

**IN THE MATTER OF AN APPLICATION FOR PERMISSION TO APPEAL AND A REVIEW TO
ADD DIRECTIONS**

B E T W E E N:

VARIOUS LEASEHOLDERS
REPRESENTED BY THE RESIDENTS' ASSOCIATION of CANARY RIVERSIDE
Applicants

AND

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

Respondents

APPLICATION FOR PERMISSION TO APPEAL
AND GROUNDS OF APPEAL
APPLICATION FOR A REVIEW OF THE DECISION TO ADD DIRECTIONS

Appeal re Challenge 2. Ground 1 : errors of fact

1. The FTT's decision at para 103 states "*the Applicants made no challenge to the rate or quantum of the financing, and we therefore determine the [financing] charges were reasonably incurred and are payable by the Applicants*".
2. The FTT decision is wrong in two respects:
 - a) First, the Applicants did challenge the financing charges paid on the portion of the premium that was being paid to WMS. In her opening submissions Ms Jezard, the Applicants' representative, stated "*the other important point to make [in respect of unreasonable financing charges] is that a good percentage of the premiums being paid on 1st April were then remitted back to WMS. So [the Applicants] are paying interest to help the landlord company get payment of commissions... the [financing] cost gets borne by the leaseholders¹*". In her closing submissions Ms Jezard told the FTT "*We believe the finance charges are not payable... the [insurance] bills were inflated as a result of the WMS commissions and the additional commissions paid to Reich, which we do not accept were payable²*".

¹ Taken from the representative's opening statement notes and confirmed by Applicants' contemporaneous notes taken during the hearing.

² IBID

The Applicants were challenging the reasonableness of the finance charges in their entirety and also - explicitly and specifically - the *quantum* of the financing charges in respect of the commissions ('Challenge 1'). The FTT has erred in omitting to take the Applicants' challenge to that element of the financing charges into consideration in its Decision.

b) Secondly, having found that the Applicants were not liable to contribute towards the sums of £1,517,372 (fees paid to WMS) and £121,338.58 (IPT attributable to the fees paid to WMS)³ it is illogical for the FTT to go on to find that the Applicants *are* liable to contribute towards the financing charges attributable to those disallowed sums. Just as the IPT charge of £121,338.58 on the WMS commissions would not have been incurred had there been no WMS commissions within the premium, there would not have been a financing charge attributable to the WMS fees (and IPT thereon) had the commissions not been unreasonably demanded in the first instance.

3. The table below sets out the calculation by year of the proportion of the financing charge attributable to the seven years in which finance charges were levied, using the interest rates charged by Reich. The interest rates have been applied to the sums calculated by the FTT as not payable by the Applicants (para 88 of the Decision) to calculate the relevant proportion of the finance charge. It is the Applicants' contention by way of this appeal that they should not be liable to contribute towards financing charges totalling £49,099.26.

Year	WMS Fees	IPT	WMT & IPT	Interest rate	Finance charge on WMS & IPT
2010/11	£99,834	£4,991.70	£104,825.70	4%	£4,193.03
2011/12	£160,636	£9,638.16	£170,274.16	4%	£6,810.97
2012/13	£160,409	£9,624.54	£170,033.54	4%	£6,801.34
2013/14	£150,548	£9,032.88	£159,580.88	4%	£6,383.24
2014/15	£146,684	£8,801.04	£155,485.04	4%	£6,219.40
2015/16	£162,272	£9,735.32	£172,007.32	4%	£6,880.29
2016/17	£162,200	£15,409.00	£177,609.00	6.65%	£11,811.00
2017/18 ⁴	£143,487	£14,348.70			
2018/19	£154,897	£18,587.64			
2019/20	£176,405	£21,168.60			
Totals	£1,517,372	£121,338.58			£49,099.26

³ Para 1 of the Decision

⁴ No financing charges applicable to years 2017/18, 2018/19 and 2019/20.

Comment on Tribunal's findings re Challenge 4

4. The Applicants are not appealing the FTT's decision in respect of 'Challenge 4' (apportionment of insurance costs) but wish to draw to the FTT's attention what they see as an error of fact in the Decision regarding the building reinstatement valuation reports.
5. At para 118 of the Decision the FTT states "the Respondents had acted on the *apportionment* recommended in the professional reports received previously" [our emphasis].
6. The FTT has erred in finding that the Respondents' valuation reports (IPS report [pages 261-266] and the QuestGate report [pages 267-284]) represented professional advice on the *apportionment* of associated insurance premiums to the underlessees. Neither of the reports referred to underlease percentages nor did they include references to such apportionment. The reports appear to have been commissioned solely for the purpose of providing the valuation basis for the sum(s) to be insured, ie, for insurance purposes.
7. It is correct that QuestGate separated out the reinstatement cost of the carpark from the building foundation. They did not, however, apportion the foundations to the various buildings, nor apportion the car park between commercial and residential. Their report was an insurance cost assessment *valuation* exercise, presumably carried out with reference to the RICS guidance⁵ [extract at 488-497].
8. The *apportionment* of service charge costs, including insurance premiums, is a landlord/managing agent function. The Respondents presumably could, when instructing IPS in 2014, asked them to provide their professional opinion on how to apportion insured sums/premiums across the Estate's tenants, but they did not do so [see page 265] – despite the fact the Applicants had been raising questions about the basis of the apportionment since at least May 2011 [page 77]. The QuestGate report was produced after the S.27A Application was made.
9. The Tribunal has erred in finding the Respondents had 'acted on apportionments in the professional reports received previously' [para 118].
10. The Applicants accept that this does not alter the FTT's findings in para 121 but wished to bring this issue to the judges' attention.

Application to review the Decision and add directions

11. The Tribunal's Decision sets out the sums that the 98 Applicants are not liable to contribute to (para 88). During the Applicants' closing submissions Judge Vance stated that he hoped there would be agreement between the leaseholders and the respondents as to 'the specifics' of any sums determined not to be payable by the Applicants. Judge Rushton noted that it would be 'a mathematical calculation applied to the various percentages in the various leases [of the Applicants]'.

⁵ Reinstatement cost assessment of buildings 3rd edition February 2018

12. The Applicants have reviewed other S27A decisions and noted in straightforward matters (those with few applicants or requiring simple calculations) the FTT sets out the sums payable by applicant(s) in the decision. In more complex applications the FTT may direct the parties to seek to agree the actual figures for each applicant/challenge and to apply to the tribunal for further directions if agreement on the sums cannot be reached.

13. We ask the Tribunal by way of a review of its Decision to add the following directions:

“We invite the parties to agree the relevant calculations and determine for each of the Applicants and for each of the years in question:

- a) The sum paid in respect of insurance.
- b) The sum determined by the FTT not to be payable by the Applicant, applying the sums detailed at para 88 of the Decision.
- c) The amount that is payable.

“If the parties are unable to do so either party may seek further directions from the Tribunal within 35 days of the date this direction is sent out.

“This direction is to be complied with by the parties regardless of whether either party has appealed the Decision dated 21 December 2022”.

14. Agreement between the parties per this direction would mean that the principles of apportionment were agreed. This would help minimise the likelihood of a dispute arising following a successful appeal: the new sums determined by the Tribunal not to be payable would replace those used in stage b) of the above (from the Decision dated 21 December 2022). The FTT is best placed to direct the parties, and determining the amount not payable by *each* Applicant is required to conclude the proceedings in the FTT and before the FTT determines the cost applications (per para 122 of the Decision).

Statement of Truth

I believe that the facts stated in this document are true and I am authorised by the Applicants to sign this statement. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

Signed:

Dated:

Name: