**Neutral Citation Number: [2024] UKUT 63 (LC)**

**Case No: LC-2023-303**

**IN THE UPPER TRIBUNAL (LANDS CHAMBER)**

**AN APPEAL AGAINST A DECISION OF THE FIRST-TIER TRIBUNAL (PROPERTY CHAMBER)**

**FTT REF: LON/00BK/LLE/2021/0005, LON/00BK/LSC/2020/0152 and LON/00BK/LLE/2021/0004**

**19 March 2024**

**TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007**

***LANDLORD AND TENANT – SERVICE CHARGES – basis of apportionment – appeal dismissed***

**BETWEEN:**

**FITZROY PLACE RESIDENTIAL LIMITED (1)**
**FITZROY PLACE MANAGEMENT CO LIMITED (2)**
**2-10 MORTIMER STREET GP LIMITED AND MORTIMER STREET NOMINEE 1 LIMITED (3)**

**Appellants**

**-and-**

**MR ANGUS LOVITT (1)**
**MR KAY PUVANESAN (2)**
**LEASEHOLDERS REPRESENTED BY THE FITZROY PLACE RESIDENTS' ASSOCIATION (3)**
**NUEVA IQT S.L. (4)**

**Respondents**

**Fitzroy Place, London W1**

**Martin Rodger KC, Deputy Chamber President**

**4 March 2024**

*Katrina Mather*, instructed by Bryan Cave Leighton Paisner LLP, for the appellants
*Edward Blakeney*, instructed by Keystone Law, for the third respondent
*Alexander Whatley*, instructed directly, for the fourth respondent
The first and second respondents did not participate in the appeal

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The following case is referred to in this decision:

*EMFC Loan Syndications LLP v The Resort Group Plc* [2021] EWCA Civ 844; [2022] 1 WLR 717

## Introduction

1. This appeal concerns the meaning of a standard form of lease used in a large and prestigious development in Central London comprising both residential and commercial premises. Specifically, it concerns the proportions in which the leaseholders of private apartments in the development are required to contribute towards the cost of services provided by the landlord to the development as a whole, and the extent of a discretion given to the landlord to vary those proportions.

2. The appeal is against a decision of the First-tier Tribunal, Property Chamber (the FTT) and there are three appellants (the freeholder, the head-leaseholder, and the management company responsible for the delivery of services and the collection of service charges). There are said by the appellants to have been 236 respondents before the FTT, who include the leaseholders of 140 apartments whose names have been supplied to the Tribunal by the Fitzroy Place Residents' Association acting through one of their number, Mr Neil Willis. The first, second and fourth named respondents are leaseholders of individual flats who have chosen not to act through the Association.

3. At the hearing of the appeal (for which permission was given by the FTT) the appellants were represented by Ms Katrina Mather, the Association by Mr Edward Blakeney, and the fourth respondent (a company registered in Spain) by Mr Alexander Whatley. Other respondents did not participate in the hearing.

## The facts

4. Fitzroy Place (the Estate) is located on the site of the former Middlesex Hospital north of Oxford Street in Central London. It is a mixed development comprising six blocks. Two of these are wholly commercial, comprising offices on upper floors with shops and restaurants on the ground floor. The remaining blocks are wholly residential and contain 235 private flats and 54 flats allocated as affordable housing which are demised to Octavia Housing Association (of which 14 have been sublet on shared ownership leases). Communal facilities including meeting rooms, a lounge, a cinema and a gym are located in a residents' amenity area with a concierge service. The development also accommodates a school, a health centre and basement car parking and storage units.

5. The Estate occupies the whole of a city block and is arranged around a pedestrianised central square accessible to the public. In the middle of the square the former hospital chapel (a late Victorian masterpiece) now provides an exhibition and event space which is separately managed by an independent community trust.

6. For some time there have been disagreements between the residential leaseholders and the appellants concerning the apportionment of service charges and the liability of the leaseholders to contribute to certain heads of expenditure. To resolve those disagreements the appellants made two applications to the FTT in October 2021 seeking a determination under section 27A, Landlord and Tenant Act 1985 of the service charges payable by all residential leaseholders. County Court proceedings in respect of disputed service charges had already been commenced against the fourth respondent in 2020, and aspects of those proceedings were eventually transferred to the FTT for its determination.

7. Issues common to all three proceedings were determined by the FTT in a decision published on 9 March 2023. The FTT decided to deal first with the interpretation of the Lease and other issues concerning the "payability" of charges, before addressing issues of quantum and accounting at a later hearing.

**The lease**

8. The private residential leases are in a standard form. The example I was shown was of Flat 705 in Block 3, which was let by Fitzroy Place Residential Ltd to Shiu Yin Yu Vivien (referred to in the Lease as "the Tenant") on 6 January 2016 for a term of 990 years from 1 January 2015 (the Lease). The affordable housing component of the Estate is comprised in a single headlease to Octavia which is materially different and is not the subject of this appeal.

9. The expression "Service Charge" is defined in clause 1.1 of the Lease as "the Tenant's Proportion of the amount of the Service Costs for each Accounting Period in providing the Services".

10. The relevant provisions of the Lease are found in Schedule 6. Part 1 of that schedule contains general provisions and the machinery for calculating, claiming, and accounting for the Service Charge including the determination of the Tenant's Proportion. Part 2 concerns "Service Costs" and lists expenditure which may be included in those costs. Part 3 lists the Services which the second appellant (referred to in the Lease as "the Company") has covenanted to provide in respect of different parts of the Estate, divided between Block Services, Estate Services and Car Park Services.

11. Payment of the Service Charge is provided for at paragraph 1.1 of Part 1 of Schedule 6, as follows:

> "The Tenant shall pay to the Landlord a Service Charge… in accordance with the provisions of this Schedule 6…, the purpose of which is to enable the Landlord to recover from the Tenant the Tenant's due proportion of all expenditure overheads and liabilities which the Landlord or the Company or any Superior Landlord may incur in and in connection with providing and/or supplying the Services and/or complying with their respective obligations in the Superior Lease, this Lease and/or under any legal obligation binding on any of the Superior Landlord, the Landlord and/or the Company with the intention that the Superior Landlord, the Landlord and/or the Company should be able to recover all of the Service Costs incurred."

12. Paragraph 2 defines the expressions "Block Service Charge" and "Estate Service Charge" by reference to the cost of providing the Services listed under those headings in Part 3 of Schedule 6. As might be expected the former relates to the cost of providing services to the block which contains the subject flat and the latter is concerned with the cost of services provided to the Estate as a whole.

13. Paragraph 6 of Part 1 of Schedule 6 is the source of the dispute. It is headed "Tenant's Proportion", an expression previously defined as "a fair and reasonable proportion from time to time fairly attributable to the Premises as conclusively determined from time to

time by the Surveyor in accordance with paragraph 6 of Part 1 of Schedule 6". It provides as follows:

6 Tenant's Proportion

6.1 The following provisions apply to the determination of the Tenant's Proportion:

(a) in respect of the Block Service Charge it is (subject to paragraph 9 of this Schedule) to be calculated primarily on a comparison for the time being of the net internal area (as defined by the Measuring Code) of the Premises with the aggregate net internal area of the Lettable Areas of the Block (excluding the net internal area of any management accommodation); and

(b) in respect of the Estate Service Charge it is (subject to paragraph 9 of this Schedule) to be calculated primarily on a comparison for the time being of the net internal area (as defined in the Measuring Code) of the Premises with the aggregate net internal area of the Lettable Areas of the Estate from time to time.

6.2 The Landlord and/or the Company may in its or their respective discretion having regard to the nature of any expenditure or item of expenditure incurred, or the premises in the Block or the Estate as the case may be which benefit from it or otherwise, the Landlord, the Superior Landlord and/or the Company may in its discretion:

(a) adopt such other method of calculation of the proportion of the expenditure to be attributed to the Premises as is fair and reasonable in the circumstances;

(b) if it is appropriate:

(i) attribute the whole of the expenditure to the Premises;

(ii) attribute a fair proportion of any expenditure to another person which has benefitted from the relevant service before attributing the remainder of the expenditure to those who would otherwise be liable; and/or

(iii) allocate the whole or part of any expenditure to a different head of expenditure than that to which it would ordinarily be allocated as is fair and reasonable and proper in the circumstances.

6.3 The Landlord and/or the Company shall be entitled by giving written notice to the Tenant to vary the Tenant's Proportion from time to time as a consequence of any alteration or addition to the Block(s) or the Estate or any alteration in the arrangements for provision of services therein or any other relevant circumstances.

6.4 Any variation in the Tenant's Proportion shall take effect from such date as the Landlord and/or Company may specify in such written notice having regard to the date of occurrence of the reason for such variation.

14. The expression "Lettable Areas" used in paragraph 6.1 is defined in clause 1.1 of the Lease as including both "the Apartments in the Blocks" and "the Commercial Buildings and all associated areas designated from time to time by the Landlord as being exclusively for the use of such premises", as well as car parking spaces, the health centre and the education accommodation.

15. It will be seen that both limbs of paragraph 6.1 are expressed to be "(subject to paragraph 9 of this Schedule)". Paragraph 9 contains a number of acknowledgements by the parties concerning the treatment of contributions to the cost of services which might be made in future by the occupiers of the affordable housing, the health centre, the education accommodation and other parts of the Estate not falling within either the main commercial or residential blocks. The effect of those acknowledgements is a little obscure, but nobody has suggested that they make any significant difference to the apportionment of liability.

**The FTT's decision**

16. One of the main issues which the FTT had to resolve concerned the calculation of the Tenant's Proportion and, in particular, the basis of the comparisons between the area of the Premises (the flat) and the Lettable Areas of the Block in the Block Service Charge proportion, and the area of the Premises and the Lettable Areas of the Estate in the Estate Service Charge proportion. Paragraph 6.1 states that these areas were to be taken as net internal areas "as defined by the Measuring Code". The Measuring Code (meaning the latest edition of the Code of Measuring Practice published from time to time by the Royal Institute of Chartered Surveyors) does not provide a definition of net internal area for residential premises and the evidence before the FTT, which it accepted, was that net internal area was not a recognised basis for the measurement of residential units. Residential accommodation in the same block may contain different arrangements of toilets, bathrooms or other areas which would normally be excluded from a net internal measurement, such that it is considered by the RICS to be an inappropriate basis of comparison.

17. The FTT heard expert evidence about measuring practice. It recorded in its decision that the experts had agreed a statement to the effect that "Gross Internal Area measurements, in accordance with RICS Measuring Code of Practice, is the nearest to that defined in the lease of Net Internal Area". It determined that the Lease contained an "error" and that the requirement in paragraph 6.1 to rely on net internal area was "unworkable". Giving particular weight to the experts' joint statement, the FTT determined that "as a matter of interpretation … the references to 'net internal area' can be read as 'gross internal area'".

18. There has been no appeal against that determination.

19. In practice the Company has never used the net internal basis of measurement stipulated in paragraph 6.1(b) when calculating the Estate Service Charge, but nor had it adopted the method favoured by the FTT as the true meaning of the agreement. Instead it devised an entirely different method which first divided the total charges for the whole Estate into commercial and residential pots based on the gross external areas of the commercial and residential buildings, and then allocated the residential portion amongst the residential leaseholders based on gross internal area of their individual flats. This avoided an imbalance created in part by the requirement in paragraph 6.1(b) to compare the Lettable Areas of the Commercial Buildings with the area of the Premises (i.e. the flat), and by the

abandonment of net internal area as the basis of measurement for the commercial buildings. The consequence of making that comparison on a gross internal basis would be that the common parts of the commercial buildings would be counted for the purpose of apportionment, but those of the residential buildings would be ignored, thereby weighting responsibility for Estate expenditure more heavily against the commercial tenants than the Company was happy with.

20. The FTT considered that the alternative approach adopted by the Company was permissible under the terms of the Octavia lease, which required a "fair and reasonable" apportionment, and that it was also "understandable". The question it had to determine, however, was whether it was permissible under the terms of the residential Leases. That depends on the scope of the discretion given to the Landlord and the Company by clause 6.2 to depart from the method of apportionment agreed in clause 6.1 and in particular whether it gives the Company *carte blanche* to adopt an entirely different method and to apply it to all Estate expenditure.

21. The FTT addressed that question at paragraphs 50 and 51 of its decision, where it said this:

> "50 […] Ms Mather submitted that paragraph 6.2(a) allows for the exercise of discretion to make a permanent and blanket change to the basis of apportionment as the Applicants have done in the present case. In particular, it was said that the provision can be read as follows:
>
> > "The Landlord and/or the Company may in its or their respective discretion having regard to the nature of ... the Estate ... adopt such other method of calculation...
>
> As such, it was submitted that paragraph 6.2 gives the Applicants a discretion to adopt a different method of calculation for various reasons, including the nature of the Estate.
>
> 51. However, we do not consider this to be a valid reading of the clause. In particular, it ignores the words the words immediately following the word `Estate', i.e. `as the case may be which benefit from it or otherwise'. In our finding, those words must relate back to the earlier reference to expenditure or item of expenditure. In other words, on proper interpretation, the clause gives a power to the landlord, `haying regard to any expenditure or item of expenditure or the premises in the Block or the Estate as the case may be which benefit from it [i.e. the expenditure] adopt a different method'. The reference to the Estate or block is to the estate or block benefitting from such expenditure. Thus, the discretion arises by reference to particular expenditure. It does not give a discretion to adopt a blanket change to the method of calculation for everything."

22. The FTT therefore determined that the discretion conferred by paragraph 6.2 to substitute a method of apportionment different from that required by paragraph 6.1 was limited to changing the way in which individual items of expenditure were apportioned and did not provide the Company with a licence to adopt a wholly new basis of apportionment for all expenditure. As that was what the Company had done, the FTT determined that "insofar as the Estate Service Charges have been apportioned in accordance with such methodology, such apportionments are not in accordance with the provisions of the private

residential leases". The consequences of that determination remain to be worked out at the resumed hearing dealing with quantum and accounting issues.

**The appeal**

23. The FTT granted permission to appeal its decision. The only issue is whether the FTT was correct in its interpretation of paragraph 6.2.

24. On behalf of the appellants, Ms Mather started her submissions on the appeal by suggesting that only sub-paragraph 6.2(a) was relevant. That was an ambitious proposition and I do not accept it. It is contrary to well established principles of contractual interpretation. These were summarised by Carr LJ (as she then was) in *EMFC Loan Syndications LLP v The Resort Group Plc* [2021] EWCA Civ 844, at [56]-[58], and they demonstrate the need to consider the whole of the clause in the whole of its context in the Lease:

> "56. The relevant well-known legal principles of contractual construction are non-contentious and to be found in a series of recent cases, including *Rainy Sky SA v Kookmin Bank* [2011] UKSC 50; [2011] 1 WLR 2900; *Arnold v Britton and others* [2015] UKSC 36; [2015] AC 1619 and *Wood v Capita Insurance Services Ltd* [2017] UKSC 24; [2017] AC 1173.
>
> 57. In summary only then, the court is concerned to identify the intention of the parties by reference to what a reasonable person having all the background knowledge which would have been available to the parties would have understood the language in the contract to mean. It does so by focusing on the meaning of the relevant words in their documentary, factual and commercial context. That meaning has to be assessed in the light of the natural and ordinary meaning of the clause, any other relevant provisions of the contract, the overall purpose of the clause and the contract, the facts and circumstances known or assumed by the parties at the time that the document was executed and commercial common sense, but disregarding evidence of the parties' subjective intention. While commercial common sense is a very important factor to be taken into account, a court should be very slow to reject the natural meaning of a provision as correct simply because it appears to be a very imprudent term for one of the parties to have agreed. The meaning of a clause is usually most obviously to be gleaned from the language of the provision. Where the parties have used unambiguous language, the court must apply it; if there are two possible constructions, the court is entitled to prefer the construction consistent with common sense and to reject the other (see *Rainy Sky* (supra) at [21] and [23]).
>
> 58. In *Wood v Capita Insurance Services Ltd* (supra) at [9] to [11]) Lord Hodge JSC described the court's task as being to ascertain the objective meaning of the language which the parties have chosen to express their agreement. This is not a literalist exercise focused solely on a "parsing of the wording of the particular clause"; the court must consider the contract as a whole and, depending on the nature, formality and quality of drafting of the contract, give more or less weight to elements of the wider context in reaching its view as to that objective meaning. The interpretative exercise is a unitary one involving an iterative

process by which each suggested interpretation is checked against the provisions of the contract and its commercial consequences investigated."

25. Ms Mather submitted that, on any reading of clause 6.2, the discretion given to the Landlord or the Company was very wide and the FTT had been wrong to give it a restricted meaning. The interpretation which it should have preferred could best be demonstrated by omitting surplus words and breaking the paragraph up into its constituent parts, which Ms Mather submitted were as follows:

> The Landlord…may in its…discretion // having regard to // the nature of any expenditure or item of expenditure incurred, // or the premises in the Block // or the Estate as the case may be // which benefit from it // or otherwise,//: (a) adopt such other method of calculation of the proportion of the expenditure to be attributed to the Premises as is fair and reasonable in the circumstances.

In this division of paragraph 6.2(a) I have included a break after "having regard to" in the first line, although it was missing from the version in Ms Mather's skeleton argument. The appellants' case was that each of the matters which follows those words was a separate subject which the Landlord could, if it chose, take into account in designing an alternative method of apportionment. Of particular significance were the final words, "or otherwise", which the FTT had not referred to and which, Ms Mather submitted, entitled the Landlord to take into account anything which appeared to it to be relevant to a fair and reasonable apportionment. It was therefore free to disregard the matters specifically mentioned and to have regard to matters not mentioned. Ms Mather acknowledged that the effect of her submission was that the words coming between "discretion" and the colon before sub-paragraph (a) were illustrative only, adding little or nothing, and that the meaning of the provision could just as effectively have been conveyed as: "The Landlord…may in its…discretion … (a) adopt such other method of calculation of the proportion of the expenditure to be attributed to the Premises as is fair and reasonable in the circumstances."

26. When asked to comment on paragraph 6.2 in its wider context, and in particular on the significance of the statement in paragraph 6.1 that the Tenant's Proportion was "to be calculated *primarily* on a comparison for the time being of the net internal area …", Ms Mather submitted that this did not imply that paragraph 6.1 was to be the main method of apportionment throughout the term of the Lease. "Primarily" indicated that the parties appreciated that the method of apportionment might have to change. The Lease was for an exceptionally lengthy term and the Estate itself was complex and included a number of different uses; there was every reason for the parties to foresee that changes in the basis of apportionment, including wholesale change, might be required for any number of reasons. They had therefore agreed that the Landlord could substitute any alternative method of apportionment at any time provided only that it was fair and reasonable in the circumstances.

27. I do not accept Ms Mather's submissions. The meaning of paragraph 6 as a whole is perfectly clear, as submitted by Mr Blakeney and Mr Whatley on behalf of the respondents. Its effect is as described by the FTT. My reasons for reaching that conclusion are these.

28. The whole of paragraph 6 is about the ascertainment of the Tenant's Proportion throughout the term of the Lease. I agree with Ms Mather that the parties have anticipated the

possibility that change might be required, but they have agreed detailed provisions about the extent and circumstances of the change which is to be permitted.

29. I place much greater weight than Ms Mather on the repeated use of "primarily" in paragraph 6.1. The Block Service Charge is to be "calculated primarily on a comparison for the time being of the net internal area" of the Premises and the Lettable Areas of the Block. The Estate Service Charge is to be "calculated primarily on a comparison for the time being of the net internal area" of the Premises and the Lettable Areas of the Estate. In this context, "primarily" means more than just "originally" or "first", it means "mainly" or "mostly", and indicates that the parties intend the Tenant's Proportion to be calculated, for the most part, in the manner described in paragraph 6.1.

30. Paragraph 6.2 does not refer to the Tenant's Proportion at all. That key expression is next encountered in paragraphs 6.3 and 6.4. That suggests that those paragraphs and paragraph 6.2 are performing different functions.

31. Focussing first on paragraphs 6.3 and 6.4, these provide a means for the Landlord or the Company "to vary the Tenant's Proportion from time to time". Such a variation is achieved by giving written notice, and it is permissible only as a consequence of one or more of the circumstances described in paragraph 6.3. These are "any alteration or addition to the Block(s) or the Estate or any alteration in the arrangements for provision of services therein or any other relevant circumstances". Subject to the right to make another variation in future, this power allows the Landlord or the Company to effect a permanent change in the Tenant's Proportion. But if that is correct (and Ms Mather did not suggest any alternative effect) what purpose was there in including that restricted right if paragraph 6.2 already provided power to make wholesale changes in the basis of apportionment without the procedural and substantive limitations in paragraphs 6.3 and 6.4?

32. Paragraph 6.2 does not purport to allow the Landlord or the Company to vary the Tenant's Proportion. Instead it first permits them, in sub-paragraph (a), "to adopt such other method of calculation of the proportion of the expenditure to be attributed to the Premises as is fair and reasonable in the circumstances". The reference to "adopt[ing]" another method of calculation is to be contrasted with "vary[ing] the Tenant's Proportion" which is permitted by paragraph 6.3. The reference to "the expenditure" is not to a defined expression but is clearly intended to refer back to the opening lines of paragraph 6.2 and specifically to "any expenditure or item of expenditure incurred".

33. The effect of paragraph 6.2 is therefore to allow the Landlord or the Company, within the general framework of an apportionment according to net internal area required by paragraph 6.1, to adopt another method of apportionment of a particular type or item of expenditure if to do so is fair and reasonable. This interpretation, which was the FTT's interpretation, respects the parties' intention that apportionment by area is to be the primary method of apportionment and avoids the power in paragraph 6.3 being entirely swallowed up by paragraph 6.2, and the procedural protections surrounding it being negated.

34. It is less clear whether the list in sub-paragraph 6.2(b) is intended to be a closed list of circumstances in which the discretion to adopt a different method of calculation for any expenditure or item of expenditure may be used, or is intended instead simply to illustrate

how the power might be used. Whichever is the case, the list is informative. It allows the whole of "the expenditure" to be attributed to a particular flat, or a fair proportion of it to be attributed to one person and the remainder dealt with as normal, or the whole or part of the expenditure to be allocated "to a different head of expenditure". I take the reference to a "head of expenditure" to mean one of the three heads or categories of expenditure in Part 3 of Schedule 6 i.e. Estate Services, Block Services, or Car Park Services. None of these examples (whether they are illustrative or exhaustive) would be apt to change the method of apportionment of the whole of the service charge expenditure on a permanent basis. It could never be fair and reasonable, for example, for the whole of the Estate expenditure to be allocated to one individual.

35. I do not think the words "or otherwise" in paragraph 6.2 will bear the weight Ms Mather places on them. The opening lines identify matters which may justify the adoption of a different apportionment to the limited extent contemplated in that paragraph. These are "the nature of any expenditure or item of expenditure incurred, or the premises in the Block or the Estate as the case may be which benefit from it or otherwise". When read together with sub-paragraph 6.2(a) the intent is clear. The Landlord or the Company may reallocate a particular type of expenditure or a particular item of expenditure if it is fair and reasonable to do so having regard to the nature of that expenditure or the premises in this Block or in another part of the Estate which benefit from that expenditure "or otherwise" i.e. which benefit or which do not benefit from the expenditure. If only one or two flats benefit from a particular item of expenditure the whole of that item might be charged to them; if only one or two flats gain no benefit from an item of expenditure they might be exempted from contributing towards it.

36. A consideration of "commercial common sense" (or the interests and objective expectations of parties entering into this sort of relationship, as it might otherwise be described) also supports a limited interpretation of clause 6.2. These are very expensive flats and the services provided on the Estate are elaborate. The parties have agreed a "primary" basis of apportionment and a means by which that primary method may be recalculated, while preserving its basic design (paragraphs 6.3 and 6.4). It seems to me most unlikely in that context that they would also agree an entirely open ended discretion of the sort suggested by the appellants. That would bypass the primary method of the apportionment and put the residential tenants substantially at the mercy of the landlord's commercial interests. It might well be in the landlord's interests to reapportion service charges to the disadvantage of the residential tenants and to the advantage of the commercial tenants because the extent to which the total occupational costs of the commercial premises are represented by service charges is likely to reduce the rent which the premises command. The fact that any such reapportionment must be fair and reasonable would be some protection but could still lead to a significant change in the service charges payable by the residential leaseholders.

37. I am therefore satisfied that the FTT was right in its conclusion that the power in paragraph 6.2 may only be exercised on an ad hoc basis in relation to particular items or types of expenditure and may not be relied on, as the appellants seek to do, to justify the abandonment of the primary method of apportionment described in paragraph 6.1.

**Disposal**

38. For these reasons I dismiss the appeal.

39. If the parties (and Octavia) are unable to agree the appropriate disposal of the applications which have been made under section 20C, Landlord and Tenant Act 1985, the appellants may make submissions within 21 days of the date of this decision why orders should not be made in favour of the respondents and Octavia. If I require submissions in response, I will request them.

Martin Rodger KC,
Deputy Chamber President

19 March 2024

**Right of appeal**

Any party has a right of appeal to the Court of Appeal on any point of law arising from this decision. The right of appeal may be exercised only with permission. An application for permission to appeal to the Court of Appeal must be sent or delivered to the Tribunal so that it is received within 1 month after the date on which this decision is sent to the parties (unless an application for costs is made within 14 days of the decision being sent to the parties, in which case an application for permission to appeal must be made within 1 month of the date on which the Tribunal's decision on costs is sent to the parties). An application for permission to appeal must identify the decision of the Tribunal to which it relates, identify the alleged error or errors of law in the decision, and state the result the party making the application is seeking. If the Tribunal refuses permission to appeal a further application may then be made to the Court of Appeal for permission.