MIDLAND RENT ASSESSMENT PANEL
Incorporating
MIDLAND LEASEHOLD VALUATION TRIBUNAL
2ND Floor, East Wing, Ladywood House,
45-46 Stephenson Street, Birmingham, B2 4DH
Tel No: 0121 643 8336 Fax No: 0121 643 7605

Residential Property
TRIBUNAL SERVICE

For addressees see 'Distribution' below

Our Refs: BIR/00CS/NSP/2002/0001
BIR/00CS/NSI/2002/0010
BIR/00CS/NLC/2002/0001
BIR/00CS/NAM/2002/0002

Date: 29 October 2003

Dear Sirs

LANDLORD & TENANT ACT 1985 - SECTION 19 and 20C
DETERMINATION OF REASONABLESS OF SERVICE CHARGES AND COSTS LIMITATION ORDER

LANDLORD & TENANT ACT 1987 – SECTION 24(1)
APPOINTMENT OF MANAGER

RE: PRINCESS GARDENS, CHURCHFIELD AVENUE, TIPTON, WEST MIDLANDS, DY4 9NF

Please find enclosed, copy of documentation relating to the above.

Yours faithfully

pp.

Mrs C L Jones
Case Officer

Distribution: Beamsafe Limited, C/o S M Properties, PO Box 21, Dudley, DY2 0YY
Mr H Loasby, HLM Midlands, Suite 1, Network House, Badgers Way, Oxon Business Park, Shrewsbury SY3 5AB, Churchfield Avenue (2002) Association, c/o The Secretary, Mrs Davis, 25 Churchfield Avenue, Tipton, DY4 9NF. Churchfield Avenue Residents' Association, 54 Princess Gardens, Churchfield Avenue, Tipton, DY4 9NF.

BIR/00CS/NSP/2002/0001
BIR/00CS/NSI/2002/0010
BIR/00CS/NLC/2002/0001
BIR/00CS/NAM/2002/0002

THE RENT ASSESSMENT COMMITTEE

(ENGLAND & WALES) (LEASEHOLD VALUATION TRBUNAL) REGULATIONS 1993

AS AMENDED BY RENT ASSESMENTCOMMITTEE (ENGLAND AND WALES) (LEASEHOLD VALUATION TRIBUNAL) (AMENDMENT) REGULATIONS 1997

CERTIFICATE OF CORRECTION UNDER REGULATION 11

LANDLORD & TENANT ACT 1985 – SECTION 19 AND 20C
DETERMINATION OF REASONABLENESS OF SERVICE CHARGES AND COSTS LIMITATION ORDER

LANDLORD & TENANT ACT 1987 – SECTION 24(1)
APPOINTMENT OF MANAGER

RE: PRINCESS GARDENS, CHURCHFIELD AVENUE, TIPTON, WEST MIDLANDS, DY4 9NF

I hereby certify that due to an error arising from an accidental slip in the Leasehold Valuation Tribunal's Ruling dated 22 May 2003, all references to 'Churchfield Residents' Association' shall read 'Churchfield Avenue Residents' Association'

Chairman T C Lloyd **Date:** 29 October 2003

Distribution: Beamsafe Limited, C/o S.M Properties, PO Box 21, Dudley, DY2 0YY
Mr H Loasby, HLM Midlands, Suite1, Network House, Badgers Way, Oxon Business Park Shrewsbury, SY3 5AB
Churchfield Avenue (2002) Association, C/o The Secretary, Mrs Davis, 25 Churchfield Avenue, Tipton DY4 9NF.
Churchfield Avenue Residents' Association, 54 Princess Gardens, Churchfield Avenue, Tipton, DY4 9NF

MIDLAND RENT ASSESSMENT PANEL

Case Nos: BIR/00CS/NSP/2002/0001
BIR/00CS/NSI/2002/0010
BIR/00CS/NLC/2002/0001
BIR/00CS/NAM/2002/0002

Landlord and Tenant Acts 1985 and 1987

LEASEHOLD VALUATION TRIBUNAL

In the matter of

Sheryl Davis and Others **(the Applicant)**
and
Beamsafe Limited **(the Respondent)**

And in the matter of the Applicant's applications for:

1. **A determination of reasonableness of service charges under sections 19(2A) and 19(2B) Landlord and Tenant Act 1985 inserted by section 83(1) Housing Act 1996;**

2. **The appointment of a manager under section 24(1) Landlord and Tenant Act 1987; and**

3. **For an order that the Respondent's costs in connection with these proceedings shall not be part of any service charge under section 20C Landlord and Tenant Act 1985**

Re: Princess Gardens, Churchfield Avenue, Tipton, DY4 9NF

Heard at: The Panel Office
On: 23 and 26 April 2004

APPEARANCES:
For the Applicant: Mrs S Davis for herself and Others
For the Respondent: Ms Fletcher of S M Properties, Managing Agents

Tribunal members:
Mr T F Cooper BSC FRICS FCIArb (Chairman)
Mr S Duffy BSc Dip EC Law MRICS Bar at Law
Professor N P Gravells MA

Date of determination: 25 OCT 2004

The applications:

1 By applications (the '**Applications**') dated 3 August 2002 (4 August s.20C application) Mrs Davis for herself and Others applies to us:

2 (a) To determine the reasonableness of service charges since 1999) pursuant to s.19 (2A) and (2B) Landlord and Tenant Act 1985 (the '**1985 Act**') to 30 June 2003 (subsequently amended, with leave of the Tribunal, to the years 1997 to 2004 (service charge year end 30 June)) for Princess Gardens, Churchfield Avenue Tipton, DY4 9NF (the '**Property**');

3 (b) For an order that the costs of Beamsafe Limited (the '**Landlord**') in connection with these proceedings shall not be part of any service charge under s.20C of the 1985 Act; and

4 (c) For an order appointing a manager of the Property pursuant to s.24(1) Landlord and Tenant Act 1987 (the '**1987 Act**').

The 1985 and 1987 Acts:

5 Subs.(2A) 1985 Act provides:

> 'A tenant by whom, or a landlord to whom, a service charge is alleged to be payable may apply to a leasehold valuation tribunal for a determination -
> (a) whether costs incurred for services, repairs, maintenance, insurance or management were reasonably incurred,
> (b) whether services or works for which costs were incurred are of a reasonable standard, or
> (c) whether an amount payable before costs are incurred is reasonable.'

6 Subs.(2B) 1985 Act provides:

> 'An application may also be made to a leasehold valuation tribunal by a tenant by whom, or landlord to whom, a service charge may be payable for a determination -
> (a) whether if costs were incurred for services, repairs, maintenance, insurance or management of any specified description they would be reasonable,
> (b) whether services provided or works carried out to a particular specification would be of a reasonable standard, or
> (c) what amount payable before costs are incurred would be reasonable.'

7 S.20C 1985 Act provides:

> '(1) A tenant may make an application for an order that all or any of the costs incurred ... by the landlord in connection with proceedings before ... [the Tribunal] ... are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant ....
> (2) ....
> (3) The ... tribunal ... may make such order ... as it considers just and equitable in the circumstances.'

8 Subss.24(1) and (2) 1987 Act provide:

> '(1) [The] tribunal may ... appoint a manager to carry out ... -
> (a) such functions in connection with the management of the premises, or
> (b) such functions of a receiver,
> or both, as the tribunal thinks fit.
> (2) [The] tribunal may only make an order ... in the following circumstances, namely-
> (a) where the tribunal is satisfied -
> (i) that the landlord either is in breach of any obligations owed by him to the tenant under his tenancy and relating to the management ..., and
> (ii) ...
> (iii) that it is just and convenient to make the order in all the circumstances of the case;
> (ab) where the tribunal is satisfied-
> (i) that unreasonable service charges have been made, or are proposed or likely to be made, and
> (ii) that it is just and convenient to make the order in all the circumstances of the case;

(ac) where the tribunal is satisfied-
(i) that the landlord has failed to comply with any relevant provisions of ['Rent Only Residential Management Code' and 'Service Charge Residential Management Code'], and
(ii) that it is just and convenient to make the order in all the circumstances of the case; or
(b) where the tribunal is satisfied that other circumstances exist which make it just and convenient for the order to be made.'

Procedural matters:

9 By its ruling dated 22 May 2003, following a hearing on preliminary issues of the validity of Applications and the Tribunal's jurisdiction - contested by the Respondent on eleven grounds - the Tribunal dismissed the Respondent's application.

10 A pre-trial review was held on 5 September 2003 at which it was agreed that the Applications are consolidated, after which directions were given.

11 On two occasions the Tribunal refused the Respondent's applications for leave to appeal the Tribunal's procedural directions/rulings: (a) 17 March 2004 (prior to the substantive hearing (the '**Hearing**')); and (b) 20 July 2004 (after the Hearing) and subsequently refused by the President of the Lands Tribunal (LRX/57/2004, 16 September 2004).

12 The Respondent's separate applications for: a 'debarring order', a subsequent peremptory order; dismissals of parts of the Applicant's case; and inadmissibility of evidence, were dismissed.

13 The Respondent's failure to comply with a disclosure ruling resulted in the Tribunal ruling that late evidence shall be admitted (after the Hearing) to enable amendment of the Applicant's case and any consequent amendment of the Respondent's case; any amendments to be restricted to admitting that costs have been incurred where not admitted in the Scott Schedule.

14 As a related matter: by the determination dated 4 March 2004, a member of the local rent assessment committee panel dismissed the Landlord's/Respondent's application, under s.29(3) 1985 Act, for cancellation of the certificate of the recognition of The Churchfield Avenue (2002) Association, recognised under s.29(1)(b) by the Certificate commencing, and valid for four years commencing, 16 July 2002; and, subsequently, leave to appeal to the Lands Tribunal was refused. Both Churchfield Avenue (2002) Association and Churchfield Avenue Residents Association (recognised by notice given by the Respondent Landlord to the secretary) are, by Regulation 4F Rent Assessment Committee (England and Wales) (Leasehold Valuation Tribunal) Regulations 1993 (amended by the 1997 Amendment Regulations), joined in the Applications.

Delay generally:

15 An initial appraisal of the timetable (Applications August 2002, this decision October 2004) suggests unreasonable delay. The case has included a long series of procedural and evidential applications from the Respondent and, to ensure a fair trial, we sought the response of the Applicant prior to deciding the Applications.

16 Prior to the Hearing S M Properties had written to the Tribunal, or its case officer, on about 47 occasions (comprising about 109, mainly single spaced typed, A4 size folios), mainly contesting the validity of the Applications, the status of Mrs Davis and the procedure.

17 At the Hearing 23 and 26 April 2004 we allowed an application for the admission of late evidence (after the Hearing), primarily because the Respondent had failed to allow adequate inspection of documents directed by us, in our disclosure ruling 27 February 2004, to be disclosed with inspection and copying.

18 By letter 15 July 2004, S M Properties applied to us to dismiss the Applicant's claim of unreasonableness in respect of electricity and other items for which Mrs Davis had seen invoices at her inspection of documents on 17 May 2004, consequent on our disclosure ruling 27 February 2004; on the grounds of Mrs Davis's unreasonable behaviour in failing to amend the Applicant's case after admission of late evidence; and that the Respondent should have £500 costs. We dismissed the application as our ruling admitting late evidence allowed the Applicant a discretion to amend the case, not a requirement to amend. We also dismissed the Respondent's application (15 July 2004) to dismiss the Applicant's claim of unreasonableness in respect of building insurance premiums as the Respondent, despite requests, had failed to provide information on the claims history.

19 Subsequent to the Hearing S M Properties has written to the Tribunal, or its case officer, on numerous occasions (most recently on 30 September 2004), not in connection with amendment of the Respondent's case (after amendment of the Applicant's case); thereby delaying our determinations.

20 The secretary of Churchfield Avenue Residents Association has also made a series of representations, after the Hearing, not in connection with amendments to the parties' cases, effectively seeking to test the evidence adduced at the Hearing. As our ruling allowing late evidence is limited to parties amending their cases but restricted to admitting that costs have been incurred where not admitted in the Scott Schedule, S M Properties and the Association's secretary have been seeking to open up the case after the Hearing on matters outside the limitations in our ruling on late evidence. We are satisfied that the Hearing was a fair hearing, confirmed in our subsequent dismissal of the Respondent's application for leave to appeal (and leave to appeal subsequently dismissed by the President of the Lands Tribunal). Procedurally, we take no account of late representations, after the Hearing, other than the restricted late evidence allowed by our ruling. This is because allowing a party to reopen the case, after a fair opportunity to present the case and meet the opposing case after due notice at the Hearing, would unreasonably be contrary to our duties of expeditious and economical disposal of proceedings. Despite this we or the case officer has replied to the numerous communications from S M Properties

Inspection and hearing:

21 We inspected relevant parts of the Property on 23 April 2004, immediately prior to the Hearing. The Property comprises a purpose built development of 48 flats (total) in five three storey blocks of brick and tile construction (estimated to have been built in the mid 1950s) with surfaced car parking and grounds.

22 The Hearing was held on 23 and 26 April 2004 at which the Mrs Davis appeared in person and for the Other applicants; and referred to several witness statements in support of her contentions. Ms Fletcher of S M Properties, Managing Agents appeared for the Respondent. Although there had been a delay in serving particulars of the parties' cases, Mrs Davis and Ms Fletcher had, helpfully,

completed a Scott Schedule, itemising matters contested as unreasonable and the relevant years. The Applicant's amended case is, again helpfully, summarised by Mrs Davis by identifying, for each year in question (commencing 1 July ending 30 June, 1997 to 2004), S M Properties' service charge accounts (as managing agent of Beamsafe Limited, the Respondent) and the invoices (with totals) made available to the Applicant on inspection of documents after the Hearing.

The leases:

23 The Applicant's leases of the Property include service charge provisions and we are satisfied that the provisions permit the service charge to include all the items which are contested by the Applicant as unreasonable.

The service charge accounts:

24 Service charge accounts, prepared by S M Properties, are introduced for each of the years ended 1998 to 2001, each with an accountant's certificate as a fair summary of service charge demands; budget accounts only, not certified, are introduced for 2002 to 2004.

S.20 1985 Act estimates and consultation:

25 One of the main grounds, alleged by Mrs Davis as evidence of unreasonable service charges, is the Respondent's failure to comply with the provisions of s.20: the subs.(3) limit is £2,400 (48 dwellings times £50), the service charge includes relevant costs of qualifying works exceeding the limit and the relevant requirements in subs.(4) or (5) have not been complied with; therefore, such costs are not reasonable. Ms Fletcher says the Respondent has complied, by displaying subs.(4) notices on the notice boards in the common ground floor hallways in each of the five blocks. On the evidence given we are not satisfied that the Respondent has complied the requirements in subs.20(4) and (5), particularly copies of two estimates. Any question of s.20(9) dispensation is a matter for the court, not us.

26 As a matter of law, we hold that the s.20 limitation, by excluding the excess from the amount of the service charge, is a matter of recoverability (for the court to decide, not us, under the statutory provisions applicable to the case before us), not reasonableness. Accordingly, we take no account of the Respondent's alleged non-compliance with s.20 in our determination of the reasonableness of service charges. We say 'in the case before us', as the subsequent provisions of the Commonhold and Leasehold Reform Act 2002 give us jurisdiction to determine matters of recoverability but the recoverability provisions of the 2002 Act are not applicable to the case before us.

COSTS INCURRED OR PAYABLE BEFORE COSTS INCURRED:

Generally:

27 We and Mrs Davis are in some difficulty with the service charge for the years 2002 to 2004 as no certified accounts have been provided, only budget accounts.

28 Mrs Davis stresses that the Respondent has not complied reasonably with the Tribunal's ruling 28 April 2004 that the Respondent shall disclose and allow inspection and copying of documents necessary for the Applicant to consider the merits of the Respondent's case; thereby prejudicing the Applicant's case. Mrs Davis tables a series of grounds of unreasonableness, including inadequate

facilities, refusal of inspection, inadequate filing and missing documents, difficulties in and excessive demands for the costs of copying.

29 We find and hold that, as set out in our directions after the pre-trial review, it is for the Applicant to show that costs are unreasonable and the Respondent has no lesser burden to show that the costs are reasonable. We also take account of the Respondent's non-compliance with its obligation, in s.22 1985 Act, to allow, after a written request (which we find has been served), reasonable facilities for inspecting and copying documents supporting the summary of costs incurred.

30 Mrs Davis refers us to each of the year end certified accounts (30 June) from 1998 to 2001 and the budget accounts for 2002 and 2003, saying that, excluding reserve fund provisions for future works, the expenditure shown in the accounts cannot be reconciled with the documents/invoices in support of the accounts; the service charge account is more than can be shown to have been incurred. In respect of the budget account for 2004, she says inspection of one account only has been given. She adds: that inspection of bank statements of the reserve decorating fund account, the reserve major repairs fund account and day to day running account for all of the years in question was denied by the Respondent; that the Applicant had not received certified service charge accounts for the years ended 2002 and 2003 but S M Properties said it would provide, by post, copies on written request; that inspection of insurance claims was denied. Ms Fletcher does not seriously contest Mrs Davis's contentions.

31 Offence provisions in s.25 for non-compliance with s.22 are not a matter for us but we find that, collectively, these matters point to unreasonableness of service charges but not conclusively. We consider each of the grouped items, identified in the Scott Schedule and subsequently amended, below. In considering each item and the opposing contentions on whether the costs incurred were reasonably incurred or whether an amount payable before costs are incurred, we consider not only the reasonableness of the Respondent in incurring the costs but the reasonableness of the costs incurred or to be incurred. As to costs alleged to have been incurred for which inspection of supporting documents has not been given, we decide we should not necessarily draw an adverse inference of unreasonableness if, on the balance of probability, costs have been incurred.

VAT:

32 We have conflicting and uncertain evidence on the VAT status of the Respondent and S M Properties, its managing agent. We are unable to establish whether the Respondent and S M Properties are able to recover VAT, as an input tax, on the costs of work carried out at the Property by a VAT registered contractor. Whilst we cannot determine conclusively any liability for VAT - only HM Customs and Excise can do that - we determine that the costs incurred or to be incurred shall, if appropriate, be adjusted to take account of VAT liabilities.

Amounts payable before costs incurred and costs incurred for decorating:

33 The exterior brick elevations are painted. The amounts shown as provision for future decorating in the summary accounts are: 1998 - £4,000, 1999 - £4,500, 2000 - £5,000, 2001 - £2,000; and in the budget accounts are: 2002 - £6,000, 2003 - £6,240, 2004 - £6,528. Mrs Davis says these amounts are unreasonable, contested by Ms Fletcher. During the year end 2000 £17,048 was expended on exterior decoration, which works, says Mrs Davis, are not of a reasonable standard, contested by Ms Fletcher.

The £17,048 was the lowest of four quotations; others were £51,465, £33,242, £48,068. It is not contested that a five yearly cycle is appropriate. S M Properties' letter 5 April 2002 (about 2½ years after the decoration work was done) acknowledges that remedial decoration work is required to make good defective flaking paint to the main walls and that the overriding cause, which may be the cause of damp ingress, is defects in the original paint finish (in about 1985-1987).

34 We find that the amounts as the provision for future decorating in the summary accounts (years 1998 to 2001) and budget accounts (2002 to 2004) are reasonable. On the evidence of the quotations (in 1999) it is reasonable to infer that the costs of decoration could be, very roughly, £30,000, which with a five yearly cycle is £6,000 per year, consistent with the accounts. We take special account of the acknowledged requirement for remedial work.

35 We find that £17,048 (the year 2000 decoration costs), as costs incurred, were not reasonably incurred, evidenced by S M Properties' letter 5 April 2002 (see above). The work can be described as a cheap bad job - cheap compared with the other three quotations. The work has contributed to the requirement for remedial work, acknowledged by S M Properties' letter 5 April 2002.

36 We find the decorating works for which costs were incurred (£17,048) are not of a reasonable standard, evidenced by S M Properties' letter 5 April 2002.

Amounts payable before costs incurred for major items of expenditure:

37 The amounts shown as provision for future major repairs in the summary accounts are: 1998 - £3,500, 1999 - £4,000, 2000 - £5,000, 2001 - £3,000; and in the budget accounts are: 2002 - £6,000, 2003 - £6,240, 2004 - £6,528. Mrs Davis says these amounts are unreasonable, contested by Ms Fletcher.

38 We heard evidence, and saw as evidence at our inspection, that there are problems with guttering at roof level and the roof itself adjoining the guttering. We accept Ms Fletcher's evidence that the costs of eliminating the problem are likely to be not inconsistent with the provision made. Accordingly, we find that the amounts as the provision for future items of major expenditure in the summary accounts (years 1998 to 2001) and budget accounts (2002 to 2004) are reasonable. In any event we should not assume that the Respondent will not comply with the relevant requirements in s.20 1985 Act (now amended by Commonhold and Leasehold Reform Act 2002).

Buildings insurance:

39 The annual amounts for buildings insurance, ignoring pence, are: 1998 - £5,162, 1999 - £5,416, 2000 - £5,733, 2001 - £5,947; and in the budget accounts are: 2002 - £6,240, 2003 - £6,480, 2004 - £7,152. Mrs Davis says these amounts are unreasonable, contested by Ms Fletcher. Mrs Davis refers us to the evidence of **Mr P Dening** FRICS who provides a quotation 14 April 2004 from Axa at £3,418 which is very substantially less than the costs incurred by the Respondent. Ms Fletcher produces evidence of insurance with Royal and Sun Alliance Insurance plc at the costs incurred.

40 Axa's quotation says, and is based on the assumption, that the insured has had no claims in the last three years. Ms Fletcher says that we should attach no weight to Axa's quotation as there have been several claims which would undoubtedly affect the premium. Mr Dening, now in the knowledge that there have been relevant claims, has requested a relevant claims history from the Respondent to enable

like to be compared with like. Despite a similar invitation by us to the Respondent (through Ms Fletcher), a claims history on which a prospective insurer could rely has not been provided but we do accept that there has been a claims history. We find this unwillingness to disclose the claims history surprising, reflecting the parties' duties to assist us.

41 Clearly there are problems but we find that the evidence of costs incurred with a reputable insurer, at a level not contested as inconsistent with the generally expected level with an adverse claims history, were reasonable.

Ground maintenance:

42 The annual amounts for ground maintenance, ignoring pence, are: 1998 - £2,171, 1999 - £1,934, 2000 - £2,004, 2001 - £1,964; and in the budget accounts are: 2002 - £2,016, 2003 - £2,016, 2004 - £2,016. Mrs Davis says these amounts are unreasonable, contested by Ms Fletcher. An invoice produced, from Maintenance for Properties 31 July 2002 £243 (no VAT), is for two visits per month for grass cutting and weeding but there is no evidence on it that has actually been paid; however, we do have the evidence of certified summary accounts which leads us to the conclusion that, in the absence of evidence to the contrary, the costs have been incurred. Mrs Davis says the costs are unreasonable and the standard of work from Maintenance for Properties is poor and infrequent but she accepts that, since May 2002, Harry's Cleaning Services charging £80 per visit is reasonable and to a reasonable standard.

43 Weighing the limited evidence we have we find that the works for which costs were incurred are of a reasonable standard but that the costs for 1998 to 2004 were not reasonably incurred. We find the reasonable costs were: for the years 1998 to 2001 - £1,400; for the years 2002 to 2004 - £1,500.

Internal cleaning:

44 The annual amounts for internal cleaning, ignoring pence, are: 1998 - £1,448, 1999 - £1,372, 2000 - £1,416, 2001 - £1,460; and in the budget accounts are: 2002 - £1,680, 2003 - £2,688, 2004 - £2,736. Mrs Davis says these amounts are unreasonable, contested by Ms Fletcher. Relying on the certified summary accounts we find that the costs to 2001 have been incurred. We accept the evidence that the significant increase in 2003 and 2004 is due to a change in the contractor. We also have evidence that there was, and there is the likelihood of, unforeseen abnormal cleaning requirements. We are not persuaded that the costs for all of the years (1998 to 2004) were not reasonably incurred.

Legal and surveyors fees:

45 The annual amounts for legal and surveyors fees, ignoring pence, are: 1998 - £2,544, 1999 - £772, 2000 - £6,636, 2001 - £20,224; and in the budget accounts are: 2002 - £1,920, 2003 - £2,400, 2004 - £3,120. Mrs Davis says these amounts are unreasonable, contested by Ms Fletcher. The amounts shown in the certified accounts (1998 to 2001) are distorted by the Respondent's recovery of part of them from individuals: *eg* for 2001 £12,673 has been recovered. Mrs Davis says documents inspected in support of the amounts (1998 -2001) are not consistent with the amounts. Despite this we rely on the certified accounts (1998 to 2001) and find that the costs 1998 to 2001 were incurred. Mrs Davis says the Respondent has been unreasonable in initiating court claims on so many occasions with the consequent disproportionate legal costs.

46 We accept Mrs Davis's contention of lack proportionality in some years. We find that the costs for the years 1998 to 2000, after deductions for amounts recovered from individuals, cannot be said to have been unreasonably incurred. As to year 2001, the net costs (after recovery from individuals and damages) are about £1,250 which we find were reasonable. As years 2002 to 2004, we find that the evidence we have clearly points to the Respondent's unwillingness to attempt compromising a dispute, resulting in unreasonable and disproportionate costs of litigation. As two examples: (a) we note the Respondent has incurred solicitor's costs £7,020 in 2003 in defending a claim for personal injury; we have insufficient information on the outcome of the claim and any insurance recovery to persuade us the £7,020 was reasonable, and (b) an invoice 10 May 2004 £10,746.75 for solicitor's charges for an appeal by the Respondent against a statutory nuisance abatement notice is such a substantial amount that, without justifiable reason which has not been adduced, we find it unreasonable and a disproportionate cost of litigation. We find, on the evidence we have, that the costs incurred for the years 2002 to 2004 were not reasonable and that the reasonable costs were £3,000 for each of the three years.

Management charges:

47 The annual amounts for management charges, ignoring pence, are: 1998 - £5,716, 1999 - £6,617, 2000 - £10,372, 2001 - £7,592; and in the budget accounts are: 2002 - £7,968, 2003 - £6,720, 2004 - £6,888. Mrs Davis says these amounts are unreasonable. Ms Fletcher accepts the amounts for years 1998 to 2001 were unreasonable and contends that the following were reasonable: 1998 - £5,011.75, 1999 - £5,589.21, 2000 - £9,930.14, 2001 - £7,597.12. It is not contested that the reasonable basis of charges, reflecting the lease provisions in para (14) Eighth Schedule, is 15% plus VAT (17.625% including VAT) of the service charge accounts for each year. Accordingly in deciding the reasonable management charges we adopt 17.625% of the total costs incurred or to be incurred in the accounts after substituting our decisions on the reasonable amounts for each item. However, as guidance we note that RICS *Service Charge Management Code* (2001) approved under the terms of s.87 Leasehold Reform, Housing and Urban Development Act 1993, at para 2.4 supports a charge per accommodation unit rather than a percentage of service charge.

Electricity:

48 The annual amounts for electricity, ignoring pence, are: 1998 - £1,228, 1999 - £983, 2000 - £849, 2001 - £954; and in the budget accounts are: 2002 - £816, 2003 - £816, 2004 - £816. Mrs Davis says these amounts are unreasonable, contested by Ms Fletcher. It is not contested that the lighting provision is of a reasonable standard. The essence of Mrs Davis's contention is that meter readings have not been taken at reasonable intervals, resulting in estimated and inaccurate bills, evidenced by the amounts in the service charge accounts and budgets compared with the invoices produced. We accept her contention but it does not establish that costs incurred were not reasonable. Looking at the amounts in the service charge accounts compared with the invoices, we find that it cannot be said that the amounts were unreasonable, recognising any inconsistency will be accommodated in a future invoice based on a true reading. We find the amounts were reasonably incurred.

Audit/accountancy fees:

49 The annual amounts, described in the accounts as 'Accrual for audit fee', ignoring pence, are: 1998 - £413, 1999 - £423, 2000 - £423, 2001 - £423; and in the budget accounts are: 2002 - £480, 2003 - £480, 2004 - £504. Ashtons Accountants certified the 1998 and 1999 accounts and Ashworths

Accountants certified the 2000 and 2001 accounts. Mrs Davis questions whether the accounts have been certified by a qualified accountant but she does not say the fees were unreasonable, despite not having seen accountants' invoices supporting the amounts. As reasonableness is not contested we accept that the amounts were reasonably incurred. S.28 1985 Act provides for the meaning of a qualified accountant. On the written evidence of Mr P Bennett of Ashtons Business Services Limited, trading as Ashtons Accountants, we are satisfied that Ashtons Accountants and Asworths Accountants are qualified within the meaning of s.28.

General repairs, maintenance and fencing:

50 The annual amounts, ignoring pence, are: 1998 - £7,966, 1999 - £12,310, 2000 - £29,278, 2001 - £6,872; and in the budget accounts are: 2002 - £8,640, 2003 - £10,080, 2004 - £10,368. Mrs Davis says these amounts are unreasonable, contested by Ms Fletcher. On the evidence we find: that £7,966 (1998) was reasonable reflecting it included £4,745 for new lighting; that £12,310 (1999) was reasonable reflecting it included £8,351 for reconstruction and resurfacing works to the car park areas; that £29,278 (2000) was reasonable reflecting it included £14,775 for resurfacing works and £9,901 for roof and guttering repairs and the totals of the invoices inspected are greater than the amount in the accounts; that £6,872 (2001) and £8,640 (2002) were reasonable as the totals of the invoices inspected are greater than the amounts in the accounts; that £10,080 (2003) was not reasonable (as it includes £2,064 in connection with balcony repairs which amount was ordered by the court not to be part of the service charge) and £8,016 would have been reasonable; and that, in the absence of persuasive evidence to the contrary of specific costs likely to be incurred (excluding expectations for which annual provisions have been made for major items of expenditure), £10,368 (2004) was not reasonable - we find £5.000 was reasonable.

Summary of our decisions on the items:

We set out our decisions on the reasonable amount of the items for each of the years in the following tables:

51 **1998**

Item	Amount	Reasonable amount
Decorating Provision	£ 4,000	£ 4,000
Major items Provision	£ 3,500	£ 3,500
Insurance	£ 5,162.65	£ 5,162.65
Ground maintenance	£ 2,171.51	£ 1,400
Internal cleaning	£ 1,448	£ 1,448
Legal and surveyors fees	£ 2,544.93	£ 2,544.93
Management charges	£ 5,716.78	£ 4,875.78
Electricity	£ 1,228.50	£ 1,228.50
Audit/accountancy fees	£ 413.60	£ 413.60
General repairs, maintenance and fencing	£ 7,966.29	£ 7,966.29
Totals	£ 34,152.26	£ 32,539.75

52 **1999**

Item	Amount	Reasonable amount
Decorating Provision	£ 4,000	£ 4,000
Major items Provision	£ 4,000	£ 4,000
Insurance	£ 5,416.61	£ 5,416.61
Ground maintenance	£ 1,934	£ 1,400
Internal cleaning	£ 1,372	£ 1,372
Legal and surveyors fees	£ 772.14	£ 772.14
Management charges	£ 6,617.87	£ 5,406.97
Electricity	£ 983.94	£ 983.94
Audit/accountancy fees	£ 423	£ 423
General repairs, maintenance and fencing	£ 12,310.14	£ 12,310.14
Totals	£ 38,329.70	£ 36,084.80

53 **2000**

Item	Amount	Reasonable amount
Decorating Provision	£ 5,000	£ 5,000
Major items Provision	£ 5,000	£ 5,000
Insurance	£ 5,733.16	£ 5,733.16
Ground maintenance	£ 2,004.86	£ 1,400
Internal cleaning	£ 1,416	£ 1,416
Legal and surveyors fees	£ 6,636.27	£ 6,636.27
Management charges	£ 10,372.91	£ 9,823.54
Electricity	£ 849.77	£ 849.77
Audit/accountancy fees	£ 423	£ 423
General repairs, maintenance and fencing	£ 29,278.17	£ 29,278.17
External decorating	£ 17,048.50	£ Nil
Totals	£ 83,762.64	£ 65,559.91

54 **2001**

Item	Amount	Reasonable amount
Decorating Provision	£ 2,000	£ 2,000
Major items Provision	£ 3,000	£ 3,000
Insurance	£ 5,947.87	£ 5,947.87
Ground maintenance	£ 1,964.50	£ 1,400
Internal cleaning	£ 1,460	£ 1,460
Legal and surveyors fees	£ 20,224.89	£ 20,224.89
Management charges	£ 7,592.65	£ 7,452.36
Electricity	£ 954.57	£ 954.57
Audit/accountancy fees	£ 423	£ 423
General repairs, maintenance and fencing	£ 6,872.58	£ 6,872.58
Totals	£ 50,440.06	£ 49,735.27

55 **2002 Estimated**

Item	Amount	Reasonable amount
Decorating Provision	£ 6,000	£ 6,000
Major items Provision	£ 6,000	£ 6,000
Insurance	£ 6,240	£ 6,240
Ground maintenance	£ 2,016	£ 1,500
Internal cleaning	£ 1,680	£ 1,680
Legal and surveyors fees	£ 1,920	£ 3,000
But invoice total is £6,708		
Management charges	£ 7,968	£ 6,055.25
Electricity	£ 816	£ 816
Audit/accountancy fees	£ 480	£ 480
General repairs, maintenance and fencing	£ 8,640	£ 8,640
Totals	£ 41,760	£ 40,411.25

56 **2003 Estimated**

Item	Amount	Reasonable amount
Decorating Provision	£ 6,240	£ 6,240
Major items Provision	£ 6,240	£ 6,240
Insurance	£ 6,480	£ 6,480
Ground maintenance	£ 2,016	£ 1,500
Internal cleaning	£ 2,688	£ 2,688
Legal and surveyors fees	£ 2,400	£ 3,000
But invoice total is £16,758		
Management charges	£ 6,720	£ 6,249.83
Electricity	£ 816	£ 816
Audit/accountancy fees	£ 480	£ 480
General repairs, maintenance and fencing	£ 10,080	£ 8,016
Totals	£ 44,160	£ 41,709.83

57 **2004 Estimated**

Item	Amount	Reasonable amount
Decorating Provision	£ 6,528	£ 6,528
Major items Provision	£ 6,528	£ 6,528
Insurance	£ 7,152	£ 7,152
Ground maintenance	£ 2,304	£ 1,500
Internal cleaning	£ 2,736	£ 2,736
Legal and surveyors fees	£ 3,120	£ 3,000
But invoice of £10,746.75		
Management charges	£ 6,888	£ 5,950.91
Electricity	£ 816	£ 816
Audit/accountancy fees	£ 504	£ 504
General repairs, maintenance and fencing	£ 10,368	£ 5,000
Totals	£ 46,944	£ 39,714.91

APPOINTMENT OF A MANAGER:

58 We are satisfied that a valid s.22 1987 Act notice has been served on the Respondent, by delivery 19 March 2002, as a condition precedent to the Applicant's application for a s.24 order from us appointing a manager.

59 S.24 1987 Act provides four possible grounds for the appointment of a manager, and if a ground is established it is also necessary for us to be satisfied that it is just and convenient to make the order in all the circumstances of the case. We consider each of the four grounds in turn and then consider whether it is just and convenient.

Breach of an obligation under the lease (s.24(2)(a)):

60 Mrs Davis alleges the following breaches: (a) failure to produce evidence of insurance policies and payment of premiums within the specified period (on demand or as soon as possible thereafter); (b) failure to maintain the Property; (c) failure to paint in a proper and workmanlike manner; (d) failure to serve/provide certified service charge accounts for years 2002 and 2003. We find Ms Fletcher's evidence, in rebuttal, is not persuasive and that the four failures alleged are established.

Unreasonable service charges:

61 We have determined, above, that unreasonable service charges have been made.

Breaches of the RICS Code of Practice:

62 Mrs Davis says the Respondent has been and/or is in breach of the RICS *Service Charge Residential Management Code*, approved under s.87 Leasehold Reform, Housing and Urban Development Act 1993, and includes the following alleged breaches: (a) at para 11.4 - failure to arrange for service charge accounts to be audited annually and for copies to be made available; (b) para 11.21 - failure to notify costs incurred within 18 months of incurring such costs; (c) para 11.24 - failure to respond to written requests within one month and failure to allow inspection of accounts, receipts and other documents within the next two months; (d) at paras 14.18 and 14.21 - failure to consult and invite comment on proposed works costing more than £2,400 (48 flats times £50) despite not being urgent; (e) at para 4.10 - inappropriate communications; (f) at para 4.12 - failure to be available; (g) at para 14.6 - failure to notify how and to whom disrepair should be reported and failure to have an established procedure for urgent repairs; (h) at para 14.7 - failure to deal promptly with disrepair reported.

63 Ms Fletcher generally contests the alleged failures, saying accounts have been made available and where the costs of works exceed £2,400 notices have been displayed.

64 Mrs Davis's cumulative evidence is that the Respondent, by S M Properties, has not been transparent in its management of the Property. On the evidence we have, we agree. On Ms Fletcher's admissions, some accounts have not been audited annually, inspection of accounts, receipts and other documents has not been given resulting in our ruling for disclosure and inspection after the Hearing; we have evidence of inappropriate communications, difficulties in communications and availability. We find the Respondent, by S M Properties, has failed to comply with the *Code*.

Just and convenient in other circumstances:

65 While not specifically submitting that circumstances other than the three we refer to above exist, Mrs Davis refers us to several instances of lack of cooperation, alleged intimidation and difficulties in achieving a compatible and productive relationship between the Applicant and S M Properties. We find there is a fundamental and serious lack of a mutually beneficial relationship and this is an existing circumstance we take into account.

Just and convenient:

66 We have decided that there are there are breaches of lease obligations; that unreasonable service charges have been made; and that the *Code* has not been complied with. We are in no doubt that it is just and convenient to appoint a manager in all the circumstances of the case, applied to these three decisions. Cumulatively, the Applicant's trust has been seriously eroded; mainly by S M Properties' failure to manage the Property on a basis which achieves, or even attempts to achieve, the transparency the Applicant is entitled to.

The identity of the manager and the terms of our order:

67 Mr Peter Dening FRICS of Pennycuick Collins attended the Hearing at Mrs Davis's request and gave evidence to us. With his 25 years' experience of management of mainly residential property, his familiarity with the Property and the established procedures in his firm in compliance with the *Code*, we are satisfied he is competent to manage the Property and he confirmed he is willing to do so. He lodged a proposed form of order, not contested as to content, which we accept.

SECTION 20C 1985 ACT ORDER:

68 The Applicant applies to us to order that all of the costs incurred, or to be incurred, by the Landlord Respondent in connection with these proceedings (the Applications) are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by them. Mrs Davis says that the overriding unhelpful attitude of the Respondent, by its agent S M Properties, is the main cause of the proceedings before us; mainly its failures to provide summaries of relevant costs, after service of s.21 notices; and, after service of a s.22 notice in March 2002, a failure to afford facilities for inspecting and copying documents until May 2004 and even then an uncooperative attitude. Ms Fletcher denies that S M Properties has been uncooperative.

69 On the evidence we have, we find that the Respondent, through S M Properties could and should have been more cooperative, evidenced in part by a failure to comply with our ruling to give inspection and copying until after the Hearing. Our discretion to make the order sought is what we consider to be just and equitable in the circumstances. We find that it is just and equitable to make the order and the Applicant's application is allowed which, for the avoidance of doubt, applies to all the proceedings in the three applications (the Applications).

REIMBURSEMENT OF FEES:

70 Mrs Davis applies to us to require the Respondent to reimburse the Applicant the whole of the fees paid by the Applicant in the proceedings, pursuant to Article 8 Leasehold Valuation Tribunal (Fees) Order 1997. Ms Fletcher opposes the application.

71 We allow the application as it is justified by our decisions.

THE ORDER:

72 Our Order is attached to these decisions.

Leave to appeal:

73 Our jurisdiction includes, at s.31A 1985 Act and at s.24A 1987 Act, giving leave to appeal to the Lands Tribunal from our decisions. Leave may also be given by the Lands Tribunal, instead of this Tribunal. Liberty is given to either party to apply for leave to appeal.

Date: 25 OCT 2004

T F Cooper
Chairman

MIDLAND RENT ASSESSMENT PANEL

Case No: BIR/00CS/NAM/2002/0002

Landlord and Tenant Act 1987

LEASEHOLD VALUATION TRIBUNAL

In the matter of

Sheryl Davis and Others **(the Applicant)**
and
Beamsafe Limited **(the Respondent)**

Re: Princess Gardens, Churchfield Avenue, Tipton, DY4 9NF **(the Property)**

Order for the Appointment a Manager and Receiver of the Property

1. That Mr Peter Dening FRICS of Pennycuick Collins, 9, The Square, 111, Broad Street, Birmingham B15 1AS (the 'Manager') be appointed manager and receiver of the Property with effect from 1 December 2004.

2. That he shall manage the property in accordance with:
   (a) The respective obligations of the landlord and the lessees under the various leases (the 'Leases')by which the flats at the property are demised and in particular, but without prejudice to the generality of the foregoing, with regard to the repair, decoration, provision of services to and insurance of the Property; and
   (b) In accordance with the duties of a manager set out in the Service Charge Residential Management Code (the 'Code') published by the Royal Institution of Chartered Surveyors and approved by the Secretary of State pursuant to section 87 Leasehold Reform Housing and Urban Development Act 1993.

3. That he shall receive all sums whether by way of ground rent, insurance premiums, payment of service charges or otherwise arising under the Leases.

4. That he shall account forthwith to the freeholder for the time being of the Property for the payments of ground rent received by him and shall apply the remaining amounts received by him (other than those representing his fees hereby specified) in the performance of the covenants of the landlord's covenants contained in the Leases.

5. That the current managing agent will provide to the Manager all books, records and counterpart leases together with the balance of service charge monies held and accounts up to date.

6. That he shall make arrangements for the proper insurance of the Property.

7. That rights and liabilities arising under contracts for which the Manager is not a party shall become rights and liabilities of the Manager.

8. That he shall be entitled to prosecute claims in respect of the causes of action accruing before or after the date of his appointment.

9. That he shall be entitled to the following remuneration (which for the avoidance of doubt shall be recoverable as part of the service charge): (a) an annual fee of £150 (one hundred and fifty pounds) per flat for performing the duties set out in paragraph 2.5 of the Code, such fee to be reviewed annually; plus (b) 10% (ten percent) of the net cost of 'major works' and in this context 'major works' means 'Qualifying Works' and works consequent on 'Qualifying Long-Term Agreements' within the meaning of Commonhold and Leasehold Reform Act 2002 to include any amendment thereto.

10. Value Added Tax shall be payable in addition to the remuneration mentioned in the preceding paragraph.

11. This Order shall remain in force until and including 30 November 2009.

Dated 25 OCT 2004

T F Cooper
Chairman