SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

CHI/40UE/LSC/2005/0081

Decision of the Leasehold Valuation Tribunal on application(s) under Sections 20C and 27(A) of the Landlord and Tenant Act 1985 as amended and Section 24 of the Landlord and Tenant Act 1987

Applicants:	Susan Elaine Merchant	No 10
	Deborah Ann Carrel	No 10
	Sophie Hyde Parker	No 3
	Steve Chalk	No 14
	Christopher Coombe	No 1
	Frances Page	No 13
Respondents:	Halse Manor Management Limited (First Respondent)	
	David Sutton	No 5
Re:	Halse Manor, Halse, Taunton, Somerset	
Date of Applications	29th August 2005	
Date of Inspection	9th January 2006	
Date of Hearing	9th and 10th January 2006	
Venue	Salvation Army Hall, Taunton	
Appearances for Applicants	Susan Elaine Merchant, Deborah Ann Carrel, Sophie Hyde Parker and Christopher Coombe all in person	
Appearances for First Respondent	Ian Morrell, the First Respondent's Sole Director and managing agent, accompanied by Mr G D Pinchbeck (No 9) (David Sutton neither attended nor was he represented)	
Other attendances	Mr D Porter (No 12)	

Members of the Leasehold Valuation Tribunal:-

M J Greenleaves	Lawyer Chairman
J McAllister FRICS	Valuer Member
Mrs M Hodge MRICS	Valuer Member

Date of Tribunal's Decision: 11th February 2006

Decision

Introduction
The applications considered by the Tribunal were as follows:

a) Under Section 27A of the Landlord and Tenant Act 1985 (the 1985 Act) the reasonableness and payability of certain service charges in respect of Halse Manor for the years April 2004 to March 2005 and from April 2005 to March 2006.

b) Under Section 20C of the 1985 Act for an Order that the First Respondent's costs incurred in connection with these proceedings should not be recoverable as service Charge

c) Under Section 24 of the Landlord and Tenant Act 1987 (the 1987 Act) the Appointment of a Manager of Halse Manor.

In respect of those applications, the Tribunal made the following determinations for the reasons set out below:-

CASE 1:

Service Charges payable (for the years 2004/05 and 2005/06) are as follows:-

Item	Amount challenged £	Detail	Tribunal's decision as to amount of the challenged sum chargeable to service charge
LH Services	1,286.63		Nil
LH Services	47.00		Nil
Durston Tree Surgeons	560.00		560.00
LH Services	1,312.48		Nil
AC Mole	381.87		Nil
Cluff Let-It	150.00		Nil
Mr Pinchbeck expenses:	Total 338.14 (a-f below)		
Bags of sand	(a) 92.38		Nil
Wyevale discount	(b) 9.00		9.00
AV Grafix invoice 16th June 2004	(c) total 204.72	Copying of plans - £30 + vat Print cartridges (27.20	Nil 74.20

		+ vat) & Cartridges, paper & fax refills (117.03 + vat)	
Stamps	(d) 10.08		Nil
Envelopes	(e) 2.98		Nil
LVT expenses	(f) 49.06		Nil
Chainsaw	25.00		Nil
Mr Pinchbeck	48.34		Nil
Mr Pinchbeck	1,878.83		Nil
Bank charges	141.60 & 60.51		Nil
Mr Morrell - management charges	1,166.66		116.66
Mr Morrell	500.00		Nil
P Vaughn	2,141.70		2,141.70
Ashfords	124.56		124.56

CASE 2: Appointment of Manager

IT IS HEREBY ORDERED that:-

1. Neil Gladwin MRICS, FAAV of Humberts, Chartered Surveyors of Mansfield House, Silver Street, Taunton TA1 3DN is appointed manager and receiver of the property known as Halse Manor with effect from 1st March 2006 for an initial period of two years. The appointment is nevertheless terminable on application to the Tribunal at any time.
2. He shall manage the property in accordance with:
   a) The respective obligations of the Landlord and the Tenants under the various leases by which the flats at the property are demised and in particular, but without prejudice to the generality of the foregoing, with regard to the repair, decoration, provision of services and insurance of the property;
   b) The duties of a manager set out in the Service Charge Residential Management Code ("the Code") published by the Royal Institution of Chartered Surveyors and approved by the Secretary of State pursuant to Section 87 of the Leasehold Reform, Housing and Urban Development Act 1993; and
   c) the provisions of the two standard RICS agreements between the landlord and the agent setting out the terms of appointment for the management of property

3. He shall receive all sums whether by way of ground rent, insurance premiums, payment of service charges or otherwise arising under the said leases and shall pay such sums into a separate bank account.

4. He shall account to the Freeholder for the time being of the property for the payments of ground rent received by him and shall apply the remaining amounts received by him (other than those representing the fees of the managing agent) in the performance of the Landlords' covenants contained in the leases.

5. He shall be entitled to management fees and expenses at the rates set out in Clauses 2.1, and 3.0 to 3.1.3 of the draft contract annexed to this decision. *[NB The Tribunal wishes to make it clear that the rights and obligations between Neil Gladwin and the First Respondent are otherwise governed only by the terms of this order and not by the draft contract.]*

6. He shall forthwith arrange and maintain professional indemnity insurance cover through Humberts his present employers in the sum of at least £10 million and will within 28 days of the date of this order provide to the Tribunal written evidence that he has complied with the provisions. (This has been provided to the Tribunal).

7. This order shall remain in force for the period set out in paragraph 2 above unless varied or revoked by further order of the Tribunal.

8. The First Respondent shall arrange for any management funds, all books, records of account, invoices, bank statements, etc to be handed over to the manager and receiver forthwith.

9. The Applicants and the First Respondent shall each have liberty to apply to the Tribunal for further directions.

CASE 3: Limitation of Costs.

The Tribunal makes an Order under Section 20C of the 1985 Act that the First Respondent's costs, if any, incurred in connection with these applications shall not be recoverable as service charge.

CASE 4: Applicants' Costs

The Tribunal makes no Order for payment of any of the Applicants' costs or expenses incurred in connection with these applications

Reasons

Introduction

1. These were applications made originally by Ms Carrel and Ms Merchant on 29th August 2005 for determination:

   a) Under Section 27A of the Landlord and Tenant Act 1985 (the 1985 Act) the reasonableness and payability of certain service charges in respect of Halse Manor for the years April 2004 to March 2005 and from April 2005 to March 2006.

b) Under Section 20C of the 1985 Act for an Order that the First Respondent's costs incurred in connection with these proceedings should not be recoverable as service Charge

c) Under Section 24 of the Landlord and Tenant Act 1987 (the 1987 Act) the Appointment of a Manager of Halse Manor.

2. The other Applicants named above had applied to be joined as Applicants to the Applications. David Sutton had applied to be joined as a Respondent. The items of service charge considered and determined by the Tribunal were as set out in the decision above. Mr Coombe additionally asked the Tribunal to consider other charges for the years in question. Mr Coombe had not been able to obtain from the First Respondent sufficient information to enable him to identify with any clarity any specific heads of charge or the amount of those charges which he wished to have determined and he accepted that the Tribunal would therefore be unable to consider them. For that reason he withdrew his application, the Tribunal agreeing to his doing so.

3. On 5th September 2005, the Tribunal had at its own instance issued provisional directions in writing. These directions included the following:

a) "7. the Respondent must provide copies of a written statement to the Tribunal and send a copy of it to the Applicants by Friday 14th October 2005 saying which of the points that are stated in the Applicants' case it agrees and which it does not accept. In the case of those that it does not accept it must explain in each case why that is so. ..... This statement will be the Respondent's case."

b) "10. the parties must send copies of written statements of the evidence to be given by any witness of fact whom they propose to call to the other party by Friday 4th November 2005. Each party must notify the other party and the Tribunal in writing by 11th November 2005 of the identity of any witness whose evidence is not contested and whose attendance before the Tribunal will not in consequence be necessary. **The Tribunal requires that each party shall be aware before the hearing of the nature of the case to be advanced by the other and of the evidence that is to be brought. It will not (other than in exceptional circumstances, at its discretion and upon such conditions as it may then make according to those circumstances) admit oral evidence at the hearing from any additional witness except that adduced by cross examination, whether by the parties or by its members, of witnesses whose statements have already been produced in accordance with this direction."**

4. On 28th November 2005 the Tribunal at its own instance made further directions which are not material to the issues set out in these reasons.

5. Halse Manor had been the subject of similar applications to the Tribunal in 2004. That Tribunal had determined the reasonableness of certain service charges (in a decision dated 11th August 2004). It had also decided (in a decision dated 7th October 2004) not to appoint a Manager as there was opposition to such a course from the majority of the Lessees and two Lessee Directors continued to be willing to manage the property.

Inspection.

6. The Tribunal inspected Halse Manor in the presence of Ms Carrel, Ms Merchant, Miss Hyde Parker and Mr Coombe and, in respect of No 9 Halse Manor, also in the presence of Mr Pinchbeck (he did not wish to accompany the rest of the inspection).

7. Halse Manor (the premises) was constructed over 300 years ago as a manor house. About 25 years ago it was converted into 15 residential units comprising 7 terrace style houses 7 flats (all of which are held on long leases) and a freehold bungalow No 9 Halse Manor owned by Mr Pinchbeck.

8. The premises are laid out in extensive walled garden grounds largely grassed over. Subject to the following, the premises appear to be in reasonable condition for their age and character. Amongst items drawn to the Tribunal's attention were: potholing of the driveway; new guttering; rotten windows and an attempt to stop the ingress of water around the window frames; peeling paintwork; part of the boundary wall had not been repaired and other parts poorly repaired; missing wall capping tiles; unsatisfactory pruning; the position of the cedar tree stump.

9. The Tribunal also inspected No 10 internally, a 2 bedroom unit with sash windows; examples of some of the problems were drawn to the Tribunal's attention.

Hearing

10. The Chairman mentioned to those present that Mr McAllister was, in his professional capacity, acting in a case with a member of Humberts (a Mr R Gardner of their Salisbury office). The Chairman expressed the view that this did not constitute a conflict such that Mr McAllister should not hear the case. The parties accepted that view.

11. During the course of the Applicant's presentation of their case, it became apparent to the Tribunal that the Applicants had difficulty in doing so for want of information from the First Respondent and having no indication of the nature of the First Respondent's case concerning service charge. The Tribunal noted the evident and complete failure of the First Respondent to comply at all with provisional directions 7 and 10 set out above. Neither Mr Morrell nor Mr Pinchbeck were able to assist in this respect. The Tribunal noted the clearest warning set out in direction 10; that the First Respondent had plainly ignored the Tribunal's directions. The Tribunal decided, pursuant to the direction, not to admit evidence for or on behalf of the First Respondent except as adduced by cross-examination.

Evidence

12. In summary the evidence given by the Applicants was as follows:-

13. LH Services - £1,286.63. The work done by LH services related to re-guttering above No 2 which was completed by mid March 2004. it had not been satisfactory and was done again by Leicester Felt Roofing in about September 2005. Because LH Services work had not been satisfactory, that firm should have been required to re-do the work. They did not accept Mr Morrell's contention that because LH Services had gone into liquidation they could not be pursued to rectify the work or to make a claim and it was reasonable to instruct Leicester Felt Roofing. In reply to questions, the Applicants said that Leicester Felt Roofing had told them that the work done by LH Services had been bound to fail.

a) LH Services - £47. Their bill dated 26th February 2004 makes it clear that it relates to a roof repair to Mr Pinchbeck's house; the service charge to which they contribute does not cover his freehold property so they should not have to pay any of it.

b) Durston Tree Surgeons - £560. Their bill dated 25th April 2004 is for "work on large cedar at Halse Manor". It was accepted that the tree belonged to the First Respondent. The bill had related to removal of certain branches to make it safe. The tree subsequently had to be felled, so this bill was a waste of money. They alleged that the work was done at the request of Mr Pinchbeck who alleged the tree was causing damage to his roof.

c) LH Services - £1,312.48. this relates to LH Services bill dated 23rd April 2004 less a credit note dated 26th May 2004. The invoice does not specify what work was done and they were not aware of any work being done at all.

d) AC Mole -£381.87. AC Mole were the First Respondent's auditors and on 7th July 2004 they submitted an account for "preparation and audit of the company accounts for the year end 31 March 2004. Meeting and correspondence with the company's directors as necessary". The invoice totalled £1,028.12. however the audited accounts for the following year showed the auditor's remuneration for the year to 31st March 2004 to be £646. They assume the difference does not relate to company affairs and should not be paid through service charge. [Note that the Tribunal calculates the difference to be £382.12].

e) Cluff Let-It £150 bill 30th March 2005. This is Mr Morrell's company. He took over management of Halse Manor in February 2005. He was paid his management fee for February and March so the sum claimed is an additional amount which they found out about months later. They consider the work charged for to be covered by Mr Morrell's management contract; that the work charged for was anyway not onerous; that Mr Morrell had had the form since the previous summer; that Mr Morrell said the sum would be deducted from Sherwoods' account; that he has charged at a rate of £60 per hour when his contract provides for additional work at £30 per hour. For these reasons it should not be debited to service charge.

f) Mr Pinchbeck - £30 for plans. Mr Pinchbeck is proprietor of AV Grafix whose bill dated 16th June 2004 shows a charge of £30 "printing costs TDDC (LVT) site plans". This had been paid to the Council who issued a receipt for £30 for copy plans on 22nd April 2004. The Applicants said that no plans were used at the previous Tribunal and they had not seen any such plans, so this should not be debited to service charge.

g) Mr Pinchbeck expenses £338.14. This relates to part of a list of expenses which Mr Pinchbeck had submitted and for which he had been paid by cheque No 000174 totalling £555.93. Their claim is made up as follows:

Item	Sum £	Their claim
Sand and cement	92.38	Of the total 4 bags of sand delivered, 2 were used by Mr Pinchbeck on his own property so are not chargeable to service charge

Wyevale discount	9.00	Mr Pinchbeck was able to get a discount as an OAP and the lessees should have the benefit of it
AV Grafix	£174.72	This is the remainder of the bill dated 16th June 2004 covering print cartridges and fax refills. Mr Pinchbeck only used black for Halse Manor management matters, so they should not pay for colour cartridges. The Office World till roll for 8th June 2004 also referred to the purchase of excessive quantities of paper. They should not be charged for this.
Stamps	10.08	They did not consider there should be any postage costs chargeable to management in respect of the AGM on 1st July 2004.
Envelopes	2.98	These are shown by Mr Pinchbeck under the heading of LVT meetings. The Tribunal concerned had ordered that the First Respondent's costs in connection with those hearings could not be charged to service charge.
LVT expenses	49.06	As above
Less an overpayment to Mr Pinchbeck in cheque 176	.08	-

h) Mr Pinchbeck – chainsaw £25. Mr Pinchbeck had purchased a chainsaw from an outgoing lessee for use by the lessees. The Applicants did not know why the lessees would want one. They thought they would need a licence. Only Mr Pinchbeck could use it. They would employ a tradesman who would anyway supply his own chainsaw. It was therefore not a reasonable cost to service charge

i) Mr Pinchbeck £48.34. The account dated 16th November 2004 from City Electrical Factors Ltd shows the purchase of various electrical items which the Applicants believed Mr Pinchbeck had installed only on his freehold property so the sum should not have been added to service charge. They said that if a PIR had been replaced by a dusk to dawn sensor the cost would have been £4.92 less

j) Mr Pinchbeck - £1,878.83. He claimed this for the cost of work done "in connection with damage to my roof by falling branches ...". They referred the Tribunal to a long series of documents which they suggested showed that the roof had a long history of problems which were not caused by the tree so this cost should not be part of service charge. They also said it would be

reasonable to assume that in this situation an insurance claim would have been made, but it had not.

k) Bank charges - £141.60 and £60.51. Large sums had been held in the current account; they should have been transferred to deposit account to earn interest. Had that been done, the interest would have offset the bank charges.

l) Mr Morrell - Cluff Let-It – management charges - £1,166.66. There had not been any consultation under Section 20 of the 1985 Act [Mr Pinchbeck agreed]; Mr Morrell had not fulfilled his management contract and they referred to the list of items constituting their grounds for application for the appointment of a manager; the spreadsheet Mr Morrell had produced [shown at B127 in Miss Hyde Parker's bundle] did not compare with the bank statements. The receipts shown on B128 do not add up to the total shown and do not tie up with the bank statements. Mr Morrell did very little and what he did do, he did badly.

m) Mr Morrell - Cluff Let-It - £500 – bill 1st September 2005. As this relates to Mr Morrell's refusal to allow Ms Carrel to take up her appointment as a Director of the First Respondent, the Lessees cannot be liable to pay it.

n) P Vaughn – grass-cutting etc - £2,141.70. There was only partial consultation under Section 20 of the 1985 Act; the notice given on 16th March 2005 did not include estimates and quotations were not received until September 2005 his quotation does not compare favourably with others obtained by the lessees.

o) Ashfords - £124.56 – bill 21st April 2005. The account relates to fees incurred to pursue lessees for non-existent arrears and should therefore not be payable.

14. In reply to the Tribunal, Mr Morrell said that that a code of practice was not part of his management contract, but he did comply with the RICS Code; his contract is "somewhat removed" from the RICS models; he has professional indemnity cover.

15. He agreed to bring evidence of his cover to the second hearing day as well as other documents the Tribunal had requested. While he sent the other documents, he did not include evidence of his indemnity cover and did not attend the second day of the hearing.

16. Mr Gladwin, whom the Applicants proposed to be appointed manager, gave evidence as follows:

a) He referred to his written proposal.

b) He is a rural estate manager and land agent (Senior Associate) with Humberts, based in Taunton, and is answerable to David Hebditch, Partner of that firm.

c) He does not have direct experience of blocks of flats but of a large number of other residential units. He would have the benefit of expertise from other offices of Humberts.

d) Humberts are considering opening a management department.

e) The out of pocket expenses are mileage costs which they charge at 50p per mile. Postage costs are included in their fee.

f) The charge proposed for the first year allowed for a comprehensive survey of the premises.

g) He was satisfied the proposed contract covered all necessary management functions and is based on contracts from their other offices.

h) Humberts could not be a Director of the First Respondent, but could be employed as Company Secretary. In other cases they charge £350 for that work. This work is not within the ambit of his Proposal.

i) He confirmed their fee for attending meetings was fixed however long the meeting and whether one or more members of Humberts attended the same meeting.

j) Humberts have professional indemnity cover of £20 million. He said he would send a copy of the certificate and his firm's standard management contract to the Tribunal within 7 days

Consideration

17. The Tribunal considered all the case papers it had received and the evidence given and submissions made at the hearing. It also noted the decisions made by the previous Tribunal concerning Halse Manor in 2004.

18. The Terms of the Leases. It is understood that all the leases are in similar terms save as to the proportion of service charge payable. The relevant provisions concerning service charge, by reference to the lease of No 10, Halse Manor are set out in Schedule 1 to these reasons.

19. The Law. The relevant statutory provisions are set out in the Schedule 2 to these reasons.

20. CASE 1: Service Charges.

a) LH Services £1,286.63. The Tribunal noted that LH Services Ltd had apparently gone into liquidation; that the work it had done had had to be re-done by Leicester Felt Roofing within a short time and that their charges were significantly higher. On the balance of the evidence it seemed likely to the Tribunal that it was unwise and poor management to instruct a firm such as LH Services to carry out technical work of this nature at what was apparently a cheap price. There was no evidence that consultation had been carried out as required by the 1985 Act so that the amount recoverable would in any event have been limited accordingly. However, the Tribunal found that the work was not done to a reasonable standard and should not be recoverable as service charge at all.

b) LH Services £47. It is evident on the face of their bill that the charge relates only to Mr Pinchbeck's freehold property. That is not covered by the service charge and is accordingly not payable as such.

c) Durston Tree Surgeons - £560. The Tribunal accepts that the tree was unsafe and also that the Lessees wished to retain the tree if possible. The Tribunal has to decide whether, when the expense was incurred it was reasonable to

do so. The fact that the tree had to be felled later is with the benefit of hindsight. The Tribunal finds that it was reasonable to incur this expense at the time, it was a reasonable sum and it is payable as service charge.

d) LH Services - £1,312.48. The Tribunal accepted the evidence of the Applicants. There is no indication at all as to what work was done or on what property. The Tribunal finds the sum was unreasonably incurred and is not payable as service charge.

e) AC Mole - £381.87. the Tribunal accepts the Applicants' evidence which is plain from the documents submitted as mentioned above. There is no evidence that any further work was done which would be chargeable to the First Respondent and payable as service charge Accordingly the bill is not chargeable to the extent of £382.12, the re-calculated figure. The balance of that bill i.e. £646 remains chargeable to service charge.

f) Cluff Let-It £150. The Tribunal finds that the charges were not covered by Mr Morrell's management contract and should have been recovered by him from Sherwoods as he indicated he would. There is no evidence that he did so or attempted to do so. It is not reasonable to charge it to the Lessees and is accordingly not payable as service charge.

g) Mr Pinchbeck's expenses of £30 and his expenses of £338.14 are linked and it is convenient to deal with them together

h) The Tribunal accepts the evidence that no plans were used or seen by the Lessees and this sum is not payable as service charge. (This claim of £30 is included in the AV Grafix invoice referred to below).

i) The Tribunal accepts that only 2 bags of sand were used for the benefit of Lessees. The cost of 4 bags was £157.24 plus VAT, one half of which is the sum claimed by the Applicants: £92.38. The Tribunal finds the charge to that extent not to be payable as service charge.

j) Wyevale discount. This was available only to Mr Pinchbeck as a pensioner. It was personal to him and the Tribunal finds it reasonable that he should retain that benefit.

k) AV Grafix invoice 16th June 2004. The Applicants say, taking all items together, that none of this invoice should be paid. The Tribunal accepts that only black cartridges would be used for management of Halse Manor. Equally it accepts on balance that it would probably be necessary to replace colour cartridges at the same time. It does not accept it would be necessary to purchase what appears to be 3 sets of cartridges within one month of each other, nor that it would be necessary to purchase such substantial quantities of paper. In respect of the 2 Office World invoices the Tribunal finds that one half is unreasonable. On the face of the documents, one till roll adds VAT while the other shows the inclusive sum. The Tribunal uses the sums of £27.20 + VAT = £31.96 and £99.60 + VAT = £117.03. one half of the total of those sums equals £74.50 and that sum is unreasonable.

l) Stamps. The Tribunal accepts that a cost of £10.08 in relation to the AGM is not reasonable. It would not expect there to be postage charges and finds the entire sum to be unreasonable.

m) Envelopes. The Tribunal agrees that these are a cost which the previous Tribunal had precluded from recovery as service charge and accordingly they are not payable.

n) LVT expenses. For the same reason these are not payable at all.

o) Overpayment – £0.08. The Tribunal makes no finding, the sum being negligible.

p) Chainsaw. The Tribunal accepts that this was not of use to the First Respondent and the cost was not reasonably incurred and is not recoverable as service charge.

q) Mr Pinchbeck £48.34. The Tribunal accepts the Applicants' evidence and finds the items purchased were all used at Mr Pinchbeck's freehold property No 9, so that none of this account is chargeable to service charge

r) Mr Pinchbeck - £1,878.83. The Tribunal considered all the documents to which the Applicants had referred. The Tribunal was satisfied that Mr Pinchbeck had had problems with his roof probably from when he bought his property in June 2002. The documents from Mr Pinchbeck do not suggest any connection between those problems and the cedar tree until a very late stage. The Tribunal also accepts the Applicants' contention that, had they been so caused, one would expect an insurance claim to have been made. The Tribunal finds that no such claim was made. The Tribunal is not satisfied that the costs incurred by Mr Pinchbeck can reasonably be said to have been caused by the cedar tree. Accordingly the sum has not been reasonably incurred and is not payable as service charge.

s) Bank charges. The Tribunal accepts the contentions of the Applicants. The bank charges have not been reasonably incurred and are not payable as service charge.

t) Mr Morrell - Cluff Let-It – management charges - £1,166.66. The Tribunal finds that this was a qualifying long term agreement to which Section 20 of the 1985 Act applied; the requisite consultation did not take place and that the amount payable is limited by the 1985 Act and the regulations thereunder to a maximum of £100 per service charge payer. It further finds that on all the facts of the case and their findings on inspection showing lack of maintenance in many respects, there has been a substantial failure by Mr Morrell to carry out his obligations to a reasonable standard or at all. The Tribunal does not find he has carried out no management work and accordingly finds that only 10% of this bill is reasonable and payable as service charge, the resulting sum of £116.66 being within the limit referred to.

u) Mr Morrell - Cluff Let-It - £500. The Tribunal noted he calculated his charge at £60 per hour rather than his stated management charge rate of £30. The Tribunal also accepted the evidence of the Applicants and finds that the sum was unreasonable incurred and is not chargeable as service charge.

v) P Vaughn – grass-cutting etc - £2,141.70. The Tribunal accepts that there was no proper consultation for Mr Vaughn's work under a long term qualifying contract. However, it notes that the rate charged was significantly lower than other quotations received for a long term contract so that it does not appear to

be consistent with such a contract. It also noted that pending agreement for the long term, Mr Vaughn was to be paid monthly. The Tribunal finds that the payments made were for short term contracts and therefore did not require prior consultation. The Tribunal finds the sums charged as reasonable for the work done and payable as service charge.

w) Ashfords - £124.56. the Tribunal does not need to make a finding on whether or not there were arrears to be collected. The Tribunal finds that it is likely that advice may well have been needed in this case for only initial legal advice on one aspect or another and that the sum charged is probably less than one-half hour of a lawyer's time. The Tribunal finds on balance that the sum was reasonably incurred and is payable as service charge.

21. CASE 2: Appointment of Manager.

a) The Tribunal is very clear that there has been a period of several years where there has been poor management. This was so in 2004 when that Tribunal would, it appears, have appointed a manager had it not been for the opposition from a majority of lessees to appointment of a manager and also that two lessee directors were willing to continue to manage.

b) It is very plain from the substantial failure of management since 2004, failure to consult and the above decisions of the Tribunal concerning the service charges in issue in this case, that a new manager should be appointed. The Tribunal finds that it has power to do so under Section 24(2)(a), (ab) and (ac) of the 1987 Act in that:

i) The First Respondent, through its manager or managers has failed to comply with its obligations under Clause 8 of the leases concerning management

ii) Unreasonable service charges have been made or are proposed or likely to be made;

iii) In both cases, the Tribunal also found that it is just and convenient to make an order in all the circumstances of the case.

c) The Tribunal decided that Neil Gladwin of Humberts should be appointed as manager accordingly on the terms set out in the decision. above

22. CASE 3: Section 20C application.

a) The Applicants had also applied for an Order under this Section preventing the First Respondent from recovering costs incurred in connection with the proceedings before the Tribunal as part of the service charge.

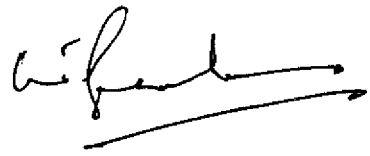
b) The Tribunal had no evidence that the First Respondent had incurred such costs.

c) The Tribunal finds that because of the Tribunal's findings it is just and equitable that an Order should be made.

23. CASE 4. Applicants' costs. After the hearing, the Applicants wrote to the Tribunal seeking payment of their costs of or incidental to the Applications. Such costs are

not within the ambit of Section 20C. The Tribunal does not have power to award Applicants' costs in any circumstances in connection with applications under Section 27A and 20C of the Act, so no Order can be made on that application. The Tribunal does have power to order that a Respondent should refund to the Applicant the fees the Applicant has paid to the Tribunal. The Tribunal decided not to exercise that power.

24. Finally, the Tribunal expresses the sincere hope that all lessees and freeholders will now take all possible steps to co-operate and resolve past issues for the benefit of all those living at Halse Manor for the future. The Tribunal believes that with the appointment of a new professional manager, the foundation for the future is laid but it is evident that much time and effort – and probably expense – is now also needed from all residents to resolve issues from past mis-management and the functioning of the First Respondent.



Chairman.
A member of the Southern
Leasehold Valuation Tribunal
appointed by the Lord Chancellor

SCHEDULE 1

Terms of the leases

In terms, the relevant Clauses of the leases provide as follows:

1. Clause 4(1): provides for payment of one fifteenth part of the costs expenses and outgoings and matters referred to in the Fourth Schedule.

2. Clause 4(2). The proportion payable may be estimated in advance and paid in half-yearly advance payments with provision for adjustment in future years

3. Clause 8. The First Respondent covenants to repair and maintain the structure, utilities and common parts of the property; to keep internal common parts clean and reasonably lit and the gardens cultivated and in good order; to keep the exterior and common parts decorated.

4. Fourth Schedule.

    a. Costs incurred by the First Respondent under Clause 8

    b. Rates and taxes

    c. Maintenance etc of the grounds

    d. Employment of staff to attend to care of the estate

    e. Maintenance of aerials

    f. Cost of management of the estate

    g. Provision of parking spaces

SCHEDULE 2

The 1985 Act

S18 Meaning of "service charge" and "relevant costs".

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent—
  (a) which is payable, directly or indirectly, for services, repairs, maintenance[, improvements] or insurance or the landlord's costs of management, and
  (b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purposes—
  (a) "costs"includes overheads, and
  (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period

S19 Limitation of service charges: reasonableness.

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period—

(a) only to the extent that they are reasonably incurred, and

(b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard; and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

S20 Limitation of service charges: consultation requirements

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—

(a) complied with in relation to the works or agreement, or

(b) dispensed with in relation to the works or agreement by (or on appeal from) a leasehold valuation Tribunal.

(2) In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

(a) if relevant costs incurred under the agreement exceed an appropriate amount, or

(b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—

(a) an amount prescribed by, or determined in accordance with, the regulations, and

(b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

S20ZA Consultation requirements: supplementary

(1) Where an application is made to a leasehold valuation Tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying long term agreement, the Tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.

(2) In section 20 and this section—
"qualifying works" means works on a building or any other premises, and
"qualifying long term agreement" means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.

(3) The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement—
(a) if it is an agreement of a description prescribed by the regulations, or
(b) in any circumstances so prescribed.

(4) In section 20 and this section "the consultation requirements" means requirements prescribed by regulations made by the Secretary of State.

(5) Regulations under subsection (4) may in particular include provision requiring the landlord—
(a) to provide details of proposed works or agreements to tenants or the recognised tenants' association representing them,
(b) to obtain estimates for proposed works or agreements,
(c) to invite tenants or the recognised tenants' association to propose the names of persons from whom the landlord should try to obtain other estimates,
(d) to have regard to observations made by tenants or the recognised tenants' association in relation to proposed works or agreements and estimates, and
(e) to give reasons in prescribed circumstances for carrying out works or entering into agreements.

(6) Regulations under section 20 or this section—
(a) may make provision generally or only in relation to specific cases, and
(b) may make different provision for different purposes.

(7) Regulations under section 20 or this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament

S27A Liability to pay service charges: jurisdiction

(1) An application may be made to a leasehold valuation Tribunal for a determination whether a service charge is payable and, if it is, as to—
(a) the person by whom it is payable,
(b) the person to whom it is payable,
(c) the amount which is payable,
(d) the date at or by which it is payable, and
(e) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to a leasehold valuation Tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to—
(a) the person by whom it would be payable,
(b) the person to whom it would be payable,
(c) the amount which would be payable,
(d) the date at or by which it would be payable, and
(e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which—
(a) has been agreed or admitted by the tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral Tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
(a) in a particular manner, or
(b) on particular evidence,
of any question which may be the subject of an application under subsection (1) or (3).

(7) The jurisdiction conferred on a leasehold valuation Tribunal in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter

S20C "Limitation of service charges: costs of proceedings.

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court or leasehold valuation Tribunal, or the Lands Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

The 1987 Act

S24 Appointment of manager by the court.

(1) A leasehold valuation Tribunal may, on an application for an order under this section, by order (whether interlocutory or final) appoint a manager to carry out in relation to any premises to which this Part applies—
(a) such functions in connection with the management of the premises, or
(b) such functions of a receiver,
or both, as the court thinks fit.

(2) A leasehold valuation Tribunal may only make an order under this section in the following circumstances, namely—
(a) where the court 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
(iii) that it is just and convenient to make the order in all the circumstances of the case; or
(ab) where the court 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;
(aba) where the Tribunal is satisfied—
(i) that unreasonable variable administration 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 court 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;
(b) where the court 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).

(2B) In subsection (2)(aba) "variable administration charge" has the meaning given by paragraph 1 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.

(3) The premises in respect of which an order is made under this section may, if the court 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 court thinks fit; and, on any subsequent application made for the purpose by the manager, the court 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 court thinks fit, and in particular its operation may be suspended on terms fixed by the court.

(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 court 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 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 2002, the court 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, improvement or insurance of those premises

SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

CHI/40UE/LSC/2005/0081

Decision of the Leasehold Valuation Tribunal on the Applicants' application for leave to appeal against the decision of the Tribunal

Re: Application(s) under Sections 20C and 27(A) of the Landlord and Tenant Act 1985 as amended and Section 24 of the Landlord and Tenant Act 1987

Applicants:	Susan Elaine Merchant	No 10
	Deborah Ann Carrel	No 10
	Sophie Hyde Parker	No 3
	Steve Chalk	No 14
	Christopher Coombe	No 1
	Frances Page	No 13
Respondents:	Halse Manor Management Limited (First Respondent)	
	David Sutton	No 5
Re:	Halse Manor, Halse, Taunton, Somerset	
Date of Applications	29th August 2005	
Date of Inspection	9th January 2006	
Date of Hearing	9th and 10th January 2006	
Venue	Salvation Army Hall, Taunton	
Appearances for Applicants	Susan Elaine Merchant, Deborah Ann Carrel, Sophie Hyde Parker and Christopher Coombe all in person	
Appearances for First Respondent	Ian Morrell, the First Respondent's Sole Director and managing agent, accompanied by Mr G D Pinchbeck (No 9) (David Sutton neither attended nor was he represented)	
Other attendances	Mr D Porter (No 12)	

Members of the Leasehold Valuation Tribunal:-

M J Greenleaves	Lawyer Chairman
J McAllister FRICS	Valuer Member
Mrs M Hodge MRICS	Valuer Member

Date of Tribunal's Decision: 11th February 2006

Decision.

1) By letter dated 21st February 2006 Sue Merchant and Deborah Carrel have applied on behalf of the Applicants to the Tribunal for leave to appeal against certain parts of the Tribunal's decisions made on 11th February 2006

2) The Applicants wish to appeal against one item of their case under Section 27A of the Landlord and Tenant Act 1985; they do not wish to appeal against the Tribunal's decisions to appoint a Manager or concerning costs and fees.

3) The general grounds of the application for leave are:

   a. The Applicants consider that the Tribunal's decision concerning P Vaughn – grass-cutting etc - £2,141.70. does not accord with the evidence.

   b. That the Applicants did not have sufficient time at the hearing to submit all their evidence on that issue.

4) In respect of ground 3)a above, the Tribunal carefully considered all the detailed documentary and oral evidence submitted at the hearing by the Applicants. The Tribunal's findings on that issue were:

   "The Tribunal accepts that there was no proper consultation for Mr Vaughn's work under a long term qualifying contract. However, it notes that the rate charged was significantly lower than other quotations received for a long term contract so that it does not appear to be consistent with such a contract. It also noted that pending agreement for the long term, Mr Vaughn was to be paid monthly. The Tribunal finds that the payments made were for short term contracts and therefore did not require prior consultation. The Tribunal finds the sums charged as reasonable for the work done and payable as service charge."

5) Having taken into account the views expressed by the Applicants in their present application:

   a. the Tribunal is satisfied that it gave full and careful consideration to all the evidence and that its decision on this issue was and is in accordance with the weight of the evidence presented at the hearing.

   b. the Tribunal also finds that it is inappropriate to consider now any additional evidence that the Applicants might wish the Tribunal to take into account in a review of its decision.

   c. The Tribunal further finds that it does not have power to re-open the case for further consideration by the Tribunal itself

6) In respect of ground 3)b above:

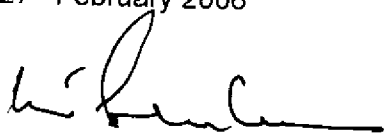
   a. Not until stated in their letter of 21st February 2006, did the Applicants give any indication to the Tribunal that they had not had sufficient time to present all their evidence during the two days of hearing of the case;

   b. the Tribunal is satisfied that every opportunity and ample time was given to the Applicants to enable them to present any evidence they wished to adduce to enable them to have a fair hearing. The Tribunal did not put any time constraints on them.

7) Accordingly the Tribunal finds that there are no or no sufficient grounds for appeal against the decisions made and the Tribunal therefore refuses leave to appeal on either ground.

8) Again, the Tribunal expresses the sincere hope that the Applicants will now focus instead on taking all possible steps to co-operate with all lessees and freeholders and resolve all other issues for the benefit of all those living at Halse Manor for the future. The Tribunal believes that with the appointment of a new professional manager, the foundation for the future is laid but it is evident that much time and effort – and probably expense – is now also needed from all residents to resolve remaining issues from past mis-management and the functioning of the First Respondent which are not within the jurisdiction of the Tribunal.

27th February 2006



Chairman
A member of the Southern
Leasehold Valuation Tribunal
appointed by the Lord Chancellor