

**LEASEHOLD VALUATION TRIBUNAL**

**CAM/26UD/NAM/2003/0001**

**The Property :** Willowdene, Mill Lane, Watton at Stone, Herts SG14 3TT  
(Title No HD215219)

**Applicants :** Nigel Holmes, 6 Willowdene †  
Joanne Ayre, 7 Willowdene ‡  
Rebecca Wainwright, 8 Willowdene  
Angela Garrard, 9 Willowdene  
Mr & Mrs Lord, 10 Willowdene  
Jane Cracknell, 11 Willowdene  
Mr & Mrs Reid, 12 Willowdene

† Joined as an Applicant at his request    ‡ Paid up, and no longer a party

**Respondent :** Stefan Kitching, GBS Estates, Lemsford House, Lemsford,  
Herts AL8 7TT

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

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Before the Leasehold Valuation Tribunal sitting at Ware, Hertfordshire on 1<sup>st</sup> October 2003

**IT IS ORDERED THAT :**

1. Ms Janet Trinnaman, of Gem Estate Management Limited, CPM House, Works Road, Letchworth, Herts SG6 1LB ("the Manager") be appointed as Receiver and Manager of the estate and premises known as Willowdene, Mill Lane, Watton at Stone, Herts SG14 3TT (Title No HD215219) ("the property") with effect from 1<sup>st</sup> October 2003.
2. She shall manage the property in accordance with :
  - a. The respective obligations of the lessor and the lessees under the various leases by which the flats at the property are demised ("the leases") and in particular, but without prejudice to the generality of the above, with regard to the repair, redecoration, and provision of services to and insurance of the property; and
  - b. The GEM Property Management Service Guide and its "Schedule A" Basis of Engagement; and
  - c. With due regard to the duties of a manager as 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 & Urban Development Act 1993.
3. She shall receive all sums whether by way of ground rent, insurance premiums, payment of service charges or otherwise arising under the leases

4. She shall :

- a. Seek the recovery from the Respondent (Mr Kitching) of the amounts tendered to him at his request by lessees in respect of ground rent and part-payment of service charges; and
- b. Account to the freeholder for the time being of the property for the payments of ground rent received by her; and
- c. Apply the remaining amounts received by her (other than those representing her or her company's fees specified in this Order) in the performance of the lessor's covenants contained in the leases.

For the avoidance of doubt, while the freehold title to the property remains *bona vacantia* and vested in the Crown all sums recovered by way of ground rent shall be held to the order of the Treasury Solicitor and applied at his direction.

5. She shall make arrangements with the present insurer of the building (if discoverable) to make any payments due under, and amend the name of the insured in, the insurance policy presently effected by or through the Respondent; and in default of there being any valid insurance she shall arrange for adequate insurance cover to be taken out in her name as Manager and Receiver of the property with a reputable insurer in respect of the risks specified in the leases and such other normal or ordinary risks as in her discretion she considers fit, ensuring that the names of all the leaseholders and their mortgagees are noted thereon.
6. She shall be entitled to be remunerated in accordance with the provisions in respect of management fees set out in Schedule A, which for the avoidance of doubt shall be recoverable as part of the service charge as defined in clause (xi) of the 1<sup>st</sup> Schedule to the leases.
7. As stated in Schedule A, the remuneration mentioned above shall be subject to payment of Value Added Tax.
8. This Order shall remain in force until 31<sup>st</sup> December 2004 unless varied, extended or revoked by further Order of the Tribunal and the Manager and every lessee shall have liberty to apply to the Tribunal for further directions.
9. Without prejudice to paragraph 8 above, this Order shall be served by the Tribunal Panel office forthwith upon the Treasury Solicitor (acting in the interest of the lessor and registered proprietor of the property) and the application shall be restored for hearing should he apply within 21 days of service of the Order upon him for it to be varied or set aside.

Dated 17<sup>th</sup> October 2003



.....  
Graham K Sinclair – Chairman  
for the Leasehold Valuation Tribunal

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**Respondent :** Stefan Kitching, GBS Estates, Lemsford House, Lemsford,  
Herts AL8 7TT

**Respondent's solicitors :** Gisby Harrison, Goffs Oak, Cheshunt, Herts

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**THE DECISION OF THE TRIBUNAL**

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Handed down : 17<sup>th</sup> October 2003

**Tribunal :** Mr G K Sinclair (Chairman), Miss M Krisko BSc (Est Man)  
FRICS, & Mr G J Dinwiddy FRICS

**For the Applicants :** Jane Cracknell, Barry Catling (representing Mr & Mrs  
Reid), & Angela Garrard

**For the Respondent :** Gary Chambers, solicitor, of Gisby Harrison

**Hearing date :** Wednesday 1<sup>st</sup> October 2003

**On 29<sup>th</sup> May 2003 the Applicant tenants submitted the following applications for determination by the Tribunal :**

- a. To determine the reasonableness of service charges levied for the property for the years 1998 – 2002 [LTA 1985, section 19(2A)]
- b. To determine the reasonableness of costs to be incurred for the property for the year 2003 [LTA 1985, section 19(2B)]
- c. For an order for the limitation of service charges arising from the landlord's costs of proceedings [LTA 1985, section 20C]
- d. For the appointment of a manager [LTA 1987, section 22]

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### Summary

1. For the reasons which follow the Tribunal is satisfied that the freehold owner of the flats at Willowdene, the subject properties, is and has been in material breach of statute law concerning the levying of service charges for residential flats and consultation in respect of substantial works, that it has attempted to breach the law on sale of the freehold reversion without first offering the leaseholders first refusal, and has breached provisions of the standard form leases. The Respondent is likely to be in breach of insurance law, having purported to insure premises in which he has no insurable interest.
2. Although the service charge demands for all years in dispute were formally withdrawn by the Respondent's solicitor shortly before the hearing, thus rendering the applications under section 19 of the 1985 Act otiose, the Tribunal considered them to be evidence material to the application for the appointment of a manager and it is satisfied, on the evidence provided by the tenants (none being forthcoming from the Respondent), that the services provided were inadequate and that the charges levied unreasonable. Works of essential maintenance are required.
3. Despite the fact that the Respondent is not the actual landlord, and that these proceedings have not been served upon the latter, the Tribunal considers that sufficient grounds have been established to justify it making an order appointing a new manager, Janet Trinnaman of GEM Estate Management Limited, and that the potential risk of the

property being inadequately insured justifies it making such an order with immediate effect, subject to provision being made for this order to be reviewed upon application by the Treasury Solicitor. As the landlord, as opposed to the Respondent, has incurred no costs in connection with these applications no order is made in respect of the application under section 20C of the Act.

### **Background**

4. The subject properties are flats within an L-shaped two-storey block of 12 flats with adjoining riverside garden and designated car parking area, developed in the 1970s and let by GBS Estates Limited, of Lemsford House, Lemsford, Hertfordshire as landlord under leases identical in format, for terms of 99 years commencing in June 1978. When in 2000 Mr Nigel Holmes was negotiating to purchase the assignment of the lease of flat 6 his solicitors, Breeze & Wyles, wrote to him on 14<sup>th</sup> July 2000, commenting that :

I have still not received confirmation from the landlord of this development that there are no major works anticipated in the next 12 months, confirmation of the current year's budget, confirmation that the insurance premium has been paid to date, and confirmation of the amount outstanding to the creditor for the reserve fund. These matters are all outstanding and are being chased by the seller's solicitors, Duffield Harrison. **I enclose a copy of a fax that was received from Duffield Harrison, showing the accounts for the last three years. It appears that these may not in fact have been issued to the sellers previously, and this is something you really must consider seriously when you purchase your property, to keep an eye on the landlord to avoid this sort of thing happening again.** [emphasis added]

5. Similar concern about the lack of break down of the "accounts", and of a failure to explain the sudden increase in the figures from 1999, was expressed by Martin Shepherd & Co, solicitors acting for Mr & Mrs Lord on their proposed purchase of Flat 12, in a letter dated 22<sup>nd</sup> March 2001.
6. No further service charge was levied until in February 2003 the Respondent, trading as GBS Estates, of Lemsford House (and with the same telephone number and e-mail address as the limited company), served upon the leaseholders of flats at Willowdene, Mill Lane, Watton at Stone, written demand for ground rent and service charges for the years 2000, 2001 and 2002. Copies of certified service charge accounts and/or receipts or other documentation relied upon in support, requested by the tenants, were not

forthcoming and correspondence never satisfactorily answered. The tenants disputed the work allegedly done on the property and charged for (eg gardening and window cleaning) and criticised the landlord's failure to comply with statutory tendering and consultation procedures under section 20 for larger items of work, in particular the crude and inexpert cutting down of all the trees on the site boundary with Mill Lane.

7. Some of the tenants decided to remit to the Respondent an amount covering only the ground rent and undisputed items (principally the buildings insurance premiums). By letter dated 16<sup>th</sup> February 2003 Ms Cracknell explained that she was disputing the service charges :

...due to failure to provide a summary or request for payment prior to 3/2/03, failure to produce accounts certified by a qualified accountant, failure to consult leaseholders or provide the required estimates for work costing a total over £1000, failure to carry out maintenance work to a reasonable standard and failure to provide receipts or other details of maintenance work that has been charged for.

Ms Cracknell also sought further information from Mr Kitching, including a schedule of when any routine maintenance work would be carried out in 2003, by whom, and at what cost. Similar letters were sent by other tenants when remitting part-payment.

8. This response by the tenants was met by abusive and threatening correspondence, followed by the issue of County Court claims by Mr & Mrs Kitching<sup>1</sup> against at least 4 "defaulting" tenants. The County Court proceedings were defended and the various courts made aware that these applications were due to be heard by the Tribunal.
9. Directions issued by the Tribunal were posted to the parties on 25<sup>th</sup> July 2003. The tenants did what was required of them by filing further details of their applications with the Tribunal office, these being received on 15<sup>th</sup> August 2003. Due to uncertainty created because the landlord identified on the leases was not the Respondent, the party actually levying demands and purporting to manage the property, paragraph 2 of the Directions Order provided that :

<sup>1</sup> Although by letter dated 20<sup>th</sup> May 2003 from Dutton Gregory, solicitors of Eastleigh, Hants, to Ms Wainwright they stated that they were instructed by GBS Estates Ltd "the organisation entitled to recover service charges and ground rent under the terms of your lease", and that the letter was to be treated as a section 146 notice

The Respondent shall [within 28 days of service of the directions upon him] :

- a. Inform the Applicants and the LVT whether Mr Stefan Kitching or GBS Estates or GBS Estates Limited is the landlord and should correctly be the Respondent to these applications
- b. If Mr Kitching/GBS Estates is either the correct Respondent or the agent for the correct Respondent, provide the Applicants and the LVT with a short *Statement in Reply to the Application*, identifying each matter which is in dispute between the parties and setting out the facts on which it relies to substantiate each of its claims. This document will be regarded as the Respondent's case.

The Respondent did not comply. Instead, by a short note faxed to the Tribunal on 1<sup>st</sup> September 2003 he stated that he would "be out of the country during the week of the date of the proposed hearing" but had freed up his diary for the whole of November in order to give the Tribunal flexibility. Implicit was a request for an adjournment.

10. By letter dated 5<sup>th</sup> September Mr Chambers, of Gisby Harrison, solicitors, wrote to the Tribunal on the Respondent's behalf, requesting an adjournment of the hearing. The grounds relied upon were that the Respondent and his son, whom he intended to call as a witness, had booked a holiday for the week of the hearing and that as the firm had only just been instructed they needed time to acquaint themselves with the file and prepare a Reply on the Respondent's behalf. The Tribunal sought further information from the Respondent's solicitors concerning when the holiday had been booked, which tenants faced County Court proceedings for their failure to pay the service charges demanded, and how any adjournment might affect them.
11. The Applicants were invited to comment upon the request for an adjournment. All who replied objected to an adjournment, on the grounds that they had all made special arrangements for work and/or child care which could not easily be unscrambled, that the request was at short notice, and that various Court proceedings had been delayed to a date following the expected date when the Tribunal would deal with the matter. A further letter dated 16<sup>th</sup> September 2003 arrived from Mr Chambers, the content of which is discussed below, but as some of the matters mentioned could be dealt with at the hearing by way of admission, and not all the tenants had replied, the Chairman invited Mr Chambers to repeat his application orally on 1<sup>st</sup> October 2003 so that all views could be canvassed. If necessary, the hearing could be treated as a pre-trial

review at which the Tribunal could endeavour to secure that the parties make all such admissions and agreements as ought reasonably to be made by them in relation to the proceedings, and record in the order made on the pre-trial review any such admission or agreement or any refusal to make such admission or agreement.<sup>2</sup>

### **The Respondent's application to adjourn the hearing**

12. By 16<sup>th</sup> September 2003 Mr Chambers had been able to make some enquiries and form a view of the file. He made a rather crucial discovery, as a result of which he considered that certain consequences were inescapable. As the information set out in that letter is highly significant, and must be compared and contrasted with that conveyed in his oral submissions to the Tribunal at the hearing on 1<sup>st</sup> October 2003, the material parts of the letter are worth quoting in full :

We act on behalf of the Respondent. We have considered the papers. We enclose Land Registry register entries of the freehold of Willowdene which shows the proprietor as GBS Estates Limited. However, the demands were made by Stefan Kitching t/a GBS Estates, ie in his personal capacity. Accordingly, the said demands which are the subject of this application, and which caused the application for appointment of manager, must be and are hereby withdrawn. In these circumstances, the subject of the applications falls away. Furthermore, in September 2000, the said company was struck off the Register for failing to file returns. We are now instructed to make the necessary applications to restore the company.

In due course, GBS Estates Limited will make proper lawful demands pursuant to the leases. The same lessee objections may apply to the lawful demands and the Applicants may wish to reapply for determinations as to reasonableness. Once the landlord company is restored, the Applicants are free to make their application for appointment of manager. It would be sensible if it were to be dealt with in conjunction with the section 19 applications.

We refer to paragraph 2(a) of the directions order dated 15<sup>th</sup> July. It seems that the Tribunal were aware of the possibility of a problem. In April 1999, Mr Kitching instructed his then solicitor to transfer the beneficial interest of the freehold of Willowdene from GBS Estates Limited to his wife and himself. The contract was made and consideration of £50,000 paid but the sale did not complete. In February this year when Mr Kitching made the demands, he believed he was acting personally as the landlord. He was not acting as agent for GBS Estates Limited (which of course by that time had been struck off).

In all these circumstances, none of the applications can proceed until GBS

<sup>2</sup>

Rent Assessment Committee (England and Wales) (Leasehold Valuation Tribunal) Regulations 1993, regulation 4G



Estates Limited is restored and in respect of the section 19 applications, until lawful demands have been made.

13. By letter dated 17<sup>th</sup> September the Tribunal was also supplied by Gisby Harrison with a copy of an explanatory letter which Mr Chambers had by then sent to each Applicant. The letter to the Tribunal stressed that Mr Kitching had acted in good faith throughout, that as owner of four of the twelve flats it was not in his interests to allow disrepair, lack of services or excessive charging, and that "it is in everybody's interest that the company is restored as soon as possible so that management is put on a proper footing."
14. At the hearing Mr Chambers appeared for the Respondent. Mr Kitching was on holiday, fishing in Northumberland – which is **not** "out of the country". Mr Chambers focussed, however, not so much on Mr Kitching's absence as on his own argument that the actual landlord was GBS Estates Limited because an intended sale of the freehold reversion to Mr & Mrs Kitching never actually took place. This, he submitted, was possibly because the solicitors then acting realised that such a transfer, without first having offered first refusal to the tenants, would be an offence<sup>3</sup>. Mr Chambers could not comment on whether the £50,000 mentioned in his letter of 16<sup>th</sup> September 2003 had actually been paid. If so, the company would have held the bare legal title on trust for Mr & Mrs Kitching as beneficiaries in equity, with a duty to convey the legal estate on request.
15. Mr Chambers submitted that, as the company had been struck off in September 2000, the freehold estate now vested in the Crown by *bona vacantia*. The application by the tenants for appointment of a manager should therefore be served upon the Treasury Solicitor. Questioned by the Tribunal as to the ownership and control of the company, Mr Chambers accepted that it was probably correct that Mr Kitching was majority shareholder and director, and it was clear that he had no definite instructions on the point. Contrary to the impression given by his letter of 16<sup>th</sup> September 2003, he stated that his firm had **not** been instructed to apply to the Companies Court for restoration of the company to the register. Mr Kitching's son was, he believed, a barrister now

<sup>3</sup> See Landlord and Tenant Act 1987, ss. 1 - 10A

working as or for a solicitor, and he may have advised his father on the point.<sup>4</sup> If his firm were instructed to act, Mr Chambers stated that in his experience it would take about 6 months to restore the company because of the need first to produce accounts for the back years and submit them to the Treasury Solicitor for approval before formally applying to the court.

16. Mr Chambers stated that Mr Kitching had now withdrawn the service charge demands for 1999, 2000, 2002 & 2002 as they were not proper demands, because not made by the true landlord. In response to the Tribunal's concern about the ongoing litigation, he stated that claims had been brought against only 4 tenants<sup>5</sup>, that his firm had now been instructed and gone on the record as acting for the Claimant, and had filed Notice of Discontinuance in each case.
17. Mr Chambers contended that as all relevant service charge demands had now been withdrawn<sup>6</sup> the applications under section 19 should be dismissed or withdrawn. As his firm was instructed by Mr Kitching and not by the true landlord he argued that none of his fees could be recovered under the service charge provisions in the lease, therefore the application under section 20C was also rendered nugatory. The only application remaining was that for appointment of a manager, which should be withdrawn because not properly constituted. Alternatively, Mr Chambers submitted, that application could be adjourned for six months pending the restoration of the landlord company to the companies register.
18. Opposing the application to dismiss or adjourn the tenants' application for appointment of a manager, Ms Cracknell stated that the most important thing was that when they left the hearing there was a managing agent in place who would carry out his duties in accordance with the law, produce accounts, consult the tenants, etc. All that needed to be resolved. In the past Mr Kitching had made promises, but things never happened. She was concerned that an application to restore the company had not yet been made,

<sup>4</sup> Although instructions to seek restoration of the company to the register could only be given by a member or creditor

<sup>5</sup> Mr Holmes (flat 6), Ms Garrard (flat 9), Ms Cracknell (flat 11), & Mr & Mrs Lord (flat 12)

<sup>6</sup> That for 1998 affected only Ms Joanne Ayres, of flat 7, who had since paid and moved on

but more anxious to know whether the building was properly insured. Despite express provision in the leases, and repeated requests made to Mr Kitching in the past, none of the tenants present at the hearing had ever seen evidence of the insurance cover arranged by him. It was evident that Mr Chambers had not seen any either, but he did suggest that, in accordance with Mr Kitching's belief (recently disabused) that he had acquired the freehold from the company in 1999, it was likely that insurance cover had been arranged in the names of Mr & Mrs Kitching. The Tribunal were concerned that this could put the buildings insurance cover in jeopardy, as it is a prerequisite to all forms of insurance (save for life assurance) that the insured party must have an insurable interest in the risk at the material time.

19. Ms Cracknell also informed the Tribunal that on Monday of that week she had telephoned the Treasury Solicitor's Office, discussed the situation, and been informed that the tenants could apply to purchase the freehold. That was all the Tribunal heard on the matter, so it was not clear precisely who was giving this advice, and whether the existence of this application and hearing had ever been mentioned.

#### **The Tribunal's decision on whether to proceed**

20. The Tribunal accepted that, even though their jurisdiction was restricted solely to a determination of the reasonableness of the service charges levied, and not to a finding on whether and/or to whom they were payable, the withdrawal of all the service charge demands in issue rendered the applications under section 19 redundant. The tenants did not dispute that in these circumstances, and the discontinuance of the court actions against them, these applications should either be withdrawn or treated as dismissed.
21. The Tribunal also agreed with Mr Chambers that, as his firm was not instructed by the landlord, and it had not incurred any legal costs of its own, no order should be made on the application under section 20C.
22. However, while recognising the force in Mr Chambers' argument that the real landlord was now effectively the Crown (pending the success of any application to restore GBS Estates Limited to the register) and that it had neither been served with the preliminary

notice under the Landlord and Tenant Act 1987, section 22, nor as Respondent to the application under section 24, the Tribunal considered, on the evidence and argument put before it :

- a. That the application concerned only the management of the estate, not the legal interest of the freehold reversioner
- b. That it was uncertain whether the interest of the Crown was merely in the bare legal estate to the property, held on trust for Mr & Mrs Kitching
- c. That the interest of the Crown in such an application was likely to be minimal, and could adequately be protected by building into any adverse decision and order a provision giving liberty to apply to vary or set aside
- d. That, provided the necessary accounts and returns were produced and fees and fines paid for failure to file annual returns by the due dates, it was likely that an application to restore a solvent company with a significant real property asset to the register would succeed
- e. That the real beneficiary of such an application would be Mr Kitching, or the Kitching family, as directors and shareholders of the company
- f. That Mr Kitching, having held himself out to the world as landlord of the estate and therefore the true Respondent, had been served with both the preliminary notice and the application
- g. That Mr Kitching, probably the principal director and operative mind of GBS Estates Limited, had been served and had actual knowledge of the application
- h. That the state of the evidence concerning the insurance of the property, and the lack of any definite instructions to Mr Chambers' firm to issue an application in the Companies Court, meant that for the foreseeable future it was unlikely that any action would be taken by the landlord concerning the proper management of the estate
- i. That it was vital that the insurance of the buildings in accordance with the lease be secured immediately by a person with an insurable interest.

23. By section 22(3) of the 1987 Act :

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 on a person in a case where it is satisfied that

it would not be reasonably practicable to serve such a notice on the person, but the tribunal may, when doing so, direct that such other notices are served, or such other steps are taken, as it thinks fit.

The Tribunal decided to dispense with the requirement to serve notice on the Treasury Solicitor and agreed to proceed with the hearing of the tenants' application, subject to the proviso that any order made would be liable to annulment if the Treasury Solicitor were to apply for it to be set aside or varied after service of the order upon him.

#### **The leases & relevant law**

24. In all material respects the tenants' respective leases are in identical form, were granted between December 1989 and December 1993 for a substantial premium, and each for a term of 125 years from 25<sup>th</sup> March 1989 at an initial rent of £100 for the first 25 years, £200 for the next 25 years, etc. The tenants' respective liabilities to contribute to the service charge account of the development, payable by way of further or additional rent, are expressed as fixed percentages :

a.	Flats 1, 3, 6 & 8 .....	7.43%
b.	Flats 2, 4, 5 & 7 .....	6.56%
c.	Flats 9 & 11 .....	11.82%
d.	Flats 10 & 12 .....	10.20%

25. In summary, "the service charge" is defined in Schedule 1(xi) as the sum or sums incurred by the lessor during the service year (as defined) in complying with the lessors' obligations set out in Part 1 of the 6<sup>th</sup> Schedule together with such other sums as the lessor deems reasonably necessary for future major expenditure on the property, and including rates, water rates and other charges in respect of the common parts (as also defined) and any reasonable fees and charges required by the lessor for managing the property or paid to managing agents or any other person or company appointed by the lessor to assist with management, and any fees paid to an accountant to produce service charge accounts and any interest or charges incurred by the lessor in borrowing money to pay for carrying out the obligations under Part 1 of the 6<sup>th</sup> Schedule, and any fees paid to any other person in connection with the management of the property.

26. The lessee's covenants appear in the 5<sup>th</sup> Schedule, including an obligation to pay the

reserved rents and to pay on demand or indemnify the lessor against the lessee's contribution.

27. By clause (1) of Part I of the 6<sup>th</sup> Schedule the lessor covenants to keep the property insured against specified perils and to produce a copy of the policy and the receipt for the current premium to the lessee when reasonably requested by the lessee and to procure a note of the lessee's interest and that of the lessee's mortgagee to be endorsed thereon. By clause (2) the lessor covenants, subject to payment by the lessee of the lessee's contribution :
  - a. To maintain and keep in good and substantial repair and condition the main structural parts of the property, conduits not exclusively serving the demised premises, and the common parts
  - b. To wash, stop, paint etc all external woodwork
  - c. To keep clean and reasonably lighted the common entrance hall, passageway, landing and staircase in the property.
28. Of particular note, in the circumstances of this case, is clause (4), whereby the lessor covenants within two months from the end of each service year (ie by the end of February) to serve upon the lessee audited accounts of the service charge, and at the lessee's expense shall allow the lessee to inspect all books and receipts relating to such charge within 28 days of such accounts being served.
29. The law concerning the appointment by the Tribunal of a manager can be found in sections 21 to 24A inclusive of the Landlord and Tenant Act 1987. Section 21 refers to the tenant's right to apply, section 22 to service of a preliminary notice, section 23 to the manner of application to a Tribunal, and section 24 deals with the order which a Tribunal can make and the circumstances in which it may do so. Section 24A deals with the jurisdiction of the Tribunal.
30. Section 24, as amended, provides as follows :
  - (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 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 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 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 (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.
- (2ZA) In this section “relevant person” means a person-
  - (a) on whom a notice has been served under section 22, or
  - (b) in the case of whom the requirement to serve a notice under that section has been dispensed with by an order under subsection (3) of that section.
- (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 any relevant person, 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 [Land Registration Act 2002] 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 the application of any relevant person 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 Part to the management of any premises include references to the repair, maintenance or insurance of those premises.

31. Although Mr Kitching had withdrawn all the service charge demands complained of the Tribunal nevertheless considered that the tenants' complaints concerning the actual management carried out, the fact of service of such demands, their nature and timing, and Mr Kitching's response to requests by the tenants for evidence to substantiate them were all highly material to the application for appointment of a manager. In all the circumstances, sections 20B (time limit on making demands for service charge), 21 (request for summary of relevant costs), 22 (request to inspect supporting accounts, etc), and 28 (meaning of "qualified accountant") of the Landlord and Tenant Act 1985 must also be taken into account.

#### **The inspection and evidence**

32. The property was inspected at 10:00 on the morning of the hearing. Also present were Ms Cracknell and Mr Catling, later joined by Ms Garrard. Although accessed from Mill Lane, the building forms an L-shape, with the long arm backing on to the river and the short arm projecting forward towards the car park and, beyond that, the High Street. This short arm is apparently of later construction and is separated from the main part of the building, at ground floor level, by an open passageway from which access is obtained to two of the flats. A plan appears in the lease. The building appears to be of fairly recent brick, cavity wall construction, parts being rendered. The exterior had been painted within this last year. The boundary of the site with the highway is defined by brick retaining walls. Behind these a row of high coniferous trees had recently been cut down, leaving large exposed stumps. A frail wooden fence guards the river frontage.
33. The following defects were noted during the site inspection :
- a. Vertical and horizontal fractures in the render of the main building
  - b. Uneven surfaces to the external stairs and landing, with water damage to brickwork and underside

- c. Uneven footpaths, terraces and car park to the extent that their condition may form a hazard
- d. Several full-height fractures in the boundary retaining walls, with severe movement to the brickwork
- e. A fractured manhole cover in the car park (liable to be driven over)
- f. Several tree stumps left after the trees were removed, and badly pruned trees with fractured stumps.

Please note that the inspection was brief and limited, so this list should not be treated as conclusive. It is no substitute for a full structural survey.

- 34. The evidence considered at the hearing comprised the documentary material submitted by the tenants in support of their applications, including the withdrawn service charge demands, correspondence with Mr Kitching, a Defence filed in the claim brought against Mr Holmes, and the office copy entries supplied and admissions made by Mr Chambers on behalf of the Respondent.
- 35. The Tribunal also heard from Janet Trinnaman, a director of GEM Estate Management Limited ("GEM"). That company currently handles approximately 6,000 units across the country, and is in dispute with none. Ms Trinnaman stated that GEM was involved with a similar situation with a block of flats in Harlow, Essex, where the tenants had bought the freehold from the Treasury Solicitor.
- 36. Although without professional qualifications she had been involved in property management for 18 years. Her co-director, Max Pendleton, whom the tenants had actually wanted as the new manager but was unable to attend the hearing that day, had been in the business for 10 years. Both had been directors of a company known as CPM but, since a management buy-out, were no longer involved with that company.<sup>7</sup> The Tribunal were satisfied that Ms Trinnaman had inspected the lease, visited the property and liaised with the tenants and that, although a draft budget had been prepared by Mr Pendleton, she was sufficiently aware of the work that needed to be prioritised (in compliance with the lease and consultation with the tenants). She regarded the major

<sup>7</sup> Although GEM's address is at CPM House, Works Road, Letchworth, Herts

item of work as being the car park.

37. She stated that she was unaware of the RICS' *'Service Charge' Residential Management Code* (the "Blue Book"), which is the current code of practice approved by the Secretary of State under section 87 of the Leasehold Reform, Housing and Urban Development Act 1993. However, amongst the documents disclosed was a copy of her company's standard terms of engagement, referred to as "Schedule A". Those terms, detailed and comprehensive in nature, were the only terms upon which her company would be willing to act. For an estate of this number of units the charge would be a flat 17.5% of costs incurred. When questioned by Mr Chambers she did say that any external surveyor's or architect's fees would be absorbed within that percentage figure. Asked for the names of any firms of surveyors used by her company Ms Trinnaman seemed unable to remember any in this area, although she stated that a firm had been used locally quite recently. She stated that GEM had a number of regular sub-contractors for gardening, maintenance, etc.
38. Payments would be made from a separate named account, to which Mr Pendleton and herself were joint signatories, eg the "GEM/Willowdene" account. Starting with a nil balance, she appreciated that the first task would be to prioritise what needed to be done in consultation with the tenants, and to raise an interim account. She accepted the suggestion from the Tribunal that the draft budget already prepared by Mr Pendleton looked a little light, and that the tenants should expect to pay more if the property was to be put properly in order. Consultation by GEM with tenants usually takes the form of a report to the directors of the residents association, but where (as here) there was no such structure then GEM would report and consult at a residents' meeting.
39. Ms Cracknell concluded by stating that GEM had been chosen because of a recommendation by Mr & Mrs Reid, whose previous property had been managed by that company very satisfactorily. This was confirmed, on their behalf, by Mr Catling. By contrast, the tenants felt that they had had nothing from Mr Kitching, and would feel in a far better situation with GEM than they were at present.

### **Findings on the application to appoint a manager**

40. Upon considering the evidence before them the Tribunal are satisfied that it may make an order because the following grounds or circumstances set out in section 24(2) of the Landlord and Tenant Act 1987 exist :

- a. 24(2)(a) : the landlord is in breach of obligations owed to the tenants under Part I of the 6<sup>th</sup> Schedule of their respective leases, namely :
  - i. Failure to provide the services set out in clause (2)
  - ii. Failure to produce a copy of the buildings insurance policy and receipt for the current premium to the lessee when reasonably requested by the lessee<sup>8</sup>, and
  - iii. Failure within two months from the end of each service year (ie by the end of February) to serve upon the lessee audited accounts of the service charge
- b. 24(2)(ab) : unreasonable service charges have been demanded for the years 2000 to 2002 by Mr Kitching, as the contract for the removal of trees should have been the subject of proper consultation under section 20, account summaries ought to have been prepared and certified by a qualified accountant upon demand by the tenants, and items were charged for although incurred more than 18 months before demand was first made<sup>9</sup>
- c. 24(2)(ac) : as demonstrated by the written demands, correspondence and tenants' evidence neither the landlord nor Mr Kitching seem ever to have complied with any approved codes of practice
- d. 24(2)(b) : other circumstances exist which make it just and convenient to make the order, namely :
  - i. That the landlord company was struck off the register in September 2000 for failure to file returns and no-one is legally managing the property at present
  - ii. That it appears that the landlord company (controlled by

<sup>8</sup> In view of this it is simply not known whether the landlord has procured a note of the lessee's interest and that of the lessee's mortgagee to be endorsed on the policy, as required

<sup>9</sup> The Tribunal accepts that these demands have now been withdrawn as invalid, but Ms Ayre was obliged to pay them in order to re-mortgage, and legal proceedings were issued against four tenants in order to secure payment, and perhaps *pour encourager les autres*

Mr Kitching) attempted to sell the freehold reversion to Mr & Mrs Kitching without first offering first refusal to the tenants, which constitutes a criminal offence

- iii. That no application has yet been made by the directors to restore the company to the register, and it is uncertain when or if such an application will be made
- iv. Pending the result of any such application, which is likely to take in excess of 6 months, the lack of management of the property would continue unless an order were made
- v. That if the insurance policy taken out for the property is in the names of Mr & Mrs Kitching, rather than the true landlord, then the interests of the tenants have been put at serious risk due to the Kitchings' lack of any insurable interest.

41. The Tribunal heard from Ms Trinnaman, read the GEM terms of engagement (Schedule A), and heard how the Applicants had selected that particular property management company upon recommendation. Whilst concerned by her lack of knowledge of the approved code of practice (the blue book) and her inability to recall the names of any chartered surveyors engaged by her company in this locality in recent years, the Tribunal was nevertheless satisfied that she and her company were sufficiently experienced in the management of residential property to assume that role here. She agreed to obtain a copy of the code of practice.

42. Bearing in mind that, in order to satisfy themselves that the manager to be appointed is a "fit and proper person", the Tribunal ought properly to see and be able to question that person at the hearing, it was decided, with her consent, to appoint Ms Trinnaman as manager rather than adjourn the hearing at great expense until the following day simply so that Mr Max Pendleton could attend for some brief questioning. Appointing her as an officer of the Tribunal does not prevent her from delegating management tasks to other officers or staff of the company, or to sub-contractors, so long as she remains answerable for what is done or not done.

43. As the information before the Tribunal was that Mr Kitching owned four of the flats and his son a fifth, out of twelve in total, the Tribunal recognises the potential for conflict within the tenant body. The manager is therefore appointed to carry out not only the functions of manager but also receiver of the property.
44. The Tribunal therefore appoint Janet Trinnaman, of Gem Estate Management Limited, CPM House, Works Road, Letchworth, Herts SG6 1LB as Receiver and Manager of the estate and premises known as Willowdene, Mill Lane, Watton at Stone, Herts SG14 3TT (Title No HD215219). The Order takes effect as of 1<sup>st</sup> October 2003, so that the manager may ensure forthwith that adequate buildings insurance cover is in place. Subject to any application being made by the Treasury Solicitor, within 21 days of service of the Order upon him, to vary or set it aside, it shall remain in force until 31<sup>st</sup> December 2004 or further order.
45. The manager and the parties are advised that the Order should be protected by an entry registered against Title No HD215219 under the Land Registration Act 2002.

**Service on Treasury Solicitor**

46. As the interest of the landlord company is currently *bona vacantia* and vested in the Crown the Tribunal directs that a copy of this Decision and Management Order be served by the Tribunal Panel office upon the Treasury Solicitor, whose attention should be specifically drawn to paragraph 44 above.

Dated 17<sup>th</sup> October 2003



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Graham K Sinclair, Chairman  
for the Leasehold Valuation Tribunal