RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL

LEASEHOLD VALUATION TRIBUNAL

Decision of the Leasehold Valuation Tribunal

on an application under the

Landlord and Tenant Act 1987 (as amended) Section 24

Case No:	CHI/40UE/LAM.2004/0003
Property:	**Halse Manor, Halse, Taunton, Somerset TA4 3AE**
Applicants:	Sophie N L Hyde-Parker Susan E Merchant Deborah A Carrel
Respondents:	Halse Manor Management Limited
Members of the Tribunal:	L H Parkyn, Lawyer (Chairman) J McAllister FRICS A Osborn
Date decision issued:	7 October 2004

1.1 This was an application to the Tribunal under Section 24 of the Landlord and Tenant Act 1987 ("the 1987 Act") initially by Miss Sophie Hyde-Parker the lessee of No 3 at Halse Manor, Halse, Taunton, Somerset ("the Premises") for the Tribunal to appoint a manager of the Premises.

1.2 Miss Susan E Merchant and Miss Deborah A Carrel, the lessees of No 10 at the Premises applied to be joined as Applicants.

1.3 At all material times, the Respondent, Halse Manor Management Ltd was both the freeholder of the larger part of the Premises and, separately, the company incorporated with the object (inter alia) of managing the communal areas and buildings erected on the Premises in accordance with the terms of the leases under which the individual units were held.

1.4 The Premises comprise 15 residential units. The lessees of the remaining 12 units and the owner of the only freehold unit (No 9) within the Premises were sent a copy of the application. Of these 11 lessees responded stating that they did not wish to be joined to the application but would like to be sent details of any further proceedings. On 4 May 2004 the Tribunal issued preliminary directions for the future conduct of the application. Following an adjournment of the application on 21 June 2004 the Tribunal issued further directions and, to assist the parties, provided them with an outline draft Order for the appointment of a manager and receiver of the Premises should the Tribunal decide, having heard the application, that such an appointment was appropriate.

1.5 A further application between the Parties under Section 27A of the Landlord and Tenant Act 1985 concerning the liability to pay service charges for the Premises ("the Services Application") had previously been determined by the Tribunal with its decision issued on 11 August 2004.

2. Inspection

2.1 The Tribunal had inspected the Premises on 21 June 2004, primarily in connection with the Services Application, and had decided that there was no need for re-inspection to determine this application.

2.2 Thus, the Tribunal were aware that the Premises, in part, were said to be Grade II listed, the original part of which appeared to have been constructed around 300-400 years ago as a small manor house within its own grounds. More recently, it had been said to have been used as a hospital or sanatorium and, in or about 1989 was

progressively renovated and developed to provide a mix of 15 residential units, 7 flats and 7 terrace style houses plus one single storey dwelling or bungalow.

2.3 During the course of its inspection, the Tribunal noted or had drawn to its attention:-

- The original manor house was three stories high with cellars below Nos 1,2,4 and 5 and another below No 3, said to be bricked up.
- There were areas of pitched and flat roofing
- In parts, the exterior paintwork was flaking and in need of redecoration.
- Some of the sash windows on the ground floor at the rear appeared in need of some repair
- Sections of guttering looked poor and in need of some attention
- The chimney stack above No 6 showed evidence of repair to the stonework, a job which would have required scaffolding for safe access
- The gardens and grounds were well maintained to provide a fitting setting for a relatively prestigious development.

3. Hearing

3.1 The hearing was held on 13 August 2004 with the Applicants represented by Miss Hyde-Parker and the Respondent represented by Mr G D Pinchbeck, a director of the Respondent. Mr Pinchbeck was assisted by Mr N Clifton (also a director of the Respondent appointed at its Annual General Meeting held on 1 July 2004). The Respondent was also assisted by Mr T G Sherwood, of Sherwoods, Taunton, the agents then appointed to manage the Premises.

3.2 The hearing was also attended by a number of the other lessees of units at the Premises.

3.3 The Tribunal established that the Parties had broadly complied with its directions although only the Applicants had prepared their skeleton argument addressing the provisions in Section 24 of the 1987 Act that the Tribunal needed to be satisfied that "...it is just and convenient for the Order (appointing a manager) to be made". Mr Pinchbeck stated that the Respondent was content to rely on the correspondence, documents and evidence to deal with this issue.

3.4 Miss Hyde-Parker presented the Applicants' case comprehensively and well relying on the written statements and supporting documents the Applicants had submitted in support of the application.

3.5 The grounds upon which the Applicants relied were set out in a notice given under Section 22 of the 1987 Act ("the Section 22 Notice") served by Miss Hyde-Parker on the Respondent on 2 April 2004 alleging that the Respondent was:-

1. In breach of obligations owed to the tenants under the lease.
2. Had made and proposed to make unreasonable service charges.
3. Had failed to ensure that inspections of the property were made.
4. Withheld information, accounts, invoices, receipts and other supporting documents when requested, in writing, to produce this information.
5. Had failed to ensure that administration of the Respondent had complied with the statutory obligations in respect of information supplied to Companies House.

3.6 To support the grounds given in the Section 22 Notice, the Applicants relied on a number of matters which, briefly, can be summarised as follows:-

3.6.1 Breaches of obligations in the lease:-

a) The Respondent had been inclined to demand additional amounts for service charges payable at very short notice (e.g., £500 in 2001, £2,500 in 2002 and c £10,600 in 2003) to be paid collectively by the lessees even when, in certain instances, the alleged shortage of funds was not supported by the evidence of the bank statements and on others it appeared that the sums demanded had been incorrectly calculated contrary to Clause 4(2) of the lease which provided for adjustments to the contribution for service charges to be made in the following accounting year.

b) The Respondent had failed to keep the Premises ".....in good and substantial repair and condition..." as provided for in Clause 8(1) of the lease, for example:-

- Repair to windows at No 1 had allegedly been outstanding for 4 years
- Repair to a leaking flat roof at No 2 took 6 months to complete
- Repair to chimneys at No 6 took 18 months to complete
- Repair to the front door of No 3 involved a claim in the Small Claims Court
- Repair to a water leak at No 4 allegedly remained outstanding
- Remedying windows painted shut in 2002 remained outstanding

- Structural alterations or additions had been made to No 9 apparently without the landlord's consent
- Repair and maintenance work had been carried out at No 9 and included in the service charges payable by the Lessees although this was an obligation of the Freeholder of No 9

c) Clause 4 of the lease gave a clear procedure for accounting for the service charges which had not necessarily been followed by the Respondent for example:-

- There had been a great deal of confusion over the financial affairs of the Respondent. Until October 2002 Lessees were sent monthly statements showing income and expenditure. These statements had become increasingly erratic and inaccurate from January 2001 but at least gave a rough idea of what might be going on.
- As the management accounts were handled exclusively by the Director David Sargison from November 2002, the Company Secretary/Managing Agent declined to discuss the Respondent's finances. The budget cash analysis and details of income and expenditure had been provided no more than once or twice a year and had often been inaccurate and in some cases quite incomprehensible.
- At the Respondent's AGM in November 2003, the Director attending proposed a budget figure of £20,000 for the year 2004/5 "more or less off the top of his head". There had been no further budget information and as at mid April 2004 the lessees had no clear idea of the amount they would be invoiced for that year.
- The annual accounts circulated at AGMs had been at best unclear and had given rise to many questions by the Lessees leading to Miss Hyde-Parker paying £70.50 to the Respondent's auditors A C Mold & Sons, Chartered Accountants, to obtain information which she believed the Respondent should have supplied.

3.6.2 The Respondent's Managing Agents had failed to carry out any regular inspections of the Premises.

3.6.3 The Respondent failed to provide information concerning the Respondent's annual accounts for example:-

- When the accounts for the year ended 31 March 2003 were considered at the AGM on 19 November 2003 due to a possible discrepancy, the Accountants were asked to substantiate how they arrived at the figures quoted in the accounts by producing a list of invoices in respect of the expenditure for the years ending 2002 and 2003 but that information had not been provided.
- The outgoings shown in the Profit and Loss Account to 31 March 2003 included some estimated figures for work which in April 2004 had still not taken place and about which the lessees were not consulted. At the Respondent's AGM on 6 June 2002 a breakdown in the repair figure containing an amount of £8,700 for painting was requested. This had been queried many times and still no answer had been forthcoming.
- A debt to Mr R L Stagg had never been documented and a request for a breakdown of creditors had not been provided.
- The whereabouts of a payment to Transco in the accounts had not been given.
- There was no obvious explanation for the Respondent's bank account to have been overdrawn in July and August since it was implied that the debt to R L Stagg would be repaid as funds allowed.
- Questions raised in a letter dated 17 March 2003 sent by Miss Hyde-Parker to Mr T G Sherwood as Company Secretary/Managing Agent of the Respondent remained unanswered notwithstanding subsequent reminders.
- Similarly questions raised in a letter sent by Miss Hyde-Parker to Mr Sherwood on 20 November 2003 concerning a number of invoices ranging from £193 to £11,407 remain unanswered although Mr Sherwood did respond concerning insurance.

3.6.4 In connection with the general management of its affairs, the Respondent had failed to comply with company law in respect of annual accounts and annual returns filed at Companies House to the extent that the Respondent (and the lessees through the service charge) had been charged a penalty incurred by late filing of the annual accounts. Further, the annual return due 23 August 2003 remained outstanding. Also, it was noted that the previous annual return was substantially inaccurate in that there were a number of discrepancies between the register of directors at Companies House, the directors shown on the annual accounts and those according to the Respondent's

minutes of AGMs. The discrepancies involved not only who the directors were at any given time but also the dates of appointment and resignations.

3.6.5 The underlying problem was that the managing agents (Sherwoods) although qualified to do the job, had tended to act solely on the instructions from whichever of the lessees happened to have volunteered to be directors of the company. There had been a high turnover of directors and, while there were undoubtedly good intentions, an adequate level of agreement among lessees and directors had never been achieved.

3.6.6 The lack of impartiality, the inconsistencies and the overall ill feeling that had been generated by the present management system made it a matter of urgency that a manager should be appointed.

3.6.7 The problems with the management were adversely affecting the values and saleability of units at the Premises.

3.6.8 The lack of impartiality on the part of the Respondent in matters of neighbour disputes.

3.7.1 Miss Hyde Parker had approached Colvilles Chartered Surveyors of Exeter and Greenslade Taylor Hunt Chartered Surveyors of Yeovil inviting each to nominate a surveyor who would be willing to accept appointment by the Tribunal as a manager of the Premises, should the Tribunal so decide, and the basis and terms on which each would accept such an appointment. Colvilles nominated Mr Hugh Neason FRICS who was available to give evidence to the Tribunal. In a letter dated 9 July 2004, Colvilles sent Miss Hyde-Parker a copy of their management terms setting out their proposed duties,fees, etc and stating that they would comply with the relevant code of the RICS. Greenslade Taylor Hunt nominated Mr Max A J Southwell MRICS, a partner in the firm, stating that the day-to-day operation would be carried out by Mr Alex Simpson MARLA, a leasehold property manager with the firm.

3.7.2 In a letter dated 15 July 2004 to Miss Hyde Parker, Greenslade Taylor Hunt gave details of their management policy in accordance with the RICS's requirements particularly emphasising:-

- The management of long leasehold residential property was a complex business requiring a full understanding of the structure and meaning of the leases and relevant statutory provisions.

- An ability to provide accounting facilities for budgeting, service charge collection and year end accounts as well as dealing with arrears and disputes between lessees in an independent and fair manner.
- Compliance with client's instructions.
- Compliance with the relevant RICS Code of Practice.

They also added that they had ready access to lawyers, professional bodies and colleagues, fidelity insurance cover to protect client funds and separate professional indemnity cover as a further protection.

3.8 In answer to questions both from Mr Pinchbeck and the Tribunal Miss Hyde-Parker stated:-

- Mr Sherwood was no longer nominated, by the Applicants, as a prospective manager.
- In the previous 6 years, 12 lessees had been appointed directors and 10 had retired or resigned.
- She had been a director for 2½ years but retired as she was unhappy with a decision concerning an insurance claim.
- The Respondent appeared to suffer from a misunderstanding concerning the obligation to carry out repairs and matters where there was a choice. For example, she explained that repairs were needed to the door of No 3 (her flat) so when the Directors of the Respondent refused to carry them out she had no alternative but to sue the Respondent in the County Court. She obtained judgement for the full amount of her claim, approximately £1,000 plus costs, and set off the amount due to her when paying the service charges in 2001.
- She felt that some lessees were preferred over others when repairs were considered whilst accepting that the Respondent had a need to prioritise.
- The allegation that the Respondent failed to inspect followed a breach of Sherwood's terms of engagement: this obligation did not arise under the lease.
- Having previously been married to a Chartered Surveyor, she was aware both of the RICS "Service Charge" Residential Management Code ("the Code") and also the need for the service of notices for certain works under Section 20 of the Landlord and Tenant Act 1985 ("Section 20 Notice").

- The Respondent's obligation was to keep the Premises in a good state of repair. The Premises were a listed building so the issue needed to be very thoroughly addressed.
- Some of the lessees would prefer to buy their freeholds rather than rely on the lottery of the present management.
- One penalty had been incurred through the late filing of accounts at Companies House.
- Although Greenslade Taylor Hunt in their letter of 15 July 2004 had outlined the basis upon which Mr Southwell was willing to be appointed a manager of the Premises, she had received no written confirmation of the firm's fees. However, orally they had informed her that the firm's fees would be based on the rate of £100 per unit per year for the basic management with additional or exceptional work charged at the rate of £165 per hour for a partner or £140 per hour for an associate. It appeared that the firm did not propose to charge a commission on higher value works but she believed that the firm had adequate professional indemnity insurance cover.
- If Mr Neason of Colvilles was appointed Receiver and Manager by the Tribunal, that appointment should commence as soon as possible.
- The pending application was likely to have an adverse effect on the values of the units.
- Miss Merchant and Miss Carrel had had their property, No 10, on the market for more than 12 months during which period they had received one offer of £10,000 below the reduced asking price.

3.9.1 Mr Hugh Neason FRICS ACIArb gave evidence in support of the application and his nomination as a manager and receiver of the Premises, the main points of which are summarised as follows:-

- He had written to Miss Hyde Parker on 9 July 2004 enclosing the management terms setting out the basis upon which he would expect to accept appointment.
- In his letter he also noted that the Respondent had delayed filing the annual return emphasising the risk of prosecution and that, normally, it was the responsibility of the Company Secretary to deal with such matters.
- The management terms included a fee structure at the rate of £100 per unit per annum plus 10% of the amounts spent in respect of any works which cost in

excess of £2,000, in each case plus VAT and any expenses which would be payable in addition to such fees.

- He had been in practice for 20 years, 15 of which had been concerned with property management.
- He was his firm's principal property managing agent and the partner responsible for some 350 properties from 8 units upwards.
- He had no prior connection with Miss Hyde-Parker.
- He was aware of the RICS Code of Practice and confirmed that his firm's management terms accorded with the Code.

3.9.2 In answer to questions from Mr Pinchbeck and the Tribunal, Mr Neason stated:-

- The fee structure quoted was much in line that charged by other managing agents.
- Whether acting as an agent or manager the fees would be the same.
- He could not give an indication of future management fees but had quoted on the basis of the initial information given.
- He had not been appointed by a Leasehold Valuation Tribunal as a manager of any other property.
- He saw no difficulty in complying with an order in the terms of the draft prepared by the Tribunal.
- His firm held professional indemnity insurance of £2,000,000 which he believed to be about the average for a practice of that nature.
- He would hold to the management fees quoted for 12 months.
- He was based in Exeter and, if appointed, initially, it was likely that he would deal with the management personally but as matters progressed with increasing assistance from his firm's staff.
- His firm employed a Chartered Accountant who would deal with the management accounts.
- He would deal with any insurance valuation based on an hourly rate of £135 plus VAT.
- He would expect to carry out a full inspection and then prepare a 5 year plan for maintenance and repairs.

- He would prefer an appointment for a minimum term of 2 years as there was a need to familiarise himself with the matter.
- The terms proposed would include the serving of Section 20 Notices, if necessary in connection with proposed repairs.
- He would expect to inspect the Premises from time to time: Halse was only 40 miles from his office in Exeter.
- The management terms before the Tribunal were broadly similar to the Code.
- In the past he had been responsible for managing a similar property although was not doing so at the present time.
- He was a general practice surveyor dealing with residential, commercial and agricultural properties. Currently, he dealt with about 300 let properties of which about 80 were in managed blocks.
- In estimating his likely fees, he had allowed for four visits a year to the Premises although visits outside normal office hours would be charged out at the usual hourly rate.
- Under the heading "Expenses", he would expect to charge 50p per mile for journeys made.
- He agreed that if the lessees were hostile it would make the management more difficult and if he was denied access then the management would be virtually impossible. However, he anticipated establishing a good working relationship with the lessees.
- He could not say whether there was an urgent need for an insurance revaluation.
- Although familiar with the Section 20 Notice procedure, he also appreciated that the Code required the manager to consult with the lessees.
- He remained willing to be appointed a manager and receiver should the Tribunal so decide.

3.10.1 Mr Pinchbeck gave evidence on behalf of the Respondent the main points of which are summarised as follows:-

- The residents who opposed the application were intelligent people who had been or continued to be decision makers and had a perfect understanding of how the Respondent worked. They wished to control their own company.

- The appointment of a manager would bring a cultural change which would be hard to accept. They most definitely did not require legislation to protect them against their landlord (i.e., themselves) by the appointment of a manager.
- The issue which dominated the discussion at the Respondent's AGM on 1 July 2004 was the removal of the lessees' right to manage their own affairs which led to a resolution to re-engage Sherwoods under a new contract after a trial period of 6 months and to reappoint Mr T Sherwood as Company Secretary of the Respondent (votes for : 10, against : 0, abstentions : 2).
- Many lessees were concerned about the potential costs.
- He did not accept the Applicants' contention that the sale of Miss Merchant's property was dependent upon the appointment of a manager. He observed that No 15 "sold within weeks, with new occupants arriving on 19th July 2004".
- Despite the Applicants' contentions, the Premises were seen as a desirable well run community : "Property here sells quickly".
- He questioned Mr Neason's suitability for appointment as manager, was concerned that he did not appear to be aware of the difference between being a manager and an agent and felt that his fees quotation was open ended in that he proposed to review the charges after appointment.
- He did not believe that Mr Neason could operate at the level of the fees quoted adding that last year the Respondent had four meetings which at £400 per meeting would amount to £1,600 plus VAT in the year for that work alone.
- As to repairs, he acknowledged that there was work to be done adding that that the 3 or 4 windows not gloss painted were due to be done during the present accounting year; he had received an estimate for £2,000 for window repairs which followed on from the previous work although he had not yet notified the lessees as it had only just been received.
- The lessees had agreed that they should be notified in respect of any expenditure above £2,000.
- He refuted the allegation that the management of the Premises by the Respondent was a shambles and would benefit from the appointment of a

manager, emphasising that the Directors had acted responsibly and that works had been carried out within the timescale and budget agreed. Also, some savings had been achieved as a number of lessees were able to help.

3.10.2 In answer to questions from Miss Hyde-Parker and the Tribunal Mr Pinchbeck stated:-

- The slates above No 2 needed quick attention.
- He considered the Premises were being inspected sufficiently frequently adding that the extent of the repair for the slates for No 2 could not have been seen without the use of a ladder.
- Similarly a repair to the roof above No 3 had taken time although Mr Sargison had reported that no water was coming in but slipped slates were blocking the gutter.
- Sherwoods had not been instructed to deal with repairs and were at present retained on a caretaker basis.
- It was difficult persuading the lessees to serve as directors.
- He had considered delegating more of the management responsibilities to Sherwoods.
- If after a period of 6 months Sherwoods were not discharging their duties satisfactorily the Respondent will look to appoint another agent.
- He had approached two other agents to quote for the management of the Premises, one did not respond and although he thought the other, Staggs, had some merits, at a company meeting, the Respondents resolved not to return to Staggs but to remain with Sherwoods.
- He was reluctant to delegate the responsibility of repairs to Sherwoods as they were not staffed to deal with this aspect of the work.
- He felt unable to comment on what had happened in the past: he limited his observations to the period with which he had been personally involved.
- Sherwoods' new contract was for a fee of about £2,000 p.a. plus VAT although they had quoted a fee of £3,800 plus VAT when Mr Sherwood was willing to be nominated as a prospective manager. The difference was due to the different level of responsibility.

- All Directors had the best interests of the Premises at heart believing he too had done a good job and had kept the lessees informed particularly in relation to the applications before the Tribunal.
- He could not see any advantage in appointing a professional manager and could not see that it would be less expensive to do so explaining that the present management could assess priority for works to be done (e.g., cosmetic painting) in a way that a professional manager would not.
- He had inspected the Premises, assessed priorities and prepared a budget: choice was to do with balancing costs.
- He had proposed to resign at the Respondent's last AGM but had agreed to stay on when Mr Clifton was appointed as a director. Mr Clifton did not have specific building knowledge but he brought business experience to the Respondent.
- He did need to call on Mr Sherwood for expert professional help and had been advised on the new legislation affecting leasehold management.
- It was more cost effective for Sherwoods to be appointed rather than a manager appointed by the Tribunal.
- He would expect to follow the Code.
- The terms for reappointing Sherwoods had not been finally agreed.
- He was happy with Mr Sherwoods' qualifications to manage a listed building explaining that he (Sherwood) had a Consultant Surveyor (Mr Keith Mitchell) "on call" and also that his brother and son were Chartered Surveyors.
- He had been involved with the management of the Premises for 16-18 months following a period when the previous manager went into liquidation.
- He was not aware when the Premises were last valued for insurance purposes but understood that Miss Merchant had a friend who advised, informally, that the cover be increased to £3.5 million. The Premises were insured with the Norwich Union and the cover would be increased in September 2004.
- He had intended to resign due to the applications to the Tribunal and would do so if the Tribunal appointed a manager. However he would be willing to continue if Mr Sherwood was appointed.

3.10.3 Mr Sherwood informed the Tribunal that if his firm was retained for a full management role:-

- He would expect to have the Premises inspected by a specialist surveyor for a fee within the proposed fee structure.
- When he was willing to be nominated as a prospective manager to be appointed by the Tribunal, he considered the fee of £5,000 per year he proposed to be reasonable.
- Supervision of works would depend on need.
- He had experience with the management of other premises including "historic buildings" and those with a mix of freehold and leasehold units.
- His firm maintained professional indemnity cover at £2,000,000: Mr Mitchell and Mr Sherwood's brother and son were separately covered.

3.10.4 Mr J C Raynor, owner of No 5 jointly with his wife, stated that they had recently exchanged contracts for the sale of No 5 having offered full information concerning the management issues at the Premises. Prior to putting the unit on the market they had taken advice from four firms of estate agents, formed a view, saw three prospected buyers within the first four weeks, agreed terms with one and exchanged contracts 3½ weeks later. They were well satisfied with the terms of the sale which were slightly better than they had anticipated. Thus, he did not consider that the pending applications before the Tribunal had caused any particular difficulty.

3.10.5 In addition to the evidence from the Parties, the Tribunal received written representations from eleven of the other lessees which can be summarised as follows:-

- The Premises were too small to justify a professional manager.
- Generally the Premises were well managed with few outstanding repairs to be carried out.
- A manager would involve much greater expense which some might be unable to afford.
- They wished to retain control of the management of the Premises.
- Acknowledgement that the appointment of a lessee as a Director could be onerous.

- Not all were confident in Sherwood's ability to continue to manage.
- Mr Neason's office base was too far away for effective management, he appeared too litigious (from his emphasis on criminal responsibility concerning the company's returns) and his fee structure was probably too low.
- At the last AGM the Respondent Company did not favour the idea of the appointment of a manager and receiver by the Tribunal (votes for : 2, against : 11).

3.11 In his closing submission, Mr Pinchbeck reiterated the Residents' concern over the potential costs of a manager and receiver which he believed would, inevitably, be higher than if the management remained within the control of the Respondent. He had not put in a skeleton argument to deal with the "just and equitable" issue but, as already noted, relied on the documents and the evidence to support the Respondent's case.

3.12 In her closing submission, Miss Hyde-Parker relied on the statement tabled when the hearing opened, purporting to be in reply to Mr Pinchbeck's letter to the Tribunal of 6 August, although as it was more in the nature of a closing submission, it was accepted as such by the Tribunal. In it, she reviewed the evidence emphasising the key elements of the Applicants' case. She hoped that the Applicants had established sufficient grounds for the appointment of a manager, believed that the proposed manager was suitably qualified, and took issue with the argument that a manager appointed by the Tribunal would necessarily be more expensive believing that if Mr Neason was appointed it would be to the contrary. She considered that quite a lot of the animosity the Applicants had experienced would disappear with the appointment of a manager believing that a professionally qualified manager dealing with the Respondent would prove to be an advantage.

3.13 Although neither a party, nor a witness, for either the Applicants or the Respondent, at his request, the Tribunal heard Mr CR Combe (the lessee of No 1) who was critical of the fact that he, as a potentially affected lessee, had not been given the opportunity to participate at the hearing. He considered the correspondence from the Tribunal's office to have been misleading in that he had not appreciated that he could have applied to be joined as a party to respond to the application : he understood he could only have become a party in support. The

Chairman apologised for this apparent lack of clarity in the information on the procedures and the fact that the Tribunal's office had not responded to a letter from Mr Combe expressing his wish to participate in the proceedings.

4. Decision

4.1 The issues in this application fall to be decided by the Tribunal under Sections 21-24 of the Landlord and Tenant Act 1987 which, for ease of reference, are set out in the Appendix to this Decision.

4.2 The Tribunal first considered whether it had jurisdiction to determine the application within the provisions of Section 21 of the 1987 Act. It decided that it had on the grounds that the Applicant, Miss Hyde-Parker, was the tenant of a flat in the premises (Section 21(1)) and that the Premises, for the purposes of the material sections of the 1987 Act, contained 7 flats of which 3 were within the original manor house so were within ".....part of a building if the building or part contains two or more flats" (Section 21(2)), the exceptions contained within section 21(3) not applying.

4.3 In addition, the Tribunal needed to have regard to the Code approved by the Secretary of State under Section 87 of the Leasehold Reform Housing and Urban Development Act 1993 and also the leases under which the units at the Premises were held.

4.4 Although neither of the parties put a copy of a standard lease of a unit at the Premises before the Tribunal for the purposes of this application, the Tribunal had retained a copy of the 14 leases and transfer relating to No 9 from the Services Application. For this application, the Tribunal referred to the lease of No 3 dated 30 June 1997 and made between Wrencon Developments Ltd (1) the Respondent (2) C L & E L Deadman (3) and Wrencon Ltd (4) ("the Lease") as it had done for the Services Application. The material provisions of the Lease were the following covenants:-

> Clause 4
> (1) The Lessee hereby covenants with the Lessor and with the Company to contribute by way of additional rent a 7.74% of the costs expenses outgoings and matters mentioned in the 4th Schedule hereto.
>
> (2) The contribution under sub clause (1) hereof for each year shall be estimated by the Company or its agents as soon as practicable after the 1st day of April in each year and the Lessee shall pay the estimated contribution

together with Value Added Tax charged thereon at the appropriate rate in advance on 31st day of March in every year PROVIDED ALWAYS that any adjustment falling to be made by reason of the costs expenses outgoings and matters referred to in sub clause (1) hereof being greater or lesser than estimated shall be taken into account upon the estimate being made for the following year and an allowance or surcharge made in respect of the Lessee's contribution accordingly.

(3) The certificate of the auditor for the time being of the company as to the amount due under sub clause (2) of this clause shall be final and binding on the parties.

Clause 8

The Company hereby covenants with the Lessee the Lessor and WL severally as follows:-

(1) That subject to contribution and payment as hereinbefore provided the Company will maintain and keep in good and substantial repair and condition:-

(a) the main structure of the building including the foundation and the roof therof with its gutters and drain water pipes

(b) all such gas and water pipes drains and electric cables and wires in under and upon the Estate as are enjoyed or used by the Lessees in common with the owners or lessees of the other flats/dwellinghouses

(c) the main entrances passages landings staircases and forecourt of the building and the paths roadways car ports parking areas lawns gardens on the Estate enjoyed or used by the Lessee in common as hereinbefore provided and the boundary walls and fences of the Estate

(2) Subject as aforesaid the Company will so far as practicable keep clean and reasonably lighted the passages landings staircases and other parts of the said building so enjoyed or used by the Lessee in common as aforesaid and will keep the gardens cultivated and in good order.

(3) That subject as aforesaid the Company will so often as is reasonably required decorate the exterior of the buildings on the Estate.....

(4) That subject as aforesaid the Company will keep buildings on the Estate insured against loss or damage by fire and other usual risks as the Company deems fit in some insurance office of repute to the full value thereof in the joint names of the Lessor W L and the Lessee .....

4.5 The Tribunal made the following findings of fact:-

- The Premises formed an attractive and impressive residential development comprising 7 flats, 7 terrace style houses and a bungalow,

the latter of which was freehold, subject to covenants designed to complement the remaining leasehold scheme.

- Overall the Premises, both buildings and grounds, appeared to be well maintained to satisfactory standards.
- The Applicant Miss Hyde-Parker, had served on the Respondent an effective notice, dated 2 April 2004, under Section 22 of the 1987 Act.
- The Respondent made no substantive response to the Section 22 Notice.
- The Respondent did not serve any notice under Section 20 of the 1985 Act in respect of works at the Premises costing in excess of £1,000.

4.6 Before the Tribunal considered whether or not to appoint a manager it needed to be satisfied that the Applicants had served a Section 22 Notice. Such a notice had been served.

4.7 Whilst the Tribunal had jurisdiction to appoint a manager and receiver (Section 24(1) of the 1987 Act) it might only do so if it is satisfied that:-

(i) the landlord either is in breach of any obligation owed by him to the tenant under his tenancy and relating to the management of the premises in question or any part of them or

(ii) unreasonable service charges have been made or are proposed or likely to be made or

(iii) the landlord has failed to comply with any relevant provisions of the Code

and in any such case it is just and convenient to make the order in all the circumstances of the case, or the Tribunal is satisfied that other circumstances exist which make it just and convenient for the order to be made.
(see Section 24(2)) of the 1987 Act)

4.8 The Tribunal considered the evidence under each element of the statutory provisions.

4.8.1 Breaches of Obligations: the Applicants relied on accounting irregularities pointing to the fact that the accounting procedures adopted by the Respondent did not follow precisely the provisions of Clause 4(2) of the lease.

The Tribunal noted that, at all material times, the Respondent's accounts had been professionally audited by A C Mole & Sons Chartered Accountants, although was satisfied that there had been a number of procedural accounting irregularities which appeared to have arisen more in the way that the Respondent managed it financial affairs, for example, in demanding funds on short notice. However, it appeared to the Tribunal that the majority of the lessees were not unduly concerned over this issue. Further, the Applicants maintained that there were many instances where necessary repairs had been left outstanding contrary to the provisions of Clause 8(1) of the Lease although it appeared to the Tribunal that in a number of instances that this was as a result of the Respondent adopting different priorities to those which the Applicants might have expected. However, the Respondent had clearly failed to carry out repairs to the front door of No 3 leading to the Lessee bringing a successful claim in the Small Claims Court. Clearly, this was a significant breach although it had occurred about 3 years ago. The Applicants also alleged that alterations were carried out at No 9 without the Respondent's consent although this issue was challenged by Mr Pinchbeck. Also, the Applicant had identified the fact that certain works on No 9 had been put to the general service charge account for the Premises although under the terms of the Transfer for N0 9 were the liability of the freeholder of that unit. The Tribunal had already made a finding on this issue in the Services Application supporting the Applicants' allegations.

4.8.2 Service Charges: The Applicants referred in general terms to the question of service charges, alleging a great deal of confusion over the financial affairs of the Respondent, inadequate information both in relation to income and expenditure and the £20,000 budget proposal for the year 2004/5 and a general lack of financial information for the Lessees. The Tribunal had considered the issue of service charges in some detail in the Services Application and had found that the budget of £20,000 was reasonable. The Tribunal had found that a number of items of expenditure were not reasonable although they were mainly relatively small sums.

4.8.3 RICS Code of Practice: although both parties seemed to have been aware of the existence of the Code, neither made much reference to its terms in presenting their respective cases. However, particularly with professional

managing agents appointed, the Respondent should have been generally aware of it's terms as it did apply to the Respondent's management of the Premises. The Code defines the role of "manager" as follows:-

> In this Code the person having day-to-day control of the management of a dwelling is called the "Manager". This person could be the landlord personally, a member of staff of a corporate landlord, a managing agent, or a group of flat owners who have formed themselves into a formal management or maintenance company (which could be limited by share or guarantee) or an informal residents' association.....(para 1.11).

In consequence, the guidelines given in the Code should have been followed by the Respondent, its Directors and Agents.

4.9 It was clear to the Tribunal that the Respondent was in breach of the Code having failed to serve Section 20 Notices for three items considered in the Services Application (for repainting the exterior - £7,810: for chimney repairs - £2,277.15: and for installing sash windows: £1,390.03) for which works the relevant paragraph of the Code reads as follows:-

> You must supply the leaseholders/tenants who are required to contribute to the cost of the works with a notice describing the works and accompanied by a copy of at least two estimates, or more if appropriate for the proposed works, one of which must be a firm or contractor wholly unconnected with the landlord. You should make it clear to leaseholders/tenants whether the estimate is subject to VAT (para 14.19).

The Tribunal found that there was a clear failure to comply with the terms of the Code in respect of these works.

4.10 Taking all matters together, the Tribunal decided that the Applicants had established the first limb of their case in that the Respondent had breached the material provisions of Section 24(2) of the 1987 Act leaving the Tribunal to decide whether it was "just and convenient to make the order in all the circumstances of the case" for the appointment of a manager.

4.11 In its further directions, the Tribunal ordered the Parties to exchange skeleton arguments of their respective cases particularly addressing the provisions of Section 24 of the 1987 Act that the Tribunal needed to be

satisfied that it will be just and convenient to make the Order. The Respondent did not submit an argument for the reasons previously stated. The Applicant on this issue submitted:-

> "It has been stated by Mr Pinchbeck that a majority of residents at Halse Manor are not in favour of the appointment of a manager. This is not borne out by the evidence and letters from residents to Mr Pinchbeck. In fact eight residents have expressed in writing a preference in favour (Nos 1, 2,3,6,7, and 14) of the formal appointment of a manager and the remaining seven residents expressed reservations either on the basis of cost or the suitability of Mr Sherwood.
>
> "Since the annual costs involved in having Halse Manor professionally and independently run by an experienced and fully qualified manager appointed by the LVT are likely to be no higher than the past and current cost of a managing agent instructed by volunteer directors, there is no advantage in continuing with that arrangement on the grounds of cost alone.
> "As to the comparative merits of having a managing agent who must act on the instructions of volunteer directors, we believe that there is more than sufficient evidence that this arrangement has not worked well in the past, nor is it satisfactory now, nor is it likely to work reliably and properly in the future.
> "The fundamental problem is that volunteer directors need no suitable qualifications, expertise or experience in order to become directors of HMML. The necessary impartiality, altruism, availability of time and resources to undertake the direction of the management of Halse Manor cannot be guaranteed by relying on volunteers among residents either now or in the future. In our opinion it is this uncertainty which would make the appointment of a manager and receiver by the LVT a just and convenient course of action".

4.12 By the time of the hearing, the Tribunal had received representations from eleven of the Lessees of whom the majority opposed the appointment of a manager. However, since those representations were made, the Respondent held its AGM on 1 July 2004 and, having appointed Mr Clifton a new Director considered whether or not the Respondent should support the appointment of a manager. This was not favoured by a substantial majority.

4.13 The Tribunal was not persuaded by the argument that the appointment of a manager would facilitate the sale of No 10, or any other unit, particularly in the face of the evidence from Mr Raynor that No 5 had only recently been sold satisfactorily and that the sale of No 15 had been completed in July 2004.

4.14 Further, the Tribunal considered that with his relatively wide and fairly diverse portfolio of work, if appointed, Mr Neason would not substantially improve the management of the Premises. The Tribunal also shared the Respondent's concern that the estimated costs for the management were likely to be on the low side and could be the subject of significant increase once the full scale and extent of the management was fully appreciated by Mr Neason.

4.15 Thus, taking all matters into consideration, the Tribunal decided that although there were issues which gave grounds for an application under Section 24, allowing for the opposition from the majority of the Lessees and the continued willingness of two Lessee Directors to continue to manage, it would not be just and convenient for a manager to be appointed.

4.16 However, the Tribunal were not impressed with the rather ad-hoc style of management which had existed in the past and, with the amendments to the 1987 Act made by in the Commonhold & Leasehold Reform Act 2002 and subsequent legislation, considered that the Respondent would need to develop a much more professional style of management to comply with the more detailed and onerous provisions which would effect the management of the Premises in the future.

4.17 The Applicants had also made an application under Section 20C of the 1985 Act ".....that all or any of the costs incurred, or to be incurred, by the landlord in connection with the proceedings before.....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...."

4.18 Whilst the Respondent might appear to have power to include such costs as part of the service charge within the scope of paragraph 1 of the 4th Schedule to the Lease, the provisions of Clause 8, to which it refers, do not include such matters. However, for the avoidance of doubt, the Tribunal decided under Section 20C of the 1985 Act that none of the Respondent's costs incurred or to be incurred in connection with the application are to be regarded as relevant costs to be taken into account when determining the

rather ad-hoc style of management the Respondent had adopted and its failure to follow the Code had, in effect, led to the Applicants making the application.

4.19 The Tribunal considered all other matters raised, and all representations received, but there were none that outweighed those upon which this decision is based.

L H PARKYN (Chairman)

[The Appendix follows]

APPENDIX

LANDLORD & TENANT ACT 1987

21 Tenant's right to apply to court for appointment of manager

(1) The tenant of a flat contained in any premises to which this Part applies may, subject to the following provisions of this Part, apply to [a leasehold valuation tribunal] for an order under section 24 appointing a manager to act in relation to those premises.

(2) Subject to subsection (3), this Part applies to premises consisting of the whole or part of a building if the building or part contains two or more flats.

(3) This Part does not apply to any such premises at a time when –

(a) the interest of the landlord in the premises is held by an exempt landlord or a resident landlord, or

(b) the premises are included within the functional land of any charity.

(4) An application for an order under section 24 may be made –

(a) jointly by tenants of two or more flats if they are each entitled to make such an application by virtue of this section, and

(b) in respect of two or more premises to which this Part applies;

and, in relation to any such joint application as is mentioned in paragraph (a), references in this Part to a single tenant shall be construed accordingly.

(5) Where the tenancy of a flat contained in any such premises is held by joint tenants, an application for an order under section 24 in respect of those premises may be made by any one or more of those tenants.

(6) An application to the court for it to exercise in relation to any premises [any jurisdiction] to appoint a receiver or manager shall not be made by a tenant (in his capacity as such) in any circumstances in which an application could be made by him for an order under section 24 appointing a manager to act in relation to those premises.

(7) References in this Part to a tenant do not include references to a tenant under a tenancy to which Part II of the Landlord and Tenant Act 1954 applies.

Section 22 Preliminary notice by tenant

(1) Before an application for an order under section 24 is made in respect of any premises to which this Part applies by a tenant of a flat contained in those premises, a notice under this section must (subject to subsection (3)) be served on the landlord by the tenant.

(2) A notice under this section must –

(a) specify the tenant's name, the address of his flat and an address in England and Wales (which may be the address of his flat) at which the landlord may serve notices, including notices in proceedings, on him in connection with this Part;

(b) state that the tenant intends to make an application for an order under section 24 to be made by [a leasehold valuation tribunal] in respect of such premises to which this Part applies as are specified in the notice, but (if paragraph (d) is applicable) that he will not do so if the landlord complies with the requirement specified in pursuance of that paragraph.

(c) specify the grounds on which [the tribunal] would be asked to make such an order and the matters that would be relied on by the tenant for the purpose of establishing those grounds;

(d) where those matters are capable of being remedied by the landlord, require the landlord, within such reasonable period as is specified in the notice, to take such steps for the purpose of remedying them as are so specified; and

(e) contain such information (if any) as the Secretary of State may by regulations prescribe.

(3) [A leasehold valuation tribunal] may (whether on the hearing of an application for an order under section 24 or not) by order dispense with the requirement to serve a notice under this section in a case where it is satisfied that it would not be reasonably practicable to serve such a notice on the landlord, but [the tribunal] may, when doing so, direct that such other notices are served, or such other steps are taken, as it thinks fit.

(4) In a case where –

(a) a notice under this section has been served on the landlord, and

(b) his interest in the premises specified in pursuance of subsection (2)(b) is subject to a mortgage,

the landlord shall, as soon as is reasonably practicable after receiving the notice, serve on the mortgagee a copy of this notice.

23 Application to court for appointment of manager

(1) No application for an order under section 24 shall be made to [a leasehold valuation tribunal] unless –

(a) in a case where a notice has been served under section 22, either –

(i) the period specified in pursuance of paragraph (d) of subsection (2) of that section has expired without the

landlord having taken the steps that he was required to take in pursuance of that provision, or

(ii) that paragraph was not applicable in the circumstances of the case; or

(b) in a case where the requirement to serve such a notice has been dispensed with by an order under subsection (3) of that section, either

(i) any notices required to be served, and any other steps required to be taken, by virtue of the order have been served or (as the case may be) taken, or

(ii) no direction was given by [the tribunal] when making the order.

(2) [Procedure regulations] shall make provision –

(a) for requiring notice of an application for an order under section 24 in respect of any premises to be served on such descriptions of persons as may be specified in the [regulations]; and

(b) for enabling persons served with any such notice to be joined as parties to the proceedings

24 Appointment of manager by the court

(1) [A leasehold valuation tribunal] may, on an application for an order under this section, by order (whether interlocutory or final) appoint a manager to carry out in relation to any premises to which this Part applies –

(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) [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 either is in breach of any obligation owed by him to the tenant under his tenancy and relating to the management of the premises in question or any part of them or (in the case of an obligation dependent on notice) would be in breach of any such obligation but for the fact that it has not been reasonably practicable for the tenant to give him the appropriate notice, 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 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.

[(2A) For the purposes of subsection (2)(ab) a service charge shall be taken to be unreasonable –

(a) if the amount is unreasonable having regard to the items for which it is payable,

(b) if the items for which it is payable are of an unnecessarily high standard, or

(c) if the items for which it is payable are of an insufficient standard with the result that additional service charges are or may be incurred.

In that provision and this subsection "service charge" means a service charge within the meaning of section 18(1) of the Landlord and Tenant Act 1985, other than one excluded from that section by section 27 of that Act (rent of dwelling registered and not entered as variable).]

(3) The premises in respect of which an order is made under this section may, if [the tribunal] thinks fit, be either more or less extensive than the premises specified in the application on which the order is made.

(4) An order under this section may make provision with respect to –

(a) such matters relating to the exercise by the manager of his functions under the order, and

(b) such incidental or ancillary matters,

as [the tribunal] thinks fit; and, on any subsequent application made for the purpose by the manager, [the tribunal] may give him directions with respect to any such matters.

(5) Without prejudice to the generality of subsection (4), an order under this section may provide –

(a) for rights and liabilities arising under contracts to which the manager is not a party to become rights and liabilities of the manager;

(b) for the manager to be entitled to prosecute claims in respect of causes of action (whether contractual or tortious) accruing before or after the date of his appointment;

(c) for remuneration to be paid to the manager by the landlord, or by the tenants of the premises in respect of which the order is made or by all or any of those persons;

(d) for the manager's functions to be exercisable by him (subject to subsection (9)) either during a specified period or without limit of time.

(6) Any such order may be granted subject to such conditions as [the tribunal] thinks fit, and in particular its operation may be suspended on terms fixed by [the tribunal].

(7) In a case where an application for an order under this section was preceded by the service of a notice under section 22, [the tribunal] may, if it thinks fit, make such an order notwithstanding –

(a) that any period specified in the notice in pursuance of subsection (2)(d) of that section was not a reasonable period, or

(b) that the notice failed in any other respect to comply with any requirement contained in subsection (2) of that section or in any regulations applying to the notice under section 54(3).

(8) The Land Charges Act 1972 and the Land Registration Act 1925 shall apply in relation to an order made under this section as they apply in relation to an order appointing a receiver or sequestrator of land.

(9) [A leasehold valuation tribunal] may, on the application of any person interested, vary or discharge (whether conditionally or unconditionally) an order made under this section; and if the order has been protected by an entry registered under the Land Charges Act 1972 or the Land Registration Act 1925, [the tribunal] may by order direct that the entry shall be cancelled.

(9A) The Tribunal shall not vary or discharge an order under subsection (9) on a landlord's application unless it is satisfied –

(a) that the variation or discharge of the order will not result in a recurrence of the circumstances which led to the order being made, and

(b) that it is just and convenient in all the circumstances of the case to vary or discharge the order.]

(10) An order made under this section shall not be discharged by [a leasehold valuation tribunal] by reason only that, by virtue of section 21(3), the premises in respect of which the order was made have ceased to be premises to which this Part applies.

(11) References in this section to the management of any premises include references to the repair, maintenance or insurance of those premises.

rather ad-hoc style of management the Respondent had adopted and its failure to follow the Code had, in effect, led to the Applicants making the application.

4.19 The Tribunal considered all other matters raised, and all representations received, but there were none that outweighed those upon which this decision is based.

.....L H Parkyn.....

L H PARKYN (Chairman)

[The Appendix follows]