

**THE SOUTHERN AREA RENT ASSESSMENT PANEL  
AND LEASEHOLD VALUATION TRIBUNAL**

Case Number: CHI/OOMS/LAM/2005/0007

IN THE MATTER OF SECTION 24 OF THE LANDLORD & TENANT ACT 1987

AND

IN THE MATTER OF DENNISON COURT, 202 REGENTS PARK ROAD, SHIRLEY,  
SOUTHAMPTON ("the Property")

BETWEEN:

**Mr L G HUTCHINGS & OTHERS**

Tenants/Applicants

- and -

**H W SHATTOCK**

Landlord/Respondent

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**REASONS FOR ORDER**

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1. **Background**
  - 1.1 This was an application by Mr L G Hutchings, tenant of Flat 20 at the Property, on behalf of himself and all other tenants of the Property, save for Flats 11 and 22 which are currently unoccupied and in respect of which the High Court in proceedings between the Respondent and his son has appointed a Receiver. He seeks an order under Section 24 of The Leasehold Reform Housing and Urban Development Act 1993 ("the Leasehold Reform etc Act") for the appointment of a Manager in respect of the Property on the ground that the Landlord has failed to keep and produce proper accounts in respect of service charges for all years since 1999/2000 in breach of the lease and in breach of the Service Charge Residential Management Code approved by the Secretary of State under Section 87 of the Leasehold Reform etc Act. The Applicant also complained that the Management Charges charged by the Landlord/his agent were excessive and this application was made in tandem with an application under Section 27A of the Landlord and Tenant Act 1985 relating to the reasonableness of service charges.
  - 1.2 Whilst no formal notice of the application under Section 22 of the Landlord and Tenant Act 1987 had been served on the Landlord and his then agent, Mr Hutchings did write to the Landlord with a copy being sent to his then management agent on 22<sup>nd</sup> June 2005. This letter

effectively contained all the elements required by Section 22. Following the hearing the Tribunal wrote to the Respondent to ask whether he had any representations to make on this point. In reply the Respondent took no point about the validity of the letter of 22<sup>nd</sup> June 2005 constituting a Section 22 Notice. Further, he re-iterated that he did not object to the appointment of a Manager. In all the circumstances, therefore, the Tribunal decided that it was enabled to proceed to consider the application under Section 24 of the 1987 Act.

- 1.3 The Respondent failed to produce any accounts to the Tribunal showing the income to and expenditure from the service charge accounts for any of the years in question or produce any invoices or bank statements despite an order for such disclosure having been made by the Tribunal on 16<sup>th</sup> August 2005. In this, however, the Tribunal is not alone because from correspondence received by the Tribunal from the Receiver appointed by the High Court in respect of flats 11 and 22 it would appear that the Court appointed forensic accountant investigating the service charge accounts for the Property has thus far been unable to secure disclosure of accounting documentation to verify budgeted accounts for service charges levied upon the lessees. The Respondent is elderly and in poor health. He, or rather his company, managed the Property during the accounting year 2002/2003. Otherwise, the Property was managed by the Respondent's agents, one of whom is apparently facing committal proceedings in the High Court for having failed to produce documentation to verify the service charges required from the tenants.
- 1.4 The hearing of the application was held at the Civic Offices, Southampton, on 18<sup>th</sup> November 2005. Those present were lessees Mr Hutchings, Mr Pearson of Flat 7 and Mrs McNichol of Flat 18. There was no appearance from the Landlord or any of his agents. The Landlord had written to the Tribunal to say that he was too ill to attend. In view of his age and infirmity there was no realistic prospect that the Landlord's health would improve and also in view of the fact that the Landlord had consented to the appointment of a manager in writing to the Tribunal, it was decided to proceed with the hearing. Mr Roger D Denford FRICS, the Applicants' proposed manager, also attended the hearing.

## **2. The Inspection**

- 2.1 The Tribunal inspected the Property prior to the hearing on 16<sup>th</sup> August 2005. It is a modern purpose built block of 27 flats situated close to Shirley High Street and the centre of the City of Southampton is not far away. The building and grounds were in good condition. The building is of brick under a tiled roof. The wooden windows were double-glazed and the guttering is plastic. The paintwork is in good condition, having been painted in 2002/2003. There is unallocated car parking for 17 vehicles in a tarmac'd car park at the rear and side of the Property. The garden is well-tended and the common parts kept clean and tidy, although some interior painting to the corridors and stairwells would be desirable.

### 3. The Evidence

3.1 It was the Applicant's evidence that since 1999 no proper accounts for the income to and expenditure from the service charge account had ever been produced by the Landlord or his agent. What happened was that each year a budget for expenditure would be produced and sent to each lessee. They would duly pay what was asked of them but then they would never receive any account after the end of the financial year showing the income and expenditure in respect of service charges. The Landlord has now said that he is unable to produce audited accounts or even the documentation to support the accounts and says it is up to his agents or the Receiver appointed by the High Court to produce the information.

3.2 The Tribunal was referred by Mr Hutchings to correspondence whereby he, on behalf of the tenants, requested proper accounts and copy invoices to verify the same on a number of occasions but without success. The forensic accountant appointed by the High Court has apparently not had any greater success.

3.3 The Applicant produced documentation showing the budgeted amounts requested for management fees over the years since 1999. For management fees the following was requested and paid:-

1999/2000	£181.86 per flat
2000/2001	£175.25 per flat
2001/2002	£177.50 per flat
2002/2003	£236.00 per flat
2003/2004	£343.00 per flat
2004/2005	£343.00 per flat
2005/2006	£343.00 per flat

3.4 The Applicant produced evidence of the charges of three local firms of surveyors which ranged from £80 plus VAT to £150 plus VAT per flat for the basic management fee, which would have covered the sort of work carried out by the Landlord and his agent over the years since 1999.

3.5 The Landlord's last managing agent had resigned as from 5<sup>th</sup> September 2005 and currently therefore no-one is managing the Property other than the residents who are keeping the services of the gardener and cleaner going and are attending to day-to-day matters.

- 3.6 The Landlord was not present but in correspondence with the Tribunal at no time did he produce any audited accounts or any invoices or accounting records relating to payments to or from the management account.

#### **4. The Leases**

- 4.1 Clause 3 of the Eighth Schedule of the leases states that:-

"The lessor shall keep proper books of accounts of all sums expended by it on the matters specified in Part II of this Schedule in each year and an account shall be taken on the Thirty-first day of March in each year (or such other date as the lessor may from time to time determine) of the said sums so expended since the date on which the last preceding account was taken."

#### **5. The Law**

- 5.1 Under Section 24(1) of the Leasehold Reform etc Act "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.

- 5.2 Section 24(2) sets out the circumstances under which a tribunal may make such an order. They are:

- (a) where the tribunal is satisfied:
    - (i) that any relevant person 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 .....  
and that it is just and convenient to make the order .....
  - (ab) where the tribunal is satisfied:
    - (i) that unreasonable service charges have been made .....
- and

- (ii) that it is just and convenient to make the order .....

and

- (ac) where the tribunal is satisfied:

- (i) that any relevant person 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 (Code of Management Practice).

5.3 The Service Charge Residential Management Code (approved by the Secretary of State under the 1993 Act above) requires (by paragraph 5.12) that the manager should:

"keep properly written up general records:

- (a) to show your dealings with Client money received, held or paid; and
- (b) to show all your other dealings through Client Bank Accounts."

By Paragraph 5.13 the manager should:

"keep properly written up records in respect of each client to:-

- (a) show all your dealings with client money received, held or paid on behalf of that client, and
- (b) enable the current balance of that account to be shown."

By paragraph 5.17 the manager should:

"send a written account to [the client](or as he directs) for all client money held, paid or received ..... at appropriate intervals .....but not less than once a year."

By Clause 11.4 the manager should

"arrange for service charge accounts to be audited annually and for copies to be made available to all those contributing to them."

## **6. The Determination**

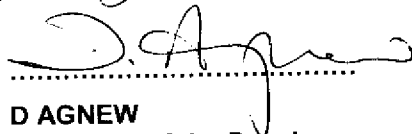
- 6.1 It was clear to the Tribunal that the Landlord was in breach of his obligations in the lease by failing to keep proper books of accounts of expenditure in respect of the Property and had failed to take an account at or shortly after the year-end in each year. If proper books of accounts and records had been kept they had never been produced to the tenants, the Tribunal or, seemingly, the High Court insofar as the years 1999 to 2005 were concerned.
- 6.2 The Tribunal found that although budgets were produced each year and the amounts contained within those budgets paid by the tenants, the Landlord never (since at least 1999) produced an account showing what had been spent against each item requested and it was not known by the tenants how much of a surplus of funds was in the bank account to be carried forward to the following year.
- 6.3 The Tribunal found that Mr Hutchings requested proper accounts and copy invoices to verify that the amounts requested to be paid were properly requested and payments made and to try to establish what, if anything, should have been left in the bank account at each year end, but the Respondent had failed, either through himself or his agent, to produce the documentation.
- 6.4 The Tribunal found that the Landlord and/or his agents were for these reasons in breach of the provisions of the Code set out at 5.3 above, and in breach of clause 3 of the Eighth Schedule of the leases.
- 6.5 The Tribunal found that the amounts requested by the Landlord or his agents for management fees for all the years since 1999 were excessive. The detailed reasons for this finding are set out in separate reasons of the Tribunal in respect of the application under Section 27A of the Landlord and Tenant Act 1985.
- 6.6 The Tribunal accepted that there was no one currently in charge of managing the Property on behalf of the Landlord.
- 6.7 The Tribunal therefore found that the grounds were established under Section 24(2) (a), (ab) and (ac) for the appointment of a manager and that it is just and convenient to make such an order. An order will, accordingly, be made.

## **7. Appointment of Manager**

- 7.1 The Tribunal had the opportunity of questioning the manager proposed by the Applicants, namely Mr Roger D Denford FRICS of Denford & son of 54 London Road, Southampton, about his experience and how he would set about managing the Property. He has many years experience of managing flats. He supervises a team of four managers. They manage 150 blocks of flats which range from 8 or 12 flats to 96 in number in the block. The Tribunal was satisfied that Mr Roger D Denford would be an appropriate person to appoint as Manager and Receiver for the Property and so orders.

Dated this 12<sup>th</sup> day of December 2005

Signed:



**D AGNEW**  
**A Member of the Panel**  
**Appointed by the Lord Chancellor**

**THE SOUTHERN AREA RENT ASSESSMENT PANEL  
AND LEASEHOLD VALUATION TRIBUNAL**

Case Number: CHI/OOMS/LAM/2005/0007

**IN THE MATTER OF:**

**DENNISON COURT, 202 REGENTS PARK ROAD  
SHIRLEY, SOUTHAMPTON ("the Property")**

**B E T W E E N :**

**Mr L G HUTCHINGS & OTHERS**

**Tenant/Applicants**

- and -

**H W SHATTOCK**

**Landlord/Respondent**

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**ORDER FOR THE APPOINTMENT OF A MANAGER  
AND RECEIVER OF THE PROPERTY**

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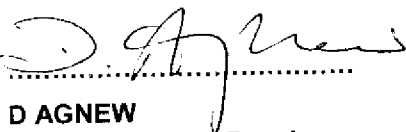
1. That Mr Roger D Denford FRICS of Denford and Son, 54 London Road, Southampton, ("the Manager") be appointed Manager and Receiver of the property with effect from 15<sup>th</sup> December 2005.
2. That he shall manage the property in accordance with:
  - (a) the respective obligations of the landlord and the lessees under the various leases by which the flats at the property are demised 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;
  - (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; and
  - (c) granting, refusing or otherwise dealing with all applications for consent in relation to dealings, alterations or any other matter requiring the consent of the Landlord under the leases.



3. That he shall receive all sums whether by way of ground rent, insurance premiums, payment of service charges or otherwise arising under the said leases.
4. That he shall account forthwith to the freeholder for the time being of the property for the payments of ground rent received by him and shall apply the remaining amounts received by him (other than those representing his fees specified hereafter) in the performance of the landlord's covenants contained in the said leases.
5. That he shall make arrangements with the present insurers of the building to make any payments under the insurance policy presently effected by the Respondent to him.
6. That he shall be entitled to the following remuneration (which for the avoidance of doubt shall be recoverable as part of the said service charges in accordance with the leases) namely:
  - (a) a basic annual fee of £80 plus VAT per flat for performing the duties set out in paragraph 2-5 of the Code; and
  - (b) in respect of the management of major works of maintenance or repair at the property he shall negotiate an appropriate fee for the work to be done with the tenants. In default of agreement either the Manager or any tenant has permission to apply to the Tribunal for a further Order.
7. The Respondent shall arrange for the funds standing to the credit of the Dennison Court bank account together with all books and records of accounts, invoices and bank statements to be handed over to the Manager forthwith.
8. Any party or the Manager shall each be at liberty to apply to the Leasehold Valuation Tribunal for further directions as to the implementation of this Order.

Dated this 12<sup>th</sup> day of December 2005

Signed:



**D AGNEW**  
**A Member of the Panel**  
**Appointed by the Lord Chancellor**

**THE SOUTHERN AREA RENT ASSESSMENT PANEL  
AND LEASEHOLD VALUATION TRIBUNAL**

Case Number: CHI/OOMS/LAM/2005/0007

**IN THE MATTER OF**

**AN APPLICATION UNDER SECTIONS 27A AND 20C OF  
THE LANDLORD & TENANT ACT 1985**

**B E T W E E N :**

**Mr L G HUTCHINGS & OTHERS**

**Applicants/Leaseholders**

- and -

**H W SHATTOCK**

**Respondent/Landlord**

**PREMISES:**

**Dennison Court  
202 Regents Park Road  
Shirley, Southampton  
(the Premises)**

**HEARING:**

**16<sup>th</sup> NOVEMBER 2005**

**TRIBUNAL:**

**D Agnew, LLM Chairman  
D L Edge, FRICS  
S Griffin, LLB**

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**REASONS FOR ORDER**

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**1. Background**

- 1.1 This is an application by Mr Hutchings on behalf of himself and all the leaseholders of flats at the Premises save for Flats 11 and 22, under Sections 27A and 20C of the Landlord and Tenant Act 1985 for an order as to the reasonableness of service charges for the Premises for the years 1999 to 2005 and for an order that the Landlord's costs of responding to this application should not be added to future service charges. Mr Hutchings resides at Flat 20. He has only owned his property since 27<sup>th</sup> March 2005 but he has been the driving force behind the attempt to put the financial affairs and management of the Premises on a sound basis.

- 1.2 The Premises are a purpose built block of 27 flats constructed in 1991, 18 of which are 1-bedroom and 9 are studio flats. The leaseholders are all over 55 years of age.
- 1.3 The Landlord, Mr Shattock, is an elderly gentleman of 83 years and in poor health. Over the years there have been different arrangements for the management of the Premises. From 1999-2002 Bargate Estates Limited were the Landlord's Managing Agents. For the year 2002-2003, the Landlord's own company, Lexa Management, dealt with the management of the Premises. A Mr David Ricketts of Poole Bay Property Management, and Allen Estates then took over the management until 1<sup>st</sup> April 2005 when Miss McKendrick of Bourne Management was appointed. She terminated her involvement in the management of the Premises as from 5<sup>th</sup> September 2005. Since that date the day-to-day management tasks have been carried out by the leaseholders without any manager appointed by the Landlord.
- 1.4 The Tribunal had received correspondence from Messrs Trevanions, solicitors, copies of which had been sent to the parties, wherein they advised the Tribunal of a substantial High Court action between the Respondent and his son concerning various properties of which the Premises was one. In the course of these proceedings Mr Marrow of Trevanions had been appointed as a Receiver for Flats 11 and 22 (one of which is currently empty and the other occupied by an assured tenant under an agreement with the Respondent's son). Furthermore, in order to try to establish the financial situation regarding the Premises and extent of the liability of those two flats for service charges, the Court had ordered the appointment of Mr M Mason of BDO Stoy Hayward, Chartered Accountants, as a forensic accountant to prepare a report for the court. In the meantime, the High Court has ordered that the Receiver is to make no payment in respect of the request for payment of service charges received for the years 2003/2004, 2004/2005 and 2005/2006 until the Receiver can verify the budget figures for those years or is otherwise satisfied that they represent reasonable management and service charges.

## **2. The Inspection**

- 2.1 The Tribunal inspected the Premises immediately prior to the hearing on 16<sup>th</sup> November 2005 and found it to be in good condition. It is constructed of brick under a tiled roof. The windows are double-glazed in wood frames which have been treated with a preservative. There is a small garden at the front and rear of the Premises which was well tended, neat and tidy. The common areas were clean and tidy. Indeed, the cleaner was at work, vacuuming the corridors, during the inspection. The internal decoration, where the walls are plastered, is a little tired and some attention is needed to repair the carpet in the ground floor corridor where it is currently taped up for safety. The external side door was in need of replacement. The guttering is plastic and in good condition. There is a rear tarmac'd area and parking for 17

vehicles in unallocated spaces. The whole of the Premises has been well-designed for low maintenance.

### **3. The Hearing**

3.1 The hearing took place at the Civic Offices, Southampton, on 16<sup>th</sup> November 2005. Those present were: Mr Hutchings (Flat 20), Mr Pearce (Flat 7) and Mrs McNichol (flat 18). Also present, for the purpose of an application by the Applicants for the appointment of a manager, which said application was heard at the same time as this application, was Mr Roger Denford, FRICS, who was the Applicants' choice of manager if the Tribunal were to agree to appoint one. There was no appearance by the Respondent or any agent or solicitor on his behalf.

3.2 The Tribunal first considered an application by the Landlord that, on the grounds of his ill-health, this application should be adjourned until the Spring of 2006. He had written to the Tribunal to say that he had serious heart disease, had been house-bound since June 2005, his breathing was restricted, and he found walking most difficult. The Tribunal had received a letter from the Respondent's doctor confirming that he is hypertensive and that he had suffered a heart attack in 2001. He reported that he had had a "previous collapse" after attending court "over two years ago" and that the doctor felt that there "is no compelling reason for him to attend".

3.3 The Tribunal decided that it would proceed with the application for the following reasons:-

- (a) In view of the Respondent's age and health condition it was not likely that the situation would be any better in the Spring of 2006 than it is now. The Respondent said himself that he had been house-bound since June of this year, during the good weather of Summer. It was unlikely, therefore, that the Respondent would be able to attend a hearing at any time.
- (b) There was no reason why the Respondent could not have appointed an agent or a lawyer to represent him at the hearing.
- (c) Miss McKendrick had written to the Tribunal on behalf of the Landlord to provide the Tribunal with as much information as she or the Landlord could provide with regard to the service charge years in question.

### **4. The Leases**

4.1 By clause 1 of the leases, the flats were demised for a term of 125 years from 25<sup>th</sup> December 1991. The lessees covenanted to pay the ground rent and secondly, "by way of further or

additional rent a sum equal to the amount specified in paragraph 20 of the Sixth Schedule .....

4.2 By clause 3 of the lease the lessor covenanted to "observe and perform the covenants and obligations on its part set out in the Seventh Schedule" and "Part 1 of the Eighth Schedule ....."

4.3 By clause 20 of the Sixth Schedule it is stated that "the lessee shall upon demand contribute and pay and shall keep the lessee indemnified from and against a proportion of all costs charges and expenses referred to in or incurred in respect of any matter or matters referred to in the Seventh Schedule hereto and the Eighth Schedule hereto such proportion to be computed on the formula 1/27".

4.4 By clause 21 of the Sixth Schedule the lease provides that the lessee shall pay to the lessor on account of the lessee's obligations under clause 20 of this Schedule an advance amounting:

(a) .....

(b) on the said next ensuing quarter day and on each usual quarter day thereafter ..... or longer intervals as the lessor shall determine from time to time during the remainder of the term hereby granted an amount determined and notified by the lessor pursuant to Clause 1 of Part 1 of the Eighth Schedule ....".

4.5 By clause 3 of the Seventh Schedule of the lease the Lessor is required to insure the buildings comprised in the Estate.

4.6 By clause 7 of the Seventh Schedule the Lessor is required to "keep the Reserved Property including the grounds drive paths forecourts boundary walls fences and hedges casual parking areas drying and dustbin areas halls stairs landings and passages and windows thereof properly cleaned and in good order", keep it adequately lighted and "keep the gardens lawns trees and shrubs properly cultivated and planted ....".

4.7 By clause 1 of Part 1 of the Eighth Schedule it is provided that "the lessor shall be entitled to apply to the Lessee for payments on account of the contributions and payments referred to in clause 20 of the Sixth Schedule ....."

4.8 By clause 2 of Part 1 of the Eighth Schedule it is provided that any moneys not expended during that year shall be held by the Lessor on trust to expend them in subsequent years and subject thereto on trust for the lessee absolutely.

4.9 By clause 3 of Part 1 of the Eighth Schedule it is provided that "the lessor shall keep proper books of accounts of all sums expended by it on the matters specified in Part II of this Schedule in each year and an account shall be taken on the Thirty-first day of March in each year .... of the said sums so expended since the date on which the last preceding account was taken".

4.10 Part II of the Eighth Schedule sets out the types of expenditure which the Lessor can recoup from the lessees by way of the service charge. This includes the payment of insurance premiums, the cost of employing professionals in connection with carrying out the Lessor's obligations under the lease, expenditure on rates, taxes and other outgoings, the cost of repair, maintenance, decoration, cleaning, lighting, carpeting, furnishing and running the Reserved Property and the cost incurred by the Lessor in the running and management of the property.

## **5. The Law**

5.1 Under Section 27A of the Landlord and Tenant Act 1985 the Leasehold Valuation Tribunal may determine whether a service charge is payable and, if it is, determine:

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

5.2 By Section 19 of the 1985 Act service charges are only claimable to the extent that they are reasonably incurred and if the services or works for which the service charge is claimed are of a reasonable standard.

## **6. The Evidence**

6.1 Notwithstanding that at a pre-trial review the Tribunal had ordered (inter alia) the Respondent to file and serve a Statement of Case by 6<sup>th</sup> November 2005 to include, exhibited thereto, accounts showing income and expenditure for each of the service charge years since 1999 and details of the budget for expenditure for 2005-2006, the Respondent had not filed a

proper statement of case and the financial information supplied had been very limited. The Respondent had written to say he was not able to produce documents or information for the period when his agents were in charge of management. There were budgets for all the years in question but apart from the year 2002/2003 no statements or audited accounts to show whether the money that had been budgeted for had been spent and, if so, how much and on what items, or whether there had been any expenditure that had not been budgeted for. There was no statement to show whether there was a surplus of income over expenditure and, if so, what that surplus was and how much therefore carried over to the next year. The income and expenditure statement for 2002-2003 was not certified or audited and there were no supporting invoices. There was no information as to what was in the Dennison Court bank account and how it had been arrived at. Miss McKendrick had produced an income and expenditure account for the period 1<sup>st</sup> January 2005 to 3<sup>rd</sup> September 2005 (even though she had not been appointed until 1<sup>st</sup> April 2005) and a balance sheet which showed that as at 3<sup>rd</sup> September 2005 there was cash at the bank of £9,350.78.

- 6.2 Mr Hutchings' evidence was that each year the leaseholders would receive a budget for the coming year and they would pay what was asked of them. They never subsequently received any accounts showing what had been spent and for what. He had requested this information from the landlord and/or his agent. There were a number of letters exhibited to the Applicants' Statements of Case which expressed dissatisfaction as to the service the leaseholders were given by the management company and in which were contained requests to see invoices for expenditure so that the amounts sought on account of service charges could be assessed as to their reasonableness.
- 6.3 The Tribunal was also referred to correspondence relating to the High Court proceedings, the possible application for the committal of Mr Ricketts for having failed to produce the information or documentation to assist in a verification of the financial situation relating to the management of the Premises.
- 6.4 The Applicants challenged every item of budgeted expenditure for all years from 1999 to-date. In most cases, however, this amounted to simply requiring the Landlord to justify the expenditure charged rather than any complaint that no expenditure had been incurred in respect of any item or that the budgeted figure was too high for the service received. There was some evidence to the effect that there was a period when the gardening was not very satisfactory. On the other hand there was evidence that one resident, at least, withheld payment of the service charge requested of him because of gardening not being done but then paid it when his complaint was addressed. The main complaint by the Applicants was as to the amount of management charges. Very little management was required or provided and the amounts being charged were excessive they said.

6.5 The budgeted expenditure requested for each year and the amount determined by the Tribunal as reasonable is set out in the Schedule attached hereto.

6.6 The Tribunal heard evidence that the Landlord's building company had carried out external painting to the windows of the Property in 2002. Although the proposal to paint is mentioned in the 2001/2002 budget document at an approximate cost of £5,000, this item does not appear in any of the budget figures for which payment was requested from the leaseholders and there was no evidence that the leaseholders had ever received a demand for payment in respect of this item.

## **7. The Determination**

7.1 The Tribunal's task had been made very difficult due to the dearth of evidence before it. There was no point, however, in adjourning the case for further evidence to be adduced because the Respondent had made it clear that there was nothing further he felt he could do to provide the Tribunal with more evidence. The Tribunal, therefore, had to do the best it could with hardly any evidence to go by.

7.2 The Tribunal was tempted to conclude that, as the Respondent had been unable to justify any of the expenditure it had claimed from budgeted service charges over the years that it would find that all the moneys claimed were unreasonable and should be repaid by the Respondent. On the other hand, the leaseholders had had the benefit of services such as insurance cover, gardening and cleaning over the years. The Tribunal decided, therefore, that it would try to assess the reasonableness of each item which had been budgeted for over the years since 1999. It also had to be borne in mind that the Applicants had no specific complaints about the services supplied other than the cost of management and gardening for a period.

7.3 As far as the £5,000 for the cost of painting the exterior of the premises in 2001/2002 is concerned, the Tribunal found, on the evidence before it, that payment had never been demanded from the lessees. By virtue of Section 20 (B)(i) of the Landlord and Tenant Act 1985, it is now too late to do so as more than 18 months have elapsed since the work was carried out. In any event, the Tribunal was told and it accepted that there had been no consultation in accordance with Section 20 of the 1985 Act before the work was carried out. In all the circumstances the Tribunal found that it would be unreasonable now for the lessees to be charged for this work and the Respondent will not be able to recover this cost from the lessees.

7.4 The Tribunal decided that it would not disturb the amounts budgeted for buildings insurance, lift maintenance, door entry maintenance, the charge for electricity to the common parts, for



general maintenance or water charges for any of the years 1999/2000 to 2004/2005 inclusive. The amounts involved seemed reasonable in each case.

7.5 The budget figure described as "program events" was more appropriately to be regarded as a contingency fund. The figures were very modest and were not unreasonable.

7.6 The following items were considered by the Tribunal to be unreasonable:-

- (a) The secretarial charges. These should have been included in the management fee.
- (b) Accountancy charges. There was no evidence that an accountant had ever audited or certified the accounts or had provided any other service to the Landlord which could properly be reclaimed from the lessees.
- (c) "Legals". There was no evidence of any legal fees having been incurred.
- (d) "Freeholder costs". These should have been included in the management fee.

7.7 The budget figures for gardening and cleaning were found to be reasonable save for the year 2004-2005 when the person carrying out this work was charging for time taken to travel to Southampton from Poole. It was unreasonable for the lessees to have to bear this additional cost. The figure for that year would therefore be, in each case, £30 per flat.

7.8 The Tribunal found that the amount budgeted for management fees for the years 1999-2000 to 2004-2005 were unreasonable. Bearing in mind that the proposed Tribunal appointed Manager was going to charge £80 plus VAT per flat, the Tribunal decided that a figure of £75 plus VAT for the years 1999-2002 inclusive would be reasonable and for 2002-2005 £80 plus VAT would be reasonable.

7.9 The consequence of the foregoing findings by the Tribunal is that the sum of £36,781.56 is due to be refunded by the Respondent to the lessees. The detail of the Tribunal's determination is set out on the attached Schedule. The total overpayments for the years 1999/2000 to 2004/2005 in respect of each flat for Gardening, Cleaning, Secretarial costs, Accountancy, Management and Freeholder costs comes to £1,362.28. As there are 27 flats the total overpayment amounts to £36,781.56 and the Tribunal finds that the Lessor is liable to reimburse the Lessees that sum, assuming that payments in respect of all 27 flats have been made out of the Dennison Court bank account, notwithstanding that contributions from Flats 11 and 22 have not been received for 2003/2004 and 2004/2005. If, when the bank account has been examined, this assumption is found to be incorrect an adjustment will need to be made to the figure of £36,781.56. Any overpayment for other service charge items such

as "General Maintenance" or "Programme events" will simply have resulted in the Dennison Court bank account being credited with the surplus amounts.

- 7.10 As far as the year 2005/2006 is concerned, the Tribunal considered that the following would be reasonable sums to be paid by the lessees per flat on account for the items concerned:-

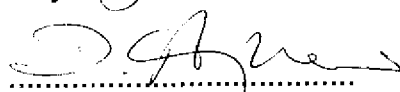
Insurance	£65
Lift maintenance	£20
Entry Door maintenance	£20
Common parts power	£35
Gardening	£40
Cleaning	£40
Management fee	£100
General maintenance	£40
Legal/professional	£14
Accountancy	£20
Water	£100
	-----
	£494 for the year
	=====

- 7.11 It follows that "Freeholder's costs" should be deleted from the amount requested.
- 7.12 It appeared that Bourne Management were seeking to charge a management fee for the work entailed in dealing with this application to the Tribunal. This firm was the Landlord's Managing Agent. Any fees that firm seeks to charge should be charged to the Respondent and not to the lessees in the first instance. The Tribunal determined that it was unreasonable for the Landlord to pass on to the Lessees Bourne Management's fees for dealing with this Application for the reasons set out in paragraph 7.13 below and the Tribunal has determined that only £100 per flat is a reasonable budget figure for management fees for that year.
- 7.13 The Tribunal decided that the Landlord should not be able to charge the cost of this application to the service charge account and that the Applicants' application under Section 20C of the 1985 Act should succeed. This is because the Landlord has only himself to blame for this application by having failed to provide proper accounts and documents in support so that the lessees know on what their money has been spent and how the moneys standing to the credit of the Dennison Court bank account have been arrived at.
- 7.14 Finally, all the service charges have been paid as demanded apart from Flats 11 and 22. As a result of the Tribunal's decision on the reasonableness of the sums demanded a refund is

due from the Respondent. To whom that refund is due is a more difficult question. Lessees will have come and gone over the period since 1999. Those who have overpaid should have a refund. It is hoped that the court appointed Receiver will now be able to pay the appropriate amount for service charge for Flats 11 and 22 for the outstanding years based on the Tribunal's determination in this case. If the Applicants require the Tribunal to establish who is entitled to what amount by way of refund the Tribunal will have to be furnished with the names of the various tenants, the dates of their ownership of their flats, their current addresses and confirmation of which years' service charges have been paid by them. The Applicants therefore have permission to apply further to the Tribunal for an order as to who should be entitled to receive a refund and of what amount on the filing with the Tribunal of a statement setting out the required information. The Tribunal orders that any such application should be made within 3 months of the date of this decision. If further time is required an application can be made by the Applicants to the Tribunal to this effect, stating reasons as to why an extension of time is required.

Dated this 16<sup>th</sup> day of December 2005

Signed:



**D AGNEW**  
**A Member of the Panel**  
**Appointed by the Lord Chancellor**

**Appendix:     Schedule**

**THE SOUTHERN AREA RENT ASSESSMENT PANEL  
AND LEASEHOLD VALUATION TRIBUNAL**

Dennison Court, 202 Regents Park road, Shirley, Southampton

Case Number: CHI/OOMS/LAM/2005/0007

**SCHEDULE**

Legend: CI = Claimed; Reas = Reasonable

Year:	1.4.99 - 31.3.00		1.4.00 - 31.3.01		1.4.01 - 31.3.02		1.4.02 - 31.3.03		1.4.03 - 31.3.04		1.4.04 - 31.3.05		1.4.05 - 31.3.06	
	CI	Reas	CI	Reas	CI	Reas	CI	Reas	CI	Reas	CI	Reas	CI	Reas
Bldgs Ins	93.21	93.21	98.86	98.86	98.86	98.86	48.64	48.64	57.00	57.00	65.00	65.00	65.00	65.00
Lift Mtce	9.00	9.00	7.88	7.88	8.25	8.25	9.00	9.00	15.00	15.00	20.00	20.00	20.00	20.00
Door Entry Fire Alarm Lights	15.90	15.90	15.90	15.90	16.90	16.90	18.00	18.00	20.00	20.00	20.00	20.00	20.00	20.00
Common Parts Power	33.00	33.00	33.00	33.00	34.00	34.00	33.00	33.00	35.00	35.00	35.00	35.00	35.00	35.00
Gardening	31.80	31.80	32.50	32.50	34.75	34.75	20.00	20.00	30.00	30.00	40.00	30.00	40.00	40.00
Cleaning	29.66	29.66	32.50	32.50	34.75	34.75	30.00	30.00	35.00	30.00	40.00	30.00	40.00	40.00
Program Events	20.00	20.00	17.00	17.00	15.00	15.00	10.00	10.00	10.00	10.00	15.00	15.00	15.00	15.00
Gen Mtce	66.00	66.00	60.00	60.00	65.00	65.00	40.00	40.00	35.00	35.00	40.00	40.00	40.00	40.00
Water	-	-	-	-	-	-	-	-	-	-	100.00	100.00	100.00	100.00
Secretarial	30.94	Nil	32.50	Nil	34.75	Nil	37.00	Nil	40.00	Nil	40.00	Nil	40.00	Nil
Account- ant	22.42	Nil	22.42	Nil	23.00	Nil	20.00	Nil	20.00	Nil	20.00	Nil	20.00	20.00
Manage- ment	181.86	88.13	175.25	88.13	177.50	88.13	236.00	94.00	343.00	94.00	343.00	94.00	343.00	100.00
Legal	Nil	Nil	Nil	Nil	Nil	Nil	32.00	Nil	14.00	Nil	14.00	Nil	14.00	14.00
F/holder Costs	Nil	Nil	Nil	Nil	Nil	Nil	Nil	Nil	12.00	Nil	12.00	Nil	12.00	Nil
Totals:	533.79	386.70	527.81	385.77	542.76	395.64	533.64	302.64	666.00	326.00	804.00	449.00	804.00	509.00

Note: All figures are per flat

L1.DA.119895-1  
6<sup>th</sup> December 2005

