Decision i.c. Carlton Rock Ltd. and The Strathglen Trust v. The Assessor for Grampian and i.c. Lloyds Register EMEA v. the Assessor for Grampian.

The cases.

These cases called on 18th September 2019 when they were continued to a procedural hearing on 8th November 2019 when the Committee gave out certain directions in relation to procedure and the cases were further continued until 11th December 2019. Evidence was led on 11th, 12th and 13th December 2019 with submissions being made 20th December 2019. The Carlton Rock Ltd. appeal was in respect of the subjects 28 Albyn Place Aberdeen and the Strathglen Trust appeal was in respect of the subjects 74 Carden Place. These two cases together will be referred to as "the West End appeals," and were both brought under the Local Government (Scotland) Act 1975 s. 3(2). The third appeal by Lloyds Register EMEA was in respect of the subjects Unit 11 Kingswells Causeway, Prime Four Business Park, Kingswells, Aberdeen which will be referred to as "the Prime Four appeal". This appeal was brought under the Local Government (Scotland) Act 1975 s. 3 (2A).
The Committee is very grateful to the parties and their agents for having observed the directions which had been given to them, thus making consideration of these, and the many other appeals, much easier for the Committee.

In this decision "rateable value" will be shown as "R.V.", values as at 1st April 2015 as "tone date values" and values as at the appropriate date for considering subjects' physical circumstances as "P.C.D. values".

All the appellants were represented by Christopher Haddow, Queen's counsel, and the respondent was represented by Brian Gill, counsel.

The evidence.

The first witness was Eric Shearer, a Chartered Surveyor specialising in the marketing of commercial property. He said that the Aberdeen office market was tied to the energy sector and that there was an almost direct correlation between the oil price and office take-up. When the oil price collapsed in late 2014, there was a huge affect on the associated market so that between 1st April 2015 and 1st January 2017 there was a 100% increase in available office stock to 2,600,000 square feet, referring to production F. The market was devastated. In addition to the known available office stock included in that figure, there were another 500,000 to 1,000,000 square feet of "grey space" that is property that was not being marketed as being for sale or rent but which could be available to enquirers with special knowledge. The sudden increase in supply led to some properties becoming unlettable with some of them being demolished to avoid having to pay rates. The glut led to huge reductions in rents. By way of example he cited the rent of £23.75 per square foot agreed by Aker to lease 335,000 square feet in 2014 and contrasted that with an assignation in 2017 by Subsea 7 to Total of 138,535 square feet at an adjusted rent which equated to a reduction of 45%. He gave further examples of a lease to a charity (Somebody Cares) of premises in East Tullos at a nil rent and of the sale of Silverburn House in Bridge of Don at a capital value of £7 per square foot. He was of the opinion that rents fell by between

20% and 100% and that it will be many years before the market will approach a balance between supply and demand.

Mr. Shearer went on to give evidence on "demand" prefacing his evidence by saying that it is very difficult to quantify but thought that take-up was a useful guide. He referred to the take-up charts in production F showing that take-up fell between late 2014 and 2015 by 61% and fell dramatically in 2016 with the fall continuing into 2017. His opinion was to the effect that the reason for the reduction in rents was mainly the unprecedented level of supply which he had not seen in 43 years of practice.

He thought that 28 Albyn Place was a traditional West End office with an open plan area plus some rooms. The quality was good but not "sexy".

In cross-examination, he agreed that he had campaigned against the rating system but that this appeal was not about business rates as such. He accepted that he was not a rating surveyor and that he had not considered the statutory definition for valuation for rating and, in particular, had not applied the definition to the examples of leases to Total and a charity which he had given and had not applied it to leases in the Silverburn building. Asked if the graphs in production K showed a figure of $30 per barrel anywhere, he said that they did not but showed averages over the years. He said that there were different market areas in Aberdeen. Of the example of lowering rents that he gave using the Total transaction, he agreed that he had not given any rental figure and that the tenant had taken occupation on 28th February 2017. In relation to the example of the charity lease, his recollection was that entry had been taken in March 2017 with a view to storing goods and that the tenant had paid the market rent of nil. He agreed that the Silverburn transaction had been a sale but said that the building had now been demolished. He concluded by saying that in his view the market had fallen impliedly between 2014 and January 2017.

Asked by members about the Subsea to Total transaction he explained that Subsea had paid cash to Total to assume the liabilities of the lease. Asked if Aker had been in competition with Total for the Subsea lease, he said that Subsea had wished Total to become the tenant and that Total's offices in Altens had been demolished. He opined that 74 Carden Place was a grade B office. Asked about differing markets within Aberdeen, he said that there were preferred locations and that, while things change, the City Centre and Westhill were popular with Dyce improving but property in Altens was unlettable. He cited the Western Peripheral Route as having affected the market which was affected by tenants' preferred locations.

Moira Ellen Gordon, led as the appellants' second witness, is a Chartered Surveyor dealing mostly with rating matters which she has done for nearly 10 years. She gave the view that 28 Albyn Place's R.V. should be £284,000 and 74 Carden Place's R.V. should be £82,500 to reflect the over supply of office premises in Aberdeen as at 1st January 2017. She described the subjects of appeal, referring to production A, saying that both lie within the West End area of Aberdeen. She explained that the subjects had to be valued at the tone date of 1st April 2015 but taking into account their physical circumstances as at 1st January 2017 ("P.C.D."). She took the view that "physical circumstances" extend to physical circumstances of any nature impacting on the value of the subjects, including the state of their locality. She said that the locality

for looking at the office market included the whole of Aberdeen and the area beyond it as far as Westhill. Accordingly, she said that valuation of the subjects required to reflect the demand for offices at the tone date but taking into account the impact of an extra 1,300,000 square feet of grade A office supply as at the P.C.D. She indicated that there were recognised to be areas within the Aberdeen area where different values applied such as West End, Altens, North Dee Business Quarter and others. She referred to a table of occupier movements contained in her written statement and production C. She said that the office market in Aberdeen had been linked closely to the price of oil and referred to production K. The price of oil had been high (reaching over $100 per barrel for Brent Crude) during the years 2010 to 2014 but the price had then plunged. During those years the demand for office space was high with many agreements taking place on a "pre-let" basis. The lead in time between agreement and occupation of such new builds was often 2 to 3 years which has to be borne in mind when looking at take-up. She referred to production F for take-up and also for showing the supply which surged after 2014. There was over supply caused by a combination of secondary office stock becoming available and speculative new builds and pre-let new builds reaching completion. She referred to a list of new developments in her statement explaining that they were spread across the city and mostly had what were seen as desirable characteristics of modern offices. She demonstrated with reference to graph TC3 in her statement that there was over supply by new builds alone. She said that there was already an over supply from secondary office accommodation as at P.C.D. which was accentuated by the completion of new build offices and argued that that over supply was a physical circumstance as at P.C.D. against which subjects had to be valued. She added that surplus "grey space" (space neither being used nor marketed openly) exacerbated the situation.

With reference to productions F and C she gave examples of comparables (the figures for most of which had been agreed between the parties) which she said vouched her position. She said that rents had fallen and that the average fall was not less than 40%. She took on the problem of separating the fall caused by a general economic recession in Aberdeen and the part caused by the over supply. She referred to production G and the case of Aon Risk Services Ltd. v. The Valuation Officer ("the Leeds case"), a decision of the Valuation Tribunal of 7th April 2011, where, in similar circumstances but with a much less pronounced over supply, a reduction of 10% had been allowed and opined that 20% of the fall in Aberdeen had been due to the exceptional over supply.
She referred to production J, saying that the respondent had reduced the R.V. of subjects in Union Street following the opening of nearby Union Square.

She went on to say that there was a hierarchy of office space with new builds such as the Capitol, Silver Fin and Marischal Square at the top. Thus, she found it surprising that 28 Albyn Place and 74 Carden Place had been assessed by the respondent at a figure higher than the £225 per square metre of these 3 new developments. She referred to production D for a list of new builds.

In cross-examination, she said that she accepted Mrs. Fleming's (a witness for the respondent's) tone date values. She also accepted that her own statement contained some nomenclature mistakes.

There then followed some evidence about the meaning to be given to the Valuation Timetable (Scotland) Order 1995 from which it was clear that Ms. Gordon took account of "locality" and the effect on subjects to be valued from their being affected by other properties in their locality. She explained that while there were different sectors within the Aberdeen market, they were all part of the same market. She said that prospective tenants chose locations to suit them across a broad area. After questioning about the detail of production C, she agreed that it did not contain all movements of tenants. About the relationship between the price of oil and the office market, she said that it took time for the market to catch up. She was questioned about the detail of production F and explained that pre-lets had not been included in the take-up figure and that if the pre-lets and others were included, the take-up figure would be higher than the 399,000 square feet in her statement. She accepted that the Marischal Square and Silver Fin developments accounted for the majority of her "new development" figure; that, if they were excluded, her total would be 135,000 square feet but explained that even if they were not completed developments at the tone date, they were being marketed and would affect rents. She also accepted figures from Mr. Gill that the Capitol and Silver Fin developments made only small percentage differences to the available office space.

There then followed questioning about what putative tenants would consider taking on lease as a result of which the Committee took from Ms. Gordon that most tenants would look at the high end of the market to see what was on offer. She affirmed that to value at the tone date taking into account supply and demand at the P.C.D. was quite in order. In relation to production C, she said that if valuing, she would look at values both before and after the tone date but that her figures there were all post tone ones. Questioned about her disaggregation exercise, she would not be diverted from her view that 20% of the fall in values was attributable to the over supply and the other 25% of her perceived fall of 45% was due to other factors.

Asked about her view that the Capitol should be valued lower than the 28 Albyn Place and 74 Carden Place, she said that it did not seem right that older West End properties should have a higher R.V. than modern city centre offices.

Asked by a member about disaggregation, she referred to the Leeds case.

In re-examination she said that her examples of West End subjects had not been put forward in a discriminating way but were simply what was available. She said that the rent for 28 Albyn Place had analysed at £136 per square metre. She said that the average shown in the respondent's production 6(a) was £286 (which had provided the R.V. figure for the subjects concerned of £250) and that she was prepared to accept these figures. She said that she looked at the tone date values and the later rents to calculate the drop. She answered several questions about the detail of the respondent's productions 13 and 11.

She said that when looking at the values of public houses, she took into account whether they were in the locality of other public houses, in a residential area and the possibility of football fan custom. She said that public houses in the city centre were considered in the light of their location and that similar considerations applied to offices. Subjects may be in different localities even if close in distance.

The appellants' last witness was James Michael Rose, a Chartered Surveyor with experience in leasing and rating work. His evidence concerned the subjects at Unit 11, Prime Four Business Park, Kingswells Causeway, Kingswells, Aberdeen ("Unit 11"). The subjects had been valued by the respondent as at 1st September 2017, when they entered the valuation roll, at £250 per square metre. He referred to production B as containing the respondent's response to the appeal. He said that a reduction was needed because the respondent had not applied the statutory provisions (contained in the Local Government (Scotland) Act 1966 section 15), because the respondent had not taken account of the over supply of office stock in the locality and because the subjects' R.V. was excessive compared with similar or superior subjects and because no quantum allowance had been given.

He outlined the basis of fixing an R.V. adding that the statutory hypothesis has to be applied with the reality principle in mind. He gave his understanding of the statutory provisions including that the time of valuation is the entry on to the roll of the subjects. In relation to the word "locality" in the 1966 Act, he gave his view that it meant, in this case, the whole of Aberdeen City and areas affected by its office market conditions. He went on to say that subjects to be valued with reference to the P.C.D. could also be affected by locality. He offered examples of that from productions I and B, being shops in Edinburgh.

He then gave evidence about a physical circumstance situation being the opening of Union Square, Aberdeen when the respondent had reduced the R.V. of shops in Union Street, Aberdeen and nearby. His evidence, with reference to production J, was that the Union Square opening had occurred between the then tone date and the coming in to effect of the 2010 valuation roll. He argued that, with reference to production B, the respondent should have treated Unit 11 in the way that he treated Union Street shops affected by the opening of Union Square.

He continued that there was a dramatic change in the Aberdeen office market between the tone date and the P.C.D. and further similar change between then and 1st September 2017. Referring to production F, he said that until 2014, office demand had outstripped supply with rents having gone up to £32 per square foot. His view was that office demand had followed the oil price and he referred to productions K and L. The oil price had started to fall in 2014 when many new offices were still in the throes of construction. He gave evidence of examples of new developments, referring to production D. Office accommodation in Aberdeen grew in a perfect storm. Referring to production F, he said that take-up reduced while supply grew resulting in 2016 that there was 11 years' supply of offices. He referred to the Leeds case as an example of how over supply should be dealt with. He gave examples of falling rents, including the appellants' sub-letting of parts of Unit 11. He is of the view that there was an unprecedented and exceptional over supply in Aberdeen of offices in the period in question. He continued with reference to production B, which shows rents for comparables well below the R.V. figures. He concluded that the Aberdeen office market was in considerable decline. He dealt with the problem of disaggregation with reference to the Leeds case, giving the view that applying it results in a 20% drop in the R.V. He went on to say that in his view the Capitol, Silver Fin and Marischal Square buildings should have higher R.Vs. than Unit 11 on account of his perception that they are better fitted out with access to better amenities than Unit 11. He explained that the respondent's production 11 was taken from Aberdeen City

Council's list of applicants for rates relief which was available only for completely empty buildings and did not contain furnished unused buildings or buildings not being actively marketed but which could be made available to rent. The remainder of his evidence in chief was taken up with his claim that a quantum allowance of 5% should be given and with a recap of the main points of his evidence.

In cross examination, he accepted that the rent of £32 per square foot for a new office in Aberdeen city centre had not actually been achieved but was what the property was being marketed at. There then followed an exchange on the effect of the law on his evidence which the Committee felt the witness was not competent to answer. Put to him that if there were no changes to subjects between the tone date and P.C.D. , then there would be no need for an adjustment, Mr. Rose agreed but said that he did not understand how the respondent could take that view. There followed a discussion of the Edinburgh shops examples which resulted in the witness saying that his understanding of the bases of the decisions was different from that put to him on behalf of the respondent.

He referred to two Edinburgh cases which had come before the Lothian Valuation Appeal Committee saying that he believed they were examples of cases where changes in physical circumstances of subjects other than the appeal subjects had been used to secure a change in the appeal subjects' R.Vs The evidence then moved on to the Union Square episode which resulted in the witness accepting that the respondent seemed to take a different view of the law from the witness to allow the respondent to take a different line in the present appeals from what the witness thought that the respondent had done when reducing Union Street rents following the Union Square opening. He then said that differences in rents between the tone date and the P.C.D were caused by both economic factors and the presence of new office space. He said that the sub-lettings in Unit 11 were good examples of the effect of the P.C.D. changes to rents as the rentals did not need adjustment for comparison although some adjustment for size and date may be needed. He accepted that the Transocean lease of October 2019 was at a different date from the valuation date. He also accepted that 5 of all the comparables in production C were dated after both tone date and P.C.D. He accepted that these deals were done in a declining market but said that once one had allowed for disaggregation, the rents had still fallen. He explained his disaggregation method. Put to him that not all the relevant take-up had been included in the take-up figures in production F, he accepted that some transactions may have been omitted, adding that he may have missed some on the other side, presumably supply. He accepted that it followed that if the figure of 399,000 square feet were increased it would mean that the over supply figure would be reduced.

Questioned about disaggregation, he said that it was a value judgement but that taking the link between rents and the oil price, which fell to $30 per barrel for Brent Crude in February 2015, while the market was falling, the rental falls were greater. He implied that the difference was the over supply.

He said that his evidence that rents had peaked at £32 per square foot was wrong and that had been the price at which subjects had been marketed. He maintained that his view of a hierarchy of letting subjects in Aberdeen was based on rental evidence and not judgement. Put to him that he based his calculation of quantum allowances on

judgement and not evidence, he maintained the he used evidence of rents and cited the Transocean rent as being based partly on a quantum allowance.

Questioned by members, he said that vacant space relief was allowed only on application to Aberdeen City Council and that the 5% quantum allowance which he argued for was a pure professional judgement. He said that disaggregation of the economic changes from the physical changes was necessary. He said that the highest rent achieved had been for a West End property at £387 per square metre. That was in 2014 when the building was not ready. About Union Square he said that R.Vs. had been reduced for properties in the Bon Accord Centre and also in parts of Union Street and the Saint Nicholas Centre. He continued that a larger area is covered by "locality" and that one area can influence another. He said that the Shire is not in the same locality as the City; that demand in the City is City wide but that it percolates into the Shire. Distance is a factor so that Westhill is in the Aberdeen locality but Inverurie may not be. It is a matter of degree and influence. Transport can be an influence. Explaining his reasoning for an R.V. of £200 per square metre, he said that disaggregating the supply from the economic factors, there was a 20% fall so that the R.V. should be so reduced. Also, the new-builds in Aberdeen were rated at £225, so, as they were better, Unit 11 should be rated at some 10% less. The R.V. of £225 is above the rents being paid for the Aberdeen new-builds. The over supply caused by the physical circumstances changes has resulted in the locality changing, such as the new office stock.

The appellants' case was closed and the witness for the respondent was Joyce Ann Fleming, a Chartered Surveyor, with more than 30 years' service in the assessor's office. She referred to productions AS 1, 2, 3 and 4 to describe the appeal subjects 28 Albyn Place, Aberdeen and 74 Carden Place, Aberdeen and her comparables. She said that AS 1 showed the extent of West End, Aberdeen on which properties with purple dots were rated at £250 and those with green at £275. She said that most buildings there had been built of granite and had slated roofs but that the higher rated buildings had been upgraded internally. She quoted the statutory hypothesis on which R.V. is arrived at and said that she had analysed the West End rents and, considering only the middle half, these had averaged £286.76 per square metre .These are listed in AS 6. Having regard to the falling market, the R.V. had been rounded down to £250. The respondent had taken cognisance of the nil uplift rent reviews which are listed in AS 8. The refurbished buildings are listed in AS 7. Using only the middle half, the rents averaged £319.25 per square foot. Her analysis had been from 1st April 2014 to 31st March 2017. Taking in to account the falling market, the R.V. had been fixed at £275. She said that the rate of £275 had been agreed to for 22 comparable subjects, making reference to AS 9.

Moving on to the appellants' "physical circumstances" argument, she said that she had reached her view on the appropriate R.V. taking the physical circumstances of each property into account as at the P.C.D. She had not been aware of any significant changes to each property between the tone and PC dates. She continued that even if the P.C.D. allowed one to consider external factors at some remove from the subjects, the rental evidence did not disclose any fall below the tone date levels.

She turned to the appellants' comparables, Capitol, Silver Fin and Marischal Square saying that these are city centre and not comparable with West End properties.

She referred to AS 12. She highlighted the reduced parking at the city centre subjects, making reference to AS10. These last mentioned three comparables have all been rated at £225. She pointed out that there were other large city centre office developments existing at the tone date and that she would not amend R.Vs. to take account of changing business patterns. She continued that the appellants' argument is flawed as they have compared tone date values with rents struck much later. The respondent would not reduce R.Vs. on the basis of changed economic factors of a normal level. She gave the view that the reduction of R.Vs. in Union Street and elsewhere was a decision taken without the benefit of the Schuh decision (Assessor for Glasgow v. Schuh Ltd. 2012 S.L.T. 903 hereinafter "the Schuh case") and was based on a liberal interpretation of "measurement error". She continued that the presence of empty offices is not evidence of value and that, in any event, the appellants' productions did not agree with the respondent's figures which are shown in AS 11. She said that the appellants' production F did not reflect accurately the office take-up as there were some lettings missing. Instead of 2 movements into the West End there should be 20 (see production C), as18 transactions which appear in an analysis do not appear in the table and 11 are movements internal to the West End. The appellants' production F was incomplete as the take-up figure should be 557,758 square feet. She had criticisms of the Dock Gate House comparable as also the existence of a hierarchy in offices in Aberdeen denying that city centre offices were more valuable than West End ones.

Mrs. Fleming then gave evidence to the effect that the completion of the 3 city centre new-builds had little effect on the West End of Aberdeen values and that the difference which they made to available office space was negligible. She referred to production AS 13. She said that her review of rents showed that rents were higher for West End properties than city centre ones.

In relation to the Edinburgh cases, she said that she did not understand them to have taken in to account physical circumstances beyond the subjects themselves. She agreed that there had been an over supply of offices but that that had existed at the tone date and had been taken into account. She said that she took account of buildings' physical circumstances at the valuation date but only in relation to the subjects of valuation and not wider.

She said that there had been no lease of part of the Capitol at £32 per square foot but that there had been a lease at that rate in Queen's Road.

In relation to the Unit 11 appeal, she referred to productions AS 1 and AS 5 to describe them. In relation to the grounds of appeal she noted that the appellants had cited comparables over the whole of Aberdeen and outside it as far as Westhill. She noted that many of their comparables were post tone date and, in many cases, post 1st April 2017. Of their 83 comparables, only 22 were in West End Aberdeen. She said that the appellants had regard to demand at one date and supply at another which was illogical. She said that the oil price downturn was not relevant to determining value as it was merely a change in the economy such as did not justify classing it as an exceptional circumstance. She quoted the statutory basis for valuing a new property and said that she took it that she had to take account of the physical circumstances of the building and its immediate locality to give effect to valuing according to the tone of the roll. She narrated the short history of the subjects and said that its rent analysed

at £305.11 per square metre. She referred to production AS 6. The respondent's comparables are listed in AS 7 from which the middle half average at £268.29 which was rounded down to £250. AS 8 shows, there was no drop in value between the tone date and the valuation date. AS 9 shows rents going up. A comparison with Deepwater House in November 2017 is not appropriate, being after the valuation date. The appellants have sought to compare three new-build city centre properties with Unit 11 but they are not in the same locality or market, referring back to her evidence about them in the other appeals. She also said that the appellants' approach was flawed as they referred to subjects well away from the appeal subjects, which are different in size and quality, and also make use of rents struck not only after the tone date but also struck after the roll came into force. She gave the view that the effect of the oil price was irrelevant to valuation but even if it were, the appellants have not properly discounted the effects of a general downturn from their over supply argument. She moved on to deal with the Union Square situation by referring to her evidence in the West End appeals. To deal with the appellants' argument in relation to the effect of empty office stock, she referred to her evidence in the other appeals. She also had given evidence about the total floor areas of office stock as they may have been impacted by the completion of the three city centre properties. She concluded her evidence in chief by saying that the R.V. should be confirmed at £250 per square metre and that there is no evidence to warrant a quantum allowance.

In cross examination, it was suggested to Mrs. Fleming that Mr. Robb withdrew an appeal for 10b Queen's Gardens as he would have no gain as he would have received both small business relief and another relief. On its being pointed out that the West End office rate had been generally set at about 10% less than her analyses, she agreed that that was the case as the respondent had taken account of the dropping market which affected value at the tone date. She was asked about the 2A+B case (Assessor for Grampian v. Anderson, Anderson & Brown, 2018 S.C. 370, hereinafter "the 2A+B case") but said that the rate being argued for was less than that shown by analysis. She said that when she considered "physical circumstances" she looked at the particular subjects of appeal only. She said that she thought a major influence by a next door neighbour may be included but that the decision in the Union Square appeals was wrong. She had looked at the physical circumstances of the subjects as at 1st January 2017 but had concluded that there was no difference in them between then and the tone date. She gave the view that the office supply evidence just showed the trickle of market changes and that what had happened was just part of the ebb and flow, although flow had been absent. She agreed that she had to protect the general body of ratepayers. Asked if it was fair for those unaffected when another group secured a reduction, she replied "no" but that it was a matter of law. She said that she worked under legislation. She said that she got evidence of offices being empty from Aberdeen City Council, shown in AS 10. She said that renewals of leases were evidence of the market but not evidence of rents. She continued that lease renewals were between people already connected and were suspect as evidence of market rents as the rent agreed may be a compromise or other factors may be at play. Asked if a new competitor next door could prompt a physical circumstances change, she said that it could be a physical circumstances change but not affect value. On its being pointed out that the opening of a super market had allowed alterations in R.V. in some cases, she said that she worked to the respondent's direction including advice on the law. On being questioned about some buildings in the West End having been assessed at £250 while shiny new buildings in the city centre were assessed at £225, she said

that not all tenants seek that and that McLays and PWC had moved from the West End to the Capitol. She said that the rates applied to the Capitol and the West End properties were based on rental evidence. The respondent acts on analyses of the market at a point in time but that pre-lets can be treated differently. She agreed that unless she had other evidence, she would assume that the date of entry in a lease was correct. She added that the ratepayer is often in a better position on that matter than the respondent. She said that she looked at rents over two years but did not analyse rents at the P.C.D. and that she only looked at the physical circumstances if there had been a change to the subjects or the locality. Asked why she did not look after the 1st of January, she said that potential landlords and tenants can't know what is to happen beyond the revaluation. She said that she looked at evidence for one year on either side of the tone date as the roll would come into effect two years ahead. She said that locality is determined by the area in which circumstances can have effect. She said that it was difficult to look at 2018 and 2019 rents for a 2017 valuation. She agreed that material physical circumstances may vary with the type of subject. Asked about the appellants' view that there is a city-wide office market, she replied that Mr. Shearer had said that there were sub markets. Referred to productions N 1-6, she agreed that they showed annual averages and that it was reasonable to consider that they were indicative if showing averages of 37-39%.

Questioned by members, she said that the headline rent for 20 Queen's Road was fixed on 11th March 2014 and that the rate for 11 Thistle Place was £200. Asked about 28 Albyn Place being assessed at £275 front and back when others were £250 at the front and £275 at the back, she said that in some the refurbished fronts were somewhat lacking but that others had been refurbished well resulting in an all-over assessment of £275.

Asked about a quantum allowance of 3%, she said that size was the main reason but the allowance is evidence led and fits with the analysed rents.

Asked whether Union Plaza, Johnstone House, AB1, The Exchange, Freedom House, Admiral Court, Annan House and Bridge View were all modern, she replied in the affirmative but said to varying degrees adding that if not modern they had been refurbished. Referred to the Schuh case and asked if the office market in Aberdeen was dynamic, she replied that the Lord Justice Clerk had been looking at changes between valuations but the respondent is of the view that, while there is a long term ebb and flow in offices, the retail market is dynamic.

Asked if the figures in AS 11 for empty office are correct on account of the existence of a grey market, she could give no answer other than that the respondent has what is on the roll and information given to him about empty properties. She agreed that AS 11 had its limitations. Asked about the existence of office markets, she said that there are many sectors within the market. She said that while the distance between the Silver Fin and West End properties was not far, they were in different locations and markets. She said that including the west side of Thistle Street in West End properties was a mistake and that AS 4a showed traditional offices. Asked about 12 Carden Place, she said that she was aware of a significant extension but was not sure if its size had doubled: however, the front had not been refurbished to a high specification. Asked about the respondent's having said in the 2A+B case that there had been "no down turn" she said that the respondent and his staff acknowledged that there had been a down turn but it had not resulted in rental values dropping below the

tone so that, in context, he meant that there had been no material change of circumstances.

When Mrs. Fleming was asked if the Schuh case could apply to offices, she replied that the 2A+B case involved an office and that it had endorsed Schuh. She then said that the West End area had two sub-markets: one for general stock and one for high specification stock.

The respondent's case was closed.

The law.

Both counsel had prepared written submissions which they helpfully made available to the Committee in advance of the hearing on their submissions. The written submissions were full but may be summarised as follows.

Mr. Haddow gave a history of the provisions relating to assessment and drew the distinction in relation to physical circumstance between subjects being re-valued and subjects which were being added to the roll. He said that in both cases, regard should be had not only to the physical circumstances of the actual subjects but that regard should be had to physically present things in the locality of the subjects which may affect their value. Locality was an area affected by a market and did not have physical boundaries. In relation to the Prime Four appeal he said that its value as entered in the roll could be lower than the tone values. He said that the Prime Four appeal should have its physical circumstances judged as at the date when it was entered in the roll.

He continued that regard could be had to the case of Clement v. Addis Ltd. 1988 R.A. 25 when interpreting both the Local Government (Scotland) Act 1996 section 15 and the 1995 Order, both detailed infra. He said that the legislation had "fairness" to both the rate payers and assessors as an aim. He pointed to the Union Square cases as examples of an exercise in trying to achieve fairness. He said that it was for the Committee to assess the expert evidence as to whether it showed that the Aberdeen office market had been affected by an over supply, what evidence represented the best evidence to ascertain the hypothetical rent as at the appropriate physical circumstances date and what evidence allowed a distinction to be made between the effects of a downturn in the local economy and the effects of the subjects' physical circumstance changes. He suggested that Mr. Shearer's evidence showed that the slump in the office market was no mere fluctuation but was caused by a dramatic over supply. He continued that the effects of the physical circumstances changes were shown in the appellants' productions F where there was evidence of the over supply and of falling rents. Mr. Haddow said that Mr. Rose's and Ms. Gordon's evidence in relation to disaggregation was a reasonable approach to a difficult question.

He invited the Committee to sustain all 3 of the appeals.

Mr. Gill said that the appellants' approach to the appeal was flawed as there were two distinct bases for the appeals which dealt with different points of time, different areas and different criteria in different legislation, namely the 1995 Order and the 1996 Act.

He said that in relation to the 1995 Order appeals, one could look only at the physical circumstances of the subjects themselves or their immediate locality.

He stressed the importance of maintaining the tone of the roll as required by the Schuh case and said that one should not be considering English cases unless they were dealing with the same legislation. He cited cases where the P.C.D. provisions had been examined to highlight that one had to have regard to physical circumstances of the appeal subjects themselves.

In relation to the 1996 Act appeal, he said that the subjects had to be valued in accordance with the tone of the roll and that was to avoid unfairness. He said that "the locality in which the lands and heritages are situated" has to be interpreted to be co-extensive with the phrase "physical circumstances" in the 1995 Order.

Mr. Gill made various observations about the quality of the evidence of the witnesses and submitted that there was no evidence of a relevant fall in value to justify interference with the R.Vs. fixed on the appeal subjects. Even if there were, the appellants' disaggregation evidence was unsound and there was no evidence for any quantum discount.

He invited the Committee to dismiss all the appeals.

The matter of the relevancy of the appellants' cases was clearly raised. For the West End appeals, the relevant provision is in the Schedule to the Valuation Timetable (Scotland) Order 1995 (referred to in this decision as "the 1995 Order") and reads:-

"Valuations to be made on the basis of the physical circumstances of properties as at 1st January in the year preceding a year of revaluation".

The Committee noted that Mr. Haddow had submitted that the use of the word "properties" meant that subjects other than the subjects to be valued could be looked at. The Committee does not agree. The Committee accepted Mr. Gill's submission that the use of the word "properties" was simply to make it accord grammatically with the use of the word "valuations". Further, the Committee interpreted "physical circumstances of properties" to refer only to tangible attributes of the properties to be valued themselves, and prayed in aid of that interpretation the Cairngorm Chairlift (Cairngorm Chairlift Coy. v. Assessor for Highland Region, 1995 S.L.T. (Lands Trib. 35) and Campsie Spring (Campsie Spring Scotland Ltd. v. Assessor for Dunbartonshire 2000 RA 401) cases. That should really be an end of the Committee's consideration of the West End appeals but the Committee felt that it was incumbent on it to deal with the factual matters, lest it be wrong about the legal position. It deals with such matters later in this decision.

In relation to the Prime Four appeal, the relevant legislation is the Local Government (Scotland) Act 1966 section 15 (referred to in this decision as "the 1996 Act"), which provides:-

Valuation according to tone of Roll

15. –(1) For the purposes of any new or altered entry to be made in a valuation roll after the passing of this Act, at any time the valuation roll is in force, the value or altered value to be ascribed to lands and heritages shall not exceed the value which would have been ascribed thereto in that roll if the lands and heritages to which the entry relates had for valuation purposes been subsisting throughout the year before the last year of revaluation, on the assumptions that at the time by reference to which that value would have been ascertained--

(a) the lands and heritages were in the same state as at the time of valuation and any relevant factors (as defined by subsection (2) of this section) were those subsisting at the last-mentioned time; and

(b) the locality in which the lands and heritages are situated was in the same state, so far as concerns the other premises situated in that locality and the occupation and use of those premises, the transport services and other facilities available in the locality and other matters affecting the amenities of the locality, as at the time of valuation.

(2) In this section "relevant factors" means any of the following, so far as material to the valuation of lands and heritages, namely-

(a) the mode or category of occupation of the lands and heritages;

(b) the quantity of minerals or other substances in or extracted from the lands and heritages;

(c) the volume of trade or business carried on on the lands and heritages.

(3) References in this section to the time of valuation are references to the time by reference to which the valuation of lands and heritages would have fallen to be ascertained if this section had not been enacted.

(4) This section does not apply to lands and heritages which are occupied by a public utility undertaking and of which the value falls to be ascertained by reference to the profits of the undertaking carried on therein.

Mr. Gill submitted that the circumstances which could be taken into account are the same as for the West End appeals. Mr. Haddow submitted that physical circumstances affecting the locality of the subjects to be valued could properly be taken account of and, if appropriate, by reference to other subjects. Section 15(1) requires, for valuation purposes, that two distinct assumptions are made: the first being –

"the lands and heritages were in the same state as at the time of valuation and any relevant factors (as defined by subsection (2) of this section) were those subsisting at the last mentioned time"

and the second being—

"the locality in which the lands and heritages are situated was in the same state, so far as concerns the other premises in that locality and the occupation and use of those premises, the transport services and other facilities available in the locality, and other matters affecting the amenity of the locality, as at the time of valuation."

The Committee noted that the Concise Oxford dictionary defines "locality" as "a particular place or region" and Collins dictionary defines it as "(a) a small area of a country or city" and "(b) a neighbourhood or area". The Committee thought that the statutory assumptions for the Prime Four appeal required it to have regard to a much wider set of circumstances than in the West End appeals. In particular, the Committee has to have regard to locality and matters affecting it. The Committee took the view

that matters which could affect a locality could be intangible. The Committee noted that in the 2A+B case (albeit that that was a material change of circumstances appeal under s. 3 (4) of the Local Government (Scotland) 1975 Act), Lord Malcolm said "While the court has from time to time allowed that factors such as an abnormal economic crisis might be relevant, in general one would be looking for changes of circumstances in the subjects or their immediate locality." As further authority for the proposition that intangible circumstances may allow an alteration to a rateable value, the Committee had regard to the decision in the Assessor for Fife v. Adamson 1964 S.C. 384 where the existence of demolition orders was held to be a valid basis for reduction.

The appellant in the Prime Four case relies on an argument that an exceptional over supply of office accommodation affected the Aberdeen market for offices and maintained that that was a circumstance affecting the appeal subjects. The respondent's position is that fluctuations in value are just part of the ebb and flow of business of the type that was referred to in the Schuh case. The committee took the view that if the appellant could show that the value of subjects had fallen caused by a wholly exceptional event (the over supply of office accommodation in Aberdeen) then, on a point of relevancy, it was open to the appellant to attempt to prove such. The Schuh case indicated that, with the Lord Justice Clerk saying "This court has recognised that certain events may be of such significance and impact as to constitute a material change of circumstances; for example, the disruption to retail businesses caused by the building of a city centre tramway (cf. Assessor for Lothian v. H & M Hennes & Mauritz UK Ltd; Assessor for Lothian v. House of Fraser Ltd.). In Tesco Stores Ltd. v. Fife Assessor this court impliedly accepted that a reduction in the rental value of a retail shop caused by the opening of a superstore next to it could amount to a material change of circumstances." He also said, "In Scammel v. Assessor for Highland and Western Isles Valuation Joint Board, in an opinion with which my colleagues agreed, I said that a material change of circumstances could be said to occur under such a system of valuation only where the change went beyond the inevitable fluctuations in bag returns from one year to another and constituted some new and significant event fundamentally altering the nature of the subjects." The Committee took from such cases that whether there had been a change to warrant a reduction in R.V. was one of fact and degree to be considered on the facts of each case.

Considering other legal points, Mr. Haddow submitted that the time at which the circumstances affecting new valuation properties are to be considered, is the time when the subjects are entered in the roll. The Committee accepted that submission.

Mr. Gill submitted that if there were any ground for reducing the R.V., any reduction had to be at or above the tone value. He said that that was required by a consideration of section 15 and its head note of "Valuation according to tone of roll" While the head note tends to support Mr. Gill's view, nevertheless the head note is subservient to the wording of the section itself. The Committee considered the case of Assessor for Tayside VJB v. Land Securities P.L.C. 2013 RA 58 ("the Land Securities case") and Lord Gill's dictum there concerning the tone of the roll provisions to the effect that section 15 is the tone of the roll provision, adding "that during the currency of the roll, the value ascribed to the subjects in a new or altered entry shall not exceed the value that would have been ascribed to them at the tone date

but, by implication, the value ascribed to them may be less", Mr. Gill referred to a decision of the Lothian VAC but that decision was about two years prior to the Land Securities case. The Committee decided to follow what Lord Gill had said.

There had been conflicting submissions by the parties over the use that could be made of English authority and, in particular, the decision in the Leeds case. While one has to treat with caution English decisions where the matters in issue are not identical with the similar Scottish provisions, one may have regard to them. In this case the Committee believes that the Leeds case concerned the interpretation of the Local Government Finance Act 1988 schedule 6 at "(d) matters affecting the physical state of the locality in which the hereditament is situated or which, though not affecting the physical state of the locality, are none the less physically manifest there and (e) the use or occupation of other premises situated in the locality of the hereditament." The Committee took the view that that wording was very close to the wording in the Scottish provisions so that the case was a useful guide to the interpretation of the Scottish provisions. In the Leeds case, it was held that an over supply of office accommodation in Leeds (at a lower level than in the instant case) could amount to a material change of circumstances such as to warrant a lowering of the R.V.

While the appeals before the Committee are not based on "a material change of circumstances" as provided for in the Local Government (Scotland) Act 1975 section 3 (4), , the Committee noted that there were close analogies with the 1975 Act provisions. As Lord Justice Clerk Gill said in the Schuh case, "There were four questions for the committee, namely, (1) whether there had been a material fall in rental values in the relevant section of Sauchiehall Street since the entries appealed against were made in the roll; (2) if so, what caused it; (3) whether the cause, or any of the causes, constituted a material change of circumstances within the meaning of s.3(4); and (4) if one or more of the causes constituted a material change of circumstances and another did not, to what extent the fall in value was caused by the material change of circumstances."

The Committee approached these appeals on the basis that it should ascertain if there had been a fall in value, and, if so, what caused it. It should then ascertain if a cause was due to a change in the subject's physical circumstances in relation to the West End appeals or to a change in "physical circumstances" as used in the Local Government (Scotland) Act 1996 s. 15 in relation to the Prime Four appeal and both as at the appropriate valuation date. If there were a fall caused by a physical circumstances change and another or other causes, the Committee should seek to establish how much of the fall was due to the physical circumstances change.

Findings in Fact.

The Committee made the following findings:

1. The office market in Aberdeen comprises the local authority area of Aberdeen City Council but extends into the local authority area of Aberdeenshire Council to include Westhill, Portlethen and the Checkbar or Aberdeen South areas.

2. Within the Aberdeen office market area there are sub-markets with much more restricted geographical areas.

3. Two of such sub-market areas are Westhill and West End Aberdeen.

4. The West End Aberdeen area comprises offices within a triangular area whose base is Victoria Street, whose north-western side is Carden Place and Queen's Road to its junction with Anderson Drive and whose south-eastern side is part of Alford Place, Albyn Place and Queen's Road to its junction with Anderson Drive, including all the subjects having postal addresses on these streets.

5. The Aberdeen office market rental levels are tied closely to the price of Brent Crude oil.

6. The price of Brent Crude oil fell dramatically towards the end of 2014 falling from $120 per barrel to (very briefly) $30 in 2015.

7. Rents of Aberdeen offices fell between the start of 2015 and the autumn of 2017 by between 20% and 100%.

8. From the beginning of 2015 until the end of 2016 there was nearly a 140% increase in the availability of office space in the Aberdeen office market.

9. In 2014 there was a "take-up" of office space of about 1,000,000 square feet and that in 2015 there was a "take-up" of about 400,000 square feet, a drop of about 60%.

10. Finds that there exists in Aberdeen a "grey market" being for offices which could be made available to tenants but which are not marketed actively.

11. Finds that in 2016 and 2017 there was an over-supply situation for office accommodation of something between 12 % and 140% which was unprecedented.

12. A reason for the drop in the Aberdeen office rental market referred to in finding 14 was the unprecedented increase in the supply of office space.

13. That when considering rental evidence in relation to any valuation date, it is reasonable to consider agreements struck or dates of entry up to three months prior to and up to three months post, any such date.

14. The following comparables had rents fixed with dates of entry or deal striking dates and analysed rents as shown:-

No.	Address	Date of Entry	Date Agreed	Assessors Rate	Analysed Rate	% Fall
	Appellants Production C : Key Comparable Evidence - Aberdeen Oversupply Case					
68	28 Albyn Place	20/06/17	27/03/17	275.00	136.00	-51
69	Ground & Basement floors 10 Albyn Place	16/05/17	16/12/16	250.00	187.00	-25
70	11 Victoria Street	01/01/17	?	250.00	160.00	-36
81	1st & 2nd Floors 32 Carden Place	01/02/17	?	250.00	211.00	-16
83	10B Queens Gardens	01/07/17	01/01/17	250.00	193.00	-23
	5 Subjects			**255.00**	**177.40**	**-30.20**
55	Suite A1-A3 Davidson House Balgownie Road	11/11/17	?	200.00	145.00	-28
57	Bankhead Drive City South Portlethen	20/10/17	14/02/17	225.00	101.00	-55
59	Suites B E & F Hill of Rubislaw Anderson Drive	02/10/17	?	300.00	44.00	-85
61	21 Abercrombie Court Prospect Road Westhill	28/09/17	?	210.00	158.00	-25
62	Air Products Enterprise Drive Westhill	18/09/17	?	130.00	85.00	-35
64	Suite C Hill of Rubislaw Anderson Drive	01/09/17	?	300.00	21.00	-93
66	Unit 7 Suite C Arnhall Business Park Westhill	01/08/17	?	225.00	179.00	-19
67	Suite F10 Enterprise Drive Bridge of Don	17/06/17	?	200.00	166.00	-17
	8 Subjects			**225.00**	**116.56**	**-44.63**

That the above analyses showed an average fall for West End properties of over 30% and for offices comparable to the Prime Four appeal subjects of nearly 45%.

15. Aberdeen City Council grants relief to potential rate payers only if the subjects in respect of which they may be liable for tax are completely empty and relief has been applied for.

16. The Committee found that the evidence about the Edinburgh cases was conflicting and where the Lothian Valuation Appeal Committee's decisions were not before this Committee, this Committee was not prepared to make any finding in relation to what the decisions in these cases were, nor what the decisions were examples of.

17. The Committee took the view that the evidence given in relation to the Leeds case was really commentary on its value as a precedent and, that being so, it is inappropriate for this Committee to make findings in fact concerning it.

18. The unprecedented over-supply of office accommodation referred to in finding 11 was partially caused by general economic factors.

19. Only the portion of the unprecedented over-supply of office accommodation not caused by general economic factors may be taken account of when considering a reduction of rental values between the tone date values and the relevant P.C.D values.

20. The respondent reduced the rateable values of several properties in Union Street and nearby in 2009 and 2010 subsequent to the opening of the Union Square development.

21. The relevant valuation date for the West End appeals is the P.C.D. of 1st January 2017.

22. The relevant valuation date for the Prime Four appeal is 1st September 2017.

23. The Committee did not discern any evidence from rents or otherwise which would justify a quantum or end allowance and therefore found that there was no basis to apply such in any of the appeals.

24. The Committee did not discern any evidence from rents or otherwise which would cause it to come to the view that the Capitol, Silver Fin and Marischal Square office developments are above the West End subjects in a hierarchy of office desirability.

The Decision.

All the witnesses gave views in relation to locality with the appellants' witnesses favouring a more extensive area than Mrs. Fleming but, as the matter of locality is really a matter of language as applied to office supply, the Committee was happy to take the evidence of Mrs. Fleming in relation to the West End appeals that it meant the offices lying in the "Golden Triangle" of production AS1.

In relation to the Prime Four appeal, the Committee was of the view that "locality" means Aberdeen City and the parts of Aberdeenshire close to it such as Portlethen, the Checkbar (Aberdeen South Gateway Business Park) and Westhill at or around the Total and Sub Sea 7 sites. The Committee's reasoning is that in relation to large offices (and, in accordance with the real world example concerning Total spoken to in evidence by Mr. Shear**er** where Total did indeed consider several areas and proposals across Aberdeen before deciding on a move to Westhill) would be tenants seeking large modern office accommodation would examine thoroughly all such locations before selecting a preferred option.

Apart from Mr. Shearer who did not express a view, there was a consensus among all the witnesses that there were sub-markets within Aberdeen and that West End Aberdeen, as noted in finding 4, and Westhill were two such sub-markets.

There was also a consensus among all the witnesses that the level of office rents in Aberdeen is influenced strongly by the price of oil, of which Brent Crude prices are examples. They also agreed that the price of Brent Crude had fallen sharply in 2014 and 2015.

The Committee looked for comparative rental values in the two different time frames required for the West End appeals on the one hand and the Prime Four appeal on the other. Mrs. Fleming gave evidence that when assessing rents she looked at comparable rents up to a year before any particular valuation date and up to three months after it. Considering rental evidence later than three months ran the risk that there may be factors affecting rents which did not exist at the relevant inspection time. The Committee considered evidence up to three months before and three months after the two relevant dates as being a period of time close to the valuation date within which comparable values are likely to reflect the market at the valuation date.

Both parties had produced schedules of comparative rents and had agreed most of them. The Committee is grateful that the parties did so thus avoiding the leading of much uncontentious evidence. The Committee considered the analysed rents only of those comparables where these had been agreed and its analyses supra were only in relation to agreed evidence. The comparables listed supra for the West End appeals were selected on account of their being within the six month time frame and lying within the West End of Aberdeen. The comparables listed for the Prime Four appeal were those within the relevant but different six month time frame but spread across greater Aberdeen as reflecting the areas which potential tenants of large offices would be likely to consider.

For the West End appeals, the Committee considered the appellants' rental evidence and, in particular, pages 1-4 of production C. The committee also considered the relevant information and evidence provided by Mrs. Fleming on behalf of the respondent. The appellants based their levels of rental at the P.C.D. whereas Mrs. Fleming stated that the valuation tone date of 1st April 2015 is what should be looked at. She also analysed rents at the P.C.D. and, in her opinion, to be fair, also looked to a band of dates from 1st April 2014 to 31st March 2017. The Committee's analysis of rents within the six month time frame and geographical area, resulted in its finding that there had been a fall in rents to £175.00 (approximately) per square metre as opposed to the tone rent of £250 and to £192.50 as opposed to the tone rent of £275, that is falls of over 30%.

For the Prime Four appeal, the Committee looked at rental evidence from 1st June 2017 until 3 months after 1st September 2017. On analysis in the locations described in production C and within the appropriate time frame, the Committee is of the view that the agreed evidence submitted clearly justifies a rental rate at 1st September 2017 of less than that proposed by the appellants. The Committee's analysis of the comparable rents discloses an average fall in rental values to £137.50 per square metre being a fall from the assessed rent of nearly 45%.

Ms. Gordon's evidence was to the effect that during 2015 and 2016 there had been a 100% increase in the amount of office accommodation available and that between 2014 and 2015 there had been a about a 60% drop in office "take-up". Mr. Rose gave evidence with reference to production F that there had been an increase in office availability of over 140% between 2015 and 2017. Mrs. Fleming's evidence, with reference to production AS 10, was that there had been a steady rise from 2015 until 2017 of empty offices ending during 2017 with percentage rises of about 12%. Those figures had been taken from Aberdeen City Council's records of office premises

which had been granted exemption from paying rates and took no account of offices which were unused apart from having furnishings in them and took no account of the "grey" market. No matter whose evidence is considered, it was clear that there had become an over-supply situation in 2017 of over 10% and above the level used in the Leeds case to justify a reduction of rateable values.

Mr. Shearer's evidence was that a 10% over-supply was unusual so that he described Aberdeen's 100% over-supply as unprecedented in his 43 years of experience. So the over-supply was a wholly exceptional and unprecedented state of affairs.

Accordingly, a situation had arisen which gave the appellants the opportunity of availing themselves of the right to apply to have the rateable values of affected premises reduced. The Committee had regard to Tesco Stores v. The Assessor for Fife, 2011 S.C. 316. While that was an appeal in terms of the Local Government (Scotland) Act 1975 section 3(4), the analogy with the West End appeals is apposite. The Committee has given its view of how to apply the law to the West End and Prime Four appeals supra.

Ms. Gordon and Mr. Rose gave evidence about the rise in the supply of offices in Aberdeen from the beginning of 2015 until the end of 2017 from the information available to them including the existence of unused office space which had some contents or which were available to rent even if not being marketed actively. They referred to the last as "grey space." Mrs. Fleming also gave evidence about such office supply but relied heavily on information from Aberdeen City Council's records of empty offices. However, those records, according to the evidence disclose only premises which are completely empty and unused and in respect of which exemption from rates had been applied for. The Committee took the view that that explained the reason for her evidence being to the effect that the supply of office accommodation was at a much lower level than the appellants' witnesses' evidence.

Mrs. Fleming and Mr. Rose both gave evidence about decisions of the Lothian V.A.C. That committee's decisions were not before this committee and where the evidence which this Committee heard was conflicting, this Committee did not rely on what the Lothian V.A.C was said to have decided.

Mr. Rose and Mrs. Fleming both gave evidence about the Leeds case. Of course, it involved different legislation. The Committee took the view that, in relation to the West End appeals, a comparison of the relevant Scottish and English legislation was so different that the Leeds case did not assist the Committee in these appeals. When the Committee compared the relevant legislation in the Leeds and Prime Four cases, it took the view that the wording was close enough to allow it to take cognisance of the Leeds decision as giving the basis of a precedent to the decision of this Committee.

Mrs. Fleming and Mr. Rose also both gave evidence about the respondent's having reduced the R.V. of shops in Union Street, Aberdeen and nearby consequent upon the opening of the Union Square shopping complex in 2009. Mr. Rose thought that the respondent had lowered the R.Vs on account of a material change of circumstances affecting the values of the shops whose R.Vs were lowered whereas Mrs. Fleming said that it was as a result of correcting an error of measurement in the assessment.

The Committee found Mrs. Fleming's reasoning difficult to follow. However, it noted that the respondent was now arguing that, whether or not there had been an apparent reduction in the Union Street shops' R.Vs. on account of their values having fallen as a result of Union Square's reducing trade, any reduction in the values of the appeal subjects was merely an example of the ebb and flow of business of the sort discussed in the Schuh case and was not a ground for reducing the R.Vs. of the appeal subjects. The Committee accepts that the respondent has the right to take that approach.

When considering the cause of the fall, the Committee was of the view that general economic factors of which the fall in the price of Brent crude oil may be one, contributed to the fall in demand but found that the rise in the over-supply situation of office accommodation in Aberdeen between early 2015 and the autumn of 2017 was so great as to amount to an exceptional and unprecedented over-supply leading directly to a reduction in rental levels. At least part of the over-supply was caused by the appearance in the market of significant office accommodation in new build offices. While the dates of entry to the Capitol, Silver Fin and Marischal Square new build office developments were contained within productions available to the Committee, it took the view that the marketing of these subjects took place from about two years before the dates of entry and that they contributed to the over-supply situation before they were occupied.

Both Ms. Gordon and Mr. Rose gave the view that disaggregation of the portion of the unprecedented over-supply caused by general economic circumstances was required and opined that, while difficult to quantify, something in the order of a 20-25% reduction in RV of the appeal subjects took appropriate account of disaggregation.

The Committee acknowledges that, in determining the West End appeals, it must have regard to the case presented to it, that is to say, to determine what change, if any, in the amended value is properly attributable to a change in "physical circumstances" and what change is due to other factors.

In the light of the whole evidence before it, the Committee considered that there had been a significant fall in the value of the appeal subjects and that the change in physical circumstances between the tone date and 1st January 2017 accounted for a slightly higher portion of the overall fall than the other factors and consequently would have sustained the West End appeals to the extent of fixing the Net Annual Value and the R.V. at £225 per square metre for subjects whose tone values had been £250 and at £250 for those subjects whose tone values had been £275. The application of these rates to the appeal subjects would have resulted in figures of £89,500 for 74 Carden Place and £326,500 for 28 Carden Place, but for the Committee's interpretation of the law, supra.

In relation to the Prime 4 appeal, the Committee considered that there had been a significant fall in the value of the subjects between the tone date and 1st September 2017. That fall was in the order of 45% which would equate to a rate per square metre of £137.50. However, as with the West End appeals, the Committee has to have regard to the case before it and, in particular, having regard to the findings in fact numbered 18 and 19 supra, to disregard those factors referred to at finding 18 on the

one hand and, on the other hand, to have regard to those factors identified in terms of finding 19. This separation or filtration process was referred to in evidence as "disaggregation."

The Committee did not find the process of disaggregation easy but was of the opinion that it is a matter of judgement.

Applying that judgement and concluding that the finding 19 factors somewhat outweighed the finding 18 factors, the Committee considered that a rate per square metre of £200 is appropriate, resulting in a net annual value and rateable value for the appeal subjects of £980,500.

While Mrs. Fleming did not accept that any change in R.V. should be allowed, she did accept the idea of end or quantum allowances but said that her analysis of rents did not reveal any evidence to justify such. The Committee agreed with her, not having discerned any evidence of such before it.

The Result.

The committee dismissed the West End appeals but sustained the Prime Four appeal to the extent of fixing the net annual value and R.V of Unit 11 at £980,500.