UPPER TRIBUNAL (LANDS CHAMBER)

UT Neutral citation number: [2015] UKUT 0635 (LC)
LT Case Number: LRX/71/2015

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

LANDLORD AND TENANT – appointment of manager – Landlord and Tenant Act 1987 s.24 as amended – landlord accepting that F-tT entitled to conclude that a manager should be appointed – landlord objecting to the terms of the management order – whether such terms impermissibly wide and disproportionate

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

BETWEEN

QUEENSBRIDGE INVESTMENTS LIMITED

Appellant

and

(1) MS SOPHIE LODGE
(2) PUJA CHANDRA DAVDA
(3) KONRAD PATRICIO COLLAO HESKEL
(4) SARA ARORA

Respondents

Re: 135 Ladbroke Grove,
London
W11 1PN

Before: His Honour Judge Huskinson
Sitting at: Royal Courts of Justice, Strand, London WC2A 2LL
on
11 November 2015

Mark Sefton, instructed by Forsters, on behalf of the appellant
Justin Bates, instructed by Northover Litigation, on behalf of the respondents

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The following cases are referred to in this decision:

Cawsand Fort Management Co Limited v Stafford [2008] 1 WLR 371
Maunder Taylor v Blaquiere [2003] 1 WLR 379
Sennadine Properties Limited v Heelis [2015] UKUT 0055 (LC)
Daejan Investments Limited v Benson [2009] UKUT 233 (LC)
Tanfern Ltd v Cameron MacDonald [2000] 1 WLR 1311
G v G (Minors: Custody Appeal) [1985] 1 WLR 647 at 652

Decision

Introduction

1. The appellant appeals from the decision of the First-tier Tribunal (Property Chamber) (Residential Property) ("the F-tT") dated 30 April 2015 whereby the F-tT ordered that a manager, namely Ms Alison Mooney MRCIS AssocRICS of Westbury Residential Limited should be appointed manager of 135 Ladbroke Grove, London W1 1PN ("the property"). The order was made under section 24 of the Landlord and Tenant Act 1987 as amended. Permission to appeal to the Upper Tribunal was granted by the F-tT.

2. In this appeal the appellant does not seek the argue that the F-tT was wrong in appointing Ms Mooney as manager. No argument is advanced by the appellant that the relevant condition for appointing a manager was not properly established under section 24(2) nor is it argued that the F-tT was in error in concluding that it was just and convenient to appoint Ms Mooney as manager. The substance of the appeal is this, namely the appellant contends that the F-tT was not entitled to make a management order which conferred such extensive powers upon Ms Mooney and which placed such extensive restrictions upon the appellant as were in fact contained in the management order.

3. The property is a five storey building which includes three residential flats on the first, second and third floors. There is a commercial unit on the ground and lower ground floor. It is appropriate at this stage to notice the following aspects of the provisions of the relevant leases under which these units are held from the appellant:

(1) The commercial tenant holds the commercial unit (namely the ground and lower ground floor) from the appellant pursuant to a lease dated 18 January 2012 whereby the commercial unit was let for a term of 10 years from that date at a rent of £35,000 p.a. subject to review. The terms of this commercial lease provide that the demise includes the structural parts of the property within the demised commercial unit, thus the external walls and load bearing walls and the windows etc are part of the demised premises. The lease contains a full repairing covenant on the part of the commercial tenant. The commercial tenant also covenanted in clause 3.6 that, whenever required by the appellant, the commercial tenant would pay to the appellant the proportion properly attributable to the commercial unit of certain costs relating to the property. It is not necessary to look at the precise categories of these costs. The commercial lease also reserved by way of additional rent a due proportion of such sums as the appellant as landlord should from time to time pay for keeping the property (i.e. the entire building) insured against certain risks.

(2) As regards the three residential units these are let upon long leases at low rents. Taking as example the lease of flat 1 (held by Ms Lodge) the lease is dated 6 September 2002 and demises flat 1 for a term of 105 years from 24 June 2001 at a rent of £250 p.a. (doubling every 25 years) and upon payment of a premium. The lease reserves the payment of a service charge in accordance with the 8th schedule. The service charge is defined to mean a fair and just proportion of the cost and

expenses of the services as set out in Part II of the 8th schedule. The lease includes a covenant on the part of the appellant as landlord, subject to the payment of the service charge etc, to use all reasonable endeavours to provide and maintain the services described in the 8th schedule. One of those services is maintaining servicing, overhauling, repairing and when necessary, rebuilding and reinstating various parts of the property including the exterior and load-bearing walls. In summary the landlord is to insure and maintain to maintain and repair the property and the tenants are to contribute towards the costs of doing so through the service charge. The provisions for the calculation of service charge in the lease of flat 2 are different from those in the leases of flats 1 and 3 in that, whereas for the latter two flats the service charge is defined to mean a fair and just proportion of certain costs and expenses, the service charge for flat 2 requires payment of 33.33% of the costs and expenses relating exclusively to the residential parts and 25% of other costs and expenses.

4. Section 24 as amended of the 1987 Act provides so far as presently relevant as follows:

24. – Appointment of manager by a tribunal

(1) The appropriate tribunal may, on an application for an order under this section, by order (whether interlocutory or final) appoint a manager to carry out in relation to any premises to which this Part applies –

(a) such functions in connection with the management of the premises, or

(b) such functions of a receiver,

or both, as the tribunal thinks fit.

(2) The appropriate tribunal may only make an order under this section in the following circumstances, namely –

(a) where the tribunal is satisfied –

(i) that any relevant person either is in breach of any obligation owed by him to the tenant under his tenancy and relating to the management of the premises in question or any part of them or (in the case of an obligation dependent on notice) would be in breach of any such obligation but for the fact that it has not been reasonably practicable for the tenant to give him the appropriate notice; and

(ii) ….

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

[Various provisions are here omitted].

(3) The premises in respect of which an order is made under this section may, if the tribunal thinks fit, be either more or less extensive than the premises specified in the application on which this order is made.

(4) An order under this section may make provision with respect to –

(a) such matters relating to the exercise by the manager of his functions under the order, and

(b) such incidental or ancillary matters,

as the tribunal thinks fit; and, on any subsequent application made for the purpose by the manager, the tribunal may give him directions with respect to any such matters.

(5) Without prejudice to the generality of subsection (4), an order under this section may provide –

(a) for rights and liabilities arising under contracts to which the manager is not a party to become rights and liabilities of the manager;

(b) for the manager to be entitled to prosecute claims in respect of causes of action (whether contractual or tortious) accruing before or after the date of his appointment;

(c) for remuneration to be paid to the manager by any relevant person, or by the tenants of the premises in respect of which the order is made or by all or any of those persons;

(d) for the manager's functions to be exercisable by him (subject to subsection 9)) either during a specified period or without limit of time.

(6) Any such order may be granted subject to such conditions as the tribunal thinks fit, and in particular its operation may be suspended on terms fixed by the tribunal.

(7) …..

(8) The Land Charges Act 1972 and the Land Registration Act 2002 shall apply in relation to an order made under this section as they apply in relation to an order appointing a receiver or sequestrator of land.

(9) The appropriate tribunal may, on the application of any person interested, vary or discharge (whether conditionally or unconditionally) an order made under this section; and if the order has been protected by an entry registered under the Land Charges Act 1972 or the Land Registration Act 2002, the tribunal may by order direct that the entry shall be cancelled.

[Various provisions are here omitted].

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

5. The nature of the respondents' concerns which led to their application for the appointment of a manager centred upon concerns regarding what they contended was serious despair of the property including in particular an exterior flank wall and certain other structural issues and including also various aspects of the condition of the property giving rise to fire, health and safety issues. On behalf of the respondents there were reports before the F-tT from Pole Structural Engineers dated 11 November 2010 and from Quadriga Health and Safety Limited dated May 2013. There was also a further report dated 16 December 2010 from Michael Chester & Partners, consulting civil and structural engineers, on behalf of the appellant.

6. Upon the question of whether the appellant was in breach of its obligations under the leases, the F-tT found as follows in paragraph 70 of its decision:

> "As regards the failings complained of in the section 22 notice, we are satisfied that the respondent is in breach of obligations owed to the applicants under their respective tenancies. We do not propose commenting separately on each individual matter relied upon by the applicants, but we are satisfied in particular that the respondent has failed to comply with its responsibility to maintain the exterior flank wall, to deal with certain other structural issues and to tackle various fire, health and safety issues. A report from Pole Structural Engineers details certain structural problems which in part they describe as possibly dangerous and in part as quite alarming. Although that report is from November 2010 its findings have not been seriously challenged by the respondent. A more recent report from Quadriga Health and Safety Ltd (May 2013) lists a number of significant high priority fire, health and safety issues which put the residents, their visitors and the visiting emergency services at risk of death or serious injury."

7. The F-tT went on to consider whether it was just and convenient to make an order for the appointment of a manager in all the circumstances of the case and concluded that it clearly was (paragraph 73 of the decision). The F-tT made a management order in the form annexed to its decision. This was a detailed document extending to 12 pages. I will in due course describe the particular aspects of this management order which the appellant challenges in this appeal. It is appropriate first, however to note certain other aspects of the F-tT's decision.

8. The following points appear from the F-tT's decision:

(1) There was a preliminary issue namely whether there had properly been served upon the appellant the relevant notice under section 22. The appellant disputed there had been any such service. The respondents relied upon three separate notices which they had sent to various addresses. The F-tT concluded that at least one of the three letters was actually received by the appellant and that in any event one of the notices was deemed to have been served by virtue of section 7 of the Interpretation Act 1978 as having been sent to an address in St Helier which the appellant accepted was a correct address for the purpose of service of notice. However in the argument on the preliminary issue the appellant took various points including the point that the omission of the word Jersey from the address on the envelope meant that, despite the fact that the correct post code had been given, the document had not been properly

addressed. Reliance was also placed upon the fact that the St Helier address was not in the United Kingdom. The F-tT found that the notice was properly served. What is of some significance, bearing in mind further observations made by the F-tT, is that the appellant saw fit to take (unsuccessfully) these technical points regarding service of documents and to seek to avoid involvement in these proceedings regarding the state of the property on the basis of such points.

(2) The F-tT considered the oral evidence presented to it. It concluded that it preferred the evidence of the respondents and described evidence on behalf of the appellant as less compelling and as being at times unconvincing.

(3) The F-tT considered the appellant's argument that a manager had been appointed, namely Urang Property Management Limited, in circumstances where Urang were in effect acting on behalf of the respondents such that the responsibility for managing the property had become a matter for the respondents together with Urang rather than remaining the responsibility of the appellant as landlord (with Urang being the managing agent for the appellant). The F-tT rejected that argument and concluded that no such arrangement had been made.

(4) I have already set out a passage from paragraph 70 of the F-tT's decision above. It will be seen that the F-tT noted and accepted that certain structural problems were possibly dangerous and could be described as quite alarming. Also the F-tT noted and accepted that there were a number of significant high priority fire, health and safety issues which put the residents and visitors and the visiting emergency services at risk of death or serious injury. Accordingly the F-tT found as a fact that there were serious matters of substantial concern and potential danger which had arisen at the property by reason of the appellant's failure to comply with its repairing obligations.

(5) In paragraph 73 the F-tT observed that the appellant had failed to take responsibility for Urang's actions or inaction and had failed to engage properly with the respondents or with Urang or the management of the property. The F-tT observed:

> "There have been serious ongoing problems with the Property and we have no confidence on the basis of the evidence provided that the Respondent is willing and able to deal with them in a proper manner."

(6) In paragraph 75 of its decision the F-tT considered whether the management order should be suspended for 12 months but concluded that this should not be the case and that the likelihood was that such a suspension would just perpetuate the problems:

> "It would leave the Respondent in control, and the Respondent's failings to date and the breakdown in relations with the Applicants do not inspire confidence that the Property would be properly managed."

(7) The F-tT gave consideration to the identity of the person who should be appointed manager. The appellant had suggested a different person if a manager was to be appointed. The F-tT decided that Ms Mooney should be appointed.

(8) In paragraph 80 the F-tT considered the extent of premises to which the management order should relate. The F-tT referred to the case of *Cawsand Fort Management Co Limited v Stafford* [2008] 1 WLR 371. The F-tT concluded that the manager should manage the whole property (i.e. including the commercial unit on the ground and lower ground floor). The F-tT observed:

> "There will be practical issues to deal with which are better controlled by one manager, and the prospect of Ms Mooney being reliant on the Respondent's management of the commercial premises, given its track record to date and hostility towards Ms Mooney, is unattractive."

(9) The F-tT referred to the case of *Maunder Taylor v Blaquiere* [2003] 1 WLR 379 and to the fact that the F-tT is concerned to provide a scheme of management not just a manager of the landlord's obligations and also that it must be possible for the manager to obtain funds necessary to manage the property.

(10) The F-tT considered whether the manager should be given the power to receive the rent because she may need to seek payment from the appellant for service charge costs attributable to the commercial unit. The F-tT concluded that such power should be given and that:

> "…. there could be difficulties in recovering these costs from a reluctant non-UK company. We also consider, based on the evidence, that Ms Mooney has reasonable grounds for being concerned that the Respondent may try to be obstructive in other respects and that therefore it would be reasonable to allow her the power of enforcement action in relation to any sums due from the Respondent, to rank and claim in any insolvency of the Respondent, to require the provision by the Respondent of keys etc and (to the extent available) relevant information to enable her to do her job effectively and the power to give consents in place of the Respondent. Similarly, to maximise the chances that the commercial tenant complies with its covenants and pays any sum which it is fair and reasonable to require it to pay it is in our view appropriate to give Ms Mooney reasonable enforcement powers against the commercial tenant direct."

(11) In paragraph 84 the F-tT referred to paragraph 8 of the draft management order. This paragraph 8 contained an expression of concern on the part of the F-tT that, unless further provision was made, the manager might be unable to obtain a 100% service charge recovery. Paragraph 8, in consequence, ordered the appellant to pay 25% of the expenditure. In paragraph 84 the F-tT referred back to paragraph 72, where it noted a potential problem under the complicated wording of the leases regarding getting in money from the commercial unit to reflect the commercial unit's share of expenses relating to the property, and the F-tT observed that there was arguably no perfect solution to the problem in the absence of variation of all the leases, but that such a variation would probably be difficult and expensive to achieve. The F-tT then stated:

> "Given the situation in which the parties find themselves, in our view the Applicants' proposal on this point is a reasonable solution and it has the merit

of giving Ms Mooney clear instructions as to how to deal with the matter and sufficient control to enable her to deal with service costs effectively."

(12) In paragraph 88 of the decision, where the F-tT considered whether to make an order regarding costs under section 20C of the Landlord and Tenant Act 1985 as amended, the F-tT observed that the respondents had been fully justified in making the application for the appointment of the manager and that:

"The need for the appointment of a manger was precipitated by serious management failings on the part of the Respondent, and in our view much of its evidence has been weak."

Submissions on behalf of the Appellant

9. On behalf of the appellant Mr Sefton advanced the following arguments.

10. He confirmed that the appellant did not challenge the F-tT's finding that the appellant was in breach of covenant as regards keeping the property in proper repair and condition. Also the appellant did not challenge the conclusion that a manager should be appointed under section 24 or the conclusion that that manager should be Ms Mooney. What was complained of were the terms of the management order which, it was submitted, went substantially further than was permissible and the making of which amounted to an error of law on the part of the F-tT.

11. As regards the relevant legal principles, Mr Sefton referred to the judgement of Aldous LJ in *Maunder Taylor v Blaquiere* at paragraph 41 and suggested that a consequence (probably unintended) of this passage is that where a manager is appointed by order of a Tribunal then, rather than the order in effect simply placing the manager into the shoes of the landlord, the order is drafted (and perhaps sometimes poorly drafted) so as to lay down a detailed code of management as part of the order, being a code which may not reflect the position under the leases. Mr Sefton also referred to *Cawsand Fort* and argued that Mummery LJ at para. 34 set out the purpose of the power to appoint a manager:

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

12. It is therefore necessary to have regard to the management functions which the relevant tenants are entitled to enjoy in relation to the relevant premises. The discretion to appoint a manager under section 24 should be exercised for this purpose, which is the purpose for which the discretion has been conferred.

13. Mr Sefton referred to *Sennadine Properties Limited v Heelis* [2015] UKUT 0055 (LC) which he submitted was a similar case to the present, namely a case where the appointment of a manager

was held to be justified by reason of a breach of the landlord's repairing obligations. He drew attention to paragraphs 51-53 of the decision of the Deputy President in that case:

> "51. I also accept the appellant's general submission that the scope of an order under s.24 should be proportionate to the tasks which the tenants are entitled under their leases to look to their landlord to perform. I do not rule out that it may be appropriate in some cases for an order to confer power on a manager to collect rents (as opposed simply to service charges) payable by lessees of commercial premises included within the scope of a management order, but the circumstances in which any order directly intervening in the relationship between a landlord and a third party might be appropriate are likely to be exceptional.
>
> 52. I am satisfied that the LVT exceeded its authority in this case by granting greater powers to the manager over the commercial premises than were either meaningful or justified. There was little evidence of the extent of the remedial work required to the building, and no attempt had yet been made by the manager to collect an appropriate contribution from the landlord. For the manager to be empowered to let the commercial unit seems to me to have been disproportionate in those circumstances. It is not possible to be prescriptive in this area but generally it would be preferable before such an order is made for the manager to be granted power to collect an appropriate contribution towards the costs of providing services from the landlord. The extent of that contribution is likely to vary depending on the extent to which the premises are let on terms requiring the payment of a service charge. If part of the premises is vacant or is likely to become vacant it seems to me preferable, initially at least, for the manager to look to the landlord for a contribution in respect of that part, rather than to confer on the manager the responsibility of letting vacant premises in order to secure a further service charge.
>
> 53. In this case, the LVT pulled back from the very extensive powers conferred on the original manager when it suspended the management order. Despite that suspension the appellant is entitled, in my judgment, to the removal from the original order of those parts of it which exceed the LVT's jurisdiction or were otherwise disproportionate. The simplest and most satisfactory approach to achieving that objective seems to me to be to confine the premises to which the management order relates to the structure and upper floors of the building and the common parts leading to the upper floors, excluding from the premises the ground floor commercial unit altogether, and to require that, after taking into account the contribution of the lessees, the appellant be responsible for contributing the balance of the cost incurred, or expected to be incurred, by the manager in the provision of all services."

14. Mr Sefton submitted that the appropriate approach was as set out in paragraph 51. The scope of an order under section 24 should be proportionate to the tasks which the tenants are entitled under their leases to look to their landlord to perform. If this approach is adopted then such an approach is, as Mr Sefton put it, human rights compliant and he accepted that, upon such an approach, he would not have any separate self-standing arguments under Article 1 of the first protocol to the ECHR.

15. Mr Sefton did however drew attention to certain principles as set out in the Law of Human Rights 2nd Edition (Clayton & Tomlinson), especially at paragraphs 18.99 and 18.113. The right to enjoy possessions is subject to the State's entitlement to impose limitations where other important interests are at stake. In considering whether there has been any violation it is necessary to consider whether there has been an interference and if so whether such interference was justified. Once an

interference with possessions has been established the court must examine the justification by applying three principles (see paragraph 18.113) namely (a) the principle of lawfulness; (b) the principle of legitimate aim in the general interest and; (c) the principle of fair balance. Mr Sefton accepted that in the present case principles (a) and (b) were satisfied, but submitted that for principle (c) to be satisfied there must be a reasonable relationship of proportionality between the means employed and the aim sought to be realised by the interference. It was this proportionality which Mr Sefton respectfully submitted that the Deputy President had correctly articulated in paragraph 71 of the decision in *Sennadine*.

16. Mr Sefton pointed out that the appellant's property is the freehold reversion on the commercial unit and the residential leases. He submitted that these property rights have been disproportionately interfered with through the management order by:

(1) The granting to the manager of the right to manage (and receive the rents from) the commercial unit (this is ground 1 relied upon by Mr Sefton);

(2) The imposition on the appellant of certain obligations not present in the lease, namely the obligations in paragraph 8 of the management order which is in the following terms:

> "8. The First-tier Tribunal being satisfied that the liability for the Schedule 1 Service Charges under the Leases will result in a 75% recovery of the costs and expenditure in providing services to the Premises, orders the Respondent to pay 25% of the expenditure, so as to ensure that the Manager can obtain 100% service charge recovery and the Manager is authorised to demand, claim and, if necessary, sue for the same. Such sums to be computed as if the Eighth Schedule of the Leases applied."

(This is ground 2 relied upon by Mr Sefton).

(3) The imposition of a restriction (to be registered at the Land Registry) that no disposition of the registered estate by the proprietor of the registered estate or by the proprietor of any registered charge is to be registered without a written consent signed by Ms Mooney (this is ground 3 relied upon by Mr Sefton).

(4) The conferring upon the manager of the power and duty to carry out the appellant's power of granting consent under the terms of the leases, e.g. a consent to an alienation or to the carrying out of works (this is ground 4 relied upon by Mr Sefton).

17. Mr Sefton submitted that it was necessary to ask whether the management order as made went further than was necessary in order to achieve the relevant purpose. He accepted that there was some margin of appreciation for the F-tT, but in the present case the management order is disproportionate in the extent to which it removes rights from the appellant and confers them upon the manager.

18. As a general observation upon the grounds of appeal (before coming to the details) Mr Sefton submitted that the question is not whether a landlord is an uncooperative (or even untrustworthy) person with the result that, if the answer is yes, the landlord's functions should be taken away from it.

The question instead is: What are the tenants entitled to receive under the terms of their leases and what is reasonably necessary by way of management order to ensure that those services are indeed received?

19. Mr Sefton submitted that a management order made under section 24 was not a legitimate method of correcting actual or perceived deficiencies in the drafting of leases. The separate provisions of section 35 and following of the 1987 Act specifically deal with such a problem. It is not permissible under section 24 to make a management order so as to give tenants better rights than they enjoy under the terms of their leases – if the leases are deficient and fail to make satisfactory provision with respect to various matters then an application for variation of the leases under section 35 and following is the appropriate course.

20. Mr Sefton recognised that in paragraph 35 of his judgment in *Cawsand Fort* Mummery LJ stated:

> "35. I would add that I agree with the President of the Lands Tribunal that the only issue before him (and the same is true in this court) is the question of construction. If, in the light of the ruling on that issue, it appears that the order of the tribunal goes too far by conferring powers on the manager otherwise than "in relation to the premises" the proper procedure for correcting the order of the tribunal is not to appeal to the Lands Tribunal or to this court on a point of law, but to apply to the tribunal under section 24(9) for a variation of the order. The tribunal's order contains an express liberty to apply for variation: para 19."

However in the present case Mr Sefton submitted that it would have been pointless to have applied to the F-tT under section 24(9) for a variation because the appellant had in effect already been turned down on this point. Thus the application for permission to appeal had sought to challenge the matters now complained of. The F-tT granted permission to appeal but, as part of its consideration of the matter, had considered whether to review its decision and decided not to do so. All the matters now complained of were therefore legitimate matters to place before the Upper Tribunal by way of appeal.

21. As regards ground 1 Mr Sefton advanced the following further points:

(1) The F-tT did not articulate what practical issues arose in relation to the commercial unit which justified conferring the management powers in relation to that unit upon the manager. A theoretical difficulty had been raised by the respondents in their submissions, namely regarding the ability to erect scaffolding at the property. However adequate powers could be conferred upon the manager to deal with this (for instance by conferring on the manager the rights of entry etc as already reserved in the commercial lease).

(2). It was also notable that there was before the F-tT a letter from the manager dated 30 January 2015 (page 357 of the bundle) in which she indicated she would have no issue personally with the appellant continuing to manage the commercial unit in accordance with the commercial lease, including the collection of rent (although she coupled this observation with a comment that as no provision was made in the

commercial lease for the recovery of service charge from the commercial tenant then liability for such payment would need to fall on the appellant).

(3) In summary Mr Sefton submitted that the F-tT did not identify any function which the manager would be unable to perform in the absence of a right to manage the commercial unit and that therefore it was unnecessary and disproportionate to confer upon her the right to manage the commercial unit.

(4) Even if it were permissible to give to the manager the function of receiving the rents from the commercial unit, this rent is substantial and it is inappropriate to require the manager to account to the appellant for this rent at so infrequent an interval as once a year. The accounting should be on a much more prompt basis, such as within 21 days of receipt of an instalment of rent.

22. As regards ground 2 Mr Sefton advanced the following further points:

(1) Paragraph 8 of the management order involved the imposition directly upon the appellant of certain obligations (including the obligation effectively to pay a service charge to the manager) which were obligations to which, prior to the making of the management order, the appellant was not subject.

(2) The problem inherent in the approach, in relation to the making of management orders, of starting with a clean sheet of paper and providing a new scheme is that one can get a bundle of rights/obligations specified in the management order which involve obligations upon the landlord which the landlord has never agreed to in the first place under the terms of the relevant leases. It is wrong in principle to impose such obligations on a landlord which the landlord had never undertaken in the leases. There is no power to impose any such obligations pursuant to a properly made order under section 24.

(3) It is accepted that the respondents are entitled to have the property properly insured and that they are entitled to pay only a proportion of the premium with the remainder of the premium coming from the commercial premises. There would be no problem with the management order providing for the manager effectively to step into the shoes of the appellant as regards the terms of the commercial lease involving the recovery from the commercial tenant of a contribution towards the insurance premium for the property. However paragraph 8 of the management order effectively makes the appellant a tenant under a notional lease and personally responsible for paying 25% of the insurance premium to the manager. Mr Sefton submitted that this would in effect remove the obligation to pay a contribution of the insurance premium from the shoulders of the commercial tenant and place this burden upon the shoulders of the appellant. This is because if pursuant to clause 8 of the management order the appellant is required to pay (effectively by way of a service charge) 25% of the insurance premium to the manager, then there will be no scope for the appellant to recover this sum from the commercial tenant pursuant to the terms of lease of the commercial unit – indeed in any event the appellant is prevented

by the management order from seeking to enforce against the commercial tenant the terms of the commercial lease. In the result the appellant will have to pay (or will be at risk of having to pay) the proportion of the insurance premium properly attributable to the commercial unit and the commercial tenant may escape having to make such contribution.

(4) A similar objection arises in relation to paragraph 8 of the management order having regard to the position regarding repairs relating to the commercial unit. There is no problem (as apparently identified by the F-tT) in relation to the repair of the structure of the property and the paying for such repairs through the service charges in the leases. The lease of the commercial unit has expressly made certain structural parts of the property, including all the walls embracing the commercial unit, as part of the premises demised to the commercial tenant, who is made responsible for repairing them. There is therefore no unfairness or problem in the respondents being between them 100% responsible for the costs of repairs to the structural parts of the property above the first floor – save that the roof and also the foundations would be matters to be dealt with globally with all the tenants, both commercial and residential, contributing. By requiring in clause 8 of the management order that the appellant pays 25% of certain costs including costs of repair the F-tT has in effect placed upon the appellant's shoulders the burden previously borne by the commercial tenant. This is not justified under the terms of section 24 and is disproportionate and unnecessary.

23. As regards ground 3 Mr Sefton advanced the following further points:

(1) The prevention of any disposition of the registered estate becoming registered without a written consent from the manager was a serious fetter upon the appellant's property rights as the owner of the freehold reversion.

(2) It was also a fetter upon a secured lender.

(3) The management order did not define the circumstances in which the manager was to consent or was entitled to withhold consent, nor was there any provision that such consent was not to be unreasonably withheld.

(4) The obligations contained in the management order were registerable and to be registered and would in any event bind a successor in title. Therefore the restriction upon registration of dispositions was unnecessary and once again disproportionate.

24. As regards ground 4 Mr Sefton pointed out that it was no part of the complaints made by the respondents, as the justification for the making of a management order, that the appellant had behaved wrongfully in relation to the granting of consent under the leases. The removal of the appellant's power regarding the granting of consent was therefore unnecessary and disproportionate.

25. As regards the amendments which Mr Sefton submitted should be made, consistently with his arguments, to the management order these were as follows:

(1) The commercial unit should be removed from the premises in respect of which the manager is appointed – such that the manager would only be appointed in respect of the upper parts of the property; the manager would not be entitled to receive rents from the commercial unit and the appellant should no longer be prevented from demanding and receiving monies from the commercial tenant (these amendments are needed to reflect ground 1 as relied upon my Mr Sefton).

(2) The whole of paragraph 4 of the management order would be removed (to reflect ground 2);

(3) Paragraph 11 of the management order would be removed (to reflect ground 3).

(4) Sub-paragraph (e)(iii) of paragraph 1 would be deleted (to reflect ground 4).

(5) There would need to be introduced a new provision entitling the manager to do three things, namely (a) to enforce clauses 3(5) and 3(6) of the commercial lease (obligation to repair and obligation to contribute towards certain expenses); (b) to recover the insurance rent from the commercial tenant; and (c) to entitle the manager to rely upon certain powers of entry etc reserved under the terms of the commercial lease.

Submissions on behalf of the respondent

26. On behalf of the respondents Mr Bates advanced the following arguments.

27. He drew attention to the findings of fact made by the F-tT (which are not challenged on appeal) and which include numerous serious criticisms of the respondent – see the passages already cited from the F-tT's decision in para 8 above.

28. When the F-tT's decision is read as a whole it is apparent why such broad powers were given to the manager and why the F-tT was entitled to confer such powers. This is not merely a case of failure to repair by a landlord. It is a case where there is to be found a wholesale failure of management by a reluctant absentee landlord (based in the Channel Islands) over a substantial period of time, being a landlord who is likely to be obstructive in the future. This conduct on behalf of the appellant as landlord has given rise not merely to breaches of repairing covenant but to breaches of such seriousness that the building is unsafe. The wide powers conferred by the management order are justified. There exist high priority works going to the safety of the building which need to be dealt with immediately.

29. Under the statutory regime introduced by section 24 as amended of the 1987 Act the first question for the F-tT to consider is whether there has been proved a relevant ground entitling the F-tT to appoint a manager (here it is admitted that such a ground was proved) and it is next necessary for the F-tT to consider whether it is just and convenient to make the order appointing a manager in all the circumstances of the case (once again it is here not disputed that the F-tT were entitled so to find). Once the F-tT has considered these two points the F-tT then has a wide discretion as to the

terms of appointment. The F-tT may appoint a manager to carry out in relation to the relevant premises such functions in connection with the management of the premises or such functions of a receiver or both as the F-tT thinks fit. The order may make provision with respect to such matters relating to the exercise by the manager of her functions under the order and such incidental or ancillary matters as the F-tT thinks fit.

30. Mr Bates referred to *Maunder Taylor v Blaquiere* and to the observation that the 1987 Act was a radical piece of legislation which impinged upon the contractual rights of landlords and that its purpose was to provide a scheme for the appointment of a manager who will carry out the functions required by the court (paragraphs 35 and 41 of that decision).

31. The purpose of section 24 is not to have regard to the rights and obligations under the lease and to make sure that the manager carries out the provisions of the lease (irrespective of how satisfactory or unsatisfactory those provisions may be). Instead section 24 is directed towards creating a scheme of management which will ensure that the relevant premises are managed properly.

32. Mr Bates accepted that the terms of the appointment of a manager must be proportionate to the circumstances giving rise to the appointment (here breaches of covenant by the landlord). However the F-tT has a wide discretion.

33. This is an appeal to the Upper Tribunal on a point of law in circumstances where the challenge is not to the question of whether a manager should have been appointed at all but is instead to the terms of appointment. The appeal is proceeding by way of review. The function of the Upper Tribunal is not to substitute its own decision for that of the F-tT. The Upper Tribunal can only interfere with the F-tT's decision if the F-tT has "… gone wrong in principle, or left material factors out of account, or its balancing of the material factors led it to a result that was clearly wrong." See per Carnwath LJ in *Daejan Investments Limited v Benson* [2009] UKUT 233 (LC) (not affected on this point by the subsequent appeals). Mr Bates pointed out that the scope and terms of the management order are self evidently decisions which involve a high degree of discretion and judgment on the part of the F-tT. When considering whether to interfere with a discretionary decision there is a particularly high threshold. Mr Bates drew attention to the following passage taken from the White Book 2015 in the annotations to CPR 52.11:

> "As to what constitutes a sufficient error in the exercise of discretion to warrant interference by the appeal court, see *Tanfern Ltd v Cameron MacDonald* [2000] 1 WLR 1311, para.32. Brooke LJ suggested that guidance might be gained from the speech of Lord Fraser in *G v G (Minors: Custody Appeal)* [1985] 1 WLR 647 at 652. In the latter part of the passage cited by Brooke LJ, Lord Fraser stated:
>
> > "… the appellate court should only interfere when they consider that the judge of first instance has not merely preferred an imperfect solution which is different from an alternative imperfect solution which the Court of Appeal might or would have adopted, but has exceeded the generous ambit within which a reasonable disagreement is possible."

Mr Bates submitted that in the present case the appellant has come nowhere near satisfying this test so as to justify an interference with the F-tT's discretion as to the terms of appointment of the manager.

34. As regards the *Sennadine* decision in the Upper Tribunal Mr Bates did not seek in any way to submit that the observations there made could not be supported, but he did observe that the observations were clearly not intended to be some form of gloss upon the statute itself. However in the present case there did exist exceptional circumstances to justify the wide terms of the management order including removing from the appellant the right to manage and receive the rent from the commercial unit. In the present case, unlike the *Sennadine* case, there has been a failure to manage leading to breaches so serious as to make the building dangerous, with an absentee landlord, and where there is a likelihood of obstruction from the landlord such that it is undesirable to leave the landlord with any management role. Mr Bates submitted this is far from the facts in *Sennadine*.

35. Mr Bates drew attention to the observations cited above in *Cawsand Fort* and submitted that even if the Upper Tribunal considered that there may arguably be some room for dispute regarding the justification for certain points of detail in the management order, these were points which should go back to the F-tT upon an application to amend the order rather than be the subject of an appeal to the Upper Tribunal.

36. As regards the four separate points relied upon in the four grounds referred to by Mr Sefton:

(1) The appellant will not lose the ultimate right to the benefit of the rent from the commercial unit – the appellant will get this money in due course less what the appellant has been required to contribute to ensure that the property is repaired. The loss to the appellant of the power to manage the lower parts of the property and the conferring of the right to manage the whole of the property upon the manager is one of the principal points of making the management order at all – namely to ensure that a single person has control of the whole building and will actually get the necessary works done with the urgency they require.

(2) As regards the obligation imposed upon the appellant to contribute via a kind of service charge towards the relevant costs, the imposition of this was necessary because the F-tT considered the scheme of the leases (including the provisions for contributions from the commercial tenant) to be complicated.

(3) As regards the provisions of paragraph 11 of the management order preventing a disposition being registered without a written consent from Ms Mooney, Mr Bates submitted that the reason for that provision is obvious. It is in order that no question arises regarding the enforcement of the management scheme against whoever for the time being may hold the freehold reversion. It is also in order that the appellant cannot sell the freehold and effectively leave the property without first meeting such financial obligations as may exist and be as yet undischarged under the management order. Mr Bates pointed out that the F-tT has no faith in the appellant. This provision will curtail any attempt by the appellant to frustrate the management order.

(4) As regards the provision in paragraph 1(e)(iii) conferring upon the manager the appellant's power to grant consent under the leases, Mr Bates submitted that it is hardly surprising that such a provision was included in the light of the finding by the F-tT that the appellant had been obstructive and had failed properly to engage with the respondents.

37. In summary Mr Bates submitted that the terms of the management order were primarily a matter for the F-tT in the exercise of its discretion and that it cannot be said that the F-tT has exceeded the generous ambit afforded to the first instance tribunal in such cases. Mr Bates submitted that, in any event, the decision of the F-tT was right. There was however an alternative submission which he relied upon in the event that the foregoing was wrong. Mr Bates submitted that, even if the Upper Tribunal took the view that the F-tT had erred, subsequent events (including a subsequent decision of the F-tT between the same parties) make it appropriate for the Upper Tribunal either (i) to decline to interfere with the F-tT's decision or (ii) to uphold that decision for additional reasons. Upon this point he drew attention to the Tribunals, Courts and Enforcement Act 2007 sections 11 and 12 which provide that the appeal to the Upper Tribunal is upon a point of law. By virtue of section 12, if the Upper Tribunal in deciding an appeal finds that in making its decision the F-tT made an error on a point of law, then:

"(2) The Upper Tribunal:

(a) may (but need not) set aside the decision of the First-tier Tribunal, and

(b) if it does, must either –

(i) remit the case to the First-tier Tribunal with directions for its reconsideration, or

(ii) re-make the decision."

38. Mr Bates's primary submission was that no error on a point of law had been made by the F-tT and that the Upper Tribunal should not in any way interfere with its decision as to the terms of the management order. However in so far as some error on a point of law can be identified Mr Bates drew attention to the following matters which he submitted the Upper Tribunal should take into consideration in deciding whether or not to set aside the decision (or any part of the decision) of the F-tT:

(1) The order as made by the F-tT on 30 April 2015 included provisions enabling the manager to recover monies from the appellant. However despite the terms of this order and despite there being no stay of this order pending the appeal, the appellant has made no payments to the manager (Mr Sefton accepted in argument that strictly these payments should have been made and they had not been made but he pointed out that the manager had been receiving the rents from the commercial unit and could satisfy any demands out of that).

(2) The appellant recently applied to the F-tT under section 168(4) of the Commonhold and Leasehold Reform Act 2002 for a determination that the respondents were in breach of a number of covenants contained in their leases that regulate their right to sublet their flats. This application was heard on 15 April 2015 and led to a decision

by the F-tT on 7 May 2015 (i.e. a week after the date of the decision of the F-tT which is the subject of the present appeal). The F-tT in these separate proceedings held that the appellant had waived the restrictions in the respondents' leases which regulate their right to sublet the flats such that the respondents were not in breach of those restrictions. In paragraphs 32-34 of the decision in that case the following passage appears:

> "32. The tenants have been wholly successful in these proceedings. Furthermore it is reasonable to consider the landlord's motive in bringing the proceedings. It is significant that these applications were only made after the tenants had applied for the appointment of manager even though the landlord must have been aware that Ms Arora at least had been sub-letting her flat for a considerable period of time.
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> 33. Even if we are wrong about the waiver of the sub-letting restrictions it seems to us inconceivable that any court having regard to the background facts would sanction the forfeiture of these two valuable residential leases. When we asked Mr Healey if his client actually intended to seek forfeiture he sidestepped the question by saying that he had no instructions despite the fact that instructions could have been obtained from Ms Erkman who was sitting behind him. We are satisfied that these proceedings were brought by the landlord principally in retaliation for the tenants' application for the appointment of a manager and to that extent may be regarded as an abuse of process.
>
> 34. For each and all of these reasons it would be wholly unjust and inequitable if the landlord were permitted to recover any part of the cost of these proceedings from the tenants through the service charge and accordingly we make the order sought by the tenants."

39. In the light of the foregoing Mr Bates submitted that events subsequent to the F-tT's decision of 30 April 2015 show that in addition to the criticisms already made of the appellant by the F-tT in that decision there can now be added the criticism that the appellant has failed to comply with the management order and the criticism that the appellant has abused the process of the F-tT by bringing proceedings principally in retaliation for the respondents' application for the appointment of a manager. Bearing in mind these matters the terms of the management order as made by the F-tT should be left as drawn even if (which is not accepted) the F-tT erred upon the material then before it in making the order in that form.

Discussion

40. It is important to note that this appeal does not involve any challenge by the appellant to the findings of fact made by the F-tT regarding:

(1) the failure over a substantial time by the appellant properly to perform its covenants under the lease, leading to the property becoming seriously disrepaired and, in certain respects, in a dangerous condition;

(2) that it was just and convenient that Ms Mooney should be appointed manager.

41. As regards the criticisms made by the F-tT of the appellant these can be seen in paragraph 8 above. Limiting my consideration at this stage to the evidence which was before the F-tT and to the findings of the F-tT (and therefore ignoring for the moment the subsequent matters referred to in paragraph 38 above) I conclude that the F-tT found the appellant to be a landlord who:

(1) was an absentee landlord (registered in Jersey);

(2) was responsible for serious management failings;

(3) had allowed through breach of covenant serious (indeed dangerous) disrepair and want of condition to arise;

(4) had been obstructive and reluctant;

(5) was a landlord in whom the F-tT had no confidence; and

(6) was a landlord in whom the F-tT detected hostility towards Ms Mooney.

The F-tT was entitled to make these findings for the reasons it gave.

42. The present appeal proceeds by way of a review. I accept that the principles to be applied are as contended for by Mr Bates, namely as set out in paragraph 33 above. It is not for the Upper Tribunal upon this appeal by way of review to seek to decide for itself what would be appropriate terms of a management order and then, in so far as those terms differ from the terms of the management order made by the F-tT, to substitute its own decision in place of the F-tT's.

43. The wording of the relevant statutory provisions is wide. The power in section 24(1) is to appoint a manager to carry out in relation to any premises such functions in connection with the management of the premises or such functions of a receiver or both as the F-tT thinks fit. It is functions in connection with the management of the premises which the manager can be appointed to carry out, not the functions of the particular landlord under the particular lease in question. See paragraph 38 and following in the judgments in *Maunder Taylor* v *Blaquiere*.

44. I accept that as a matter of general principle, as well as for the purpose of complying with the relevant human rights legislation including in particular Article 1 of the first protocol to the ECHR, there must be a reasonable relationship of proportionality between the terms of the management order and the aim sought to be realised, in the interests of the community, by the management order. I respectfully agree with the Deputy President's analysis in paragraph 51 in *Sennadine Properties Limited v Heelis* where he stated that the scope of an order under section 24 should be proportionate to the tasks which the tenants are entitled under their leases to look to their landlord to perform. I also agree that circumstances in which it is appropriate for a management order directly to intervene in the relationship between a landlord and a third party (e.g. a commercial tenant of part of a building) are likely to be exceptional, but in making this observation the Deputy President was clearly not seeking to put any gloss upon the statutory provisions in section 24. I also conclude that the

reference to the order being "proportionate to the tasks which the tenants are entitled under their leases to look to their landlord to perform" should be considered in the light of the following matters.

45. Tenants of residential units which constitute part of a building are entitled to expect that the building will be properly managed including in particular repaired (especially so as to keep the building safe) and insured.

46. Mr Sefton argued that in so far as leases of residential units in a building are defective such that they do not make satisfactory provision regarding certain matters (for instance repair or insurance) then the proper solution is not to seek to cure this problem by the appointment of a manager but is instead for the parties to make an application under section 35 of the 1987 Act for an order amending the relevant leases. He submitted that such a problem could not properly be cured through a management order.

47. It may well be correct that, where leases are defective, the only proper solution in the long term is to seek an amendment of the terms of the leases under section 35 and following. However this does not mean that the appointment of a manager under section 24 (which may only be an appointment for a limited period) cannot properly confer powers upon the manager which will avoid a problem arising from any inadequate drafting of the leases. It may be observed that section 24 contemplates an interlocutory order appointing a manager. It may be necessary, for instance if a building is uninsured by reason of failure of a landlord to comply with its covenants, for an interlocutory management order to be made as a matter of urgency so that such insurance can be put in place. It cannot be right, if the leases themselves make inadequate provision for the placing of insurance, that the manager can only be given these inadequate powers under the lease – with the tenants being told that if they wish their building to be properly insured they need to make an application to amend the lease terms under section 35. In summary, by way of further example, suppose circumstances in which the leases are badly drafted such that the management which the tenants could expect under these badly drafted provisions would be unsatisfactory, and suppose also that the landlord has failed even to provide this unsatisfactory level of management. In my judgment if a manager is appointed under section 24 in such circumstances the F-tT's powers when appointing the manager are not limited to conferring upon the manager only the inadequate powers of management conferred under the badly drafted leases.

48. I therefore accept that the management powers conferred by a management order should be proportionate – but they should be proportionate to what the tenants are entitled to expect in accordance not merely with the terms of the leases viewed on their own but instead in accordance with the terms of the leases (which remain a relevant consideration) when read in the light of the relevant law including the terms of the 1987 Act and the matters which Parliament considered tenants should be entitled to expect.

49. I now turn to consider the four grounds as advanced by Mr Sefton.

50. Ground 1 involves an argument that the F-tT was wrong in conferring upon the manager the right to manage the commercial unit and to receive the rents from the commercial tenant. In my view

the F-tT was entitled to conclude (see in particular paragraphs 75 and 80 of the decision) that it was necessary in order to secure proper management of the property that all of the management functions for the whole property (including the commercial parts) should be removed from the hands of the appellant. The F-tT was also entitled to conclude that the management order should be drafted so as to ensure that adequate funds were available to the manager for carrying out the necessary works. The F-tT was entitled in consequence to conclude that the manager should receive the commercial rents.

51. As regards ground 2 , this involved an argument that the F-tT erred in including paragraph 8 of the management order (see paragraph 16(2) above). By this paragraph 8 the appellant is made liable to pay to the manager what is in effect a form of service charge to represent the contribution from the commercial unit. So far as concerns the power to make such an order requiring payment by a landlord of monies which under the terms of the leases the landlord is not contractually obliged to pay, I conclude that the wide words of section 24 are sufficient to authorise the inclusion of such a provision in a management order. I observe also that in paragraph 52 of the decision in *Sennadine Property's Limited v Heelis* the Upper Tribunal made such an order.

52. It is a notable feature of the leases that the commercial tenant is not required to make any regular service charge payments – instead the commercial tenant by clause 3.6 is required to repay to the landlord the proportion properly attributable to the demised premises of certain costs. Also one of the residential leases contemplates that the tenant is to pay 33.33% of the costs and expenses relating exclusively to the residential parts and 25% of other costs and expenses, whereas the other two residential leases require the tenants to pay "a fair and just proportion "of certain costs and expenses. In these circumstances the F-tT was entitled to conclude that the position was complicated and that there did exist a doubt as to whether the manager would be able to recover 100% of certain items of expenditure. In these circumstances I conclude the F-tT was entitled to be concerned that the manager might be unable to secure payment of 100% of the relevant service costs and the F-tT was also entitled to decide that the appellant should indeed contribute money by way in effect of a service charge so as to ensure that the manager was properly in funds.

53. While no argument was specifically advanced upon this point, I have considered whether the amount of the potential expense at the property for the manager was sufficient to justify not only the appointment of the manager to receive the commercial rents but also an imposition in paragraph 8 of the management order of this type of service charge on the appellant. There was no specific finding by the F-tT as to the likely cost of the works, but no argument was addressed to me to suggest that the likely costs were not accurately described in paragraph 33 of the F-tT's decision where the F-tT recorded Ms Mooney as considering a sum of £20,000 - £30,000 would cover the works that were needed initially, but that this was just the initial outlay for the most urgent issues which would need to be followed by a properly structured programme at a manageable cost. Bearing in mind the urgency of the works needed and the necessity that the manager has sufficient money in hand to carry out those works, I conclude that the F-tT was entitled to decide that paragraph 8 should also be included within the management order. Contrary to the submissions on behalf of the appellant, the purpose and effect of paragraph 8 is not to remove obligations from the commercial tenant and place them upon the shoulders of the landlord. The manager is entitled to enforce against the commercial tenant its various obligations under the lease including to contribute towards the insurance and to repair the

commercial unit. This will be reflected when the manager accounts (as she is required to do) periodically to the appellant.

54. As to whether the manager should be required to account on a more frequent basis than once a year, I do not consider that this is a point of principle or a point which goes to the proportionality or lawfulness of the F-tT's decision. If the appellant considers that the manager has received from the commercial tenant significantly more money than she needs such that she is in effect unreasonably sitting on funds which belong to the appellant, then the appellant can apply to the F-tT for an order that such monies be released.

55. As regards ground 3, namely paragraph 11 of the management order which places a restriction upon the registration at the Land Registry of a disposition of the registered estate, this is the provision which has caused me most concern as to whether it was permissible for the F-tT to impose it. It is a substantial interference with the appellant's and any mortgagee's right to dispose of its property. Also the provisions of the management order, being registered, would in any event bind a purchaser. However the present is an exceptional case in which serious criticisms have been made by the F-tT of the appellant. The appellant cannot be relied upon to comply with the terms of the lease but it seems that the appellant can, upon the F-tT's findings, be relied upon to be obstructive to the manager and to the respondents. The management order has only been made for a period of 2 years. If Ms Mooney was, in the appellant's contention, acting unreasonably in refusing to consent to a registration of a disposition then the appellant could make an application under section 24(9) of the Act. In the exceptional circumstances of the present case I conclude that the F-tT was entitled to impose this restriction so as to remove the prospect that the appellant might sell its interest without paying to the manager monies which it owed and might leave the manager with such rights if any if she was able to enforce against the new proprietor (whoever that might be and, if a company, wherever it might be registered).

56. As regards ground 4, it is true that the application for the appointment of a manager did not include, as one of the grounds for appointment, any complaint regarding the granting or withholding of consent by the appellant under the leases. However having regard to the criticisms made of the appellant by the F-tT I conclude that the F-tT was justified in including within the management order a provision that the power of granting consent was to rest with the manager.

57. My overall conclusion is this. The F-tT imposed terms in the management order which were within the range of reasonable terms which it was permissible for the F-tT to impose. There is a reasonable relationship of proportionality between these terms and the aim properly sought to be realised by the management order. There is no error of law in the F-tT's decision. There is no basis upon which I properly can or should allow this appeal by varying in some way this management order.

58. I refer again to the observations of Mummery LJ in paragraph 35 of his judgement in *Cawsand Fort*, see paragraph 20 above. Section 29(9) of the Act allows the F-tT, on the application of any person interested, to vary or discharge (whether conditionally or unconditionally) an order made under section 24. I do not accept that this route under section 24(9) is barred to the appellant by

reason of the fact that, when granting permission to appeal, the F-tT observed that it did not think it right to review its decision. In doing so the F-tT was not thereby stating (and could not properly have stated) that if an application was in due course made under section 24(9) it would decline to consider such an application. The F-tT made the observation it did in the context of an application for permission to appeal, which it granted. If some identifiable problem arises under the management order for the appellant then the appellant can make an application to the F-tT for a variation of the management order under section 24(9) so as to alleviate this problem. Any such application would be considered by the F-tT upon the evidence and argument then before it. Of course if the application was simply a reassertion, without any new evidence, of a complaint about the management order which had already been advanced by the appellant and already rejected by the F-tT, then such an application would be unlikely to succeed. If however some practical problem does actually arise (e.g. such as that discussed in paragraph 54 above) then the appellant has section 24(9) available to it.

59. Accordingly I conclude that the present appeal must be dismissed. I reach that conclusion quite apart from the additional point raised by Mr Bates which I now mention.

60. Even if I had concluded that some part of the management order (for instance the inclusion of paragraph 11) was unjustified and involved an error of law on the part of the F-tT having regard to the material before the F-tT, I would have declined to set aside the F-tT's decision either in whole or in part. I would have declined to do so for the following reason. The additional material referred to in paragraph 38 above demonstrates two further matters in respect of the appellant. First the appellant cannot be relied upon to comply with the terms of the management order (in breach of its terms the appellant has failed, pending an appeal, to make any payment to the manager). Secondly the appellant has shown that it has a further quality which can be added to the list of criticisms already mentioned in paragraph 41 above, namely the appellant is prepared to resort, by way of an abuse of the process of the Tribunal, to litigation for the purpose of retaliating against the respondents for their making of an application for the appointment of a manager. This further evidence serves to confirm how right the F-tT was in its conclusion that a widely worded management order was demanded in the present case in order to ensure that the property was properly managed.

Conclusion

61. The appellant's appeal is dismissed.

62. On behalf of the respondents Mr Bates made an application under section 20C of the Landlord and Tenant Act 1985 as amended that I should order that all of the costs incurred by the appellant in connection with these proceedings before the Upper Tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the respondents. Mr Sefton asked that the parties be given time to make submissions upon this point in the light of my decision on the substantive points. I therefore direct that the parties within 14 days from the date of this decision submit such written argument as they wish in relation to this point under section 20C. I shall then give a supplementary decision upon that point.

Dated: 19 November 2015

His Honour Judge Huskinson

Addendum dealing with the respondents' applications regarding costs.

63. The respondents have made written application to the Tribunal

(1) for an order under section 20C of the Landlord and Tenant Act 1985; and

(2) for an order for costs under rule 10 of the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010 as amended.

64.. The Tribunal sent a copy of the respondents' application to the appellant's solicitors on 10 December 2015 giving them until 18 December 2015 to respond to the costs application. No such response has been received.

65. As regards the application under section 20C I consider it just and equitable to make the following order, which I do hereby make, namely that all of the costs incurred by the appellant in connection with the proceedings before the Upper Tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by any of the respondents.

66. So far as presently relevant, in accordance with rule 10, the Tribunal has power to make an order of costs in favour of the respondents

> " if the Tribunal considers that a party or its representative has acted unreasonably in bringing, defending or conducting the proceedings"

67. I bear in mind that the present appeal could not have come before the Upper Tribunal unless permission to appeal was granted and that such permission was indeed granted by the deputy president.

68. However I also bear in mind the matters referred to in my decision in the present case including in particular paragraphs 41 and 60 (in the discussion part of the decision) and in paragraph 38 (in the part of the decision dealing with submissions on behalf of the respondents).

69. In the light of the grant by the Tribunal of permission to appeal I do not conclude that the appellant acted unreasonably in originally bringing the appeal. However I accept the argument advanced in paragraph 4 of the costs application on behalf of the respondents. I conclude that after the second decision of the F-tT (i.e. the decision referred to in paragraph 38(2) of my substantive decision in this case) had become final, ie when the Upper Tribunal refused permission to appeal against that second decision, it was unreasonable for the appellant to continue with the present appeal. This is because it was by then established that not merely could the criticisms mentioned in paragraph 41 of this decision be made against the appellant, but also that the further two criticisms referred to in paragraph 60 could be made as well. It was unreasonable for the appellant, against whom all of these criticisms could then be made, to continue with the present appeal. There was no reasonable prospect of success. Any complaint regarding the detailed drafting of the order appointing a manager could have been dealt with by an application to the F-tT.

70. I therefore order that the appellant pays to the respondents the costs of this appeal to the Upper Tribunal (to be assessed by the Registrar if not agreed and to be assessed on a standard basis) as from the date on which there was communicated to the appellant the refusal of the Upper Tribunal to grant permission to appeal in relation to the above-mentioned second decision of the F-tT.

His Honour Judge Huskinson

13 January 2016

Second addendum on costs

71. In the first addendum (which is dated 13 January 2016) to the substantive decision in this case I ordered that:

> "……. the appellant pays to the respondents the costs of this appeal to the Upper Tribunal (to be assessed by the Registrar if not agreed and to be assessed on a standard basis) as from the date on which there was communicated to the appellant the refusal of the Upper Tribunal

to grant permission to appeal in relation to the above-mentioned second decision of the F-tT."

72. This order was made upon the application by the respondents 10 December 2015 for an order for costs against the appellant. In paragraph 64 I stated:

> "64. The Tribunal sent a copy of the respondents' application to the appellant's solicitors on 10 December 2015 giving them until 18 December 2015 to respond to the costs application. No such response has been received."

73. Accordingly the costs order was made without considering any submissions on behalf of the appellant upon the merits of the respondents' application for costs. It was so made because no submissions on behalf of the appellant had been submitted.

74. By a letter dated 22 January 2016 the appellant's solicitors wrote to the Tribunal asking that the costs order be set aside. They said that the Tribunal's notification to them of the respondents' costs application and of the requirement that they should respond by 18 December 2015 was only communicated to them by e-mail on 10 December 2015 (this is correct); that the solicitor dealing with the matter namely Amy Jackson was away and that therefore the Tribunal would have received an out of office reply (this is correct – the Tribunal did receive an immediate such reply on 10 December 2015); and that such an important order containing a strict deadline should have been sent in hard copy by DX. The solicitors drew attention to the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010 as amended and in particular rule 6(7) which they pointed out required that, unless the Tribunal considers that there is good reason not to do so, the Tribunal must send written notice of any direction to every party and to any other person affected by the direction. They contended that this provision was not satisfied by sending the notification by e-mail only. They drew attention to rule 54 and they asked that their letter be treated as an application to set aside the costs addendum decision of 13 January 2016 on the basis that a document relating to the proceedings was not properly sent to, and was not received at an appropriate time by, the appellant's representative.

75. In their letter the solicitors also drew attention to the fact that some of the present respondents had made an application for costs (on the basis of alleged unreasonable conduct on the part of the appellant) in the separate proceedings before the F-tT being the proceedings referred to in paragraph 38 of my substantive decision in the present case. They enclosed a copy of their submissions dated 4 December 2015 made to the F-tT in that case by way of objection to the application for costs in that other case. This document showed that the appellant had substantial submissions to make in that case on the question of whether an adverse costs order should be made against it on the basis of unreasonable conduct. It is clear from this document that, had it been aware of the costs application in the present case, the appellant would equally have had substantial submissions to make in the present case on the question of whether an adverse costs order should be made – and especially as part of the basis for the respondents' costs application in the present case (being a basis to which I accorded weight in my addendum decision) rested upon observations made by the F-tT in the other case as to the nature of the appellant's conduct in that case. This alleged unreasonable conduct in the other case was being vigorously resisted by the appellant in the costs application in the other case. I consider it clear the appellant would have equally wished to resist the same point in the present case if it had known of the costs application in the present case.

76. The respondents' solicitors wrote to the Tribunal by letters dated 22 January and 28 January 2016 observing that even if Ms Jackson had been out of the office on 10 December 2015 there was no explanation given as to why it took so long for her to deal with the matter or why the Tribunal's e-mail did not come to her attention before it eventually did. They also drew attention to rule 13 and to the fact that the Tribunal was entitled to communicate with the appellant's solicitors by e-mail. They also commented that the appellant's solicitor was had not set out the grounds on which they were challenging the costs decision in the addendum.

77. By a direction dated 5 February 2016 the Tribunal gave both parties a further period expiring on 29 February 2016 to make any further representations they wished to make upon whether the costs order made in the addendum decision should be set aside and directing that each party must ensure the other party had received copies of all representations which such party had made. The direction also indicated that I would then consider the written representations and give a written decision (A) upon whether the costs order should be set aside and (B) upon the procedure (if the decision was that the costs order should be set aside) for the making of final representations upon the question of what if any costs order should be made.

78. Written submissions and a bundle of authorities were submitted on behalf of the appellant on 29 February 2016. No further submissions were made at that stage on behalf of the respondents. By a letter dated 29 April 2016 the Tribunal enquired (at my request) as to whether the parties would be content for the final decision to be made in a single stage rather than two stages, such that if I concluded that the costs order should be set aside then I could go on to redetermine the costs application. The letter enquired whether, if such procedural adopted, both parties had said all they wanted to say upon both limbs of the decision making process, namely whether the order should be set aside and if so what if any order should be made.

79. The appellant's solicitors responded saying that the appellant would wish to adhere to the originally contemplated procedure so that, if the order was set aside, they could have a final opportunity of responding to any further submissions the respondents' solicitors might have submitted. The respondents' solicitors responded to the Tribunal's letter by confirming that they had previously made no further submissions in response to the letter from the Tribunal dated 5 February 2016 and that they were content for the final decision to be made in one stage. They also included written submissions which dealt not merely with the second point (namely what costs order should be made if the original order was set aside) but also with the first point namely whether the original costs order should be set aside at all. The intention was that any such submissions on the first point should have been put in by 29 February. I have however considered these submissions.

80. By these submissions on the respondents' solicitors drew attention to rule 54; they submitted that none of the conditions in section 54(2) were satisfied; and they further submitted that even if one of those conditions was satisfied the Tribunal should nonetheless conclude within section 54(1) that it was not in the interests of justice to set aside the original costs order.

81. Bearing in mind the original directions given by the letter of 5 February 2016 and bearing in mind the objection by the appellant that these should not be departed from, I shall at this stage only consider the question of whether the original costs order should be set aside.

82. I accept the argument advanced by the respondents namely that in the present case, where the the appellant's solicitors had provided an e-mail address and had been communicating with Tribunal by

e-mail, rule 13(2) enables the Tribunal to serve documents on the appellant's solicitors by e-mail. The documents were served by e-mail on 10 December 2015. I do not accept that the Tribunal was obliged to send hard copies by DX or post. Accordingly if rule 6(7) applies to the directions given on 10 December 2015 the Tribunal did send written notice of the direction to the appellant namely by sending it by e-mail to the appellant's solicitors.

83. Rule 54 provides:

> "Setting aside a decision which disposes of proceedings
> 54.—(1) The Tribunal may set aside a decision which disposes of proceedings, or part of such a decision, and re-make the decision or the relevant part of it, if—
> (a) the Tribunal considers that it is in the interests of justice to do so; and
> (b) one or more of the conditions in paragraph (2) are satisfied.
> (2) The conditions are—
> (a) a document relating to the proceedings was not sent or delivered to, or was not received at an appropriate time by, a party or a party's representative;
> (b) a document relating to the proceedings was not sent or delivered to the Tribunal at an appropriate time;
> (c) a party, or a party's representative, was not present at a hearing related to the proceedings; or
> (d) there has been some other procedural irregularity in the proceedings.
> (3) A party applying for a decision or part of a decision to be set aside under paragraph (1) must send a written application to the Tribunal and all other parties so that it is received no later than 1 month after the date on which the Tribunal sent notice of the decision to the party."

84. As regards rule 54(2)(a) and (c) I conclude that these are not satisfied in the present case. Paragraph (c) clearly is not satisfied. As regards paragraph (a) the relevant document was sent to the appellant's solicitors and was received by them at an appropriate time.

85. However this is a case where it is now clear that as at December 2015 the appellant would have wished to make substantial and detailed submissions upon the costs application if only it had known about the application. Once the appellant did become aware of the costs application then it did make such substantial and detailed submissions – but these were only sent to the Tribunal after the original costs order had been made. I consider that therefore rule 54(2)(b) is satisfied, namely a document relating to the proceedings was not sent or delivered to the Tribunal at an appropriate time.

86. If the foregoing is wrong I would conclude that in any event rule 54(2)(d) is satisfied namely there has been some "other procedural irregularity in the proceedings". The full title of the rules is the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010. The rules deal with procedure. Rule 2 is entitled "Overriding objective and parties' obligation to co-operate with the Tribunal" and provides:

> "2.—(1) The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly.
> (2) Dealing with a case fairly and justly includes—
> (a) ………………
> (b) ……………….
> (c) ensuring, so far as practicable, that the parties are able to participate fully in the

proceedings;
(d) ………..”

In the events which have occurred the appellant has been unable to participate fully in that part of the proceedings which led to the making of the original costs order. I conclude that in the circumstances the overriding objective, namely enabling the Tribunal to deal with the case fairly and justly, has not been met. I consider that that constitutes a procedural irregularity such as to satisfy rule 54(2)(d).

87. I must next consider whether it is in the interests of justice to set aside the original costs order and to reconsider the question of costs and to make a new order. I conclude it is in the interests of justice to do so. The matters recorded above and especially at paragraphs 75 and 86 lead me to this conclusion. The adverse costs order against the appellant was made in circumstances where the appellant had much to say on the topic (and had already made similar representations upon another costs application in other proceedings between the appellant and some of the present respondents). I recognise that it is a discretion which is conferred by rule 54. I conclude that I should exercise this discretion as requested by the appellant.

88. I therefore set aside the costs order made in the addendum decision (but not that part of the order relating to section 20C of the Landlord and Tenant Act 1985 as amended).

89. It is next necessary for me to give directions upon the procedure for the making of final representations upon the question of what if any costs order should be made. Apart from point next mentioned this would only require in a fairly short period so as to ensure that both parties had said everything they want to say – for instance it is possible the appellant may wish to respond to the recent submissions made on behalf of the respondents. However I am aware that there is pending in the Upper Tribunal a decision in conjoined cases heard in March 2016 before Martin Rodger QC (Deputy Chamber President) sitting with Siobhan McGrath (Chamber President First-Tier Tribunal Property Chamber) which raise questions as to the proper interpretation of and approach to the provisions in Rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, which concerns the power of the F-tT to award costs and which is in similar terms to the relevant provisions of rule 10 concerning the power of this Tribunal to award costs in the present case.

90. I consider it would be appropriate for the parties to have the opportunity of submitting final submissions in writing in relation to the respondents’ costs application in the present case in the light of the decision in this pending appeal.

91. I therefore direct that the parties make their final written representations upon the question of what (if any) costs order should be made against the appellant in the present case by whichever is the later of the following two dates, namely the end of June 2016 alternatively by 14 days after the giving by the Upper Tribunal of its decision in this pending appeal. The matter will then be determined upon the written representations.

His Honour Judge Huskinson

Nicholas Hopkins

16 May 2016

Third addendum on costs

92. In the second addendum on costs in this case dated 16th of May 2016 I set aside the order previously made in the addendum on costs dated 13 January 2016 for the reasons there stated. I invited further and final submissions from the parties upon the question of any costs order under rule 10(3)(b) in the light of the anticipated decision in conjoined cases heard before Martin Rodger QC (Deputy Chamber President) sitting with Siobhan McGrath (Chamber President First-Tier Tribunal Property Chamber) which raised questions as to the proper interpretation of and approach to the provisions in rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. This decision has now been published namely *Willow Court Management Company (1985) Limited v Alexander* (LRX/90/2015) dated 21 June 2016. The parties have each made further submissions in the present case in the light of that decision.

93. The decision on costs in the present case dated 13 January 2016, made in the absence of any representations on behalf of the appellant, has been set aside. I must consider the question of the costs application under rule 10 entirely afresh. I do so.

94. The relevant wording in rule 10 is as follows:

> "10 (1) The Tribunal may make an order for costs on an application or on its own initiative.
> (2) Any order under paragraph (1)—
>> (a) may only be made in accordance with the conditions or in the circumstances referred to in paragraphs (3) to (6);
>> (b) ……
>
> (3) The Tribunal may in any proceedings make an order for costs—
>> (a) under section 29(4) of the 2007 Act (wasted costs) and for costs incurred in applying for an order for such costs;
>> (b) if the Tribunal considers that a party or its representative has acted unreasonably in bringing, defending or conducting the proceedings; or
>> (c) …………..."

The present application for costs does not involve any claim for wasted costs against a representative of the appellant. Instead the application is for an order for costs against the appellant itself under rule 10(3)(b).

95. I can see no relevant distinction in the wording of rule 10(3)(b) as compared with the relevant wording in rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. Accordingly in considering whether, within the wording of rule 10(3)(b) a party has acted unreasonably in bringing defending or conducting the proceedings the same approach should be adopted as is appropriate for consideration of whether a person has acted unreasonably in bringing, defending or conducting proceedings in a residential property case within rule 13(1)(b) of the 2013 Rules. The decision of the Upper Tribunal in *Willow Court v Alexander* therefore gives guidance as to the proper approach in the present case.

96. The submissions upon costs by the parties in the present case have embraced references to numerous decisions upon costs in the Court of Appeal and elsewhere. However having regard to the recent guidance in *Willow Court v Alexander* I do not consider it necessary further to prolong the present decision by analysing those decisions.

97. I note that the first stage of analysis is to consider the question of whether the appellant acted unreasonably. This does not involve an exercise of discretion but rather the application of an objective standard of conduct to the facts of the case (see paragraph 28 of the decision in *Willow Court v Alexander*). I also note the analysis in paragraph 24 of that decision:

> "An assessment of whether behaviour is unreasonable requires a value judgment on which views might differ but the standard of behaviour expected of parties in tribunal proceedings ought not to be set at an unrealistic level. We see no reason to depart from the guidance given in *Ridehalgh* at 232E, despite the slightly different context. "Unreasonable" conduct includes conduct which is vexatious, and designed to harass the other side rather than advance the resolution of the case. It is not enough that the conduct leads in the event to an unsuccessful outcome. The test may be expressed in different ways. Would a reasonable person in the position of the party have conducted themselves in the manner complained of? Or Sir Thomas Bingham's "acid test": is there a reasonable explanation for the conduct complained of?"

98. I also note from paragraph 43 of that decision that applications for costs under rule 10(3)(b) on the basis of unreasonable conduct should not be allowed to become major disputes in their own right; that they should be determined summarily; and that a decision to dismiss such an application can be explained briefly.

99. The original reasons advanced by the respondents for the making of an order for costs under rule 10 were:

> (A) that it was unreasonable to pursue the appeal to the Upper Tribunal in circumstances where the appellant had not paid monies required as a result of the F-tT order and had not obtained a stay upon that order; and

(B) it was unreasonable to pursue the appeal once the second F-tT decision (see paragraph 38 above) had become final, i.e. when the Upper Tribunal had refused permission to appeal; and
(C) matters of detail in the drafting of the management order upon which the appellant had legitimate concern (if any) could properly have been dealt with by an application back to the F-tT under section 24(9).

The respondents submitted that point (B) above was particularly important; that it was clear that parties are under an ongoing duty to reconsider the strength of their case; that such a duty is consistent with the overriding objective (see rule 2 of the Upper Tribunal rules) and represents a proper exercise of the duty owed to the Tribunal to assist it to achieve the overriding objective. Failure to withdraw the appeal to the Upper Tribunal was unreasonable.

100. The respondents also submitted that the Upper Tribunal (Lands Chamber) Practice Directions at paragraph 12.2 was instructive and was consistent with the respondents' argument that a costs order should be made.

101. I am unable to accept the respondents' arguments. I conclude that no order for costs under rule 10 should be made against the appellant. My reasons for so concluding are substantially those advanced in the written submissions on behalf of the appellant. I express these reasons in my own words as follows.

102. The relevant enquiry is not whether in some general sense the appellant can be said to have behaved unreasonably in relation to the building. The relevant enquiry is instead an enquiry as to whether the words of rule 10(3)(b) are engaged, namely whether the appellant acted unreasonably "in bringing, defending or conducting the proceedings". The relevant proceedings are the proceedings which constituted the appeal to the Upper Tribunal which resulted in the substantive decision in this case dated 19 November 2015.

103. As regards the point raised in paragraph 99 (A) above, the question of whether the appellant had acted unreasonably in omitting to pay monies as required by the F-tT's order to the manager, despite not having obtained a stay of execution upon that order, is in my judgement not a question which impinges upon whether the appellant acted reasonably in pursuing the appeal to the Upper Tribunal. In any event I note the matters raised in paragraphs 26 and 27 of the appellant's submissions to set aside the costs order under rule 10(3) and I see some substance in those points. I do not consider that the omission to pay monies as required by the order thereby made unreasonable the pursuit of the appeal by the appellant.

104. As regards the point raised in paragraph 99 (B) above, the question of whether the appellant acted unreasonably in pursuing the appeal (or in further pursuing it after the separate decision of the F-tT dated 7 May 2015 referred to in paragraph 38 above) must in my judgement depend upon what was the substance of the appeal and merits (or lack of merits) of the arguments raised.

105. If the appellant had sought to appeal against the making of any management order at all or against the selection of Ms Mooney, then in the circumstances of the present case such an appeal might well have been unreasonable (although it is difficult to see how permission to pursue such an appeal could ever have been granted). However the appellant did not seek to raise any such points, see paragraph 10 above.

106. Instead the appellant sought to challenge the width of the management order. The appellant was granted permission by the F-tT to do so (the appellant points out that my reference to such permission being granted by the deputy president of the Upper Tribunal is wrong). In my judgement the points raised by Mr Sefton on behalf of the appellant as to the width and proportionality of the terms of the management order were points which, although ultimately unsuccessful, were properly arguable. I note that the appellant acted upon legal advice and that the legal advice was to the effect that there were reasonable prospects of success upon at least some of the complaints regarding the width of the order. In so acting I do not consider the appellant can be said to have acted unreasonably.

107. If, as I conclude it was, it was reasonable for the appellant to have launched the present appeal (having been granted permission to do so by the F-tT) the question arises as to whether it became unreasonable for the appellant to continue that appeal after the making of the observations by the F-tT dated 7 May 2015 in the other case (see paragraph 38 above). Having carefully considered the representations made by both parties I have concluded that these observations did not have the effect of transforming proceedings which were being reasonably pursued (because the arguments raised were properly arguable upon the merits) into proceedings which were not being reasonably pursued.

108. As regards the point raised in paragraph 99 (C) above, I consider that the points raised by the appellant in the appeal were points of principle rather than of drafting. I do not consider the appellant's only reasonable course, if it had some complaint regarding the management order, was to make application under section 24(9).

109. I do not consider that the respondents' reference to the Upper Tribunal (Lands Chamber) Practice Directions at paragraph 12.2 assists their claim for costs. This paragraph is not dealing with the approach to costs under rule 10(3)(b).

110. In the result I conclude that there is a reasonable explanation for the conduct complained of, namely the continuation by the appellant of its appeal to the Upper Tribunal. I decline to make any order for costs under rule 10 against the appellant.

111. The order I made in paragraph 65 above under section 20C still stands.

His Honour Judge Huskinson

8 August 2016