

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**

Case Nos: CHI/19UC/LVA/2005/0001 &
CHI/19UC/LIS/2005/0054

RE: 64B BARGATES, CHRISTCHURCH, DORSET BH23 1QL

Between:

Twynham Housing Association ("the Applicant")

And

Biala Charity Trust ("the Respondent")

In the matter of Applications under:

- (a) Section 27A Landlord and Tenant Act 1985
(Liability to pay service charges)
- (b) Schedule 11 of the Commonhold and Leasehold Reform Act
2002 (Liability to pay an Administration charge) and
- (c) S20C Landlord and Tenant Act 1985 (Costs Limitation)

Date of the Section 27A application and the S20C application	24 October 2005
Date of the Schedule 11 application	21 November 2005
Date of the first directions	25 November 2005
Date of second directions	20 January 2006
Date of the third directions	30 March 2006
Date of the fourth directions	17 May 2006
Date of the inspection	20 March 2006
Date of the first hearing	20 March 2006
Date of the second hearing	8 June 2006
Venue	Christchurch Town Hall Christchurch
Appearance for the Applicant	Steve Schollar Dee Gardner Winston Nelson Maurice Smith

There was no appearance by the Respondent

Members of the Leasehold Valuation Tribunal

Mr T D George	Lawyer Chairman
Mrs H C Bowers MRICS	Valuer Member
Mr J Mills	Lay Member

Date of the Tribunal's Decision: 30 July 2006

THE APPLICATIONS

1. Twynham Housing Association is the Tenant of 64 Bargates, Christchurch, Dorset being a single flat in a block of flats, shops and garages of which the Respondent is the landlord. The Applicant has made the applications detailed below to the Tribunal. The applications are described in paragraphs 2-7 below and the Tribunal's decisions are summarised at paragraphs 8-14 below. The summary is for convenience but in the event of any inconsistency the detailed decision from paragraph 15 onwards is to be regarded as authoritative.
2. Section 27A of the Landlord and Tenant Act 1985 provides for an application to be made to the Tribunal for a determination as to whether a service charge is payable and if it is as to: -
 - (a) the person by whom it is payable
 - (b) the person to whom it is payable
 - (c) the amount which is payable and
 - (d) the manner in which it is payable

An application may also be made for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description a service charge would be payable for the costs and, if it would, as to:

- (a) the person by whom it would be payable
- (b) the person to whom would be payable
- (c) the amount which would be payable and
- (d) the date at or by which it is payable
- (e) the manner in which it would be payable

There are other provisions which are not relevant to this case

3. The Applicant under the Section 27A Application dated the 24 October 2005 sought the following determinations: -

- (a) whether the Applicant was liable to pay a management fee of £118.97 for the period 2001/2002
- (b) whether the Applicant was liable to pay a management fee of £118.97 and service charges/repairs of £244.71 for the period 2002/2003
- (c) whether the Applicant was liable to pay a management fee of £118.97 and service charges/repairs of £244.71 and an insurance charge of £178.76 all for the period 2003/2004.
- (d) whether the Applicant was liable to pay a management fee of £118.97 and service charges/repairs of £244.71 and an insurance charge of £178.76 all for the period 2004/2005.
- (e) whether and if so what sums the Applicant was liable to pay of management charges, service charges/repairs and insurance charges all for the period 2005/2006. Although the Applicant's application did not mention specific sums or items, the Tribunal was satisfied that a decision of the Tribunal for that period was being required by the Applicant in view of written submission provided by the Applicant to the Tribunal and the written comments of the Respondent dealing with the same items and period.

4. Section 20C of the Landlord and Tenant Act 1985 empowers the Tribunal to make such order as it considers just and equitable when considering whether or not to make an order that all or any of the costs of the Landlord incurred in connection with the proceedings before the Tribunal are or are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant under the lease.

By the Application dated the 24th October 2005 the Applicant sought an order preventing the Respondent recovering the costs incurred in connection with these proceedings before the Tribunal as part of the service charge.

5. Schedule 11 of the Commonhold and Leasehold Reform Act 2002 provides that an application may be made to the Tribunal for a determination whether an administration charge is payable and, if it is, as to

- (a) the person by whom it is payable
- (b) the person to whom it is payable
- (c) the amount which is payable
- (d) the date at or by which it is payable and
- (e) the manner in which it is payable

The same schedule defines “administration charge” as an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable directly or indirectly : -

- (a) for or in connection with the grant of approvals under his lease, or applications for such approvals
- (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant or
- (c) in respect of a failure by the tenant to make payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant or
- (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease

By the Application dated the 21st November 2005 the Applicant sought, a determination by the Tribunal whether or not the Tenant was liable to pay administration charges in the sums of £1,160.11 up to January 2001 and £586.33 from January 2001.

6. Section 20B of the Landlord and Tenant Act 1985 provides that

- (a) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to (b) below) the tenant shall not be liable to pay so much of the service charge as relates to the costs so incurred

(b) the above subsection shall not apply if within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

In the written submissions it made to the Tribunal the Applicant sought a determination on this issue by the Tribunal

7. Section 20 of the Landlord and Tenant Act 1985 provides for the consultation provisions to be observed if certain qualifying works are to be carried out by a landlord. Subsection 4 sets out the relevant requirements which relate to estimates being provided and certain notices being served.

In the written submissions it made to the Tribunal the Applicant sought the determination of the Tribunal on this issue in respect of drainage works for which a service charge of £384.12 had been raised in the January 03/04 period.

DECISION

8. Management Fees

The Tribunal finds that the following charges are reasonable:

		<u>Total</u>
June 01 to June 02	£105 + VAT of £18.38	£123.38
June 02 to June 03	£115 + VAT of £20.13	£135.13
June 03 to June 04	£120 + VAT of £21.00	£141.00
June 04 to June 05	£125 + VAT of £21.88	£146.88
June 05 to June 06	£125 + VAT of 21.88	<u>£146.88</u>
		<u>£693.27</u>

The Applicant has paid the Respondent, the following sums: -

On the 17 June 2003	£246.76
On the 11 June 2001	<u>£123.38</u>
Total:	<u>£370.14</u>

The amount that is due and payable is £323.13

9. Service Charges

The Tribunal finds that the following charges are reasonable: -

	Total
01/02 Electricity for common parts 1/13 of £23.40	£ 1.81
Rubbish disposal 1/13 of £447.00	£ 34.38
Common parts electricity 1/13 of £99.05	<u>£ 7.62</u>
Total	<u>£ 43.81</u>
02/03 Purchase of new bins 1/13 of £458.25	£ 35.25
Electricity works over the year 1/13 of £158.62	£ 12.20
Common parts for electricity 1/13 of £78.71	<u>£ 6.05</u>
Total	<u>£ 53.50</u>
03/04 Muscliffe property maintenance 1/13 of £510.00	£ 39.23
Lanes for drains 1/13 of £546.38	£ 42.03
Lanes for drains 1/13 of £4245.28	£326.56
Management fee on large project At 10%	
1/13 of £424.53	£ 32.66

Common parts for electricity		
1/13 of £97.95	<u>£ 7.53</u>	
Total	<u>£448.01</u>	
04/05 Roof works		
1/13 of £164.50	£ 12.65	
Common parts for electricity		
1/13 of £133.14	<u>£ 10.24</u>	
Total	<u>£ 22.89</u>	
05/06 Two doors replaced		
1/13 of £764.00	£ 58.77	
Gardener 12 month contract		
1/13 of £355.00	£ 27.31	
Common parts for electricity		
1/13 of £101.74	<u>£ 7.83</u>	
Total	<u>£ 93.91</u>	
The total sum is £662.12		£662.12
The Applicant has made the following payments: -		
02/03 On the 18 December 2002	£ 41.46	
On the 25 April 2002	£ 7.15	
On the 15 May 2002	£ 10.09	
On the 16 November 2002	<u>£ 50.38</u>	
	<u>£109.08</u>	
03/04 On the 17 June 2003	<u>£ 42.03</u>	
04/05 No payments		
05/06 On the 3 August 2005	<u>£42.88</u>	
Total	<u>£193.99</u>	<u>£468.13</u>

The sum of £468.13 is due and payable by the Applicant to the Respondent.

10. Insurance

02/03

1/13 of £1168.02	£ 89.85
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04/05

1/13 of £ 977.03 plus

£ 356.14

£1333.17

£102.55

Total	<u>£192.40</u>
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The Applicant has paid to the Respondent the following sums: -

On the 11 march 2002	£ 85.29
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On the 18 December 2002	£ 98.83
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Total	<u>£184.12</u>
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The sum of £8.28 is due and payable by the Applicant to the Respondent

11. Administration Charges

The Tribunal determined that no administration charges are due from the Applicant to the Respondent.

12. Section 20B (The Eighteenth Month Period)

The Tribunal finds that no reduction in service charges will be made.

13. Consultation For Certain Works

The Tribunal finds that the consultation provisions were complied with.

14. Costs Not Being Part of Service Charges

The Tribunal grants the Tenants application

INSPECTION

15. 64B Bargates is one of two flats in a block above a shop at 64 Bargates. It is of brick and white painted render under a tiled roof with U.P.V.C Windows. Flats 64A and 64B, are accessed by a separate concrete staircase and appear from the lease documents before the Tribunal to have been created in or at some time shortly before 1973. The service charge regime to which it is subject relates to expenses incurred in respect of the two flats at 64A and 64B Bargates and to five flats above two shops at 62 Bargates, as well as to the three shops in question.

The Tribunal inspected the property on 20 March 2006. It was not necessary to inspect the flat itself because the service charge, insurance, management charges and administration charges had no bearing on the interior of the flat. The flat comprised a two bedroom flat in a block of eight flats and three shops known as 62 Bargates and two flats known as 64 Bargates. There were also five garages to the rear of the property. From external inspection, the condition of the property was poor. The paintwork was in need of attention and the property had a run down appearance

THE LEASE

16. The Lease ("The Lease") of the property is dated the 19th July 1973 and is made between Gatwick Investments Limited of the one part and Alan James Wilkins and Sylvia Ruth Wilkins of the other part. The term is ninety nine years from the 8th June 1973. The relevant clauses of the lease are as follows

(a) 3(iii) "forthwith to pay to the Landlords one equal thirteenth part of the expenses and outgoings mentioned in the Fourth Schedule and if so required to do by the Landlords make payments on account towards accrued or any accruing liability of the Lessee hereunder as the Landlords shall reasonably require".

(b) 4(c) "that subject to contribution and payment as hereinbefore provided the Landlords will as and when necessary maintain and renew:

(i) the gas and water pipes sewers drains and electric cables and wires in under and upon the property and enjoyed or used by the Lessee in common with the Lessee of the other parts of the property and

(ii) the boundary walls and fences of the property and the roof outside walls and foundations of the blocks of flats shops and services".

(c) 4(g) "at all times during the said term to insure and keep insured the block of flats shops and garages against loss or damage by fire and such other risks as the Landlords consider necessary in at least such amount as in the opinion of the Landlords shall represent the full re-instatement value thereof for the time being and whenever required produce to the Lessee the policy or policies of such insurance and the receipt for the then current premium for the same and will in the event of the flat or any part thereof being damaged or destroyed by fire as soon as reasonably practicable lay out the monies received by virtue of such insurance in the repair rebuilding and re-instating of the flat."

(d) Clause 9 "It is agreed that the Landlords shall keep proper accounts of all monies expended by them under the preceding provisions hereof whereof the Lessee shall be liable to repay a proportion to the Landlords under the covenants herein contained and that a copy of such account shall be despatched by the Landlords to the Lessee at the demised premises not later than the expiration of a period of twenty-one days next following the yearly day hereinbefore appointed for a payment of rent and the Lessee shall be deemed to have accepted such accounts and agreed the contributory payment or proportion to be paid by the Lessee in the event of no objection in writing having been received by the Landlords from the Lessee before the expiration of the period of one calendar month from the despatch of such account by the Landlords to the Lessee as aforesaid And all rights and remedies for enforcing payment of such contributory payment or proportion (as the case may be) vested in or enforceable by the Landlords under this Lease or otherwise against the Lessee or the demised premises or the owner or occupier for the time being thereof shall become immediately exercisable by the Landlords at the expiration of such period of one month".

(e) The Fourth Schedule which is lengthy, but briefly includes the maintenance items in respect of which service charges are payable including the repairing maintaining renewing all the parts of the property not already the liability of the Tenant. The sewers, drains, gas and water pipes and electricity cables and wires. The insurance costs of the property. The Landlords costs of managing the property and the costs of the Landlords Agents. However, the Tribunal had regard to the full schedule in coming to its conclusions and not this summary.

HEARING

17. The Tribunal had received certain documents and written submissions prior to the hearing. Neither the Applicant nor the Respondent had complied with all the directions which the Tribunal had made. The Applicant was unable to comply in certain respects because the Respondent had not first of all complied with the directions in a way that enabled it to do so. The purpose of the directions was to assist both parties, and the Tribunal, so that a fair result could be obtained. The fourth set of directions dealt with certain matters raised by the Respondent. An oral hearing was held. The Respondent did not attend the hearing. The Applicant did attend, and assisted the Tribunal.

The issues before the Tribunal are set out in paragraphs 2, 3, 4, 5, 6 and 7 of this determination. The documentary evidence and written submissions of both parties and the oral evidence of the Applicant together with the Tribunal's reasoning in considering the evidence may be summarised in the following way.

REASONS

Management Fees

18. The Respondent in documents R.2 and R.3 of the Respondents bundle claimed the following management fees and charges: -

June 02 – June 03	£115.00
June 03 – June 04	£120.00
June 04 – June 05	£125.00

June 05 – June 06

£125.00

Total £485.00

VAT £ 84.88

TOTAL £569.88

The Respondent stated in the documents that these payments had not been made and that the Applicant had not given any explanation as to why the payments had not been made.

Both in the written submission and verbally the Applicant maintained that since 2001 its records included only one demand for a management fee and that no evidence had been produced to the Applicant by the Respondent of any demands for management fees. The Applicant did agree that there have been occasional demands for agent's fees and administration fees. The Applicant also conceded that, at the time of these events, its filing system was very faulty. The Applicant stated that agents' fees for 2002/03 and 2003/04 were paid when demanded by the Respondent. Document R.4 in the Respondents bundle set out the Respondents method of charging, namely on average 15% to 22% of all expenditure for any one year together with a minimum charge of between £150 and £300 per flat. The Applicant said that it had not seen any such terms before the production of document R.4.

The Tribunal considered that charging the fixed fee per annum and adding the percentage per item of expenditure plus vat is unreasonable. The fixed fees per annum were too high for flats in the Bournemouth area by comparison with the rates that the members of the Tribunal collectively know to be charged there. It would be reasonable to add on a ten per cent charge on major expenditure, but nothing on any other expenditure. It is clear from the documents that varying percentages have been charged by the Respondents on various items of expenditure. The Tribunal found from an examination of the documentation that the payments set out in paragraph 10 had been made by the Applicant.

Service Charge

19. In document R.2 already referred to the Respondent made service charge claims which may be summarised in the following way, giving only the totals year by year: -

January 01	£ 47.05
January 01	£ 72.36
January 03	£489.50
January 04	£ 27.41
January 05	£131.68

In its written submissions the Applicant stated that some of the demands for electrical contractor's works for associated administration fee and for the removal of rubbish and works to the fire escape were not in the Applicants files. In evidence the Applicant agreed, as mentioned above, that its filing system was not good and accepted that where there was an invoice in the documents produced by the Respondent and the Applicant to the Tribunal showing work done or electricity supplied then those events had happened. The issue was then the percentage to be charged under the terms of the Lease referred to at paragraph 16 of this determination. Both the Applicant and the Respondent in their written submissions made statements about payments being made or not made and for what periods. The Tribunal considered these issues from perusal of the written documentation and submissions supplied by the parties, with the results set out in paragraph 9 of this determination. The percentage for payments of service charge by the Applicant is clearly 1/13 since clause 3(iii) of the Lease states so. There was no evidence before the Tribunal showing any variation of that provision. The calculations set out in paragraph 9 of these reasons are, therefore, carried out on that basis.

Insurance

20. In the document R.2 already referred to, the Respondent claimed a total of £397.50 for insurance premiums on the property (as the Lease defines that term) for the period 02/03 and 04/05. The Respondent also gave the Applicant the choice of paying 1/13 of the insurance costs of the flats of which the property the subject of this application is one, and the shops adjoining or 1/10 of the premium just for the flats. The only percentage that can be applied is the 1/13 of the whole of the property because clause 3(iii) of the Lease states so. The insurance debit notes are numbered R.5 R.6 and R.7 in

the Respondents bundle. The premiums are £1168.02 for 02/03 (R.5), £977.03 (R.6) and £356.14 (R.7) for 03/04. The Applicant stated in evidence and in the written submissions that it had not received any demands or invoices for any payment, but only copies of certificates. The Applicant accepted at the hearing that R.5, R.6 and R.7 set out the insurance cover for the property and the premiums charged despite a lack of information on its files. The Respondent in its written submissions explained that the insurance for 02/03 was for all the flats and the shops. The insurance for 03/04 was separated into two policies one for £977.03 for the ten flats and the other for £356.14 for the shops and garages. Clause 4(g) of the Lease referred to in paragraph 16 of these reasons provides for the Landlord to insure the block of flats, shops and garages against loss or damage by fire and such other risks as the landlord considers necessary in at least such amount as in the opinion of the landlord shall represent the full re-instatement value. The insured values are set out in the documents R.5, R.6 and R.7. There was no other evidence before the Tribunal as to insured values or premiums. The Tribunal therefore accepted these figures and considered that there was so little difference between the premiums of £1168.02 for the whole premises and the £977.03 added to the £356.14 for the flats and shops being separately insured, that the three sums were reasonable to adopt. Therefore the decision at paragraph 10 of these reasons was made, which uses all those figures as appropriate. From an examination of the papers provided to the Tribunal the payments set out at paragraph 10 had been made by the Applicant to the Respondent.

Administration Charges

21. Schedule 11 of the Commonhold and Leasehold Reform Act 2002 referred to in paragraph 5 of these reasons came into effect on 30 September 2003. However the Tribunal has jurisdiction over administration charges if an application is made to the Tribunal after the 30th September 2003. In this instance the application was made on the 21st November 2005. An analogy is available in the case of Sinclair Gardens Investments Ltd -v- Wang and others (LRX/89/2005) which deals in this way with the same point in relation to service charges.

The respondent makes two claims. One up to January 01 for £1160.11 for solicitors costs of £697.16 and costs of the Respondent for the balance of £463.05. The other is for a period after 2001 in the sum of £586.33 in respect of the Respondents costs. The documents supplied to the Tribunal confirm that the costs of £1160.11 are claimed in respect of proposed proceedings under Section 146 of the Law of Property Act 1925 which is in the Lease at paragraph 1(d). That clause provides for the payment by a tenant of costs charges and expenses of the preparation and service of a Section 146 Notice. No notice was actually served by the Respondent. More importantly, the Respondent did not comply with the provisions of Sections 81 and 82 of the Housing Act 1996. In summary these sections provide that there has to be a determination by the Tribunal as to the amount of the service charge before a Section 146 Notice can be effective in respect of a failure to pay service charges. From the information supplied by the Respondent, there is doubt whether the charge of £1160.11 is a service charge or an administration charge. Whichever it is the work should not have been undertaken, whether in the way it was or possibly at all, and therefore the charge is unreasonable.

In addition Clause 9 of the Lease referred to in paragraph 16 of this determination provides for the preparation by the Respondent of proper accounts, and if no objection to the accounts is received from the Applicant within one calendar month all rights and remedies of the Respondent shall become exercisable by the Respondent. The Respondent did not produce any accounts to the Tribunal and it appears as a matter of fact that none can have been produced to the Applicant. Therefore proceedings were inappropriate.

In respect of the Respondent's claim in the sum of £586.33 for the period after 2001, the Respondent has not made clear why these are for administration charges in accordance with the definition in paragraph 5 above. There is one area which is an administration charge. Clause 2(f) of the Lease provides for production to the Respondent of any transfer underlease devolution or disposition of the property and for payment of a fee. When this was brought to the attention of the Applicant, the Applicant complied but the Respondent returned the registration documents and the fee that the Applicant had

tendered. Mistakenly the Respondent considered that because of a sub letting there had been a breach of the Lease. Clause 2(f) of the lease doesnot require any consent to any assignment, transfer, underlease, devolution or disposition. Neither does any other provision of the Lease. It is, therefore, not reasonable for any charge to be made by the Respondent in that respect. To the extent that the remainder of the charges are service charge items, the correspondence and documents produced by the parties indicate that the Respondent was pursuing the Applicant for the incorrect sums that arose because of the Respondent's misunderstanding of the terms of the Lease as to the apportionment of the service charges and the duties in respect of insurance. It follows that it is not reasonable for the Applicants to pay any part of the charge of £586.33.

No dispute arose over the identity of the person responsible for the service or administration charges, or when or in what way they are payable.

Section 20B (The Eighteen Month Rule (Paragraph 6))

22. The submissions and documentation provided by the Applicant did not reveal any relevant costs taken into account in determining any service charge that were incurred more than eighteen months before a demand for payment was served on the Tenant. The Tribunal finds that no reduction in service charges will, therefore, be made.

CONSULTATION FOR CERTAIN WORKS (Paragraph 7 of these reasons)

23. In July 03 the Respondent wished to carry out certain drainage works. This resulted in the charge of £4245.28 and a charge of £748.23 (paragraph 19 of this determination) being part of the Respondents claim for £489.50. In the written submissions before the Tribunal the Applicant questioned whether the consultation provisions had been complied with. The Tribunal found that the letter dated the 8th July 2003 (number 82 in the Applicant's bundle) complies with the requirements of Section 20 of the Act as it then stood. Therefore the charge was not irrecoverable due to the lack of consultation.

The Section 20C Application (Paragraph 4)

24. The Respondent had failed to comply with the terms of the Lease in two important respects. First, by not applying the correct percentage when calculating the service charge and insurance payable by the Lessee. Secondly, by failing to provide the accounts as required by clause 9 of the Lease. That resulted in incorrect amounts being demanded of the Lessee. The Lessee has been largely successful in its applications to the Tribunal. In these circumstances it is just and equitable for the Tribunal to make an order that the Respondent's costs of these proceedings should not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Lessee under the Lease. The Tribunal so orders.

Interest

25. In its written submissions, the Respondent made an application for interest on all arrears due at the rate of eight per cent per annum. The Lease makes no provision for payment of interest and therefore the claim is rejected.

Respondents Costs under paragraph 10 of schedule 12 of the Commonhold and Leasehold Reform Act 2002

26. This paragraph provides that the Tribunal may determine that a party to the proceedings should pay the costs incurred by another party in connection with the proceedings in any circumstances where (a) he has made an application to the Tribunal which is dismissed for being frivolous or vexatious or otherwise an abuse of process or (b) he has in the opinion of the Tribunal acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings. Currently the amount of costs the Tribunal can award cannot exceed the sum of £500. The Applicant was largely successful in its applications to the Tribunal. The Applicant was correct in disputing a number of the Respondent's claims as are detailed in this determination. In the view of the Tribunal the Applicant has not acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably. The Respondent's application for costs under this heading is therefore, dismissed.

Dated the 30th day of July 2006

T. D. George

CHAIRMAN
T D GEORGE