Southern Residential Property Tribunal Service
Leasehold Valuation Tribunal

Case No.CHI/43UB/N51/2002/008
CHI/43UB/NAM/2002/0003

Re: Rodwell Court, Hersham Road, Walton on Thames, Surrey
("The Property")

Between:-

Lesley Birch and others ("the Tenant/Applicant")

And

Reston Ag
C/o Guthrie Hills and Marchant ("the Landlord/Respondent")

DECISION OF THE TRIBUNAL

Appearances:

Ms Lesley Birch, tenants' representative, in person
Mr Stanton, Chairman, Rodwell Court Residents' Association

Mr G Needham of Messrs Paton Walsh Laundy for Guthrie Hills & Marchant
Mr Nathan Gooch of Guthrie Hills & Marchant for Reston Ag

Mr Charles Flight
Mr Steven Chandler FRICS IRRV
Mrs Jan Francis
All of Castle Wildish, the tenants' nominees for the manager appointment

Hearing:	19 May 2003
Tribunal:	Ms J A Talbot MA (Chairman) Mr H Preston FRICS Mr R P Long (Lawyer member)
Date of Issue:	30 June 2003

Introduction

1. Ms Birch and Mr Stanton applied on 10 October 2002 to the Residential Property Tribunal Service:

    a. for a determination under Section 19(2A) of the Landlord and Tenant Act 1985 (as amended) ("the Act") of the reasonableness of service charge costs already incurred at the property; and

    b. for the appointment of a manager under Section 24 of the Landlord and Tenant Act 1987.

2. Ms Birch acted as the tenants' representative although she no longer lives at the property. Mr Stanton lived at Flat 67. The applications were made on behalf of 61 lessees named in Schedule 1 to the application for the appointment of a manager.

3. Ms Birch added two further applications dated 02 May 2003:

    c. for a determination under Section 19(2B) of the Act of the reasonableness of service charges which were proposed to be incurred at the property; and

    d. for a determination under Section 20C of the Act that the landlord's costs in connection with these proceedings were not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenants.

The Statutory Provisions

4. The relevant statutory provisions were as follows:

Section 24 of the Landlord and Tenant Act 1987
Appointment of a manager by the court
(1)A leasehold valuation tribunal may only make an order under this section in the following circumstances, namely-

(a) where the tribunal is satisfied-

(i) that the landlord is either in breach of any obligation owed by him to the tenant under his tenancy and relating to the management of the property in question or any part of them or (in the case of an obligation dependent upon notice) would be in breach of any such obligation but for the fact that it has no been reasonably practicable for the tenant to give the appropriate notice, and

(ii) that it is just and convenient to make the order in all the circumstances of the case; or

(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; or

(ac) where the tribunal is satisfied-

(i) that the landlord has failed to comply with any relevant provision of a code of practice approved by the Secretary of State under section 87 of the Leasehold Reform, Housing and Urban Development Act 1993 (codes of management practice), 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.

Section 19 Landlord and Tenant Act 1985
Limitation of service charges: reasonableness

(2A) 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.

(2B) An application may also be made to a leasehold valuation tribunal by a tenant by whom, or a 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;

(c) what amount payable before such costs are incurred would be reasonable.

Section 20C Landlord and Tenant Act 1985
Limitation of service charges: costs of proceedings

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court or leasehold valuation 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 or any other person or persons specified in the application.

The Inspection

5. The members of the Tribunal inspected the property on 19 May 2003 before the hearing. Also present at the inspection were the landlord's managing agent Mr Gooch, his solicitor Mr Needham, and the tenants' representatives, Ms Birch and Mr Stanton. The property consisted of a modern purpose built development of 72 flats and maisonettes, situated in the suburban area of Walton on Thames, Surrey, and surrounded on 3 sides by Hersham Road, Rydens Road and Sidney Road. The dwellings were in blocks built around a central landscaped garden. Parallel to Hersham Road was the block containing flats 1 – 16. Next to that was the block of maisonettes 17 – 36, then a smaller block of flats 37 – 42, and finally a larger series of joined blocks comprising flats 43 – 72. On the outer rim of the development were the separate blocks of garages. The blocks were all 3 storeys high, of uniform brick construction under flat roofs.

6. We saw that the gardens were well landscaped, planted and maintained. They were bordered at each end by decorative wooden trellis-style fencing and connected by paved pathways, some of which were uneven. Within one block, we inspected the communal bin store at the rear, containing several green plastic wheelie bins. This area appeared clean and tidy. It led into the stairwell serving one block of flats. The hallway, stairs and landings had been recently scoured with bleach. We noted remaining signs of former ingrained dirt, and other photographic evidence before us indicated that the common areas had previously been much dirtier. We also saw, in the same hallway, the doormat in front of the main entrance door. This had been replaced in November 2002 and was in reasonable condition.

7. The parties agreed that the condition of the common ways in this block was a fair representation of the other blocks, and therefore it was not necessary for us to inspect any other common areas. It was also not necessary to inspect the interior of any of the flats.

8. It was drawn to our attention that there was some staining on the exterior walls as a result of dripping overflow pipes, though none were dripping at the time of the inspection. This staining was evident on several walls throughout the property. We did not inspect any of the roofs. Although this was an item in dispute with further works required, it was agreed between the parties that there was blistering to the roof of block 1-16 but that the roof was watertight at that moment.

The Hearing

9. The hearing took place at Staines on 19 May 2003. It was attended by Ms Birch and Mr Stanton on behalf of the applicant tenants, and by Mr Needham of solicitors Paton Walsh Laundy representing Mr Gooch of the managing agents Guthrie Hills & Marchant on behalf of the respondent landlord. Also present were Mr Charles Flight, Ms Jan Francis, and Mr Steven Chandler, from Castle Wildish, chartered surveyors, the tenants' proposed manager.

10. At a pre-trial review on 12 March, Directions were given requiring the landlord to produce service charge accounts for the calendar years ending 1998, 1999, 2000, 2001, and 2002, along with a quarterly statement of account for the quarter ending 25 March 2003. Both parties then had to prepare Statements clearly identifying which items were in dispute and which were agreed in relation to the service charges, and a summary of the tenants' grounds for the appointment of a manager, along with the landlord's response.

11. As a result the parties had prepared a clear and concise Schedule divided into parts A, B and C, dealing with the Section 24, Section 19(2A) and (2B) applications respectively, each supported by a helpful, well-organised trial bundle of numbered documents. This bundle had plainly involved a great deal of time and effort to produce. References to page numbers in this decision are to the numbered documents in the bundle.

12. We stressed the Tribunal's independent and expert status and explained that we would approach the matter with an open mind, making our decision after carefully considering all the evidence, both written and oral. We explained that we could only deal with matters within our jurisdiction, meaning those matters Parliament has allowed us to deal with. We indicated that we would deal consecutively with each application, starting with the application for the appointment of a manager.

Appointment of Manager: Section 24 Landlord & Tenant Act 1987

13. We had noted the landlord's statement, in the Schedule at page 1, that whilst making no admissions as to the allegations made against the landlord's managing agents, which it would normally have defended, it was content for a manager to be appointed. The landlord's reasons were that the freehold was to be disposed of, and the agents had no desire to continue managing the property after that. In his letter of 09 May 2003 to the tenants (page 291), Mr Needham reserved the right to address us on the tenants' proposed manager. Mr Needham explained that the current freeholder, Reston Ag, a company registered in Lichtenstein, had gone into voluntary liquidation, but this had no effect on its position as landlord. It would continue to exist and to carry out its functions as landlord until the freehold was transferred.

14. In view of the landlord's agreement, it was neither necessary nor expedient for us to hear evidence or to consider each and every allegation made by the tenants in relation to the landlord's management of the property. These were set out in Part A of the Schedule (pages 1-12). We did not need to make findings in respect of the grounds for appointing a manager in Section 24(2)(a), (ab), and (ac) of the Landlord and Tenant Act 1987 (see paragraph 4 above). We had the power, under Section 24(2)(b) of the Landlord and Tenant Act 1987, to make an order appointing a manager "where it is satisfied that other circumstances exist which make it just and convenient for the order to be made", those circumstances being the landlord's agreement.

15. Ms Birch, in her letter dated 02 May to Mr Needham, said that Castle Wildish would only be prepared to take on the management of the property provided that the freehold was sold. We were concerned that this might indicate some confusion on the part of the tenants and Castle Wildish on the role of a manager appointed by the Tribunal. We therefore explained the crucial difference between such a manager, and a managing agent instructed by, and acting on behalf of, the landlord.

16. A manager appointed by the Tribunal under Section 24 is the appointee of the Tribunal, and is ultimately accountable to the Tribunal. He is therefore independent of both the landlord and the tenants. However, the Tribunal does not get involved in the day to day management of the property. The manager is expected to manage the property in accordance with his own professional judgment and expertise. He does not take instructions from either the landlord or the tenants, but makes his own decisions.

17. All parties having confirmed their understanding of this important point, Mr Flight of Castle Wildish said that he would be willing to take on the management of the property on that basis, regardless of when the freehold was transferred. Mr Needham confirmed that, following the clarification of the appointee manager's role, the landlord did not oppose the tenants' choice of manager. We had to be satisfied that the tenants' proposed manager was a suitable person to carry out the functions of an appointed manager, and accordingly proceeded to question Mr Flight and his colleagues on their qualifications, experience, expertise, and professional indemnity insurance.

18. Mr Flight confirmed that Castle Wildish is a firm of chartered surveyors and managing agents, established since 1978 and currently managing over 60 properties throughout the south of England, including large blocks of flats. The firm is based in Hersham with 3 full time and 2 part time staff. Mr Chandler is a qualified chartered surveyor. Mr Flight, though not formally qualified, has considerable experience of property management, having worked in the field since 1972.

19. Mr Flight further confirmed that Castle Wildish operates in accordance with the RICS Residential Management Code (approved by the Secretary of State under the terms of Section 87 of the Leasehold Reform, Housing and Urban Development Act 1993). Any unqualified staff were supervised through regular management meetings to ensure compliance with the Code. Mr Chandler confirmed that he controls specifications for, and supervises, minor maintenance works, and refers to specialist contractors where necessary for major works. All work contracts include CDM assessments (Construction Design and Management supervision in accordance with the regulations). Individual contractors, such as window cleaners, were required to meet health and safety standards.

20. Turning to financial arrangements, Mr Flight confirmed that Castle Wildish set up and operate separate maintenance charge accounts for each property, strictly in accordance with RICS standards. Generally, their practice is to use accountants retained by individual freeholders, but in certain cases such as this, they retain a local accountant to certify and audit the account.

21. Mr Flight further confirmed that Castle Wildish had adequate professional indemnity insurance with cover of £2 million, which meets all RICS requirements including those in relation to Tribunal-appointed managers. Concerning management fees, Castle Wildish would charge £135.00 plus VAT per flat per year basic management charge, plus an additional charge of either not more than 10% of the cost of works costing in excess of £1,000.00 (where supervised), or a time charge at the rate of £85.00 per hour plus VAT for management staff and £125.00 per hour plus VAT for professional staff, or the proper cost of an external contractor, as appropriate to the nature and extent of the works concerned. We decided that these charges were acceptable.

22. We then considered the question of whether to make a time-limited or indefinite appointment. We took into account the general approach of the Courts, which has been to use the appointment of manager jurisdiction to resolve existing problems in relation to the property concerned. At Rodwell Court, the problems were to put the property back in to management stability, and to deal with ongoing maintenance and outstanding major works, namely, cleaning and descaling of the communal stacks, and roof repairs. It was apparent that difficulties had arisen between the parties over these issues, leading to a degree of lack of trust.

23. It was not appropriate for us to appoint a manager indefinitely, as the freehold was to be transferred in the near future. The new freeholder would probably want to engage its own managing agent in due course.

24. On that basis, we decided that the appropriate term for the appointment would be a period of 2 years, in order to give the appointed manager a realistic

chance to achieve the objectives of management stability, and to deal with ongoing maintenance and outstanding major works.

25. We further decided that the effective date for the appointment of the manager to commence would be the next quarter day, namely, 24 June 2003. This was agreed between the parties. Mr Gooch confirmed that the necessary preliminary accounting procedures, and transfer of all relevant management files, could be achieved by that date. On a practical level, this would be effected by closing the maintenance account under an existing system, avoiding the need to transfer the information to a new computer system due to come into force on 24 June. The landlord's insurance on the property was due for renewal on 01 June 2003. The policy, arranged through the tenants' preferred brokers, Deacon, would remain in existence. The insured parties were Rodwell Court and Reston Ag. The fact that the landlord was in voluntary liquidation would not affect the validity of the policy.

26. The tenants were understandably concerned to ensure the smooth transfer of all monies held in, and owed to, the reserve fund, by the effective date. We accepted Mr Gooch's assurance to the tenants that the amount transferred would include all monies currently held in Guthrie Hills & Marchant's client account, plus all amounts due to be credited to the reserve, as calculated and certified by their accountant, Mrs Marie-Anne Rose, who had recently audited the accounts as required by the Directions. The tenants were satisfied with this arrangement, and confirmed that moneys currently held in the Residents' Association account, on behalf of the reserve fund, would also be transferred.

Decision

27. We decided that Mr Charles William Flight, of Castle Wildish, was a suitable person to be appointed as manager under Section 24 Landlord and Tenant Act 1987. The appointment was for a period of 2 years commencing on 24 June 2003, in accordance with the terms and conditions set out in the Order attached as Appendix 1 to this decision.

Service Charges already incurred: Section 19(2A) Landlord & Tenant Act 1985 (as amended by Housing Act 1996)

28. We then turned to the question of service charges, and reminded the parties of the limits of the Tribunal's jurisdiction. First, our powers were prescribed by statute. The relevant law is found in Section 19(2A) and (2B) of the Landlord and Tenant Act 1985 (see paragraph 4 above). Briefly, we were empowered to determine whether service charges already incurred were reasonable, and whether the work and service to which they related were of a reasonable standard.

29. Our jurisdiction was further prescribed by case law - decisions of the higher courts that are binding on the Tribunal. In relation to service charges already incurred, we explained that the relevant legal authority was *R –v- London Leasehold Valuation Tribunal ex p Daejan Properties Limited (Court of Appeal, 2001).* As a result of this case, we only had jurisdiction to decide the reasonableness of disputed service charges that were still unpaid, except in certain very limited circumstances. Furthermore, if service charges had been paid by most tenants but only withheld by some individual tenants, we would only retain jurisdiction in relation to those individuals. Any ruling on reasonableness would not affect those tenants who had already paid. It was common ground that some service charges remained unpaid for the years 2001 and 2002. However, there was some dispute about the years 1998, 1999 and 2000.

30. The tenants had set out in Part B of their Schedule (pages 13-16) the items of service charges they disputed, numbered 1 to 8, and the landlord had made its response. The landlord's case was that the Tribunal was prevented from considering items 1 to 5, covering the calendar years 1998, 1999, 2000, and 2001, because of the *Daejan* case. The tenants were frustrated by this, because these items included the most serious of their concerns, namely, the alleged mismanagement of repairs to the roof and drains, leading to unreasonable service charge costs and unsatisfactory standards of work. We therefore had to consider, as a preliminary point, the following question of fact: did any the service charges for those periods remain unpaid?

31. The tenants' case was that some service charges did remain unpaid. Although most of the tenants had paid, a few had not paid in full. A former tenant, a Mr de Felici, had failed to pay an unspecified amount in 1998. Mr Stanton said he had withheld one quarter's basic charge of £167.50 during 1999, and another tenant subsequently sold her flat subject to outstanding arrears. Ms Birch pointed to a letter dated 28/03/2003 from the landlord's accountant, Marie-Anne Rose, (at page 71) in which she refers at paragraph 4 to some "debtors". Ms Birch took this to refer to unpaid service charges, but the meaning of this in relation to the service charges was unclear.

32. The landlord's case was that there was no evidence to show that any sums remained unpaid, or were still alleged to be payable within the meaning of section 19, for the years 1998, 1999 and 2000. Furthermore, there was no evidence that any sums had been paid under protest in respect of particular items. Mr Gooch explained, in response to the tenant's submissions, that the alleged amounts outstanding were no longer alleged to be payable, because by reason of the agent's normal accounting procedure, any subsequent payments were credited against the oldest arrears. In Mr de Felici's case, the landlords treated the amount as no longer payable. In Mr Stanton's case, he had not withheld a specific amount for a specific item in dispute, and had subsequently made payment. In the case of the tenant who sold her flat, the outstanding service charges were paid by the

purchaser's mortgagee. Mr Gooch produced a series of 3 Tables showing the arrears outstanding during 2001 and 2002.

33. It was clear to us in the light of the landlord's submissions, that there were no service charges unpaid, or alleged to be payable, in relation to the years 1998, 1999 and 2000. There was no evidence that any payments attributed to earlier years had been specifically allocated by the payer. The agent's accounting procedure was standard and uncontroversial. It did not matter how the amounts were paid – e.g. by the mortgagee – but simply whether they had been paid. As a result, we were unable to consider items 1 to 5 in the Schedule. We proceeded to hear evidence in relation to items 6, 7 and 8.

34. Before doing that, Ms Birch asked that we make a determination on the standard of all the works, including the major item in dispute, the roof works. Whilst acknowledging that Ms Birch was representing 70 lessees who wanted their concerns to be addressed, we explained that, in view of the strict limitations to our jurisdiction, we did not have the power to make findings of fact in relation to the standard of works where we were not able to do so in relation to the service charges. If the tenants wanted to pursue other claims in other forums, that was a matter for them. They were free to do so and to take appropriate advice.

Damage caused to fencing by Council's refuse lorry: £311.37 (item 6)

35. On or about 25 September 2002 a refuse lorry operated by SITA as refuse contractors for Elmbridge Borough Council caused impact damage to fencing at the property. The tenants reported the incident to the landlord's agent and a repair was carried out by the usual gardening contractors at a cost of £311.37, charged to the service charge account. There was no dispute about the nature, extent, quality or cost of the works. The tenants' complaint was that the landlord's agent had failed to make an insurance claim against either the local authority and/or its contractors. The tenants did not see why they should have to bear this cost. Although Mr Gooch claimed to have made the claim a couple of weeks before the hearing, there was no evidence that the Council had received it. Mr Gooch confirmed that once the claim was settled any money recovered would be credited to the service charge account.

Front door mats: £951.00 (item 7)

36. The front door mats in the common parts of each block had been replaced in November 2002 at a cost of £951.00. The tenants felt that the matting used was not thick enough and was of inferior quality. As a result the mats required underlay and had to be re-cut and re-fitted. The tenants would have preferred to pay double for a thicker mat, but accepted that £951.00 was a reasonable price for the mats supplied. The landlord's case was that reputable suppliers were used who recommended the matting used as the most appropriate modern replacement. If thicker matting had been fitted, the mats would have been higher

and might have rubbed against the doors, making them difficult to close. No cost had been passed to the service charge account in respect of the remedial work carried out.

Certified accounts for year 2002 (item 8)
Including cleaning costs: £6441.37

37. Ms Birch made various points about the accounts for the year ended 31/12/2002. She was concerned about the accuracy and completeness of the accounts because there was a history of accounting errors on the landlord's part. In particular, there was an ongoing dispute with the former cleaners of the property whose standards had been unacceptably low. Mr Gooch, accepting this, had not paid their 2002 invoices in full and as a result the cleaning contractors had taken action to recover the balance. Mr Gooch confirmed that the total amount paid was £5212.55, out of £6441.37 claimed. Ms Birch felt that £5000.00 would be the maximum reasonable charge for the cleaning costs for that year.

38. Ms Birch again raised concerns over the correct certification of the reserve fund. It was imperative for the tenants to have all sums due to the reserve fund properly certified by the landlord's accountant before the fund was transferred to the manager appointed by the Tribunal. This point has been addressed in the wording of the Management Order and explained at paragraph 26 above.

Consideration

39. After considering all the evidence we came to the following conclusions:

Damage caused to fencing by Council's lorry: £311.37 (item 6)

40. The cost of the fencing repair was not in dispute. The parties agreed that the sum of £311.37 was reasonable, and we concur with this. Although we have no jurisdiction on the liability for this item, we comment in passing that Mr Gooch had taken an unreasonably long time to deal with a straightforward minor insurance claim. The claim will be pursued by Mr Flight under the terms of the Management Order pursuant to Section 24(5)(b) LTA 1987.

Front door mats: £951.00 (item 7)

41. We considered the mat we had inspected was of a reasonable standard. It was not a matter for us to rule on whether the alternative more expensive matting should have been used. The cost of £951.00 was reasonable for the mats provided.

Certified accounts for year 2002 (item 8)
Including cleaning costs: £6441.37

42. We noted during our inspection that the floors to the communal parts, despite being scoured with bleach and steam cleaned, still showed signs of ingrained dirt. On this evidence it was clear to us that the standard of previous cleaning had been unsatisfactory. We concluded that £5000.00 was a reasonable cost for cleaning for the year 2002. We therefore assessed the liability to the lessees at £5000.00.

Service charges to be incurred: Section 19(2B) Landlord & Tenant Act 1985 (as amended by Housing Act 1996)

43. This application by the tenants concerned the proposed charge of £40,000 for the cleaning and descaling of the communal stacks. This appeared as item C1 on the tenants' Schedule (pages 17 and 17a of the bundle). The application was made after the applications for the appointment of a manager and for a determination on reasonableness of service charges already incurred. Ms Birch explained this was because the tenants only became aware of the proposed future charges when Mr Gooch submitted his provisional budget for 2003, after the Directions were made (page 73). There were 36 stacks at a cost of approximately £350.00 each, totalling, and a further 10 stacks at £450.00 each. This came to a total of £17,100.50 (plus VAT).

44. The tenants' case was that this work should have been carried out at least 2 years ago, in 2000, following flooding to 2 flats in December 1999. Had the work been done at the appropriate time, it would have cost less. The landlord's case was that the amount proposed was provisional, the planning was very much at a preliminary stage, and had not been costed in detail. There was not as yet a specification of works, so estimates had not been sought. The provisional amount included an element for scaffolding to all blocks. This would enable further roof repairs to be carried out once the scaffolding was in situ.

45. Ms Birch told us, in response to our question, that she would prefer this work to be carried out by the new manager in any event. If the lessees did purchase the freehold, then they would be able to control this work.

Consideration

46. We decided that it was not appropriate or necessary to make a determination in relation to the reasonableness of the proposed future charge for two reasons: (a) that it would be premature to do so because the proposed item was still speculative and vague, and (b) in view of the tenants' preference that the works would be dealt with, from the start, by the new manager, who would be obliged to consult the lessees and obtain competitive quotations. If the tenants were unhappy with the proposed cost at that stage, it would be open to them to make a further application to the Tribunal.

Landlord's costs of proceedings: Section 20C Landlord & Tenant Act 1985

47. Mr Needham stated that the landlord would not pass on to the tenants through the service charge account, any of its costs incurred in connection with these proceedings before the Tribunal. Accordingly it was not necessary for us to consider the point further.

Attached: Appendix 1: Order for Appointment of Manager
Appendix 2: Order Reasonableness of Service Charges

Dated 30th **June 2003**

J Talbot

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Jane Talbot
Chairman

APPENDIX 1

Southern Residential Property Tribunal Service

Leasehold Valuation Tribunal

Case No.CHI/43UB/N51/2002/008
CHI/43UB/NAM/2002/0003

Re: Rodwell Court, Hersham Road, Walton on Thames, Surrey
("The Property")

Between:-

Lesley Birch and others ("the Tenant/Applicant")

And

Reston Ag
C/o Guthrie Hills and Marchant ("the Landlord/Respondent")

ORDER FOR THE APPOINTMENT OF A MANAGER AND RECEIVER PURSUANT TO SECTION 24 LANDLORD & TENANT ACT 1987 ("The Act")

1. The Tribunal orders that Charles William Flight of Castle Wildish, Chartered Surveyors and Managing Agents, Surrey House, Hersham Green, Walton-on-Thames, Surrey KT12 4HW ("The Manager") be appointed Manager and Receiver of the Property with effect from 24 June 2003 for a period of two years.

2. The Manager shall thereafter manage the property in accordance with:

   a) the respective obligations of the landlord and the lessees under the various leases by which the flats at the property are demised ("the Leases") 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 of the Leasehold Reform Housing and Urban Development Act 1993.

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

4. The Manager 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 landlord's covenants contained in the Leases.

5. The Manager shall make arrangements with the present insurers of the property to make any payments due under the insurance policy presently effected by the Respondent to the Manager.

6. The Manager shall, under Section 24(5)(b) of the Act, be entitled to prosecute a claim against the insurers of Elmbridge Borough Council and/or SITA Ltd and/or their insurers in relation to vehicle impact damage to a fence at the Property that took place on or about 25 September 2002.

7. The Respondent shall arrange for all documents relating to the continuing management of the Property to be delivered to the Manager by 24 June 2003.

8. The Respondent shall arrange that its accountant, Marie-Anne Rose, shall audit the service charge account, being a quarterly account, immediately after 24 June 2003, and also thereupon certify the amount relating to the reserve fund. This amount must then be paid by the Respondent to the Manager within 7 days of the date of certification.

9. The Manager shall be entitled to the following remuneration by way of fees (which for the avoidance of doubt shall be recoverable as part of the service charges in accordance with the provisions of the Fourth Schedule of the leases) namely:

   a) a basic annual fee of £135.00 per flat for performing the duties set out in paragraph 2.5 of the Code; and

   b) in the case of major works with a net cost greater than £1,000, the manager shall further be remunerated at EITHER not more than

10% of the net cost of the works, OR on a time-charged basis of £85.00 per hour (management staff) and £125.00 per hour (partners) in accordance with the relevant sections of Clause 2.6 and with Clause 3 of the Code, for preparing any schedule of works, supervising such works, and giving the necessary notices.

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

11. This Order shall remain in force until 23 June 2005.

Dated **June 2003** (previously issued to the parties)

.....
Ms Jane Talbot
Chairman

A Member of the Southern Residential Property Tribunal Service
Appointed by the Lord Chancellor

APPENDIX 2

ITEM IN DISPUTE (AMOUNT)	TENANTS' COMMENTS	LANDLORD' COMMENTS	TRIBUNAL'S DECISION
Damage to fencing caused by Council refuse lorry (£311.31)	Cost and standard of work not disputed – tenants concerned at landlord's failure to pursue insurance claim	Claim being made-an money recovered will be credited to service charge account	Amount not in dispute. Power given to new manager to pursue claim under Section 24(5)(b) LTA 87
Front door mats to common parts (£951.00)	Replacement mats of inferior quality and thickness – tenants would have preferred thicker matting at double the cost	Thickness and specification of mats used as recommended by contractor	Amount allowed in full
Certified accounts: cleaning costs (£6,441.37)	Standard of cleaning common parts poor – reasonable cost would be £5000.00	Landlord accepted standard of cleaning poor, has withheld full payment of invoice	Reduced to £5000.00