Eastern Rent Assessment Panel
Great Eastern House Tenison Road Cambridge CB1 2TR
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Residential Property
TRIBUNAL SERVICE

REASONS FOR DECISION OF LEASEHOLD VALUATION TRIBUNAL

Landlord & Tenant Act 1985 Sections 20C and 27A
Landlord & Tenant Act 1987 sections 24 and 35

Premises:	The Truman Building, Maltings Park Road, West Bergholt, Colchester, Essex CO6 3TJ
Our ref:	CAM/22UG/NAM/2003/0002
Hearing:	15 February 2004 commencing 1150 and concluding at 1720 hrs, with a break for lunch. The LVT met in private on 5 March 2004 to consider its Decision
Applicants:	Ian McKay (Flat 5) and Others (as per attached List)
Respondent:	G & O Investments Ltd
Managing Agents:	Urbanpoint Property Management Ltd
Proposed Manager:	Mr David Boyden BsC MRICS of Boydens, Surveyors
Members of Tribunal:	Mr G M Jones - Chairman Mr F W James FRICS Mr R W Marshall FRICS

Representation at Hearing

For Applicants:	MrTimothy Walker (Counsel) Instructed by Mr Brian Hughes of Hughes & Co (Solicitors)
For Respondent:	No appearance
Manager:	Not present
Interested Parties: (present at hearing)	Mr Arnold (Flat 1) Mr Nellist (Flat 16) Miss Rosetti (occupier Flat 10)

LIST OF LEASEHOLDERS AND APPLICANTS

Flat No	Plot No	Floor	Name
1*	99	GF	Ms Barbara Joyce Arnold & Ms Beverley Alison Parker
2*	100	GF	Mr Robert Henry Hughes and Ms Estelle Hughes
3	98	GF	Ms Rebecca May
4	97	GF	Mr Lloyd Wade-Jones and Mrs Amanda Wade-Jones
5*	107	FF	Mr Ian Stuart McKay (Chairman, Residents Association)**
6	108	FF	Mrs Janet Hodge
7	106	FF	Ms Joyce Cliff Wright
8*	105	FF	Ms Jane E Christy
9	115	2F	Unknown
10*	116	2F	Ms Lisa Jo Rush** & Mr Anthony Christopher Baker**
11	114	2F	Mr Malcolm Buy and Mrs Ann Buy
12	113	2F	Mrs Jan Wright
13*	122	3F	Mr Roland Jeremy Curtis
14*	121	3F	Mainstay Residential
15	95	GF	Mr Baker
16	96	GF	Mr Alexander John Nellist
17	94	GF	Mr R Hawkey & Mrs Pamela Hawkey
18	93	GF	Mr Jonathan Dye
19*	103	FF	Mr Dean Roseman
20*	104	FF	Mr John Windsor Earle
21	102	FF	Mr Kevin Rapca
22*	101	FF	Mr Ian Stewart Green
23	111	2F	Ms Katrina Anne Cooper
24	112	2F	Mr Monk
25*	110	2F	Mainstay Residential
26	109	2F	Mr Steven Bourne
27	119	3F	Unknown
28	120	3+4F	Miss Forderer
29*	118	3F	Miss Emma Thomas
30	117	3F	Unknown

The above are the identities of those leaseholders insofar as known to the Tribunal.

The flats owned by the Applicants are marked with a *.
Those Applicants present at the hearing are marked with a **.

0. BACKGROUND

0.1 The Property

The Truman Building is a Grade II listed former brewery building (actually maltings) on three floors (plus a fourth floor and an attic to Flat 28) converted into 30 flats by Berkeley Homes in about 1991. Leases were granted by the then freeholder Hunting Gate Homes Ltd to First Predator Plus Plc (probably an associated company) on 27 September 1991 each for a term of 999 years from 1 September 1991 at a peppercorn rent. The leases contemplated that the building would be managed by O M Ltd of Luton. From 1995 onwards, leases were sold off individually to owner-occupiers and investors. The first service charge was levied in accounting year 1996-7. There are other dwellings on the former brewery site, but these are not owned by the same freeholder or managed by the same management company.

0.2 The current freeholder of the building is G & O Investments Ltd, which acquired the freehold in February 1999. The shareholders in G & O Investments Ltd are Mrs Ferdous Sultana Gossain (2500) and Mr Christopher John O'Dell (2500). The sole director appears to be Mrs Gossain, though Mr O'Dell also appears to act as a director. The manager employed by G & O Investments Ltd is Urbanpoint Property Management Ltd. The shareholders in Urbanpoint are G & O Properties (London) Ltd (99) and Mrs Gossain and Mr O'Dell jointly (1). The sole director is Mr Christos Kouroubetsis and the Company Secretary Dr Sukhdeep Raj Gossain.

0.3 The shareholders in G & O Properties (London) Ltd are Mrs Gossain (2500) and Mr O'Dell (2500). The shareholders are the only directors. The Company Secretary is Mr O'Dell. It is clear that Mrs Gossain and Mr O'Dell control all these companies. In practice, Urbanpoint's principal correspondent for management issues is "Sam" Gossain, who in some letters signs himself "Director". It seems likely that "Sam" is the anglicised nickname of Dr Gossain.

0.4 Under the terms of the leases (all of which are in the same form) the tenants are liable to pay a maintenance charge and a facility charge. The maintenance charge includes costs and expenses incurred by the landlord for the building under clause 6A; reasonable costs and expenses of the landlord's managing agents; electricity to common parts of the building; reasonable provision on account of long-term expenditure; and rates, taxes and outgoings on common parts. The facility charge includes administration and management costs incurred, including costs and expenses incurred by the landlord or the estate management company for communal areas and facilities under clause 6B; maintaining common parts; employing managing agents, staff and contractors; rates taxes and outgoings on common parts; managing communal areas and facilities in accordance with the interests of good estate management; such other services and amenities as the estate management company shall properly and reasonably determine. There is no provision for a sinking fund in respect of the facility charge.

0.5 The management expenditure year runs from 1 March or such other period as the landlord shall specify in advance. The tenants are to make payments on account on 1 March and 1 September and a balancing payment to be certified by the landlord. If payments, having been lawfully demanded, are delayed, interest is payable at 20% p.a. or 4% above Barclays Bank

base rate (whichever is higher).

1. THE DISPUTE

1.1 Concern about management and service charge issues dates back almost to the start of Urbanpoint's appointment as managing agent. By a letter dated 7 June 2000 Hughes & Co raised with Urbanpoint issues relating to information required by prospective purchasers of flats. By an application dated 9 September 2003 the Applicants initially sought the appointment of a new manager under section 24(1) of the Landlord & Tenant Act 1987 (pursuant to a section 22 notice dated 12 January 2001) and a determination as regards the landlord's costs under section 20C of the Landlord & Tenant Act 1985.

1.2 Most of the grounds advanced by the Applicants to justify the appointment of a manager amounted to challenges to service charge items. Accordingly, the Tribunal gave the Applicants permission to apply under section 27A of the 1985 Act, which they duly did on 15 January 2004 in respect of the calendar years 2000 to 2003 inclusive.

1.3 It also became apparent that the Applicants wished to apply to vary the lease so as to remove the reference to a fixed interest rate of 20%, leaving interest payable at 4% above Barclays Bank base rate. Accordingly, at the hearing, the Tribunal gave permission for an application to be made under section 35 of the Landlord & Tenant Act 1987 (as amended).

2. THE ISSUES - GENERALLY

2.1 The Applicants challenge the service charges from 2000 to 2003 generally. They complain of lack of consultation and of inadequate information about the basis of the service charges. In particular, they complain of non-compliance with section 20 of the 1985 Act in relation to major refurbishment works undertaken in 2001. They question whether Urbanpoint are entitled to raise additional or revised interim service charges. They are concerned about Urbanpoint's apparent failure to hold service charge monies in a separate trustee account. They dispute management, legal and professional fees and interest charges. At the hearing the Applicants focused on the issues referred to in Counsel's skeleton submissions.

2.2 The Applicants say that Urbanpoint's management has been inadequate and a new manager should be appointed. They propose Mr David Boyden BsC MRICS of Boydens, Surveyors. Boydens are experienced in managing blocks of flats and this is Mr Boyden's field. The balance of the maintenance fund held by Urbanpoint should be paid over to the new manager for the benefit of the tenants. The provision in the leases for interest charges at 20% p.a. are unreasonable and should be deleted. A rate of 4% above Barclays Bank base rate is not unreasonable and is fair to both parties.

2.3 The detailed issues litigated before the Tribunal will be apparent from the summary of

evidence and arguments set out below. We make it clear that we do not in this Decision intend to recite all the evidence and arguments, merely to reflect the important evidence and the principal arguments and to explain the basis for our decision on each disputed issue. We have, nevertheless, taken into account all the arguments and the evidence, documentary and oral, laid before us.

3. THE DETAILED ISSUES - EVIDENCE AND ARGUMENTS

Inspection

3.1 The Tribunal undertook an inspection on the morning of the hearing. The members inspected the building externally and visited Flat 10 and Flat 5. This enabled the Tribunal to see the communal grounds and parking areas and a good deal of the common parts and to test the qualities of the lift in the main stairwell (serving Flats 1 to 14). The members also inspected the ground floor lobby of the secondary stairwell serving Flats 15-30.

3.2 The building is a complex structure, which is likely to prove expensive to maintain. Part of it is very high, leading to problems gaining access to some wall and roof areas. It appeared to be generally in reasonable order, though the standard of recent external works was not all that high. For example, the external rendered wall areas had recently been painted, but without removing ivy clinging to one flank wall. The decorators had simply painted around the edges of the ivy. Nor was the standard of grounds maintenance very high. There is not a great deal of gardening to do. Very recently, the shrubs were trimmed. But there was rubbish and debris beneath the shrubs and weeds growing through gravel and paving.

3.3 The entrance halls and landings are fairly utilitarian. The lift used by the members of the Tribunal was small, old-fashioned and difficult to operate. The entry phone system in the secondary stairwell does not work. The top of the entrance porch (visible from within Flat 5) is an asphalt-lined flat roof with parapets, draining via a single drain in one corner. This was covered in pine needles from overhanging trees. The falls to the drain are poor. There are extensive water stains in the porch below the gully, where blockages or overflows have occurred at some time in the past. The panel for the entry phone system is in this area, lending support to the Applicants' account of the entry phone system failing on occasions owing to water penetration. The flats vary widely in size and layout. Internal finishes are to a reasonable but modest standard. There is a structural problem in Flat 10 as a result of which water penetrates above the large bay windows.

Witnesses and other evidence at the Hearing

3.4 The Tribunal heard from Mr McKay and from Mr Nellist of Flat 16. Reference was made to numerous documents in the trial bundle and to written statements from various tenants and occupiers. Argument was advanced by Counsel on behalf of the Applicants, with the support and assistance of Mr Hughes. The Respondent landlords and Urbanpoint Limited did not appear and were not represented.

The Service Charge Regime

3.5 The Applicants contend that the interim service charge demands made by Urbanpoint were unlawful because they were made on 1 January and 1 July, rather than on 1 March and 1 September as specified by the lease. Although the landlord is entitled to specify alternative dates, there is no evidence that this was done. Moreover, an additional demand, for which the lease makes no provision, was made on 17 April 2001. Interest and penalties were then applied to tenants who failed to abide by the landlord's unlawful payment regime. This is exemplified by the documentation relating to Flat 16 (Mr Nellist).

3.6 There is indeed no evidence of a separate communication giving notice that the service charge payment dates were to be altered. However, in the judgment of the Tribunal the first service charge demand made clear the landlord's intentions. The tenants would have been entitled to challenge that demand but did not in fact do so. Arguably, they waived compliance with the provisions of the lease, though it is not necessary for the Tribunal to make a finding on that issue. They could not challenge subsequent demands because by then they knew what dates the landlord proposed to adopt.

3.7 It appears that demands were made during 1999 and went unchallenged, as regards timing. Certainly, a statement of account dated 7 February 2000 for year ending 31 December 1999 and related correspondence refer to service charges previously billed. The first interim demand for 2000 was dated 12 July 2000. The service charges for 1999 are not in dispute. Thus in the judgment of the Tribunal, the landlord through Urbanpoint had given due notice by the time of the first disputed demand.

3.8 As regards the interim demand dated 17 April 2001 (which related to the cost of major works), the Tribunal concludes that there is no provision in the lease for such a demand. However, Urbanpoint was entitled to make a further interim demand in July 2001 and did so by notice dated 2 July 2001. In the judgment of the Tribunal, that legitimated the April demand and interest (if applicable) should run from 14 days after service of that later notice.

3.9 As regards the rate of interest, the Tribunal has no power to interfere retrospectively with the contractual provisions contained in the lease. On this topic, however, the Tribunal points out that clause 2(iv) of the lease requires the landlord to apply surpluses to the following year's service charges. Urbanpoint have not done this; instead they have allocated surpluses to reserve. In the judgment of the Tribunal this was done contrary to the terms of the lease. It follows that the service charge accounts may need to be rewritten to adjust outstanding balances and interest charges. The balance held in reserve will also be affected.

Standard and Cost of Services generally

3.10 Because of their genuine and legitimate concerns, the tenants commissioned accountants BDO Stoy Hayward to audit the service charges for 2001. The accountants reported that the expenditure was generally supported by vouchers. They could not, of course, say whether the vouchers correctly reflected services actually provided. There is no reason for the Tribunal

to doubt that the services were actually provided. However, the Applicants say that the services were of poor quality and accordingly that the costs incurred were unreasonable. The Tribunal proposes to deal with this issue for the relevant years compendiously under the heads as identified in the section 27A application.

3.11 Gardening

The sums claimed under this head are modest, having regard to the extent of the grounds. On the evidence, the Tribunal finds that the quality of the work was of a low standard. However, in the judgment of the Tribunal, the charges were not unreasonable for the services actually provided. The Tribunal declines to interfere with these charges.

(i) Cleaning of common parts

Again, the charges are relatively modest, having regard to the extent of the common parts. On the evidence, the Tribunal finds that the quality of the work was of a modest standard and on occasions poor. Nevertheless, in the judgment of the Tribunal the charges are not unreasonable for the services actually provided. As regards both gardening and cleaning, the Tribunal finds that the quality of Urbanpoint's management has been poor.

(ii) Window cleaning

Cleaning of the windows of the demised premises (the flats) is not the landlord's responsibility under the terms of the lease and none has been done. If the tenants want it done, it appears to be their responsibility to organise it. However, access to the outside of some windows is difficult and may require special equipment. It would make sense to clean the windows of the flats at the same time as those of the common parts (which are the responsibility of the landlord). It is a problem requiring proper and active management, which has not happened to date.

(iii) Buildings maintenance

Items specifically identified under this head are the maintenance of the lifts and of the entry phone systems. In a block of this size and layout, these are both very important items for the comfort and convenience of the tenants. At the time of inspection, the entry phone system and lift in the second stairwell were not working at all. There is unchallenged evidence of intermittent problems with the entry phone system and lift in the main stairwell. The Chairman had to make a minor adjustment to the mechanism in that lift before it would work. It is a relatively cheap installation of low specification. The maintenance arrangements for all the systems have broken down.

The Tribunal finds that Urbanpoint has failed over a long period to take reasonable steps to organise the maintenance of these systems or to control

the quality of service or cost of works. However, having regard to the overall costs charged to tenants, the Tribunal concludes that the charges were reasonable for the services actually provided.

(iv) Insurance

There is some evidence to suggest that the cost of insurance is high. In the judgment of the Tribunal, Urbanpoint has been guilty of very poor communication with the tenants over this issue. However, the design and construction of the building are such that repair and reinstatement are likely to be relatively expensive in relation to the amount of accommodation provided for tenants. In the judgment of the Tribunal, the evidence produced by the Applicants is not sufficient to satisfy the Tribunal that the premiums are unreasonably inflated. It is impossible to ascertain whether the quotation obtained by Boydens is "like for like".

It is, in any event, not sufficient to show that a more modest quotation can be obtained; the issue is whether the charges are reasonable. The Tribunal concludes on the evidence that the charges for insurance were reasonable. In view of the Tribunal's decision on the appointment of a manager, this may not be a problem in the future.

(v) Estate maintenance

This item is wrongly identified in the application as "Estate Management". It appears that the expenditure for 2001 was supported by vouchers. There must have been some estate maintenance. It appears from Urbanpoint's ledger that, from the second half of 2000, there was a regular estate maintenance contract with someone called "Peverel", who rendered half-yearly invoices of £1,000 or so. This is in addition to gardening and outside maintenance charges in the region of £1,000 p.a. The figures show only modest increases over the period covered by the ledger. Despite some unease on this issue, the Tribunal concludes on balance that the expenditure was probably reasonably incurred and declines to interfere.

(vi) Management and Administration

The Tribunal finds that the quality of management services was generally poor. Particular aspects of this have already been identified in this Decision. Urbanpoint's management fees amount to around £100 + VAT per flat. This is a modest figure in all the circumstances. In the judgment of the Tribunal these charges were reasonable for the services actually provided. However, the Tribunal finds that the basic management fee should cover correspondence with tenants and others; accordingly, the Tribunal would disallow any additional charges under this head.

Urbanpoint have made substantial additional charges to some tenants for "administration". To the extent that this involves sending letters and reminders in relation to service charge payments, the Tribunal finds these charges unreasonable and disallows them. The lease contains no provision for administration charges. Clause 4(8) provides for a reasonable fee for registration of notices. This is an administrative matter, but it does not form part of the service charge and does not fall within the jurisdiction of the Tribunal.

Clause 4(9) deals with the costs of section 146 notices and costs associated with the recovery of rent and service charges. Such costs appear to be included within the maintenance charge under (b) – the reasonable costs and expenses of managing agents. In order to be recoverable, costs must have been "incurred". It is not sufficient merely that the managing agents have spent time on them, unless their contract provides for a separate (reasonable) charge. As it happens, it does not appear that any such charges have, in fact, been made.

(vii) Other

For the sake of completeness, the Tribunal records that it could find no basis for interfering with other charges referred to in the section 27A application. The breakdown provided in Urbanpoint's ledger does not look in any way suspicious. In particular, the items for legal and professional fees appear to relate entirely to surveyors' fees, which are likely to arise from time to time in this type of situation. The Tribunal has sympathy with the Applicants as regards the poor quality of communication and lack of documentation in relation to various matters; but concludes on balance that the charges were reasonably incurred.

The 2001 Major Works

3.12 The Applicants argue that the Truman Residents' Association was not a recognised residents' association at the relevant time. The section 20 notices (referred to as Schedule 2 notices because section 20 of the 1985 Act was amended by Schedule 2 of the 1987 Act) were inadequate and the consultation provisions of section 20 generally were not complied with. Provision in the January 2001 service charge was premature. The need for cyclical maintenance and, in particular, for external decoration, was or should have been apparent to Urbanpoint in 1999. External decorations should have been carried out in 1998. Had the works been done sooner, there would have been less disrepair. Had a proper payment regime been enforced, there would have been money in the sinking fund to ease the burden on the tenants. The works were, in some respects, defective.

3.13 The leases provide for external decorations every three years and internal decorations every five years. It appears that external decorations should have been carried out in 1998. The Tribunal was supplied with the specification for the works, which ultimately overran by 8 weeks and cost just over £100,000 (plus professional fees). The schedule of works, prepared by Countrywide Surveyors, covers "the complete external repair and redecoration" of the building. In the judgment of the Tribunal the cost was not unreasonable in relation to the specified work (if carried out properly).

3.14 The contemporaneous correspondence shows that all parties proceeded on the basis that the residents' association was recognised by the landlord at the relevant time. Urbanpoint's management corresponded with the then Chair, Mrs Hawkey, and attended meetings of the association. It appears that Mrs Hawkey may have exceeded her authority in her dealings with Urbanpoint. But there is no evidence that Urbanpoint knew or ought to have known about that. The contractor ultimately selected (Roalco) was put forward by Mrs Hawkey, who urged Urbanpoint to use that contractor. The letter at document 17 shows that Mrs Hawkey had the basic details and that at its April 2001 meeting the residents' association supported the award of the contract to Roalco. Although copies of the estimates were not sent to tenants with the section 20 notices, in the judgment of the Tribunal they had sufficient information to assess and compare the various quotations.

3.15 The Tribunal has no jurisdiction to make a determination under section 20. The relevance to this application of section 20 is in relation only to the question whether the costs were reasonably incurred.

3.16 Document 110 lists defects reported by tenants to the residents' association. One item which is well documented is the poor drainage of the porch roof after replacement of the roofing materials. In the judgment of the Tribunal this was, insofar as it was caused by the 2001 works, a relatively minor defect. The consequences, in particular the damage to the entry phone panel, although unfortunate, were not readily foreseeable. The design does require regular attention by way of maintenance, to ensure that the roof is kept free of debris and the gully unobstructed. It does not appear to the Tribunal that the works carried out in 2001 are responsible for the design.

3.17 It appears that some areas of paintwork were poor, in addition to which the decorators painted around ivy instead of removing it. There were numerous complaints about windows being painted shut. This is a natural hazard of external decorations though, with proper care, it can be reduced to a minimum. Proper management should have ensured that the contractor returned to ease all windows affected. Carpets in communal areas were left in need of a deep clean. A defect was left above the bay windows of Flat 10. There were other minor defects.

3.18 In the judgment of the Tribunal the defects complained of were relatively minor having regard to the overall scale of the works and amounted to little more than normal "snagging". Competent and reasonably diligent management should have resolved these issues long before the Tribunal's visit. The remaining defects are a comment on management rather than on the quality of the contractor's work. The Tribunal has considered the question whether professional fees associated with the works were unreasonably incurred. There is insufficient evidence to enable the Tribunal to conclude that delay in commencement or execution of the 2001 works increased the cost of the works. Nor is there evidence to suggest that, in the end, the tenants were prejudiced by lack of consultation. The Tribunal has reached the conclusion that the standard of the works was reasonable and the cost of them (including professional fees) reasonably incurred.

3.19 There is some force in the argument that a better-planned payment regime would have eased the financial burden imposed on tenants in 2001. This reflects poorly on Urbanpoint. But all were agreed that the works needed to be done and should not be further delayed. The landlord had no fund of money for this purpose. The contractor must be paid. The Tribunal does not find any proper basis for making any financial adjustment in this respect.

Breaches of the RICS Residential Management Code

3.20 The application lists numerous alleged breaches of the RICS Code, some more significant than others. The Tribunal accepts that there were various breaches. The breaches of real concern to the Tribunal are those under paragraph 8.14 (Services – lack of consultation in relation to choice of contractors for regular repairs); paragraph 10 (Reserve Funds – failure to plan ahead and to keep funds in a separate account); paragraph 11 (Accounting for Service Charges – failure to provide proper information) and 16.9 (Insurance – failure to provide information). The Tribunal is satisfied on the unchallenged evidence that Urbanpoint was guilty of serious breaches under all those heads.

Variation of Leases – Landlord & Tenant Act 1987 section 35

3.21 The Tribunal has no difficulty in concluding that the provision in the leases for an interest rate of 20% is unreasonable in the current economic climate. That rate is currently far higher than the general level of commercial interest rates. The difference would not have been so great in 1991. The terms of the leases were probably not the subject of commercial negotiation at arm's length. The only evidence of actual interest charges incurred is from Urbanpoint, that a loan at 9% p.a. was taken to finance the Roalco contract. Provision for interest at a variable rate linked to bank base rates is likely to be much fairer. In the judgment of the Tribunal a rate of 4% above Barclays Bank base rate is reasonable.

3.22 Under section 35(2)(e) the Tribunal has power to vary the provisions of the Applicants' leases if they fail to make satisfactory provision for the recovery by the landlord company of expenditure incurred by it, or on its behalf, for the benefit of tenants. In the judgment of the Tribunal the provision for interest charges falls within the scope of section 35(2)(e). Moreover, the provisions of section 35(3A) (added by section 162(4) of the Commonhold & Leasehold Reform Act 2002) clearly apply. The lease fails to make satisfactory provision in that the provisions of the lease as regards interest rates are unfair to tenants.

3.23 The variation proposed by Mr Walker seems unnecessarily complicated and, in the unlikely event high interest base rates (above 16% p.a.) were to prevail, potentially unfair to the landlord. Accordingly, the Tribunal proposes to vary the leases by omitting from the proviso to clause 2 the words "either twenty per centum per annum or" and "whichever shall be the higher of such rates". Thus the proviso will refer to "interest at the rate of four per centum per annum above the base rate of Barclays Bank plc for the time being in force".

3.24 Obviously, in the absence of new evidence or legal argument, the same reasoning would apply to the other leases of flats in the building. However, the Tribunal has no power, on the present application, to vary those other leases. The Tribunal points out that the other leaseholders have a right to apply for variations, in which event the landlord will be at liberty to raise new arguments in opposition to any such applications.

Appointment of Manager

3.25 In view of the various management deficiencies identified above the Tribunal is satisfied that the provisions of section 24(2)(a), (ac) and (b) apply and that it is just and convenient in all the circumstances to make an order for the appointment of a manager. The Tribunal is minded to appoint Mr David Boyden BsC MRICS of Boydens, Surveyors, subject to an interview, to his consent and to agreement of appropriate terms. The proposed terms of appointment are set out in the Schedule hereto. The Tribunal is also minded to order that the balance of the maintenance fund held by Urbanpoint at the date when the appointment takes effect should be paid to Boydens, to be held in a separate account for the benefit of the tenants.

3.26 The Tribunal intends to interview Mr Boyden on 5 May 2004 or (failing that) on a date to be fixed, at which time the parties and Mr Boyden will be given the opportunity to make representations about the terms of appointment.

Costs – Landlord & Tenant Act 1985 section 20C

3.27 In the circumstances the Tribunal is minded, subject to any representations from the Respondent, to order that the costs of the landlord in defending the applications are not to be added to service charges (if indeed, any such costs were incurred). The Respondent has permission to make representations in relation to costs at the time fixed for the interview of Mr Boyden.

4. ORDERS

4.1 In the light of the above findings, the Tribunal makes only one order at present, namely:-

> **The Tribunal hereby varies the leases relating to Flats 1, 2, 5, 8, 10, 13, 14, 19, 20, 22, 25 and 29 by omitting from the proviso to clause 2 the words "either twenty per centum per annum or" and "whichever shall be the higher of such rates". Thus the proviso will refer to "interest at the rate of four per centum per annum above the base rate of Barclays Bank plc for the time being in force".**

4.2 The Tribunal will make any further orders immediately after the interview with the Manager and in the light of any representations made by the Manager or by the parties.

Geraint M Jones MA LLM (Cantab)
Chairman

SCHEDULE – PROPOSED TERMS OF APPOINTMENT OF MANAGER

1. The Tribunal appoints DAVID BOYDEN BSc MRICS of Boydens, Aston House, 57-59 Crouch Street, Colchester, Essex CO3 3EY to be Manager of The Truman Building, Maltings Park Road, West Bergholt, Colchester, Essex CO6 3TJ and grounds as comprised in freehold title EX451239 at H M land Registry ("the Property").

2. This appointment is made by the Tribunal for the benefit of the Leaseholders of Flats 1 to 30 The Truman Building and the Freeholder G & O Investments Limited of Falcon House, 257 Burlington Road, New Malden Surrey KT3 4NE.

3. The term of this appointment is two years from 1st June 2004.

4. The duties of the Manager are:-

   (a) to manage the Property for the purpose of fulfilling the obligations imposed upon the Landlord in accordance with the provisions of Clause 6 of the Lease of Flat 5 (being in form identical to the leases of all the flats) a copy of which is annexed hereto and in accordance with the RICS Residential Management Code
   (b) to collect utilise and account for the service charge monies payable by the Lessees under Clauses 2 and 4 of the Leases in accordance with the terms thereof
   (c) to make reasonable provision for future expenditure by way of a sinking fund in accordance with paragraph (d) of the maintenance charge definition
   (d) to hold all service charge monies including any provision for future expenditure in a separate account or accounts provided that any sinking fund and any other substantial balances not reasonably required (in the opinion of the Manager) for immediate purposes shall be held in an interest-bearing account
   (e) to keep all proper accounting records and to secure the preparation by a chartered accountant of annual statements of account and certificates for the purposes of Clause 2(iii) of the Leases
   (f) to produce for inspection within 14 days his professional indemnity insurance if so demanded by the Landlord or any Lessee
   (g) subject to the foregoing, to perform the above duties in accordance with the terms and conditions (save as regards remuneration and omitting item (C) on page 4) set out in his letter dated 15 February 2002.

5. The remuneration of the Manager shall be £3,120.00 per annum plus VAT (if applicable) provided that, in the event he provides additional services (such as building surveys or site supervision of contracts for major works) he shall be entitled to additional remuneration as agreed with the Chairman for the time being of the Truman Residents Association or (in default of such agreement) determined by the Tribunal.

6. The Landlord the Lessees and the Manager shall have permission to apply to the Tribunal for directions or further orders under section 24(4) and (9) of the Landlord & Tenant Act 1987.