LVT/SC/CR/021/016 & 064/03

LEASEHOLD VALUATION TRIBUNAL

FOR THE LONDON RENT ASSESSMENT PANEL

DETERMINATION

UNDER SECTIONS 19(2A), 20C & 31C OF THE LANDLORD AND TENANT ACT 1985 (as amended)

RE: GILDA COURT (Flats 26-31 Building) WATFORD WAY LONDON NW7 2QN

Claimant: M & M Savant Ltd (Lessor)

Defendants: Mr A H Stocker and Mr D P Mileman (Lessees of Flats 26 & 31)

Consolidated Proceedings transferred to the Tribunal by Orders dated 20 January 2003 and 24 March 2003 made by District Judge Karet sitting at Barnet County Court.

Hearing: 23 & 24 June 2003

Appearances: Miss S Cope of Counsel
and Mr J Schreiber of J S Estates Limited, Witness

[For Claimant]

Mr R Courts and Mr J Le Tissier of the College of Law,
Mr C M A Stocker, Witness,
Mr D Brown, person interested (as lessee of Flat 56),
and Mr Mileman in person

[For Defendants]

Inspection: 23 June 2003 (before Hearing)

Members of the Leasehold Valuation Tribunal:

PROFESSOR J T FARRAND QC LLD FCIArb Solicitor (Chairman)

MR D L EDGE FRICS

MR A D RING

Preliminary

1. In the proceedings before Barnet County Court, the Claimant sought payment by the Defendants of specified sums as unpaid ground rent and service charges. According to Schedules attached to the Particulars of Claim, as against Mr Stocker the periods of non-payment involved were from 1 April 1999 to 28 September 2002 with a balance to pay of £1,503.40, and as against Mr Mileman from 1 April 1997 to 28 September 2002 with a balance of £1,700.77. In Mr Mileman's case, an additional sum of £298.18 was claimed as an insurance payment. Both of the Defendants submitted defences, making no admissions of amounts due and referring to personal difficulties but also asserting an inability to understand the sums claimed because of lack of detailed information.

2. In Mr Stocker's case, District Judge Karet simply ordered that "this case be transferred to" the Tribunal. In Mr Mileman's case, he ordered (as amended on 31 March 2003) that –

> 1 the application for summary judgment be adjourned generally;
>
> 2 this case be transferred to [the Tribunal] to be consolidated with at least 1 other case relating to Gilda Court (No.26)...;
>
> 3 costs be reserved.

Such transfers will have been made in exercise of the power conferred by s.31C of the 1985 Act and can only relate to so much of those proceedings as relate to questions within the jurisdiction of the Tribunal under that Act. This essentially refers to the limited jurisdiction under s.19(2A) to determine:

> (a) whether costs incurred for services, repairs, insurance or management were reasonably incurred;
>
> (b) whether services or works for which costs were incurred are of a reasonable standard."

The consequence of a negative determination will be to limit the amount payable (see s.19(1)). The Tribunal has no applicable jurisdiction in respect of rent arrears or, currently, as to the legal liability of individual persons to pay service charges.

Leases

3. The Claimant is the relevant Lessor of Gilda Court, which comprises five blocks (plus, apparently, a bungalow) and grounds, each of the blocks consisting of two buildings containing six flats. The Defendants are the present Lessees of Flats 26 and 29 under identical leases granted in 1956 for

terms of 90 years, less the last 10 days, from 30 July 1947 for a ground rent of £13 pa payable quarterly. At the Hearing, the Tribunal was told by Mr Schreiber that J S Estates Ltd had been the Claimant's managing agent since 1995 and that the Claimant 'owned' about 30 of the 60 flats at Gilda Court, in the sense that they were no longer subject to long leases, including two out of six in the same building as the Defendants.

4. As to service charges, the Defendants' leases included a Lessee's covenant in Clause 2:

> (6) At all times during the said term to pay and contribute a rateable or due proportion of the expenses of:
>
> (a) Making repairing maintaining rebuilding and cleansing the exterior of the flat and the building of which it forms part and including the roof walls timbers sewers drains pipes watercourses cisterns gutters gas water and electric pipes or installations entrances passages staircases pavements manholes roads ways paths pavements party walls party structures foundations dividing floors fences and the land garden and pathways coloured brown on the said plan and other conveniences which shall belong to or serve or be used for the flat hereby demised end the said Building
>
> (b) Painting the fences and
>
> (c) Keeping clean and lighted the entrance Hall and staircase such proportion in case of difference to be reasonably settled by the Surveyor for the time being of the Lessor whose decision shall be final and to be paid to the Lessor on demand

In the leases, "the Building" means the building "consisting of the flats known as number 26–31 Gilda Court" (see Clause 1). The Tribunal was only shown black and white copy plans but noted that the demise included use of "the communal garden" and also of "the forecourt and paths coloured brown on the said plan". The Leases included approximately corresponding Lessor's covenants as to providing the services (Clause 4(3)). There was no provision in the leases for any payments in advance or for a 'sinking fund'.

5. The leases contained no Lessor's covenant to insure the building and no Lessee's covenant to (re)pay the cost of such insurance. However, the leases did include a Lessee's covenant to insure the demised flat which entitles the Lessor to insure in default and to recover the cost from the Lessee (see Clause 2(18)). Nevertheless, no evidence of facts or submissions, as to law or otherwise, were put to the Tribunal in support of the claim for unpaid insurance made against Mr Mileman and this issue is not, therefore determined.

6. Further, the leases contained no provision expressly enabling the Lessor to charge the Lessees for the costs of management or for the expenses of employing lawyers or surveyors, or of legal proceedings, except specifically for the service of notices under s.146 of the Law of Property Act 1925 (see Clause 2(16)).

7. In so far as the leases may fail to make any satisfactory or other provision for the recovery of expenditure incurred by Lessor, this could render the Tribunal's determination, under s.19(2A) above, academic as to matters not so provided for. However, this aspect is not a question yet within the Tribunal's jurisdiction. Nor does the Tribunal yet have jurisdiction to order the variation of unsatisfactory leases.

Pre-Trial Proceedings

8. By Directions, dated 14 March 2003, the Claimant was, in effect, required to supply a copy of the service charge accounts for the years in question, which were agreed to be from 1 April 1999 to 31 March 2002, to the Defendants by 28 March 2003. The Defendants would then be able to require copies of other documents before supplying a full statement of case by 16 May 2003. The Claimant was directed to respond to this statement by 30 May 2003.

9. The Claimant supplied copy invoices and outline service charge accounts to the Defendants' representatives in time. The Defendants requested further documents specified by letter dated 17 April 2003, but these were not supplied. Nevertheless, a Statement of Case was submitted for the Defendants on 27 May 2003, but the Claimant did not respond. An amended Statement of Case was submitted on 11 June 2003 on behalf of the Defendants. This identified 6 areas of disputed costs: Management Fees, Surveyor's Report, Gardening, Electrical Work, Water Tanks and Cleaning and Light Bulbs.

10. Following a Case Management Review on 11 June 2003, the Claimant was directed, inter alia, to provide its statement of case in response by 18 June 2003 and any witness statements by 19 June 2003. These were provided under cover of a letter from the Claimant's solicitors dated 18 June 2003. In the statement of case the Claimant conceded that certain electrical work had been duplicated and stated that each lessee had been credited with £142.24. The sole witness statement was by Mr Schreiber, as the Claimant's managing agent, in which it was also conceded that works in renewal of water tanks might have been duplicated

and stated that the Defendants had each been credited with an additional £182.52.

Inspection

11. At the inspection, attended by everyone who later appeared, the Tribunal bore particularly in mind the aspects of cleaning, gardening and management. It was observed, first, that the interior common parts of the building were in a very poor condition: unclean, undecorated and unkempt with marks of water leakage on walls and floors. It was then observed that the exterior of the building similarly was in a poorly maintained condition, with rendering and pointing dropping off the walls. The communal grounds and gardens appeared to have had the grass cut recently but generally were seen to be in an unsatisfactory state: rubble and rubbish had not been properly removed whilst brambles had been allowed to become overgrown and weeds thrived throughout the flowerbeds.

12. The location of the blocks beneath the start of the M1 Motorway was exceptionally unattractive and inconvenient, which was hardly the Lessor's fault, but this was made worse by the desolate, uncared for aspect of the estate: the two entrances to Watford Way were each flanked with a dozen 'wheelie bins' overflowing with detritus and numerous large puddles demonstrated serious drainage problems.

13. Overall, it was perfectly possible for the Tribunal to conclude from the inspection, without hearing oral evidence in support, that the services involved in cleaning, gardening and management had manifestly failed for many years to reach a reasonable standard.

14. The Tribunal also observed that works of refurbishment were being undertaken to the building containing flats 56-61 Gilda Court. These works did not themselves constitute a question for determination by the Tribunal. However, it appeared to the Tribunal that what was being undertaken amounted to patching-up a poor property with poor workmanship rather than undertaking any fundamental improvements.

Issues

15. At the Hearing, Miss Cope helpfully produced a Schedule of Service Charges, prepared in the light of the Defendants' Statement of Case and of the concessions made for the Claimant. This was designed to isolate the issues confronting the Tribunal and, for this 'focusing' purpose, it was not challenged for the Defendants. It was based upon invoices showing the Lessor's expenditure for each of three years, as sent to the Lessees by J S

Estates, the Managing Agents, in letters dated respectively 11 July 2000, 10 May 2001 and 24 April 2002, each letter requesting payment of one-sixth of the total. Accordingly, the Tribunal has followed this approach.

16. ***Service charge year to 31 March 2000*** -

- Staircase Lighting: Although the Tribunal's attention was drawn to operational difficulties with the hall lights in the building, the cost of £54.84 was not disputed.
- Building Repairs: Similarly, for this year, although the work done was not described, the cost charged of £217.63 was not disputed.
- Gardening: Again, the cost of £275.53 for this year, apportioned to the subject building, was not disputed. However, it should be noted that for some years the lessees in the various buildings had undertaken some gardening of the communal grounds themselves, even clubbing together to acquire a motor mower. This had ceased when, apparently in this year and without consultation, the Lessor's Managing Agents had employed a firm of building contractors, Hall & Lane, to do the gardening for the whole Gilda Court grounds at a charge of £117.50, including VAT, per fortnightly visit. This firm's gardening was regarded as unsatisfactory and another firm was employed in the following year.
- Cleaning & Light Bulbs: In contrast to the later two years, no cost was included in this service charge year under this head.
- Rubbish Clearance: A charge of £41.49 was not disputed.
- Removal of Abandoned Cars: No charge in this year.
- Management Fee: The charge here was at 10% of the total of the above undisputed costs (ie £589.49) calculated at £58.94 plus VAT, so that the total service charge for the building was £658.74, one-sixth of which sum was to be recovered from each of the lessees. However, the management fee was disputed for all the three service charge years. The primary challenge put on behalf of the Defendants was: "There is no provision in the lease enabling the Lessor to recover a management charge." As already indicated, this involves questions of legal liability not yet within the Tribunal's jurisdiction which must be left for decision by Barnet County Court. The secondary, alternative challenge was that the Managing Agents had failed, in substance, to achieve a reasonable standard of

management. In the light, not only of its own inspection, but also of evidence from Mr Schreiber as well as from Messrs Stocker and Mileman, the Tribunal was certainly not satisfied that the Managing Agent's performance had been acceptable, in any of the three years, in any objective sense. There was no written management contract and Mr Schreiber's account of the terms of an alleged oral agreement was unconvincing, whilst he did not succeed in rebutting allegations of poor dealings with lessees by members of his firm. Indeed, in practice, it was plain that successful management as envisaged by the RICS 'Service Charge' Residential Management Code had never been achieved in relation to Gilda Court. However, the consequence is not that no amount at all is recoverable from lessees but that any management charge should be appropriately low (compare the Court of Appeal decision in *Yorkbrook Investment Ltd v Batten* (1986) 52 P & CR 51). Had the fee payable to J S Estates Ltd been agreed on the more usual per accommodation unit basis, it is unlikely that this would have come to less than £100 per flat. Here, the actual percentage charge for each lessee, for this service charge year, is just about £12. The Tribunal accepts that management services did take place and considers that, however unsatisfactorily they may have been performed, it is impossible to find that an unreasonable cost has been included in the service charge.

17. It follows from the preceding paragraph that the amount of £658.74 invoiced for the year to 31 March 2000 is not found to be unreasonable by the Tribunal. However, it should be appreciated that this finding is without prejudice to questions of the Defendants' legal liability to make payment, in particular of the management fee, under the terms of the leases.

18. ***Service charge year to 31 March 2001*** –

- Staircase Lighting: As before, the cost of £56.63 was not disputed.
- Building Repairs: The cost of £985.75 originally invoiced was disputed on behalf of the Defendants as to £980 incurred in respect of renewal of water tanks. This was, primarily, because "the work was undertaken in 1995 and has now been unnecessarily duplicated, but also because it should have been covered by a 20 year guarantee and because of a lack of consultation under s.20 of the 1985 Act. The consultation question would have been a matter for the County Court (see subs.(9) of s.20) but, as already indicated, the duplication challenge had been accepted by Mr Schreiber shortly before the

Hearing and appropriate deductions made from the charges. Accordingly, under this head, only the balance of £5.75 remained and this amount was not disputed.

- Gardening: The total cost charged was £428.87. The challenge on behalf of the Defendants was specifically concerned with the amounts paid to the new firm, Enfield Garden Services, employed from the beginning of January 2001. Consequently, the amount paid to Hall and Lane for gardening in this service charge year was not disputed. The Tribunal was supplied with 11 copy invoices from Hall & Lane to J S Estates, from 11 April to 3 October 2000, each for £117.50 including VAT and relating to the whole grounds. Accordingly, their total charge for Gilda Court gardening can be calculated at £1,292.50, so that the proportion attributable to the Defendants' building and not in dispute must be £129.25.

  The balance in dispute was £299.62, which derived from three invoices from Enfield Garden Services: the first dated 8 January 2001 was for £1,938.75 in respect of "a one off garden clearance", and the other two were each for £528.75 in respect of "garden maintenance" for, respectively, the months of February and March 2001. All the invoices were inclusive of VAT and related to the whole grounds, so that one-tenth would be apportionable to the Defendants' building. The costs incurred were challenged on behalf of the Defendants on the grounds that the Managing Agents –

  a) Employed contractors when gardening services were not required;

  b) Failed to employ competent contractors;

  c) Failed to employ contractors at a reasonable rate;

  b) Failed to employ contractors who would undertake a reasonable amount of work for the amount charged.

  e) Further or in the alternative, the Applicants or their agents failed to comply with the requirements under s.20 Landlord and Tenant Act 1985 regarding consultation with tenants.

  As to a), the Lessor is under a contractual obligation to keep the paths, forecourts and gardens properly maintained (see Clause 4(3)(b) of the leases). As to e), s.20 of the 1985 Act relates to works not services and would not, in any case, involve a question for the Tribunal to determine. The other grounds appeared consistent with the view formed by the Tribunal in the light of inspection (see para.13), which was reinforced by Mr Stocker's oral evidence at the

Hearing that the gardeners had, unusually, attended for some 6 hours on the previous day (ie Sunday 22 June 28, 2003) and carefully cleared away cuttings. Mr Stocker is a registered carer for his father, who is one of the Defendants, and otherwise unemployed so present at Gilda Court during the working day. According to his written evidence, ordinarily-

> The gardeners only ever cut the grass with a mower or strimmer, and deposit the cuttings in the bramble bushes on the site. These bramble bushes have been cleared once, but they were not sprayed so they have returned. Furthermore, dumping the grass cuttings on these weeds appears to act as compost and they are now rampant. They do, very reluctantly, take some litter away, but refuse to touch drink cans or food packaging.

According to Mr Schreiber's evidence, he had not been aware of any complaints about Enfield Gardening Services prior to the present proceedings and his view was that the gardening had been properly carried out. He stated that there had been complaints about Hall & Lane, who had simply stopped coming. He agreed that the gap between gardeners had not been in a 'growing time' and that the 'one off' charge appeared high but explained that Enfield Gardening Services had insisted upon the 'one-off garden clearance' as a condition of entering into the contract for monthly maintenance.

The Tribunal's conclusion was that the maintenance of the grounds of Gilda Court by Enfield Gardening Services had not been shown to have achieved reasonable standard and that the costs incurred had also not been reasonable. The Tribunal considered that the rate charged by Hall & Lane and not itself challenged as excessive (in effect £216.67 per calendar month including VAT) would have been a reasonable amount to allow had the gardening been performed properly. In the circumstances, the Tribunal has decided that the reasonable and appropriate discounted rate to take into account as a service charge for Enfield Gardening Services would be £145 plus VAT per calendar month (ie £340.75 total in this year). In addition, the Tribunal was entirely satisfied that the 'one off clearance' fee was unreasonably excessive and, on the assumption that 12 hours labour by 4 persons paid £12.50 per hour would be amply adequate, considered that £800 plus VAT (ie £940) should be allowed as an appropriate and reasonable cost to incur. Apportioning one-tenth of these sums to the service charges for the Defendants' building, the Tribunal determines that an amount of £128.07 should be added in

respect of Enfield Garden Services to the undisputed £129.25 for Hall & Lane's services to produce a reasonable charge of £257.32 under this head.

- Cleaning [& Light Bulbs]: The total cost charged was £309.94. Copy invoices from Beechwood Property Services were provided principally for weekly cleaning at Gilda Court from mid-November 2000, at a rate of £135 plus VAT, totalling £3,066.75 (ie for 4 calendar months plus 2 weeks). The invoices also covered the supply and fitting of light bulbs at a total cost of £32.68. One-tenth of these sums will have been apportioned to the Defendants' building, so as to produce the charge indicated.

  The light bulbs' cost was not disputed and the challenge as to the cleaning costs on behalf of the Defendants was expressed to be on exactly the same grounds as the gardening challenge. Again the Lessor is under a contractual obligation to keep the entrance hall and staircase in the building lit and clean (see Clause 4(3)(b) of the leases) and consultation under s.20 of the 1985 Act appears irrelevant. As to whether the costs were reasonably incurred and the cleaning of reasonable standard, Mr Stocker's effectively uncontradicted written evidence was as follows:

  > The cleaners attend erratically, sometimes turning up every week, and sometimes missing a week. When they do appear, they never stay longer than fifteen minutes, and never do any more than just vacuum the single stairway in our block. They do not, for example, dust any surfaces, so that there is a layer of dirt that can be seen if you rub your fingers along it. They do not do basic things like shake out the doormat, or remove cobwebs, let alone things like cleaning the interior of the windows.

  This evidence was, in substance, corroborated by the Tribunal's own observation during the inspection, despite the fact that there had apparently been extra cleaning undertaken the Thursday before. An alternative quotation for the cleaning contract at Gilda Court had been obtained by Mr Stocker from Kite Contract Cleaning Ltd, dated 3 June 2003, at a weekly figure of £100 plus VAT.

  Mr Schreiber's evidence was to the effect that there had been no previous complaints about Beechwood Property Services and that he was satisfied with their work. However, he accepted that his own visits to Gilda Court were monthly rather than weekly.

It was entirely clear to the Tribunal, in the light of inspection and evidence, that the cleaning services have incurred excessive costs and have not been of a reasonable standard. On the basis that £100 per week plus VAT would represent an appropriate rate for work properly carried out but that it should be discounted in the present case, the Tribunal concluded that a reasonable cost to allow for the cleaning as performed would be £75 per week plus VAT. For the 4 months and 2 weeks involved, this comes to £1,703.75. To this must be added £32.68 in respect of light bulbs, making £1,736.43. Apportioning one-tenth to the Defendants' building produces the reasonable service charge figure of £173.64 under this head.

- Rubbish Clearance: A charge of £85.15 was not disputed.
- Removal of Abandoned Cars: A charge of £12.32 was not disputed.
- Management Fee: The amounts originally invoiced totalled £1,878.56 and here a fee of 10% plus VAT was charged. As adjusted by concession and by the Tribunal, the amounts allowed as reasonable total £590.81. A management fee of 10% of whatever the Tribunal found to be reasonable was all that was sought on behalf of the Lessor under this head. This comes to £69.42, which is a per unit fee of just over £11.50 each, and, for reasons already indicated in relation to the previous year, the Tribunal is content to allow this amount.

19. It follows from the preceding paragraph that the amount of £660.23 as a service charge for the year to 31 March 2001 is found to be reasonable by the Tribunal. However, it should be appreciated that this finding also is without prejudice to questions of the Defendants' legal liability to make payment, in particular of the management fee, under the terms of the leases.

20. ***Service charge year to 31 March 2002*** –

- Staircase Lighting: A charge of £48.96 was not disputed.
- Building Repairs: The figure of £4,484.39 included in the original invoice was disputed on behalf of the Defendants as to two matters, which totalled £4,347.50 so that £136.89 of the charge was not in dispute. First, as to electrical work carried out in the building containing the Defendants' flats for which Urban Solutions had charged £3,760 inclusive of VAT, it was asserted that (a) there had been duplication of work done in 1997, (b) the contractors were not

cost-effective and (c) that there had been a failure to consult as required by s.20 of the 1985 Act. Point (c) involves questions of liability and dispensation not within the jurisdiction of the Tribunal but within that of the County Court. Point (a) had been conceded on behalf of the Lessor as to communal lighting and £853.44 deducted from Urban Solutions' charge, thus crediting each lessee with £142.24 in the service charge account, leaving a balance of £2,906.56 in dispute as to this matter. However, no cogent or positive evidence was made available to the Tribunal on which it could be found that the cost of rewiring sub-mains in the building was not reasonably incurred or that the work was not of reasonable standard. Accordingly, that balance was accepted by the Tribunal as reasonable for the purposes of inclusion as a service charge.

The second matter in dispute was the cost incurred by the managing agents in instructing Chartered Surveyors to inspect Gilda Court and prepare a Schedule and Specification of Works of, essentially, refurbishment of all the blocks. The Surveyors' invoice totalled £5,875 including VAT of which a one-tenth proportion had been attributed to the Defendants' building. This was challenged on behalf of the Defendants as unreasonable with the statement that: "If, which is not admitted, the renovation works are now required, this is entirely due to the [Claimant's] failure to maintain the properties in the past adequately or at all". However, from inspection of Gilda Court, it was plain to the Tribunal that such work was required and it was also obvious that preparatory work such as the Surveyor undertook would be necessary, so that it could not sensibly be found that the cost was not reasonably incurred. The Tribunal was further satisfied that the Schedule itself was of reasonable standard and that the charge invoiced could not be treated as unreasonable. On this basis, inclusion of the £587.50 proportion in the service charge should be allowed as reasonable. In so far as the work is required because the Lessor's failure to comply with repair and maintenance obligations, which would have been at the expense of the Lessees, this might give rise to a counter-claim for breach of covenant but is not a question for the Tribunal. Nevertheless, it should be appreciated that, although renewal work had begun at Gilda Court, no such work had as yet been carried out to the Defendants' building and might not for several years if ever. Mr Schreiber stated in evidence that a block by block approach would be cheaper for the

Lessees than undertaking, in effect, a bulk job but did not succeed in persuading the Tribunal to this view. The cost and standard of the works to another building was not a question for the Tribunal to consider, nor was the question of the Defendants' legal liability under the terms of their leases to contribute to such surveyors' fees before the work to their own is undertaken or at all.

As it is, the total charge allowed by the Tribunal as reasonable under this head is £3,630.95 (ie the sum of £136.89, £2,906.56 and £587.50).

- Gardening: Here the charge of £670.92 was entirely disputed essentially for the same reasons as for the previous year in relation to Enfield Garden Services fees. The Tribunal adopted the same view as before and only allowed as reasonable a charge at the rate of £145 per calendar month plus VAT, which would total for the year £2,044.50. In addition, an invoice from J & L Building Contractors, for cutting down overgrown ivy plants from building and pipes, in the sum of £293.75 including VAT was not challenged so inclusion should be allowed. However, it had been accepted by Mr Schreiber at the Hearing that an extra sum of £60 plus VAT charged by Enfield Garden Services for cutting and tidying the bungalow's hedges should not have been included. Consequently, the sum allowed by the Tribunal as a reasonable service charge under this head is £233.82 (ie a one-tenth proportion of £2,044.50 plus £293.75).
- Cleaning & Light Bulbs: The cost charged was £775.52. Presumably this was derived from the monthly rate of £585 plus VAT charged by Beechwood Properties Ltd over 12 months plus amounts for supplying and fitting light bulbs. In fact, the Tribunal only had 11 copy monthly invoices for the period (missing one for March 2002) and the light bulb costs came to £165.20 plus VAT. However, the Defendants' challenge and the Tribunal's conclusions were the same as for the previous year: the rate of £75 per week plus VAT would be allowed for the 12 month period, totalling £4,582.24. To this must be added the £165.20 in respect of light bulbs, making £4,776.61. Apportioning one-tenth to the Defendants' building produces the reasonable service charge figure of £477.66 under this head.
- [No Charges for Rubbish Clearing or Removal of Abandoned Cars]
- Management Fee: Here, the amounts originally invoiced totalled £5,979.79 and a fee of 10% plus VAT was charged. As adjusted by

concession and by the Tribunal, the amounts allowed as reasonable total £4,391.39. A management fee of 10% (plus VAT) of whatever the Tribunal found to be reasonable was again what was sought on behalf of the Lessor under this head. This comes to £516, which is a per unit fee of £86 each. Although this is significantly more than the nominal fees in the previous years, it is not excessive or substantial and, for reasons already indicated in relation to the previous years, the Tribunal is content to allow this amount. In effect, a significant reduction from what would otherwise be a reasonable management charge has been made by the Tribunal on account of below standard management services.

21. It follows from the preceding paragraph that the amount of £4,907.39 as a service charge for the year to 31 March 2002 is found to be reasonable by the Tribunal. However, it should again be appreciated that this finding also is without prejudice to questions of the Defendants' legal liability to make payment, in particular of the survey charge and the management fee, under the terms of the leases.

Costs

22. Finally, at the close of the Hearing, Mr Courts for the Defendants applied for an order under s.20C of the 1985 Act that the Claimant's costs of the proceedings should not be included in any service charges payable by the Defendants. He emphasised, in effect, the social purpose of the relevant legislation, which would be undermined if landlords' legal costs could be imposed on tenants such as the Defendants. Miss Cope for the Claimant observed that the application appeared academic in that there was no provision in the leases allowing a Lessor to recover such costs from Lessees. Nevertheless, she opposed the application basically on the ground that the issues of reasonableness should be determined in the Claimant's favour, the proceedings were only occurring because the Defendants had not paid the charges concerned and 'costs follow the event'. However, the Tribunal took into account not only that the issues of reasonableness had largely not been determined in favour of the Claimant but also that sufficient information about the charges had not been forthcoming from the Claimant to the Defendants or, despite Directions, to the Tribunal until a very late stage and that concessions about substantial duplications of charges had similarly not been made until the 11th hour. Beyond this, there were still outstanding questions of legal liability under the terms of the leases which need resolving before the Claimant could reasonably demand payment of certain of the charges from Lessees. In all the circumstances,

the Tribunal considered it just and equitable to make the order applied for: costs incurred by the Claimant/Lessor in connection with the proceedings before the Tribunal shall not be regarded as relevant costs in determining the amount of any service charge payable by either of the Defendants.

CHAIRMAN

DATE 14th July 2003