

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE**  
**SOUTHERN RENT ASSESSMENT PANEL**  
**LEASEHOLD VALUATION TRIBUNAL**

**Case No. CHI/00MR/LAM/2010/0010**

**REASONS**

**Application** : Section 24 of the Landlord and Tenant Act 1987 (“the 1987 Act”) and section 20C of the Landlord and tenant Act 1985 (“the 1985 Act”)

**Applicant/Leaseholders** : Mr Thomas McPhail (Flat 1D), Miss Dee Davison (Flat 1C), Ms Jayne Bennett (Flat 1A), Miss Karen Cahill (Flat 2E), Mr Christopher Newhouse (Flat 2B/2D), Ms Dyanne Holland (Flat 2F), and Mr Ross Barker (Flat 2C)

**Respondent/Landlord** : Mr Bennet Charles Grenville Coulson

**Current Manager** : Labyrinth Properties Ltd

**Proposed Manager** : Mr Peter Dack, FRICS, of Dack Property Management

**Building** : 1 & 2 Lennox Mansions, Clarence Parade, Southsea, Hants, PO5 2HZ

**Flats** : the flats in the Building

**Leases** : the leases of the Flats

**Date of Application** : 14 September 2010

**Date of Directions** : 27 September 2010

**Date of hearing** : 10 December 2010

**Venue of hearing** : RPTS Office, 1 Market Avenue, Chichester, West Sussex, PO19 1JU

**Appearances for Applicant/Leaseholders** : Mr McPhail, Miss Davison, and Miss Cahill

**Appearance for Proposed Manager** : Mr Dack

**Appearance for Respondent/Landlord** : none

**Appearance for Current Manager** : none

**Members of the Tribunal** : Mr P R Boardman JP MA LLB (Chairman), Mr A J Mellery-Pratt FRICS

**Date of Tribunal's Reasons : 10 December 2010**

## **Introduction**

1. This application is for :
  - a. the appointment of a manager under section 24 of the 1987 Act
  - b. an order under section 20C of the 1985 Act that any costs incurred by the Respondent/Landlord in connection with the proceedings before the Tribunal were not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicant/Leaseholders
  
2. The application stated that the grounds were that :
  - a. commitment to the repairs and maintenance of the Building had been slow and inconsistent over the last few years
  - b. action had not been taken to carry out urgent repairs to the Building, and, when some work had been done, workmanship had been poor
  - c. regular site inspections had not been undertaken
  - d. repairs had to be carried out to halt the deterioration process of the Building structure
  - e. the value of the Building and the Flats had been affected
  - f. communication with the Applicant/Leaseholders by the Respondent/Landlord and the Current Manager had been poor, with no response to reasonable requests for information
  - g. there were breaches by the Respondent/Landlord of the lease and of the Code of Practice
  - h. there had been a failure to enforce payment of service charges by leaseholders in arrears
  - i. various health and safety regulations had been breached
  - j. window frames which could have been painted 4 years ago were now in need of full repair at greater cost
  - k. areas of poor workmanship should not be repaired at the expense of the leaseholders
  - l. a notice under section 22 of the 1987 Act had been served on 6 July 2010
  - m. a new manager should be appointed

## **Documents**

3. The documents before the Tribunal are :
  - a. a bundle comprising the application, the notice under section 22 of the 1987 Act, and a letter from the Proposed Manager dated 11 October 2010
  - b. the Applicant/Leaseholders' bundle
  - c. a letter from the Current Manager dated 8 November 2010
  - d. a letter from Kirklands Solicitors dated 10 December 2010 received just before the hearing
  - e. a bundle of notices, letters and e-mails submitted by the Applicant/Leaseholders at the hearing
  
4. References in these reasons to page numbers are to page numbers in the Applicant/Leaseholders' bundle, unless otherwise indicated

## **The Leases**

5. The Applicant/Leaseholders' bundle contains a statement that the Leases for all the Flats are in similar terms
6. A copy of the Lease of Flat 1D is attached as Appendix 1 to these reasons

**Notice under section 22 of the 1987 Act 6 July 2010**

7. The notice, a copy of which is attached as Appendix 2 to these reasons :
  - a. was expressed to be from the Applicant/Leaseholders, and, in the first schedule to the notice, set out their names and addresses
  - b. was addressed to the Respondent/Landlord at 2 The Gardens, Office Village, Fareham, Hampshire, PO16 8SS
  - c. stated that the Applicant/Leaseholders intended to make an application for an order under section 24 of the 1987 Act to be made by the Tribunal to appoint a manager in respect of the Building, but would not do so if the Respondent/Landlord complied with the requirements set out in the notice
  - d. specified, in the second schedule to the notice, the grounds on which the Tribunal would be asked to make the order
  - e. specified, in the third schedule to the notice, the matters which would be relied upon by the Applicant/Leaseholders for the purposes of establishing those grounds
  - f. specified, in the fourth schedule to the notice, the matters which were capable of remedy, and the steps for so doing, and required the Respondent/Landlord to take those steps within the period of 2 months from the date of the notice
  - g. stated that, if the Building was subject to a mortgage, section 22(4) of the 1987 Act required the Respondent/Landlord to serve a copy of the notice on any mortgagee as soon as reasonably practicable

**Letter from the Proposed Manager 11 October 2010**

8. The Proposed Manager stated that :
  - a. he was a fellow of the RICS
  - b. he was the sole director of Dack Property Management, which specialised in leasehold property management and was the leading firm of chartered surveyors on Portsea Island specialising in that field, and had been in existence for 5 years
  - c. previously he had been an employee of DM Nesbit & Company for 10 years working as the property manager running the management department, and prior to that he had worked in central London for a bank specialising in property portfolio management
  - d. his terms of appointment, remuneration, and any additional charges, would be set out under a standard RICS Residential Management Agreement, a copy of which is attached to these reasons as Appendix 3
  - e. he fully understood the RICS service charge residential management code
  - f. the agreement produced by the RICS was in strict accordance with the code
  - g. over recent years he had personally acted for a number of leaseholders' right to manage companies in acquiring the right to manage their properties

- h. he fully understood the duties and obligations of a manager appointed by the Tribunal under section 24 of the 1987 Act, and was willing to accept such an appointment

**Letter from Current Manager 8 November 2010**

- 9. The letter, showing the Current Manager’s address as 2 The Gardens, Office Village, Fareham, Hampshire, PO16 8SS, stated that the Current Manager had reviewed the case following this application and felt that the best course of action was for the Current Manager to resign as managing agents, “thereby negating the need for a LVT hearing”. The Current Manager would work with the chosen agent, the Proposed Manager, to ensure a smooth handover of the Building and all relevant information

**The law**

- 10. Section 24 of the 1987 Act provides as follows

***24 Appointment of manager by a leasehold valuation tribunal.***

*(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]*

*(c) 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 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*

## **Inspection**

11. The Tribunal inspected the Building on the morning of the hearing. Also present were Mr McPhail, Miss Davison, and Miss Cahill
12. The Building was a semi-detached, 5-storey block with brick elevations under a tiled pitched roof. The Applicant/Leaseholders said that it had been built in the 1890's, and converted into flats in 1999. The Building was divided into two houses. House 1, on the left hand side looking from the road, comprised 6 Flats. House 2, on the right hand side, comprised 5 Flats. A helpful photograph is on the front cover of the Applicant/Leaseholders' bundle. There are plans in the Leases

13. The Applicant/Leaseholders drew the following matters to the Tribunal's attention :
- a. the pillars on either side of the 2 front gates were in poor condition
  - b. the outside paintwork was in poor condition, particularly on the window sills where some bare wood was exposed, and the 2 outer front doors; the Applicant/Leaseholders said that there had been no external painting for at least 6 years
  - c. there was moss growing by, and apparently in, the guttering
  - d. the wooden fence round the bin storage area had not been treated
  - e. the brickwork on top of the left-hand boundary wall was cracked and displaced
  - f. the wooden steps leading to the outer front doors were untreated, and only a few pieces remained of non-slip pads which the Applicant/Leaseholders said had been fixed on about 2 years ago, but which had come off again only a few weeks later
  - g. the newel posts attached to the wooden steps were in poor condition
  - h. the wooden fence panels on the right-hand boundary were leaning and had not been treated
  - i. the pointing on the front wall of the Building was in poor condition
  - j. in the inner lobby of House 2 was a sheet entitled "Scotts Contract Services" which listed cleaning dates, the last of which was 18 October 2010
  - k. the Applicant/Leaseholders said that no interior painting of the common parts had taken place for at least 6 years
    - l. on the first floor landing there was a ceiling stain which the Applicant/Leaseholders said had resulted from a leak from the Flat above at Easter
    - m. through the first floor landing window could be seen scaffolding and window sills covered in bird droppings
    - n. inside Flat 2E Miss Cahill drew attention to stains on the outer walls of the main bedroom, the hall, and the back room
    - o. at the rear of the Building, accessed from Clarence Road, was a disused external wooden staircase attached to House 2, the base of which was surrounded by shingle, and a disused external iron staircase attached to House 1
    - p. there were 2 overgrown rear garden areas behind the Building, but the only access to the garden behind House 1, the base of the iron staircase, and the gas meters, was through wooden gates, which were locked

## **The hearing**

### **Adjournment application**

14. A few minutes before the hearing, the Tribunal received by fax a letter from Kirklands Solicitors dated 10 December 2010 stating that :
- a. they were acting for the Respondent/Landlord
  - b. the Respondent/Landlord was resident in St Kitts
  - c. he had received from his managing agents a copy of the Tribunal's directions dated 27 September 2010, indicating that the target date for the hearing was 10 December 2010, the Respondent/Landlord would receive formal notification of the date, time and place of the hearing not less than 28 days before it was to take place, and that the

- Applicant/Leaseholders should supply the Respondent/Landlord with statement of case and supporting documents
- d. he had not received either formal notification of the hearing nor a copy of the Applicant/Leaseholders' bundle
  - e. Kirklands Solicitors were requesting an adjournment
15. The bundle of notices, letters and e-mails submitted by the Applicant/Leaseholders at the hearing comprised the following documents:
- a. an application for payment of ground rent dated 28 May 2010 from the Current Manager to Mr McPhail, endorsed with a notice pursuant to sections 47 and 48 of the 1987 Act that all notices, including notices in proceedings, might be served on the Respondent/Landlord at 2 The Gardens Office Village Fareham Hants PO16 8SS
  - b. an undated notice from the Current Manager to Mr McPhail stating that rent was due on 24 June 2010, that payment should be made to the Current Manager at 2 The Gardens Office Village Fareham Hants PO16 8SS, and that the notice was given by the Respondent/Landlord of 2 The Gardens Office Village Fareham Hants PO16 8SS
  - c. a letter dated 7 July 2010 from the Current Manager to Mr McPhail referring to Mr McPhail's letter dated 6 July 2010 in connection with Mr McPhail's application for the appointment of a manager and stating that the Current Manager had forwarded the application to the Respondent/Landlord by post and e-mail
  - d. an e-mail dated 7 November 2010 from Mr McPhail to the Respondent/Landlord referring to the application to the Tribunal, to the notice under section 22 of the 1987 Act dated 6 July 2010, and to the resignation of the Current Manager as managing agent, and asking whether the Respondent/Landlord was content for the Proposed Manager to be appointed as the new managing agent
  - e. an e-mail dated 8 November 2010 from the Respondent/Landlord stating that :
    - the Respondent/Landlord had not been aware of the application to the Tribunal until receiving a comment in an e-mail from Jayne Bennett on other matters
    - the Current Manager had copied the section 22 notice to the Respondent/Landlord in July and had received the Respondent/Landlord's instructions to deal with it and the appropriate concerns
    - it was only when the Respondent/Landlord asked the Current Manager about progress last week that the Current Manager explained about the current situation and about the Current Manager's resignation
    - the Respondent/Landlord was awaiting the advice of his solicitor
    - the Respondent/Landlord would contact the Proposed Manager and, if happy, and subject to the Respondent/Landlord's solicitor's advice, could see no reason not to instruct the Proposed Manager
  - f. an e-mail dated 17 November 2010 from Mr McPhail to the Respondent/Landlord stating that the Applicant/Leaseholders had decided to continue with the application to the Tribunal to obtain an order appointing the Proposed Manager, and that Mr McPhail had now received a resignation letter from the Current Manager
  - g. an e-mail dated 24 November 2010 from the Respondent/Landlord to Mr McPhail :
    - asking the date of the hearing

- stating that the Respondent/Landlord had seen no correspondence about the hearing other than the application, but that the Current Manager was sending a bundle of documents to the Respondent/Landlord's solicitors today
  - stating that the Respondent/Landlord had corresponded with the Proposed Manager and had researched his credentials
- h. an e-mail dated 25 November 2010 from the Respondent/Landlord to Mr McPhail stating that the Respondent/Landlord was entitled to "the reasonable costs incurred as part of the right to manage process"
  - i. an e-mail dated 25 November 2010 from Mr McPhail to the Respondent/Landlord, copied to Kirklands Solicitors, stating that :
    - the hearing date was Friday 10 December at the offices of the Tribunal in Chichester
    - the Applicant/Leaseholders' bundle had been sent to the Respondent/Landlord via the Current Manager on 27 October 2010
    - the application included an application under section 20C of the 1985 Act for an order limiting the inclusion of the Respondent/Landlord's costs in the application
  - j. an e-mail dated 4 December 2010 from the Respondent/Landlord to Mr McPhail stating that the Respondent/Landlord was making representations to the Tribunal, and that the Respondent/Landlord had written to the Proposed Manager explaining that the Respondent/Landlord was looking forward to instructing the Proposed Manager if the Tribunal so allowed
  - k. an e-mail dated 6 December 2010 from the Respondent/Landlord to Mr McPhail stating that the Respondent/Landlord's solicitor, Kirklands Solicitors, would contact Mr McPhail about the "RTM company which you have set up"
  - l. an email dated 9 December 2010 from Kirklands Solicitors to Mr McPhail stating that :
    - Kirklands Solicitors had seen via the Current Manager a copy of the section 24 application and of the Tribunal's directions, which indicated a target date for the hearing of 10 December and directed that the Applicant/Leaseholders should supply a statement of case
    - the Respondent/Landlord would like to work with the Applicant/Leaseholders in the appointment of a new manager and would be happy if that was the Proposed Manager
  - m. an e-mail dated 9 December 2010 from Mr McPhail to Kirklands Solicitors stating that the hearing date of 10 December had been set out in Mr McPhail's e-mail dated 25 November and in the letter from the Tribunal dated 15 November, and that on 27 October Mr McPhail had sent to the Respondent/Landlord via the Current Manager the Applicant/Leaseholders' bundle

#### **The Applicant/Leaseholders' submissions about the adjournment application**

16. Mr McPhail opposed the adjournment application

#### **The Tribunal's decision about the adjournment application**

17. The Tribunal indicated at the hearing that :
  - a. under paragraph 14(8) of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 ("the 2003 Regulations"), if a party did not appear at a hearing, the

- Tribunal might proceed with the hearing if it was satisfied that notice had been given to that party in accordance with the 2003 Regulations
- b. under paragraph 14 of the 2003 Regulations, notice of a hearing should be given not less than 21 days before the appointed date
  - c. under paragraph 23 of the 2003 Regulations, notices should be sufficiently served if sent to the recipient at his usual or last known address, or, if he had appointed an agent, to the address of the agent supplied to the Tribunal
  - d. the notice under section 22 of the 1987 Act dated 6 July 2010, the application under section 24 of the 1987 Act dated 14 September 2010, and the notice of the Tribunal hearing dated 15 November 2010 had all been sent to the Respondent/Landlord at 2 The Gardens Office Village Fareham Hants PO16 8SS, and the Applicant/Leaseholders' bundle had been sent to the Respondent/Landlord at that address on 27 October 2010
  - e. that was the address given in the application for payment of ground rent dated 28 May 2010 from the Current Manager to Mr McPhail, pursuant to sections 47 and 48 of the 1987 Act, as the address at which all notices, including notices in proceedings, might be served on the Respondent/Landlord
  - f. if there was any failure on the part of the Current Manager to forward any of those documents to the Respondent/Landlord, then that was a matter between the Respondent/Landlord and the Current Manager, and not a reason, as such, for adjourning the hearing
  - g. in any event, it was clear from the e-mail dated 25 November 2010 from Mr McPhail that the Respondent/Landlord had personally been notified of the hearing date
  - h. the Tribunal was satisfied that the Respondent/Landlord had had notice of the hearing date for the purposes of the 2003 Regulations
  - i. under paragraph 15 of the 2003 Regulations the Tribunal should not adjourn a hearing except where it considered that it was reasonable to do so having regard to the grounds of the request, the time at which the request was made, and the convenience of the other parties
  - j. the Tribunal did not, in all the circumstances, consider that it would be reasonable to adjourn the hearing
  - k. the Tribunal accordingly refused the adjournment application

#### **The substantive application under section 24 of the 1987 Act**

#### **The notice under section 22 of the 1987 Act**

18. The Applicant/Leaseholders submitted that the section 22 notice had been sent to the Respondent/Landlord at 2 The Gardens Office Village Fareham Hants PO16 8SS. That address was the address of the Current Manager, and was the address stated in the application for payment of ground rent dated 28 May 2010 from the Current Manager to Mr McPhail, as the address pursuant to sections 47 and 48 of the 1987 Act at which all notices, including notices in proceedings, might be served on the Respondent/Landlord. The letter from the Current Manager dated 7 July 2010 made it clear that the Current Manager had received the section 22 notice, and had sent it to the Respondent/Landlord

19. The Tribunal indicated at the hearing that the Tribunal was satisfied that the section 22 notice had accordingly been effectively served on the Respondent/Landlord and the Current Manager for the purposes of section 22(1) of the 1987 Act

**The grounds of the application under section 24 of the 1987 Act**

20. The Applicant/Leaseholders submitted that there were breaches by the Respondent/Landlord of covenants under the Leases, and of the RICS Service Charge Residential Management Code, being the code approved by the Secretary of State under section 87 of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Code"), as set out in the notice under section 22 of the 1987 Act
21. The Applicant/Leaseholders submitted at the hearing that examples of breaches by the Respondent/Landlord of covenants under the Leases, and of the matters being brought to the attention of the Current Manager, were as follows :
- a. exterior decorations : the last external painting had been at least 6 years ago, leaving, for example, outer doors and window sills, in poor condition : no remedial action had been taken despite a letter from the Current Manager dated 9 June 2006 stating that the doors would be dealt with (item 9, page 41) and outstanding matters being recorded in items 8 and 9 of the minutes of a meeting attended by the Current Manager on 27 June 2006 (page 36)
  - b. outside steps : the problems were recorded in the letter from the Current Manager dated 9 June 2006 (item 12, page 41) and in item 8(d) of the minutes of the meeting attended by the Current Manager on 27 June 2006 (page 36), following which anti-skid patches were applied about 2 years ago, but came off almost immediately
  - c. pigeon droppings : the problems were recorded in item 9(b) of the minutes of the meeting attended by the Current Manager on 27 June 2006 (page 36); a contractor had installed spikes, but had not cleaned the sills beforehand; 3 months ago scaffolding had been erected, the spikes had been removed, the walls had been cleaned, and the spikes had been replaced, but the scaffolding had remained; the result was that pigeons had now been perching on the scaffolding and all the cleaning needed to be carried out again; there was a similar problem at the front of the Building, resulting in pigeon droppings being tramped into the communal hall, particularly in damp weather, with a consequent health and safety risk
  - d. interior painting of communal hall, stairs and landings : this had not been carried out for at least 6 years; no remedial action had been taken despite the problems being recorded in item 5 of the minutes of the meeting attended by the Current Manager on 27 June 2006 (page 36)
  - e. roof : the problems were recorded in item 4 of the letter from the Current Manager to Miss Davison dated 9 June 2006 (page 39), item 3 of the minutes of the meeting attended by the Current Manager on 27 June 2006 (page 36) and in the report from PPS dated 6 July 2006 (page 34); although some work had been carried out to the roof of House 1 in 2007, works to the roof of House 2 had not been carried out at the same time, which would have saved scaffolding costs
  - f. entrance gate pillars : the problems were recorded in a letter from Miss Davison to the Current Manager dated 12 March 2010 (page 11)
  - g. wooden fencing round dustbin area : this had not been maintained
  - h. the external rear staircases : these were unsafe

- i. cleaning of internal communal hall stairs and landings : the Tribunal had seen in the inner lobby of House 2 a sheet entitled "Scotts Contract Services" listing cleaning dates, the last of which was 18 October 2010; the Applicant/Leaseholders said that House 1 had never been cleaned by contractors, but had been cleaned by the leaseholders, but that cleaning costs were still being included in the service charges for both House 1 and House 2, as was clear from the budget for 2009 (page A3)

22. The Applicant/Leaseholders submitted at the hearing that examples of breaches by the Respondent/Landlord of the Code were as follows :
- a. lack of communication with leaseholders, despite letters from leaseholders : for example, the letter from Mr McPhail to the Current Manager dated 21 August 2009 (page 15)
  - b. lack of accounting information : the leaseholders received accounts, but no accounting information, despite requests such as the letter from Mr McPhail to the Current Manager dated 12 February 2010 (page 12)
  - c. lack of site inspections : the many examples of breaches of the Respondent/Landlord's covenant would have been noted had there been proper site inspections
  - d. failure to supervise contractors : again, the problems with the pigeon droppings, the front steps, and the cleaning of the internal common parts would not have occurred if there had been proper supervision of the work done
  - e. health and safety issues : for example, again, there were problems with the pigeon droppings and the slippery front steps
  - f. failure to carry out consultation procedure under section 20 of the 1985 Act : the Applicant/Leaseholders said that the repairs to the front steps had cost £3,542, which equated to £322 for each of the 11 Flats, which exceeded the £250 limit, but the Applicant/Leaseholders had not been consulted about the overall intent or cost of the work
  - g. failure to have a clear complaints procedure : the only response to Mr McPhail's formal letter of complaint to the Current Manager dated 15 April 2010 (page 10) had been the bare acknowledgement from Countrywide dated 20 April 2010 (page 9)

### **The Proposed Manager**

23. Mr Dack confirmed the contents of his letter dated 11 October 2010. He had 14 staff. He had 2 other property managers, in addition to himself. He was not a member of the FSA, but had RICS group membership, the RICS being authorised by the FSA as a "Designated Professional Body". His company had an insurance portfolio. He had RICS-approved indemnity insurance of £1m. His long-stop complaints procedure was to the Surveyors Ombudsman Service. He had a single designated client account. He was registered with the Data Protection Registrar. He used an independent company, Lloyds Marsh, for fire risk assessment. Insurance commissions were 40%, and were shared equally with the broker. Mr Dack agreed an arrangement with each client about how his share of the commission should be dealt with. Administration charges for arrears letters and court proceedings were set out in warning letters. He had a bank of contractors to choose from. He insisted on having a contractor's PI insurance cover certificate on file before instructing the contractor. Out of hours emergency calls were diverted to mobile telephones of himself and his 2 managers on a rota basis. His property management portfolio was 1,500 leasehold and 500 rented

properties. His management fee was reviewed annually. It was currently £150 a flat plus VAT per annum

**Date from which the appointment of the Proposed Manager should take effect**

24. The Applicant/Leaseholders and the Proposed Manager suggested that this should be from 13 December 2010

**Tribunal's decision and reasons**

25. The Tribunal, having considered all the evidence before it, and the representations by and on behalf of the parties, including the indications in the e-mails from the Respondent/Landlord that the Respondent/Landlord was happy to instruct the Proposed Manager, makes the following findings :
- a. the Respondent/Landlord is in breach of the covenants on behalf of the landlord contained in the leases
  - b. the Respondent/Landlord has failed to comply with the Code
  - c. a notice under section 22 of the 1987 Act has been served, and the period specified for the taking of steps to remedy the matters referred to has expired without the Respondent/Landlord having done so
  - d. it is just and convenient in all the circumstances of the case to make an order appointing the Proposed Manager as manager and receiver of the Building

**Order appointing the Proposed Manager**

26. The Tribunal accordingly makes an order in the terms set out in the form attached to these reasons as Appendix 4

**The application under section 20C of the 1985 Act**

27. The Applicant/Leaseholders submitted that any costs incurred by the Respondent/Landlord in these proceedings should not be recoverable as part of the service charge

**The Tribunal's decision and reasons**

28. The Tribunal, having considered all the evidence before it, and the representations on behalf of the parties, including the submission in the e-mail dated 25 November 2010 from the Respondent/Landlord to Mr McPhail that the Respondent/Landlord was entitled to "the reasonable costs incurred as part of the right to manage process", finds that :
- a. the Tribunal's attention has not been drawn to any provision in the Lease which would expressly or impliedly entitle the Respondent/Landlord to include any costs incurred by the Respondent/Landlord in these proceedings in a service charge
  - b. paragraph 1.3.1.1 of the third schedule, for example, which entitles the Respondent/Landlord to include in a service charge fees and disbursements in connection with the *management* of the Building, does not, as the Tribunal finds, expressly or impliedly

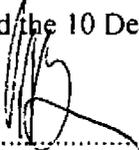
refer to fees in connection with a successful application for the appointment of a manager because of the *poor management* of the Building

- c. in any event, in the light of the making of the Tribunal's order for the appointment of a manager as sought by the Applicant/Leaseholders under section 24 of the 1987 Act, this not being an application for the acquisition of rights to manage under Part 2 Chapter 1 of the Commonhold and Leasehold Reform Act 2002, it is appropriate in all the circumstances to make an order under section 20C of the 1985 Act

**Order under section 20C of the 1985 Act**

29. The Tribunal accordingly makes an order that any costs incurred by the Respondent/Landlord in connection with the proceedings before the Tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicant/Leaseholders

Dated ~~the~~ 10 December 2010



P R Boardman  
(Chairman)

A Member of the Tribunal appointed by the Lord Chancellor

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE**  
**SOUTHERN RENT ASSESSMENT PANEL**  
**LEASEHOLD VALUATION TRIBUNAL**

**Case No. CHI/00MR/LAM/2010/0010**

**1 & 2 Lennox Mansions, Clarence Parade, Southsea, Hants, PO5 2HZ**

**Appendix 1**

**Copy Lease of Flat 1D**

DATED

24<sup>th</sup> May

2001

MR. B. C. G. COULSON

to

MR. P. E. BARTY

Lx34-6

**LEASE**

relating to  
Hall Floor Flat No. 1d  
Lennox Mansions Clarence Parade Southsea in Hampshire

Philip Kirkland & Co.,  
21a Market Place  
Romsey  
Hampshire  
SO51 8NA

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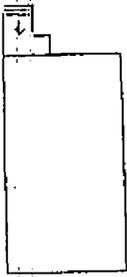
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FIRST SCHEDULE: Rights Included

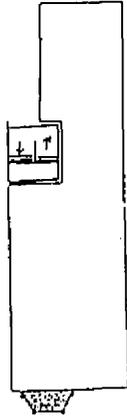
1+2 EMMOX MANSIONS SOUTHSEA.

LEASE PLANS FOR IDENTIFICATION PURPOSES ONLY.

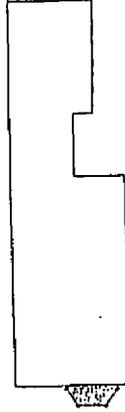
3<sup>rd</sup> Floor



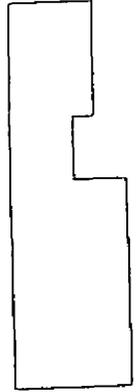
2<sup>nd</sup> Floor



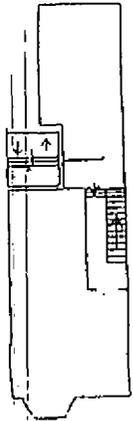
2<sup>nd</sup> Floor



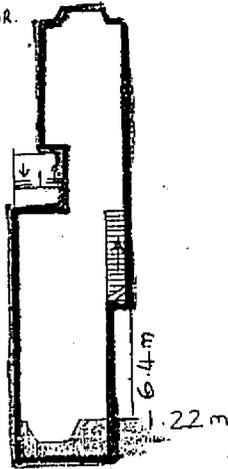
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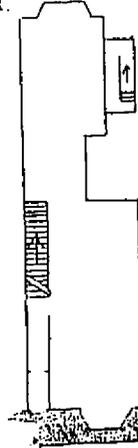
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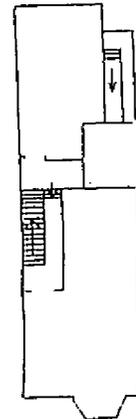
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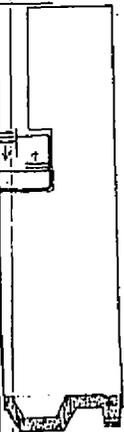
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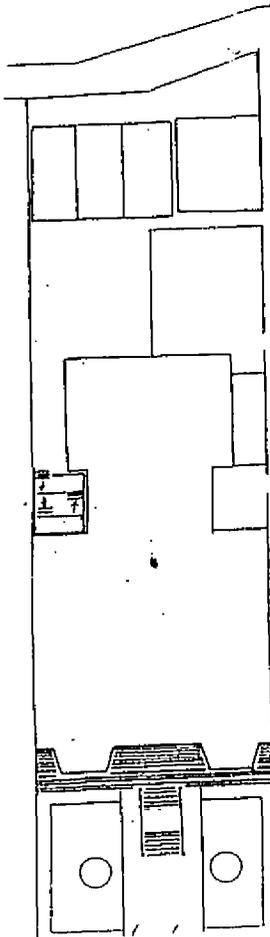
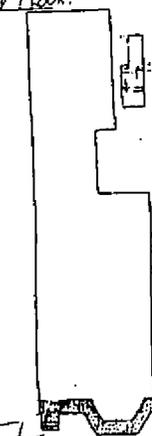
1<sup>st</sup> Floor



LOWER GROUND FLOOR



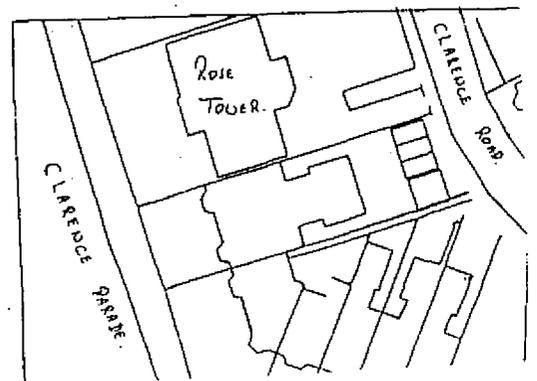
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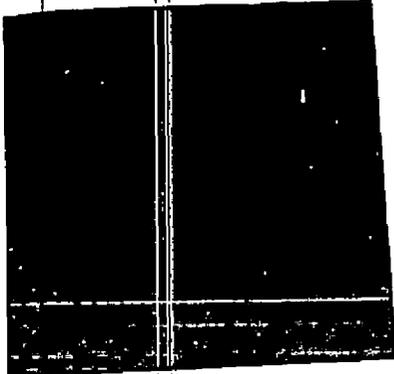
Bennet Charles & Co. Architects  
by Resolution  
P.L.C.

Upper Ground Floor  
for the Tenant

LOCATION PLAN



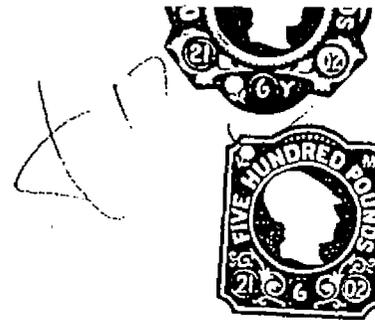
Plan for identification purposes only in the scale 1:2500



H M LAND REGISTRY

Land Registration Acts 1925 - 1986

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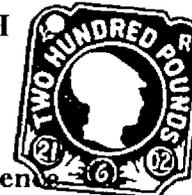


COUNTY AND DISTRICT : HAMPSHIRE - PORTSMOUTH

TITLE NUMBER : PM 731

PROPERTY : 1 & 2 Lennox Mansions Clarence Parade Southsea

DATED : 24<sup>th</sup> May 2001



1. PARTICULARS

1.1.1 The Landlord

BENNET CHARLES GRENVILLE COULSON of Lepe Farmhouse Exbury  
Southampton in Hampshire

1.1.2 The Tenant

PETER EDWIN BARTY of 2 Leyden Court Alhambra Road Southsea Hampshire

1.2 The Property

ALL THAT property known as 1 & 2 Lennox Mansions Clarence Parade Southsea  
comprised in the Title above referred to

1.3 The Premises

The Hall Floor Flat 1d and forming part of the Property and shown edged red on the Plan  
including

1.3.1 the inner surface of and the paint and other decorative finishes applied to the interior and external walls and the internal load bearing walls of the Building but not any other part of such walls

1.3.2 the floor finishes so that the lower limit of the Premises includes such finishes but does not extend to anything below them

1.3.3 the ceiling finishes so that the upper limit of the Premises includes such finishes but does not extend to anything above them

1.3.4 the internal non-load bearing walls

1.3.5 the inner half severed medially of the non-load bearing walls dividing the Premises from any other parts of the Building

1.3.6 the doors and door frames and the windows and the window frames

1.3.7 all additions and improvements to the Premises and

1.3.8 any conduits that are in or on and that exclusively serve the Premises

#### 4 The Term

4 years from and including the 24th June 1999

#### Rent Commencement Date

2002

#### The Rent

The yearly rent shall be for the first Twenty Years of the Term the yearly rent of ONE HUNDRED AND FIFTY POUNDS (£150.00) such rent to be subject to review on each twentieth anniversary of the grant hereof and shall then be increased to such sum as is the same percentage as the reviewed value of the flat (to be determined as hereinafter provided)

as the rent hereinbefore reserved is to the premium hereinbefore referred to but so that such reviewed rent shall never equal (but shall be less than) such a sum as would in appropriate circumstances create an inhibition on the premium capable of being charged on an assignment of the demised premises in the same manner as set out in Section 127 and Part II of Schedule 18 to the Rent Act 1977 as amended by Section 78 of the Housing Act 1980 or any amending or similar legislation. The amount of the rent shall be determined by a Chartered Surveyor acting as an expert and not as an arbitrator who shall be appointed by the President for the time being of the Royal Institution of Chartered Surveyors or (if he fails to appoint one within three months of being requested to do so) by the President for the time being of the Law Society on the application by the Lessor made at any time after each twentieth anniversary of the commencement of the said term. The Surveyor may be requested to determine all or any of the rents of the flats comprised in the development. The fees of the Surveyor appointed for this purpose shall be paid by the Lessor.

**1.7 The Price**

**ONE HUNDRED AND SIXTY NINE THOUSAND NINE HUNDRED AND NINETY FIVE THOUSAND POUNDS (£169,995.00)**

**1.8 Interest Rate**

4 per cent per annum above the Base Rate of Lloyds Bank Plc

**1.9 Service Charge Proportion**

10% of the total service charge

**1.10 Initial Provisional Service Charge**

£250.00 per annum

2. **DEFINITIONS**

2.1 For all purposes of this Lease the terms defined in Clauses 1 and 2 have the meanings specified

2.2 "Accountant" means a Chartered Accountant or firm of Chartered Accountants appointed by the Landlord to perform any of the functions of the Accountant under this Lease

2.3 "Building" means the building or buildings from time to time erected on the Property and any additions and improvements thereto

2.4 "Common Parts" means the conduits entrance halls staircases and all other parts of the Property which are intended to be for the use of and enjoyment by the Tenants of the Property and all persons expressly or by implication authorised by them

2.5 "Conduits" means pipes sewers drains mains ducts conduits gutters watercourse wires cables channels flues and all other conducting media and includes any fixings louvres cowls and other ancillary apparatus which are in on or under or which serve the Property

2.6 "Insured Risks" means fire lightning explosion aircraft (including articles dropped from aircraft) riot civil commotion malicious persons earthquake storm tempest flood bursting and overflowing of water pipes tanks and other apparatus and impact by road

vehicles and such other risks customarily covered by a Block of Flats Comprehensive Buildings Insurance Policy and against all liability of the Landlord to third parties arising out of or in connection with any matter including or relating to the Property

2.7 "Interest" means interest during the period from the date on which the payment is due to the date of payment both before and after any judgement at the Interest Rate then prevailing or should the Base Rate referred to in Clause 1.8 cease to exist such other rate of interest as is most closely comparable with the Interest Rate to be agreed between the parties or in default of agreement to be determined by the Surveyor acting as an expert and not as an arbitrator

2.8 "The Plan" means the plan annexed to this Lease

2.9 "the Planning Acts" mean the Town and Country Planning Act 1971 and all statutes regulations and orders included by virtue of Clause 3.9

2.10 "the Regulations" means the regulations in the Fourth Schedule

2.11 "Surveyor" means a Chartered Surveyor or firm of Chartered Surveyors appointed by the Landlord to perform any functions of the Surveyor under this lease including the Landlord or employee of the Landlord and including also the person or firm appointed by the Landlord to collect the Rent

2.12 "the Notice Value" means the consideration set out in the document then being registered save that where the consideration is nominal or the document put up for

registration has no reference to the consideration the expression "the Notice Value" means the last full consideration for value relating to the Premises

### 3. INTERPRETATION

3.1 The expression "the Landlord" and "the Tenant" wherever the context so admits include the person for the time being entitled to the reversion immediately expectant on the determination of the Term and the Tenant's successors in title respectively

3.2 Where the Landlord or the Tenant for the time being are two or more persons obligations expressed or implied to be made by or with such party are deemed to be made by or with such persons jointly and severally

3.3 Words importing one gender include all other genders and words importing the singular include the plural and vice versa

3.4 References to "the last year of the Term" include the last year of the Term if the Term shall determine otherwise than by effluxion of time and reference to "the expiration of the Term" include such other determination of the Term

3.5 References to any right of the Landlord to have access to the Premises shall be construed as extending to all persons authorised by the Landlord (including agents professional advisers contractors workmen and others)

3.6 References to any right exercisable by the Landlord or exercisable by the Tenant in common with the Landlord include the exercise of such right by and in common

with all persons authorised by the Landlord and all other persons having a like right

3.7 Any covenant by the Tenant not to do any act or thing shall be deemed to include an obligation not to permit or suffer such act or thing to be done by another person

3.8 Any references to a specific statute include any statutory extension or modification or re-enactment of such statute and any regulations or orders made under such statute and any general reference to "statute" or "statutes" includes any regulations or orders made under such statute or statutes

3.9 References in this Lease to any Clause sub-clause or Schedule without further designation shall be construed as a reference to the Clause sub-clause or Schedule to this Lease so numbered

3.10 The Clause paragraph and Schedule headings and the Table of Contents do not form part of this Lease and shall not be taken into account in its constructions or interpretation

#### 4. DEMISE

In consideration of the Price now paid by the Tenant to the Landlord (the receipt whereof the Landlord hereby acknowledges) the Rent and the Tenant's covenants herein the Landlord with Full Title Guarantee demises to the Tenant the Premises **TOGETHER WITH** the rights specified in the First Schedule **EXCEPTING AND RESERVING** to the Landlord the rights specified in the Second Schedule **TO HOLD** unto the Tenant for the Term **SUBJECT TO** all rights easements privileges restrictions covenants and

stipulations of whatever nature affecting the Premises including any matter contained or referred to in the Seventh Schedule **YIELDING AND PAYING** to the Landlord the Rent payable without any deduction by annual payments in advance on the 24th day of June in every year and proportionately for any period of less than a year the first such payment being a proportionate sum in respect of the period from and including the Rent Commencement Date to and including the 24th day of June next to be paid on the date of this Lease

## 5. **TENANT'S COVENANTS**

The Tenant covenants with the Landlord

### 5.1 **Rent**

5.1.1 To pay the Rent on the days and in the manner set out in this Lease and not to exercise or seek to exercise any right or claim or withhold the Rent or any right or claim to legal or equitable set-off

5.1.2 If so required in writing by the Landlord to make such payments by Bankers Order or Credit Transfer to any bank and account in the United Kingdom that the Landlord may from time to time nominate

### 5.2 **Outgoings and V.A.T.**

To pay and to indemnify the Landlord against

5.2.1 All rates taxes assessments duties charges impositions and outgoings which are now or during the Term shall be charged assessed or imposed upon the Premises or upon the owner or occupier of it excluding any payable by the Landlord occasioned by receipt of the Rent or by any disposition of dealing with or ownership of any interest

reversionary to the interest created by this Lease and

5.2.2 Value Added Tax (or any tax of a similar nature that may be substituted for it or levied in addition to it) chargeable in respect of any payment made by the Tenant under any of the terms of this Lease or in respect of any payment made by the Landlord where the Tenant agreed in this Lease to reimburse the Landlord for such payment

5.3 **Repair decoration etc.**

5.3.1 To repair the Premises and keep them in good and substantial repair excepting damage caused by an Insured Risk other than where the insurance money is irrevocable in consequence of any act or default of the Tenant or anyone at the Premises expressly or by implication with the Tenant's authority

5.3.2 To replace from time to time the Landlord's fixtures and fittings in the Premises which may be or become beyond repair at any time during or at the expiration of the Term

5.3.3 In every fifth year and in the last year of the Term to redecorate the Premises in a good and workmanlike manner and with appropriate materials of good quality

5.4 **Waste and alterations**

5.4.1 Not to:

5.4.1.1 commit any waste

5.4.1.2 make any addition or structural alteration to the premises

5.4.1.3 unite the Premises with any adjoining premises

5.5 **Access of Landlord and notice to repair**

5.5.1 To permit the Landlord on 48 hours written notice (except in the case of

emergency:

5.5.1.1 to enter upon the Premises for the purpose of ascertaining that the covenants and conditions in this Lease have been observed and performed

5.5.1.2 to view the state of repair and condition of the Premises and

5.5.1.3 to give to the Tenant (or leave upon the Premises) a notice specifying any repairs maintenance or painting that the Tenant has failed to execute in breach of the terms of this Lease and to request the Tenant immediately to execute the same

5.5.2 Immediately to repair maintain and paint the Premises as required by such notice

5.5.3 If within three months of the service of such a notice the Tenant shall not have commenced and be proceeding diligently with the execution of the work referred to in the notice to permit the Landlord to enter the Premises to execute such work as may be necessary to comply with the notice and to pay the Landlord the cost of so doing and all expenses incurred by the Landlord (including legal costs and surveyor's fees) within fourteen days of a written demand

5.5.4 To enter the Premises (on reasonable notice except in case of emergency) for the purpose of carrying out repairs and works to the Building and Conduits but causing as little inconvenience to the Tenant as practicable and making good any damage caused

## 5.6 Alienation

5.6.1 Not to transfer underlet or part with possession of the Premises save by way of a Transfer or Underlease of the whole pursuant to Clause 6.6.2

5.6.2 Not to transfer the Premises unless before completion of any Transfer the

Transferee executes a Deed of Covenant (jointly and severally if there be more than one person constituting the transfer) at the cost of the Tenant in the form set out in the Fifth Schedule and such Deed of Covenant shall be delivered to the Landlord immediately after completion of the transfer

5.6.3 Not to underlet the Premises unless before completion of any Underlease the Underlessee executed a Deed of Covenant (jointly and severally if there be more than one person constituting the Underlessees) at the cost of the Tenant in the form set out in the Sixth Schedule and such Deed of Covenant shall be delivered to the Landlord immediately after completion of the Underlease

5.6.4 Within twenty eight days of any Transfer Underlease or Charge of any transmission or other devolution relating to the Premises to produce for registration a certified copy of any such deed or document and to pay the Landlord's Solicitors a fee for the registration of every such document calculated at the rate of .05% of the Notice Value of the Premises with a minimum of **THIRTY POUNDS (£30.00)**

5.7 **Nuisance etc**

Not to do anything in the Premises which is immoral or illegal or which may be a nuisance annoyance or disturbance to the Landlord or any of the Tenants of any part of the building or the neighbourhood

5.8 **Landlord's Costs**

To pay to the Landlord on an indemnity basis all costs fees charges disbursements and expenses (including without prejudice to the generality of the above those payable to Counsel Solicitors Surveyors and Bailiffs) incurred by the Landlord in relation to or incidental to the preparation and service of a Notice under the Law of Property Act 1925

Section 146 or incurred by or in contemplation of proceedings under Sections 146 and 147 of that Act notwithstanding that forfeiture is avoided otherwise than by relief granted by the Court

**5.9 The Planning Acts**

Not to commit any breach of planning control (such term to be construed as it is used in the Planning Acts) and to comply with the provisions and requirements of the Planning Acts that affect the Premises and to indemnify the Landlord against all liability whatsoever including costs and expenses in respect of any contravention

**5.10 Yield Up**

At the expiration of the Term to yield up the Premises in good and substantial repair and in accordance with the terms of this Lease

**5.11 Interest on arrears**

If the Tenant shall fail to pay the Rent or any other sum due to the Landlord under this Lease within fourteen days of the date due whether formally demanded or not the Tenant shall pay interest on the Rent or other sum from the date when they were due to the date on which they are paid and such interest shall be deemed to be rent due to the Landlord

**5.12 Regulations**

To observe the regulations contained in the Fourth Schedule and such other reasonable regulations as may be made by the Landlord and notified in writing to the Tenant for the better management of the Property

## 6. TENANT'S FURTHER COVENANT

The Tenant covenants with the Landlord:-

6.1 To pay the Service Charge payable on demand in accordance with the Third Schedule

6.2 If so required in writing by the Landlord to make such payments by Bankers Order or Credit Transfer to any Bank or Account in the United Kingdom that the Landlord may from time nominate

6.3 If the Tenant shall fail to pay the Service Charge or any other sum due to the Landlord under this Lease within fourteen days of the date due whether formally demanded or not the Tenant shall pay interest on the Service Charge or other sum from the date when they were due to the date upon which they are paid

## 7. LANDLORD'S COVENANTS

### 7.1 Enforcement of covenants

The Landlord covenants with the Tenant that at the request and cost of the Tenant the Landlord will enforce the covenants on the part of the Lessees of the remainder of the building **PROVIDED THAT** if the Landlord shall in his absolute discretion so require, the Tenant shall first deposit with the Landlord such sum as the Landlord shall reasonably specify as security for the full costs and expenses arising or likely to arise in or in connection with such enforcement

**7.2 Performance of the Services**

Subject to the Tenant paying the Service Charge and complying with the covenants and other terms of this Lease the Landlord shall perform the Services (as defined in the Third Schedule hereto) through the Term .

**7.3 Quiet Enjoyment**

The Landlord covenants with the Tenant to permit the Tenant peaceably and quietly to hold and enjoy the Premises without any interruption or disturbance from or by the Landlord or any person claiming under or in trust for the Landlord

**7.4 Unsold Flats**

The Landlord will as to any flat or flats in the Property not subject to leases for similar terms and in similar form to this lease pay the Service Charge for such unsold flats

**8. INSURANCE**

**8.1 Landlord to Insure**

The Landlord covenants with the Tenant to insure the Property unless such insurance shall be vitiated by any act of the Tenant or by anyone at the Property expressly or by implication with the Tenant's authority and to produce to the Tenant at the cost of the Tenant on demand reasonable evidence of the terms of the Policy and the fact that the last premium has been paid

**8.2 Details of the Insurance**

Insurance shall be effected:

8.2.1 in such insurance office or with such underwriters and through such agency as the Landlord may from time to time decide

8.2.2 for such sum as the Landlord shall from time to time be advised as being the full cost of rebuilding and reinstatement including architects surveyors and other professional fees payable upon any application for Planning Permission or other permits or consents that may be required in relation to the rebuilding or reinstatement of the Building the cost of debris removal demolition site clearance any works that may be required by statute and incidental expenses

8.2.2.1 for the loss of Rent payable under this Lease

8.2.3 against damage or destruction by the Insured Risks to the extent that such insurance may ordinarily be arranged for properties such as the Property with an insurer of repute and subject to such excesses exclusions or limitations as the insurer may require

8.2.4 In the name of the Landlord with interest of the Tenant and his Mortgagees (if any) noted (such noting being in such form as the insurers shall think fit and provided that such noting shall not be required if the insurers policy shall have a general endorsement acknowledging such parties interest automatically)

### 8.3 **Reinstatement and Termination if Prevented**

8.3.1 If whenever during the Term:

8.3.1.1 the Premises or the means of access thereto are destroyed or damaged by any of the Insured Risks and

8.3.1.2 the payment of the insurance monies is not refused in whole or in part by reason of any act or default of the Tenant or anyone at the Property expressly or by implication with the

Tenant's authority the Landlord shall use his best endeavours to obtain all Planning Permissions or other permits and consents that may be required under the Planning Acts or other statutes (if any) to enable the Landlord to rebuild and reinstate ("Permissions")

8.3.2 Subject to the provisions of Clauses 8.3.3 and 8.3.4 the Landlord shall as soon as the Permissions have been obtained or immediately where no Permissions are required apply all money received in respect of such insurance in rebuilding or reinstating the Premises or the means of access thereto

8.3.3 For the purposes of this Clause the expression "Supervening Events" means:

8.3.3.1 the Landlord has failed despite using its best endeavours to obtain Permissions

8.3.3.2 any of the Permissions have been granted subject to a lawful condition with which it would be impossible for or in all circumstances it would be unreasonable to expect the Landlord to comply

8.3.3.3 some defect or deficiency in the site upon which the rebuilding or reinstatement is to take place would render the same impossible or would mean that the same could only be undertaken at a cost that would be unreasonable in all the circumstances

8.3.3.4 the Landlord is unable to obtain access to the site for the purposes of rebuilding or reinstating

8.3.3.5 the rebuilding or reinstating is prevented by war act of God Government action strike lock-out or any other circumstances beyond the control of the Landlord

8.3.4 The Landlord shall not be liable to rebuild or reinstate the Premises if and for so long as such rebuilding or reinstating is prevented by Supervening Events

8.3.5 If upon the expiry of a period of two years commencing on the date of the damage or destruction the Premises or the means of access thereto have not begun to be rebuilt or reinstated so as to be fit for the Tenant's occupation and use either party may by Notice served at any time within six months of the expiry of such period invoke the provisions of Clause 8.3.6

8.3.6 Upon service of a Notice in accordance with 8.3.5

8.3.6.1 the Term will absolutely cease but without prejudice to any rights or remedies that may have accrued to any party against another party including (without prejudice to the generality of the above) any right the Tenant might have against the Landlord for breach of the Landlord's covenants set out in Clauses 8.3.1 and 8.3.2

8.3.6.2 all money received in respect of the insurance effected by the Landlord pursuant to this Clause shall be held in trust for the Landlord the Tenant and such Tenants of the other parts of the building as may be affected in such proportions as shall be agreed between them and failing agreement as shall be

determined by the Surveyor on the application of the Landlord or the Tenant such Surveyor acting as an expert (but having regard to representations made to him or by or on behalf of any interested party) having regard to the values of the respective interests of the persons entitled to the insurance monies immediately prior to such destruction or damage

#### 8.4 Tenant's Insurance Covenants

The Tenant covenants with the Landlord not to do or omit anything that could cause any policy of insurance on or in relation to the Property to become void or voidable wholly or in part nor anything by which additional insurance premiums may become payable

### 9 PROVISOS

#### 9.1 Re-entry

If and whenever during the Term:

9.1.1 The Rent (or any part of it) under this Lease is outstanding for twenty one days after becoming due whether formally demanded or not or

9.1.2 There is a breach by the Tenant of any covenant or other term of this Lease or any document expressed to be supplemental to this Lease the Landlord may re-enter the Premises (or any part thereof in the name of the whole) at any time (and even if any previous right of re-entry has been waived) and then the Term will absolutely cease but without prejudice to any rights or remedies which may have accrued to the Landlord against the Tenant in respect of any breach of covenant or other term of this Lease (including the breach in respect of which the re-entry is made) **PROVIDED ALWAYS** that the Landlord

shall not exercise any right of re-entry without first having given to any Mortgagee of the Premises who shall have given Notice of its Charge under Clause 5.6.3 not less than twenty one days notice in writing of his intention to re-enter the Premises

#### **9.2 Party Walls**

The non-load bearing walls dividing the Premises from any other parts of the Building shall be deemed to be party walls within the meaning of the Law of Property Act 1925 Section 38 and shall be maintained at the equally shared expense of the Tenant and the other respective estate owners

#### **9.3 Service of Notices**

The provisions of the Law of Property 1925 Section 196 as amended by the Recorded Delivery Service Act 1962 shall apply to the giving and service of all notices and documents under or in connection with this Lease

#### **9.4 Exclusion of general words**

The implication of the general words under the Law of Property Act 1925 Section 62 shall not apply to this Lease and no easement right or privilege shall be granted to the Tenant by reason of the fact (if such is the case) that he was the Tenant or in occupation of the Premises prior to the grant of this Lease

### **10 REGISTRATION OF RESTRICTION**

The Landlord and the Tenant hereby apply to the Registrar for the entry on the Register of the following restriction on the Title to the Premises:-

"Except under an Order of the Registrar no Transfer or Assent of the Premises is to be registered unless a certificate is given by the Landlord's Solicitors that notice of such Transfer or Assent has been given to them"

**IN WITNESS** whereof this deed has been executed the day and year first before written

### **FIRST SCHEDULE**

#### **Rights included in the demise**

1. The right in common with the Landlord to the free passage and running of water soil gas electricity and other services to and from the Premises through the Conduits
2. The right in common with the Landlord to use the Common Parts
3. All rights of support shelter and protection as are now enjoyed or intended to be enjoyed by the Premises
4. The right to enter onto the remainder of the Property upon reasonable notice (except in case of emergency) in order to maintain or repair the Premises

### **SECOND SCHEDULE**

#### **PART I**

#### **Rights excepted to the Landlord and the other Lessees**

1. The right to the free passage and running of water soil gas electricity and other services through the Conduits in the Premises
2. All rights of light and air and other rights and easements and benefits now enjoyed or intended to be enjoyed by any other part of the Property over the Premises
3. All rights of support shelter and protection for the benefit of all other parts of the

Building as are now enjoyed from the Premises

## **PART II**

### **Rights excepted to the Landlord**

1. Such rights of access to and entry upon the Premises as are necessary for the proper performance of its obligations hereunder or under covenants relating to the other parts of the building and similar to those herein contained including the installation and connection of services
2. The right to rebuild and alter or use any adjoining land or buildings in any manner whatsoever and to let the same for any purpose or otherwise deal therewith notwithstanding that the access of light or air to the Premises is in any such case thereby diminished or any other liberty easement right or advantage belonging to the Tenant is thereby diminished or prejudicially affected provided that reasonable means of access to the Premises are maintained

## **PART III**

### **Rights excepted and reserved to the Authorities**

Full right and liberty for the Southern Electricity Board and other supply Authorities to enter upon and place conduits through the Property to make connections thereto and thereafter to use the same provided always that they shall make good any damage caused as soon as practicable

## **THIRD SCHEDULE**

Service Charge Provisions

1. Definitions

1.1 The terms defined in this paragraph shall for all purposes of this Lease have the meanings specified

1.2 "Service" means:

1.2.1 Maintaining repairing renewing and reinstating and where appropriate treating washing down painting and decorating

\* 1.2.1.1 the exterior and load bearing walls of the Buildings

1.2.1.2 one half of the non-load bearing walls dividing any flat from the entrance halls staircases and landings

1.2.1.3 the floor and ceiling structures to the extent that the same are not demised or intended to be demised to the Lessees of the flats

1.2.1.4 the foundations of the Building

1.2.1.5 the roof of the Building and the roof timbers

1.2.1.6 the Common Parts

1.2.1.7 the doors of the Building which are not demised or intended to be demised to the Lessees of the flats

\* 1.2.2 Painting the exterior of the window frames in the Building

1.2.3 Maintaining repairing cleaning emptying draining amending and renewing all

Conduits serving the Premises in common with other parts of the Property

1.2.4 Cleaning maintaining and lighting the Common Parts

1.2.5 Any other services relating to the Property or any part of it reasonably provided by the Landlord from time to time during the Term

1.3 "the Additional Items" means:

1.3.1 the proper fees and disbursements (and any VAT payable on them) of:

1.3.1.1 the Landlord or the Surveyor the Accountant and any other individual firm or company employed or retained by the Landlord for or in connection with such surveying or accounting functions or the management of the Property

1.3.1.2 the managing agents (whether or not the Surveyor) for or in connection with:

1.3.1.2.1 the management of the Property

1.3.1.2.2 the collection of the Service Charge and all other sums due to the Landlord from the Tenants of the Property

1.3.1.2.3 the performance of the Services and any other duties in and about the Property or any part of it relating to (without prejudice to the generality of the above) the general management administration security maintenance protection and cleanliness of the Property

1.3.1.3 any other individual firm or company employed or retained by the Landlord to perform (or in connection with) any of the

Services of any of the functions or duties referred to in this paragraph

1.3.2 the reasonable fees of the Landlord for any of the Services or the other functions and duties referred to in paragraph 1.3.1 of this Schedule that shall be undertaken by the Landlord and not by a third party

1.3.3 the cost of entering into any contracts for the carrying out of all or any of the Services and the other functions and duties that the Landlord may in its absolute discretion deem desirable or necessary

1.3.4 all rates taxes assessments duties charges impositions and outgoings which are now or during the Term shall be charged assessed or imposed upon the whole of the Property where there is no separate charge assessment or imposition upon or in respect of any part of the building

1.3.5 the cost of the supply of electricity for the provision of the Services and for all purposes in connection with the Common Parts

1.3.6 the amount which the Landlord shall be called upon to pay as a contribution towards the expense of making repairing maintaining rebuilding and cleansing any pavements structures conduits or anything which may belong to or be used in the Property or any part of it exclusively or in common with other neighbouring or adjoining premises

1.3.7 the costs charges and expenses of preparing and supplying to the Tenants copies of any regulations made by the Landlord relating to the Property

1.3.8 any interest and fees in respect of money borrowed to finance the provision of the Services or the Additional Items

1.3.9 such provision (if any) for anticipated expenditure in respect of any of the Services or the Additional Items as the Landlord shall in his absolute discretion consider appropriate

1.4 "The Annual Expenditure" means:  
1.4.1 the cost incurred by the Landlord in complying with its obligations under

Clause 8

1.4.2 all costs expenses and outgoings whatever reasonably and properly incurred  
by the Landlord in or incidental to providing all or any of the Services and

1.4.3 all sums reasonably and properly incurred by the Landlord in relation to the  
Additional Items and any VAT payable on such items but excluding any expenditure in  
respect of any part of the Property for which the Tenant or any other tenant shall be wholly  
responsible

1.5 "Computing Date" means 31st December in every year of the Term or such  
other date as the Landlord may from time to time nominate and

1.6 "Financial Year" means the period:

1.6.1 from the commencement of the Term to and including the first Computing  
Date and subsequently

1.6.2 between two consecutive Computing Dates (excluding the first Computing  
Date from but including the second Computing Date in the period)

1.7 "Service Charge" means the Service Charge proportion of the Annual  
Expenditure

2. **Payment of Service Charge**

2:1 The Landlord shall as soon as convenient after each Computing Date prepare

an Account showing the Annual Expenditure for the Financial Year ending on that Computing Date and containing a fair summary of the expenditure referred to in it and upon such Account being certified by the Accountant it shall be conclusive evidence for the purposes of this Lease of all matters of fact referred to in the Account except in the case of manifest error

2.2 The Tenant shall pay for the period from the Rent Commencement Date to the Computing Date next following the date of this Lease the initial provisional Service Charge the first payment being a proportionate sum in respect of the period from and including the Rent Commencement Date to the Computing Date next following the date of this Lease and subsequent payments to be made in advance on the 1st day of January in each year

2.3 The Tenant shall pay for the next and each subsequent Financial Year a provisional sum equal to the Service Charge payable for the previous Financial Year (or what the Service Charge would have been had the previous Financial Year been a period of twelve months calculated by establishing by apportionment a monthly figure for the previous Financial Year and multiplying this by twelve) by a yearly payment on the 1st day of January

2.4 If the Service Charge for any Financial Year shall:

2.4.1 exceed the provisional sum for that Financial Year and excess shall be due to the Landlord on demand or

2.4.2 be less than such provisional sum the overpayment shall be credited to the Tenant against the next yearly payment of the Service Charge

#### FOURTH SCHEDULE

##### Regulations

1. No trade or business or profession whatsoever shall be exercised or carried on from or upon the Premises
2. Not to affix advertisements nameplates or signs on any part or parts of the Property except a nameplate giving the name of the Tenant in the place or places approved by the Landlord
3. Not to affix or display a "For Sale" or "To Let" board
4. Not to do anything in the Premises or on the Property which may be or annoyance or nuisance to owners or occupiers of other flats or the neighbourhood and in particular not to play any radio or television or other noise making equipment or instruments so as to be audible outside the Premises between the hours of 11.00 pm and 7.00 am
5. Not to keep pets livestock or other animals in the Premises or upon the Property except with the prior written consent of the Landlord (which will not be unreasonably withheld) which consent may be withdrawn at any time if such animal causes a nuisance or annoyance to the Landlord or other owners or occupiers of other parts of the Building
6. Not to encumber with boxes or otherwise or leave any rubbish in or cause any obstruction in the Common Parts save normal domestic refuse in the Refuse Area
7. Not to erect any aerial in or on the Premises so as to be visible outside the Premises
8. Not to paint the exterior of the Premises
9. Not to block any waste pipe in the Premises and not to overload the electrical circuits and installation therein
10. Fully to carpet or cover with other suitable floor covering adequate to restrict the penetration of sound from the Premises to other parts of the Building all floors of the Premises

11. To use the front garden for the purpose of sitting only and during daylight hours only
12. Not to use any barbecues in the front garden
13. Not to store any item outside the Demised Premises including the verandah and light walls

### FIFTH SCHEDULE

#### Form of Deed of Covenant referred to in Clause 5.6.2

I  
of  
**HEREBY COVENANT** with  
of  
("the Lessors") that I and my successors in title will at all times from the                      day  
of                      19                      duly pay the rent and service charge and all other sums becoming due  
and payable under the Lease of the premises known as  
dated  
made between  
which was transferred to me by the Registered Proprietor thereof by a Transfer of even date  
and executed contemporaneously herewith and observe and perform all the covenants  
restrictions stipulations and conditions therein contained and on the part of the Lessee to  
be observed and performed (whether running with the Lease or of a purely personal or  
collateral nature) to the same extent as if I were the original Lessee party thereto  
**AND I ALSO AGREE** that all notices served under the Lease or for the purpose of in  
anticipation of proceedings against me by the Lessors may be served upon me at the above

named premises or by delivery at the Premises (whether the same shall come to my knowledge or not) and that for the purposes of proceedings to forfeit the Lease I elect domicile in England at the said premises and agree that process may be served at the premises (whether the same shall come to my knowledge or not)

DATED the \_\_\_\_\_ day of \_\_\_\_\_ 19

IN WITNESS whereof this deed has been duly executed the day and year first before written

SIGNED by the Tenant in the \_\_\_\_\_ )  
presence of:- \_\_\_\_\_ )

[END OF FORM OF COVENANT]

### SIXTH SCHEDULE

Form of Deed of Covenant referred to in Clause 5.6.3

I

of

HEREBY COVENANT with

of

("the Lessors") that I and my successors in title will at all times from the

day of \_\_\_\_\_ 19 \_\_\_\_\_ duly pay the rent the service charge and all other sums

becoming due and payable under the Lease of the premises known as

dated

made between

which was leased to me by the Registered Proprietor thereof by an Underlease of even date and executed contemporaneously herewith and observe and perform all the covenants restrictions stipulations and conditions therein contained and on the part of the Lessee to be observed and performed (whether running with the Lease or of a purely personal or collateral nature) to the same extent as if I were the original Lessee party thereto

AND I ALSO AGREE that all notices served under the Lease or for the purpose or in anticipation of proceedings against me by the Lessors may be served upon me by post addressed to me at the above named premises or by delivery at the premises (whether the same shall come to my knowledge or not) and that for the purpose of proceedings to forfeit the Lease I elect domicile in England at the said premises and agree that process may be served at the premises (whether the same shall come to my knowledge or not)

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_

IN WITNESS whereof this deed has been duly executed the day and year first before written

SIGNED by the Tenant in the \_\_\_\_\_ )  
presence of:- \_\_\_\_\_ )

[END OF FORM OF COVENANT]

SIGNED as a deed by the said \_\_\_\_\_ )  
BENNET CHARLES GRENVILLE )  
COULSON in the presence of:- \_\_\_\_\_ )

*Bennet Charles Grenville Coulson  
by his attorney  
[Signature]*

Witness signature... *Lo Miceley* .....  
Name... *CASEY AND KIRBY* .....  
Address... *20, MANCHESTER PLACE* .....  
Occupation... *Surveyors* .....

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE**  
**SOUTHERN RENT ASSESSMENT PANEL**  
**LEASEHOLD VALUATION TRIBUNAL**

**Case No. CHI/00MR/LAM/2010/0010**

**1 & 2 Lennox Mansions, Clarence Parade, Southsea, Hants, PO5 2HZ**

**Appendix 2**

**Copy notice under section 22 1987 Act 6 July 2010**

**Preliminary Notice**  
**Application for the appointment of a manager**  
*(Section 22, Landlord and Tenant Act 1987)*

To:  
B Coulson Esq.  
2 The Gardens Office Village  
Fareham  
Hampshire  
PO16 8SS

**1&2 LENNOX MANSIONS, CLARENCE PARADE, SOUTHSEA, PO5 2HZ**

We, the persons whose names and addresses are set out in the First Schedule attached GIVE YOU NOTICE as follows:

1. This notice is served under Section 22 of the Landlord and Tenant Act 1987 by the tenants of flats in 1&2 Lennox Mansions, Clarence Parade, Southsea, PO5 2HZ.
2. The tenants intend to make an application for an order under Section 24 of the Act to be made by the Southern Leasehold Valuation Tribunal to appoint a manager in respect of the property, but will not do so if you comply with the requirements specified in paragraph 5 below.
3. The grounds on which the Tribunal will be asked to make the order are set out in the Second Schedule attached.
4. The matters which will be relied upon by the tenants for the purposes of establishing the grounds are set out in the Third Schedule attached.
5. The matters which are capable of being remedied by you and the steps to do so are set out in the Fourth Schedule attached; the tenants require you to take the steps specified for the purpose of remedying those matters within a period of two months from the date of this notice.
6. If your interest in the property is subject to a mortgage, Section 22(4) of the Act requires you to serve a copy of this notice on the mortgagee as soon as is reasonably practicable.

1D Lennox Mansions  
Clarence Parade  
Southsea  
PO5 2HZ

6 July 2010

## First Schedule

### *Names and addresses of the tenants*

Thomas McPhail  
1D Lennox Mansions  
Clarence Parade  
Southsea  
PO5 2HZ

Dee Davison  
1C Lennox Mansions  
Clarence Parade  
Southsea  
PO5 2HZ

Jayne Bennett  
1A Lennox Mansions  
Clarence Parade  
Southsea  
PO5 2HZ

Karen Cahill  
2E Lennox Mansions  
Clarence Parade  
Southsea  
PO5 2HZ

Chris Newhouse  
2B/2D Lennox Mansions  
Clarence Parade  
Southsea  
PO5 2HZ

Ross Barker  
2C Lennox Mansions  
Clarence Parade  
Southsea  
PO5 2HZ

Dyanne Holland  
2F Lennox Mansions  
Clarence Parade  
Southsea  
PO5 2HZ

## **Second Schedule**

### ***Grounds for the appointment of a manager***

1. The Landlord is in breach of his obligation owed to the tenants under the lease.
2. The Landlord is in breach of the Code of Practice approved by the Secretary of State under Section 87, Leasehold Reform, Housing and Urban Development Act 1993.
3. The Landlord has made unreasonable Service Charges.
4. Other circumstances justifying the appointment of a new Managing Agent

## **Third Schedule**

### ***Matters relied on by the tenants***

- 1 Breaches of obligations owed to the tenants under the lease:
  - 1.1 With reference to Clause 7.2 (Performance of the Services) of the Lease, the Landlord has not performed the following Services as defined in the Third Schedule of the Lease.
    - 1.1.1 The maintenance of the exterior walls of the building has not occurred. The pointing of the brickwork has not been carried out despite numerous requests to the Managing Agents and a failure to identify during a recent site inspection. The dividing wall to the rear of the property is also crumbling and in a state of disrepair.
    - 1.1.2 The exterior of the window frames on the property (in particular outside flats 1D and 2E) have not been maintained or painted, despite requests to the Managing Agents and a failure to identify during a recent site inspection. This has resulted in the wood rotting where the paint has peeled away.
    - 1.1.3 Anti-pigeon spikes have been installed in House 2, however there was no attempt to remove the pigeon guano prior to placing the spikes.
    - 1.1.4 The painting of the entrance hall, staircases and landings has not occurred for a longer than reasonable period, despite requests to the Managing Agents.
    - 1.1.5 The doors (and entrance system) to the property are in a need of repair and painting despite requests to the Managing Agents.
    - 1.1.6 Clarification is needed on the state of repair of the roof to House 2, despite questions raised to the Managing Agents.
    - 1.1.7 The Common Parts are not well maintained. In particular:
      - 1.1.7.1 The Gate entrance posts require re-rendering and painting, despite requests to the Managing Agents and a failure to identify during a recent site inspection.

- 1.1.7.2 The External staircase, balcony and stairs to Flats 1E & 2F are needed to be properly repaired and painted (with wood-treating) at no further cost to the Leaseholders following a poor quality of workmanship and lack of wood-treating. This was also not identified at a recent site inspection.
- 1.1.7.3 The anti-skid patches on the external stairs are needed to be properly repaired and replaced at no further cost to the Leaseholders following a poor quality of workmanship and equipment in their original laying. This was, however, identified at a recent site inspection.
- 1.1.7.4 The Back communal gardens are not maintained. This area has now become rat-infested. No cleaning of the area has taken place in the last seven years except at personal expense to Dyanne Holland (2F). This was also not identified at a recent site inspection.
- 1.1.7.5 The fencing around the garbage bin containers in the front garden is not suitably maintained. The lack of wood-treatment will degrade the wood in months to come. This was also not identified at a recent site inspection.
- 1.1.7.6 The fire-escape / back communal stairs are in a state of complete disrepair and unsafe on both Houses (particularly House 2). The stairs at House 2 was due to be removed approximately 8 years ago, but nothing has occurred. This was also not identified at a recent site inspection.
- 1.1.8 The communal area cleaning in House 2 has not been consistent. This has only occurred every few months (as identified in a chit which is signed by the cleaners held in House 2). All Leaseholders are charged for the cleaning, which has not been separated between both Houses (as the occupants in House 1 have their own arrangements for cleaning, as well as Flats 1E & 2F). This is despite a confirmation in a letter from the Managing Agent dated 17 April 2008. This has also not been identified at a recent site inspection.
- 1.1.9 There has also been a failure to provide a suitable communal television aerial on the roof of the property despite numerous requests.

1.2 Under Paragraph 7.1 of the Lease, it is stated that the Landlord is obliged to the tenant that he will enforce all of the obligations he has towards all Leaseholders at the request and cost of the tenant. As stated in paragraph 1.1 of the Third Schedule of this Notice (above), this has not occurred. If other tenants have not paid their Service Charge, this does not exempt him from performing his duties to the individual tenant (including the Provision of Services).

## 2 Breaches of Code of Practice:

2.1 With reference to Paragraphs 2.1 and 16.2 of the Code, the Address of the Landlord provided is the one of the Managing Agents. The Managing Agents have advised the tenants that they are unable to communicate with the Landlord directly.

- 2.2 With reference to Paragraph 2.1 of the Code and paragraph 2.14 of the Third Schedule (below), there is not sufficient information about major works (including the costs and date of the repair on the roof to House 2) and the information about the Managing Agents putting money aside in a Reserve Fund.
- 2.3 Although the tenant does not see the contract between the Landlord and managing agents, as referred to in Paragraph 2.2 of the Code, the Services provided have not been to a reasonable standard, time and cost (specific examples are identified in paragraph 1.1 of the Third Schedule of this Notice (above)).
- 2.4 With reference to Paragraphs 2.4 (a) and 21.1 of the Code, there has been a failure to enforce payments of the Service charges of the tenants in arrears. Over the past 8 years, there have been extensive debts by tenants not paying the Service Charge, in particular in 2009 to a value of £7225.21. Although the recovery of these charges is not viewed, the tenants are able to see a poor track record of the debts at the end of each year. It was confirmed in a letter from the Managing Agents on 14 September 2005 that properties in arrears are being pursued via the proper channels. It is believed that that is not occurring.
- 2.5 With reference to Paragraph 2.4 (f) of the Code, the Accounts were not visible to the Leaseholders following requests detailed in letters dated 29 March 2008 and 3 May 2008. A reply was given dated 2 June 2008 stating that the accounts were in archive and would be retrieved, but this never occurred. A further request to sight the accounts was made on 12 February 2010, however this was not answered until 23 April 2010 when access is granted to see the accounts, in contravention of Paragraph 10.16 of the Code. A full list of expenditure was given dated 23 April 2010 detailing all costs, however with certain discrepancies (detailed in other parts of this Schedule).
- 2.6 With reference to Paragraphs 2.4 (h) and 7.14 of the Code and to paragraph 1.1.8 above, there has been a failure to engage and supervise the Cleaners to House 2. The accounts provided on 23 April 2010 state that 'Scott' Cleaners have been paid monthly. However, as detailed on a chit inside House 2, this has been inconsistent and has not occurred every month.
- 2.7 With reference to Paragraph 2.4 (k) of the Code, it is believed that there is a lack of site inspections. Uncertain of the agreement between the Landlord and the Managing Agents, it is still incumbent on the Managing Agent to visit the property to check its condition. In a letter from the Managing Agent dated 23 April 2010, they state that a recent site inspection had taken place with no vision to any urgent works that are required. Examples of poor site inspections are stated in paragraphs 1.1.1, 1.1.2, 1.1.5, 1.1.7.1, 1.1.7.2, 1.1.7.4, 1.1.7.5 and 1.1.7.6 above, as it would be obvious to any viewer of the property of these deficiencies.
- 2.8 With reference to Paragraph 2.4 (l) of the Code, there is often a poor or lack of response to request and enquiries by tenants. For example, letter from Thomas McPhail dated 29 March 2008 had some questions still left unanswered resulting in a follow up letter on 3 May 2008. Letters from Thomas McPhail dated 21 August 2009 and 12 February 2010, from Dee Davison dated 25 October 2009 and 12 March 2010 and from Dyanne Holland dated 6 May 2010 were not answered at all.

- 2.9 With reference to Paragraph 2.4 (o) of the Code, there is no clear pattern of oversight of the Managing Agents. There is no structure to the management and use of funds for key works and there is no interest whatsoever in managing and maintaining the property to an appropriate standard.
- 2.10 With reference to Paragraph 3.1 of the Code, there is a failure that the policies and procedures for dealing with management matters are not effective. This is shown in the breaches of the Lease and breaches of the Code of Practice as detailed all paragraphs in the Third Schedule (above).
- 2.11 With reference to Paragraph 3.2 of the Code, there is a failure in the Landlord's obligations under the Lease as detailed in paragraph 1 of the Third Schedule (above). Many duties and responsibilities are delegated to the Managing Agents, therefore there is also a failure by the Managing Agents to ensure that the Landlord's obligations under the Lease are fulfilled.
- 2.12 With reference to Paragraph 3.4 of the Code and in paragraph 2.8 of the Third Schedule (above), there has been a failure by the Managing Agents to respond promptly and suitably to reasonable requests from the tenants for information and observations. There has been a failure on several occasions as detailed above to respond at all to any correspondence.
- 2.13 With reference to Paragraph 7.15 of the Code and paragraph 1.1.7.4 of the Third Schedule (above), the shared garden areas (both front and rear) are not tended to a reasonable standard. At present, the tenants (whose obligation it is not) tend the shared garden at the front, but are not given any remuneration for plants, shrubs, etc. The rear shared gardens are not tended at all.
- 2.14 With reference to Paragraphs 9.2 and 9.3 of the Code and paragraph 2.2 of the Third Schedule (above), there is a lack of communication and awareness of the Reserve Fund. Although the amount held in the Reserve Fund is publicised in the Service Charge Accounts, it is not apparent of what it is intended to be used for. It is mentioned in a letter that major works may be required to the roof of House 2, but there is no formal note of what the Fund is to be used for and at what cost. There is also no apparent income from this Fund with respect to any interest gained.
- 2.15 With reference to Paragraphs 10.2 and 10.3 of the Code, there is a failure in the transparency of the accounts reflecting all expenditure. Until a request on 15 April 2010 and a letter from the Managing Agents dated 23 April 2010, the presentation of accounts has not been clear in as much as the specific expenditure for each category has been withheld. The actual costs for building works and other works for repairs and maintenance was not forthcoming following requests on 29 March 2008, 21 August 2009 and 12 February 2010. There is also no view of any bank interest accrued on funds held within the account.
- 2.16 With reference to Paragraph 12.5 of the Code, the Managing Agents have failed to ensure that contractors carry out their duties to a reasonable minimum standard. The example given in paragraph 1.1.7.2 and 1.1.7.3 of the Third Schedule (above) is that the maintenance of the stairs, paintwork and anti-skid patches are not at a high standard and there has been no follow-up by the Managing Agents on completion of any work carried out. When an employee of the company conducting the repairs on the steps and balcony was asked why the bare wood had not been preserved, he

stated that the Managing Agent would not extend the contract to include wood preservation and to save money, it had been omitted.

- 2.17 With reference to Paragraph 12.10 of the Code and although the invoices of the works carried out have not been viewed by the tenants, no details of costs of any work have been given to the tenants.
- 2.18 With reference to Paragraph 13.2 of the Code, the Landlord has a duty of care to see that any person is reasonably safe from personal injury with respect to the property. As has been apparent in wet weather, the steps at the front of the building become slippery and can cause people to fall or slide. No injury has yet occurred, but the anti-skid patches in paragraph 1.1.7.3 of the Third Schedule (above) are not fit for purpose and have come loose. Therefore, the areas of wood have become slippery again when wet. This is also applied to the rear fire-escape / communal access steps which are unsafe and can cause severe injury if used.
- 2.19 With reference to Paragraph 13.4 of the Code and the 'Welcome Pack' by the Managing Agents, there is no established procedure for dealing with urgent repair works, particularly out-of-office hours.
- 2.20 With reference to Paragraph 13.5 of the Code, it is apparent that the Managing Agents do not deal promptly with any reports of disrepair. The Code also states that the remedy of which is the Landlord's responsibility. This is a major failing in the Managing Agents, and the delay or lack of response or action has increased the urgent need to repair certain parts of the property and thereby increased the costs that will be liable to repair in due course. Examples of this are set out below:
- 2.20.1 The failure to deal with the anti-skid patches as mentioned in paragraphs 1.1.7.3 and 2.18 of the Third Schedule (above) from the initial mention by the tenants (acknowledged by the Managing Agents in letter dated 9 June 2006) to the installation of the patches in January 2009 was evident.
- 2.20.2 The reports of the lack of maintenance and painting of the external window-frames (especially to Flats 1D and 2E) as mentioned in paragraph 1.1.2 of the Third Schedule (above) were initially made at a Residents' Meeting held on 27 June 2006 (attended by the Managing Agents) and followed up by a letter on 29 March 2008. A reply from the Managing Agents was received dated 2 June 2008 stating that quotations were being obtained. To date, nothing has occurred.
- 2.20.3 The repairs to the roof were made in 2007. The initial quotations given in 2006 (for both Houses, rather than just House 1) were far lower than the cost of the roof repairs actually carried out. It is apparent that if the repairs had been conducted sooner, then the cost would have been lower. It should also be noted that during the delay, the initial roofing company had gone into liquidation, with new tenders having to be sought.
- 2.20.4 The reports of the need to re-point the brickwork as mentioned in paragraph 1.1.1 of the Third Schedule (above) was brought up in September 2008. Site inspections should also have picked up these points, but nothing has been actioned or mentioned with respect to the re-pointing.

- 2.21 With reference to Paragraph 13.10 of the Code, it is noted that works that have been carried out have not been to a reasonable minimum standard. For example, the anti-skid patches in paragraph 1.1.7.3 of the Third Schedule (above) have not lasted long and poor equipment was used. This work comes under a guarantee and the tenants should not be asked to pay for someone's poor workmanship. This work should not 'need to be repeated within a short period relative to their nature and reasonable expectations of them'; that is not the case for the anti-skid patches and a reasonable time for wear and tear would be approximately 10 years and not one year.
- 2.22 With reference to Paragraph 13.11 of the Code, there has been no communication with the tenants with respect to a programme of cyclical maintenance for parts of the building, which should include a realistic cost of maintenance and a budget for specific tasks. In addition, there are adverse cost implications for this older building, which are not being noticed. With reference to Paragraph 13.14 of the Code, tenants are not being advised as to what work and maintenance is being carried out at a certain time.
- 2.23 With reference to Paragraph 13.15 of the Code, it is apparent that various Health & Safety regulations are being breached with respect to the dilapidation of the rear stairs and garden (particularly to House 2) as mentioned in paragraphs 1.1.7.4 and 1.1.7.6 of the Third Schedule (above). This property at the rear is not maintained in a safe and healthy condition.
- 2.24 With reference to Paragraphs 13.16 and 18.1 of the Code, a Section 20 Order (of the Landlord and Tenant Act 1985) was not followed. The repairs to the front stairs as mentioned in paragraph 1.1.7.2 amounted to £3542 (amongst 11 properties is equal to £322 each, thereby exceeding the £250 per leaseholder). The Managing Agents should have anticipated that the overall cost would be greater than £250 per leaseholder. The tenants were not consulted in the overall intent or cost of the work, and a need to consult should be regarded as the minimum standard required, not the optimum.
- 2.25 With reference to Paragraph 20.1 of the Code, the Managing Agents have not produced a clear procedure for handling complaints and grievances, so a letter was written to the Managing Agents dated 15 April 2010. An inadequate response was made by the Managing Agent on 23 April 2010 and no response was given by the Estate Management Group responsible for the Managing Agent.

### 3 The Landlord has made unreasonable Service Charges:

- 3.1 Although the general costs of Service Charges are not unreasonable, when Thomas McPhail purchased his flat (1D) in September 2005, he was advised by the Managing Agents that the works to the roof were expected to be undertaken during 2005/2006, with all associated costs being met from existing Service Charge funds. The Service Charges were due to reduce to a lower level, but has not. This was brought up again by letter dated 29 March 2008, but with no answer.

### 4 Other circumstances justifying the appointment of a new Managing Agent:

- 4.1 There are significant breaches of the Lease and the Code of Practice detailed in Paragraphs 2 and 3 of the Third Schedule (above) which lead directly to the inappropriate management and ineffectiveness of the Managing Agents rather than

the Landlord directly. Specific examples include poor communication, lack of action regarding the exterior maintenance of the property and poor supervision of contractors.

#### **Fourth Schedule**

##### ***Matters specified in the Third Schedule which are considered capable of remedy; steps required to remedy them***

#### **1 Breaches of obligations owed to the tenants under the lease:**

##### **1.1 The following Services as detailed in the Third Schedule (above) need to occur:**

1.1.1 The proper and efficient maintenance of the exterior walls and rear dividing wall (re-pointing) should take place. Following correct Notice of Intention and Statement of Estimates, the process should begin by October 2010.

1.1.2 The repair, treating and painting of the window frames on the property (especially outside flats 1D and 2E) should occur. This process should begin by October 2010.

1.1.3 The recent installation of Anti-pigeon spikes has not been suitable. A full re-installation (with cleaning of surrounding areas) should take place with no further payment by the tenants. This should take place by September 2010.

1.1.4 The internal painting of the entrance hall, staircases and landings should take place, as it is believed that this is a longer than reasonable period from when it last took place. This should occur by December 2010.

1.1.5 A full repair and maintenance of the doors and system to the property should take place. This should occur by December 2010.

1.1.6 Clarification is needed (with suitable estimates and full descriptions) on the state of repair of the roof to House 2 and to estimated timescale of repair. The clarification should be received by 31 August 2010.

1.1.7 The Common Parts to the property, which are not well maintained are:

1.1.7.1 The Gate entrance posts require re-rendering and painting by October 2010.

1.1.7.2 The External staircase and balcony needs to be properly repaired and painted at no further cost to the tenants. This should come under the guarantee of the repair company and should take place by October 2010.

1.1.7.3 The anti-skid patches on the external stairs need to be properly replaced at no further cost to the tenants by October 2010.

- 1.1.7.4 The maintenance of the back communal gardens needs to occur. A plan of action of the work to the gardens needs to be in place by September 2010.
- 1.1.7.5 Treatment of the wood on the fencing around the garbage bin containers should occur with creosote or any other suitable material by October 2010.
- 1.1.7.6 The fire-escape / back communal stairs are needed to be removed at no cost to the tenants with a full cleaning of the surrounding area. A plan of action of this work needs to be in place by September 2010.
- 1.1.8 The tenants of House 1 should not be charged for cleaning of the property. This should occur with immediate effect. It has been decided that the communal cleaning in House 2 will now take place by the residents themselves. As there has been a breach of the cleaning contract, in as much as it has not taken place on a monthly basis, the contract should be terminated by October 2010. This charge should then be suitably be reimbursed.
- 1.1.9 At a suitable opportunity (when scaffolding is erected for any possible roof repairs) that a suitable television aerial should be provided and directed to every flat.
- 1.2 The Landlord remains responsible under the terms of the Lease to perform his duties to the individual tenant (including the Provision of Services), even if not all Service Charges are received by the tenants. The Landlord is to ensure that he complies with this part of the Lease with immediate effect.

Breaches of Code of Practice:

- 2.1 The Landlord should be able to be communicated with directly and any communication should be followed up immediately.
- 2.2 Information regarding Major Works (including costs and timescale of repairs and the amount held within the Reserve Fund) should be open. All information regarding any Major Works in the pipeline should be given by 31 August 2010.
- 2.3 The Landlord should ensure that all future works and provision of any Services should be to a reasonable standard, time and cost with immediate effect.
- 2.4 The Landlord is to ensure that any non-payment of any Service Charges should be followed up through the appropriate and proper channels with immediate effect.
- 2.5 The Managing Agents were in breach of Paragraph 10.16 of the Code in as much as access to the accounts was not granted in the appropriate timescale. Access to the accounts should continue to be granted for possible viewing by any tenant until December 2010 or by further request by letter from any tenant.
- 2.6 With reference to 1.1.8 of the Fourth Schedule (above), cleaning of House 2 will now be conducted by the residents themselves.

- 2.7 Site inspections by the Managing Agents should take place at frequent intervals with consultation with at least one tenant who can bring certain deficiencies to their attention. Tenants should be able to see what deficiencies are brought up by the Managing Agents during a Site Inspection with immediate effect.
- 2.8 All correspondence to the Landlord or to the Managing Agents should be responded within one month of receipt of the correspondence with immediate effect. All correspondence should be precise and comprehensive answering all questions raised by the tenant.
- 2.9 The structure to the management and use of the funds for key works should be effective. The appointed Managing Agent should have full interest in managing and maintaining the property to an appropriate standard with immediate effect.
- 2.10 All policies and procedures for dealing with management matters should be effective with no breaches of the Lease or Code of Practice with immediate effect.
- 2.11 The Managing Agents should ensure that the Landlord is maintaining his obligations under the Lease to an effective and proper standard with immediate effect. The Landlord should also ensure that he fulfils those obligations.
- 2.12 All reasonable requests and correspondence from the tenants should be responded to promptly and suitably with immediate effect. (see also Paragraph 2.8 of the Fourth Schedule (above)).
- 2.13 With reference to paragraph 1.1.7.4 of the Fourth Schedule (above)), the front and rear gardens should be tended to a reasonable standard. Remuneration to cover expenses to those residents tending the front garden should be agreed by October 2010.
- 2.14 A full account of the Reserve Fund (including any intention of use) should be sent to tenants by 31 August 2010. A separate list of bank interest gained from this account should also be made available.
- 2.15 Specific expenditure should always be sent along with the Statement of Accounts every year, detailing individual expenditure for different categories (including Repairs and Maintenance).
- 2.16 The Managing Agents should ensure that the contractors carry out their duties to a reasonable minimum standard with immediate effect. Any work carried out should be followed up, not only at the completion of any work, but also at a reasonable time after completion to ensure that the quality of workmanship and materials were appropriate and maintained.
- 2.17 All specific works expenditure should be made available to the tenants following any work carried out.
- 2.18 The Landlord should ensure that all persons are made reasonably safe from personal injury with immediate effect. The anti-skid patches on the front steps should be replaced at no further cost to the tenants by October 2010 (as mentioned in paragraph 1.1.7.3 of the Fourth Schedule (above)). A plan needs to be in place for the removal of the rear fire-escape / communal access steps by September 2010.

- 2.19 A full procedure for dealing with urgent repair works should be made available to the tenants with immediate effect.
- 2.20 All reports of any disrepair should be dealt with promptly. Any delay may result (and has resulted in) further disrepair (especially to the external stairs and window-frames). This should take place with immediate effect.
- 2.21 All works carried out should be to a reasonable minimum standard. If poor equipment was used and the works are not at an appropriate standard within a 'period relative to their nature and reasonable expectations of them', then the work is to be re-done at the expense of the repair company and not the tenant. This should take place with immediate effect.
- 2.22 Communication should exist between the Managing Agent and tenants with respect to a programme of cyclical maintenance for parts of the building with immediate effect.
- 2.23 The fire-escape / back communal stairs are needed to be removed at no cost to the tenants with a full cleaning of the surrounding area and rear garden. A plan of action of this work needs to be in place by September 2010
- 2.24 All 'Major Works' or works that *may* exceed £250 per leaseholder should be progressed through a Section 20 Order of the Landlord and Tenant Act 1985 with immediate effect.
- 2.25 A set procedure for handling complaints and grievances regarding the Managing Agents should be produced with immediate effect.

3 The Landlord has made unreasonable Service Charges:

- 3.1 A full explanation of the Service Charges should be given by the Managing Agents with respect to the expectations of a decrease in Service Charges in 2005 by 31 August 2010.

4 Other circumstances justifying the appointment of a new Managing Agent:

- 4.1 With the ineffectiveness of the Managing Agents as detailed in the Third Schedule (above) coupled with various breaches of the Lease and Code of Practice, the remedy to rectify the majority of the factors above would be to appoint a new Managing Agent. This appointment should follow consultation with the tenants, and all factors which have failed in the past should be achieved by the new Managing Agent. It is believed that rectification of the failing factors (above) of the *current* Managing Agents would not be sufficient to rectify all points.

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE**  
**SOUTHERN RENT ASSESSMENT PANEL**  
**LEASEHOLD VALUATION TRIBUNAL**

**Case No. CHI/00MR/LAM/2010/0010**

**1 & 2 Lennox Mansions, Clarence Parade, Southsea, Hants, PO5 2HZ**

**Appendix 3**

Copy draft terms of appointment and remuneration of Proposed Manager



Date of Agreement:

**TERMS OF APPOINTMENT**

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**1. 'The Service' to be provided by the Agent**  
With reasonable skill, care and diligence to:-

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- 1.1 Use his best endeavours to collect current instalments, any arrears of rent, service charges, contingency and future expenditure fund contributions, and any other payments due from Leaseholders/Tenants of the property, and hold such sums in accordance with the RICS Members' Accounts Regulations until disbursement.
- 1.2 Inspect without use of equipment, at the frequency specified in the Agreement attached, such of the common parts of the property as can be inspected safely, and without undue difficulty to ascertain for the purpose of day-to-day management only - its general condition of those common parts.
- 1.3 Prepare, if required, an annual estimate of future expenditure, administer any service charge or contingency and future expenditure funds and prepare and distribute appropriate service charge accounts.
- 1.4 Administer contracts and check demands for payment for goods, service, plant and equipment supplied for the benefit of the property where the cost falls within the expenditure limits specified in the attached Agreement.
- 1.5 Engage for and on behalf of the Client, staff, whether part-time or full-time, residential or not, and pay their remuneration in accordance with agreed terms (withholding of PAYE tax and national insurance contributions) and where appropriate dismissal payment or redundancy pay.
- 1.6 Arrange insurance in respect of the property.
- 1.7 Advise the Client when Notices should be served.
- 1.8 Keep files of Leases and other Documents relating to the property that have been supplied to the Agent.
- 1.9 Attend to routine enquiries from the Client or any tenant, tenants, association or auditor.
- 1.10 Provide quarterly statements of account to the Client.
- 1.11 Provide information to Solicitors and others in connection with enquiries on sales (for which fees would be chargeable to those applying for the information).
- 1.12 Produce for inspection, on written demand by the Client and Leaseholders/Tenants, as appropriate, receipts or other evidence of expenditure, and provide VAT invoices (if any) in the form prescribed.

1.13 Within the time specified in the Agreement after the end of each agreed accounting period, or of the termination of the Agreement, send to the Client a written Statement for that period of.

- (a) Monies due to the Client showing how much the Agent has received and any interest due to the Client that has accrued on monies received.
- (b) Remuneration due to the Agent (any fixed element of fee being apportioned as appropriate if this Agreement takes effect or is terminated during a payment period) and any VAT due.
- (c) Expense and other disbursements made on behalf of the Client and whether any VAT is included.
- (d) Any sum due to the Agent or deducted in calculating (a) above for bank charges relating to the administration of a service charge account(s).

**2. Authorisations of the Agent by the Client**  
 The Client authorises the Agent as follows:

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2.1 To expend any sums for the benefit of the property that are within the expenditure limits specified in the Agreement, and also in cases of emergency to take such reasonable measures as the Agent shall consider appropriate.

2.2 To expend any other sums considered necessary by the Agent to ensure compliance with any statutory provision affecting the property or affecting the Client or the Agent with regard to the property.

2.3 Whenever the Agent expends any sums under Clause 2.1 and 2.2 above to reimburse himself from any service charge or contingency/future expenditure fund kept for that purpose or from any monies of the Client held by the Agent.

2.4 From monies received by him for the Client.

- (a) At any time to pay or reimburse himself for any expenses or other disbursements recoverable from the Client.
- (b) To deduct during any payment period his remuneration for that period - other than any charge already collected in advance by agreement.
- (c) After termination of the Agreement to deduct his outstanding remuneration and/or expenses due.

**3. Communications between the Client and the Agent**

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3.1 All instructions of the Client to the Agent with regard to the 'Service' to be performed by the Agent shall be given to the Agent in writing or, if given orally shall be confirmed in writing within seven days.

3.2 The Client is to provide personally or through a previous Agent all information necessary to initiate and undertake the management service and any additional work necessitated

by absence of such information is chargeable.

- 3.3 The Client shall promptly upon request by the Agent provide to the Agent any decision or information that the Agent considers necessary for the proper performance of the 'Service' to be performed by the Agent.
- 3.4 The Agent shall promptly upon request by the Client allow the Client to inspect and at the Client's expense copy any accounts and documents in the possession of the Agent relating to the property.
- 3.5 It shall be sufficient service of any written notice or other written communication to send such by first class post to the address specified in the Agreement or the last known address of the person for whom the communication is intended: and -
  - (a) Any notice or communication posted on a Monday or Tuesday shall be deemed served on the following Thursday.
  - (b) Any notice or communication posted on a Wednesday or Thursday shall be deemed served on the following Tuesday.
  - (c) Any notice or communication posted on a Friday, Saturday or Sunday shall be deemed served on the following Wednesday.
- 3.6 The Client undertakes to keep the Agent informed of proposals to sell the property or any part thereof.

**4. Undertakings by the Client**

The Client undertakes:

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- 4.1 Upon written notice by the Agent that the Agent requires the Client immediately to advance or reimburse sums in respect of Clauses 2.1 and/or 2.2 to immediately do so.
- 4.2 Within 14 days of the Agent sending the Statement referred to in Clause 1.13 above to pay to the Agent the specified remuneration still due to the Agent, and to reimburse any expenses and other disbursements (including premiums for insurance) still due to the Agent, and to pay any VAT due, in every case without any deduction or set off in respect of any other undisputed claim by the Client against the Agent.
- 4.3 To pay on overdue remuneration expenses and other disbursements at the rate per cent specified in the Agreement above the base rate in force from time to time of the bank specified in the Agreement.

**5. Bases of Remuneration**

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- 5.1 The basis or bases of the Agent's remuneration as recorded in the Agreement shall apply.
- 5.2 In the event of it being agreed that additional work not part of the Service (Clause 1) shall be remunerated by the hour, the rates to apply from the commencement of the Agreement shall be as specified in the Agreement.
- 5.3 The Client shall reimburse the Agent for any agreed out-of-pocket expenses immediately on request.

5.4 Any fixed fee specified in the Agreement for Clause 5.1 shall be adjusted annually in proportion to the change in the Retail Price Index from the figure current at the time of the last review to the last published monthly figure before the review date.

5.5 The rates specified in the Agreement for Clause 5.2 may be reviewed at the instance of either party at any time after a year from any previous review, and any revised rates will apply from an agreed date.

## 6. Assignment

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6.1 This Agreement may only assigned or transferred in whole or in part with the written consent of the other party thereto, and such assignment or transfer shall be valid only after written notice to that effect has been given.

## 7. Termination

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7.1 Either party may terminate this Agreement with effect from expiry of the tenancy or by serving on the other three months' notice in writing.

7.2 Notwithstanding the provisions of Clause 7.1 if either party is in breach of this Agreement:

- (a) The other may serve on the party in breach written notice specifying the breach or breaches and requiring them to be remedied within 60 days; and
- (b) If the party in breach fails within 60 days of the service of such notice to remedy such breach or breaches - then
- (c) The party who served the notice may terminate the Agreement upon serving written notice to that effect on the other party.

7.3 If either party commits an act of bankruptcy or has a receiving order made against him or makes any arrangement with his creditors or if distress or execution is levied or threatened upon any of his property or any judgement against him remains unsatisfied for more than 14 days, or if being a limited company a party enters into liquidation whether compulsory or voluntary (other than a voluntary liquidation for the purpose of amalgamation or reconstruction) or has a receiver appointed of any of its assets, the other party may terminate the Agreement upon serving written notice to that effect.

## 8. Liability of the Agent

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8.1 Unless caused by the Agent's negligence in the provision of the Service (Clause 1) the Agent is not liable either in contract or in tort of any loss, injury, damage or legal or other expenses sustained as a result of:

- (a) The Agent having reasonably relied upon the Client to provide accurately all relevant information.
- (b) Any inaccurate forecast by the Agent of future income or expenditure.

- (c) Any defect or failure to identify any defect in the property or plant, machinery, equipment or materials used for the property whether or not such defect be latent or apparent on examination.
  - (d) The act, omission or insolvency of any person other than the Agent.
- 8.2 The Client shall indemnify the Agent in respect of any claims made by another or third party for any loss, injury, damage or legal or other expenses referred to in Clause 8.1 above.
- 8.3 The Agent shall not be liable to indemnify the Client in respect of any claims made by another or third party for any loss, injury, damage or other expenses referred to in Clause 8.1 above.
- 8.4 Clause 8.1 to 8.3 above shall not be valid in so far as prohibited by statute.
- 8.4 In no circumstances shall the Agent be liable for any consequential loss or damage save where death or injury results from negligence on the part of the Agent or his employees.
- 8.6 The Agent's liability to the Client for death or injury resulting from his own or that of his employees' agents or sub-contractors' negligence shall not be limited.

## **9. Waiver**

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- 9.1 No indulgence shown by either the Client or the Agent shall prevent the other subsequently insisting upon his rights and remedies under the Agreement.

## **10. Arbitration**

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- 10.1 Any dispute between the Client and the Agent arising out of the Agreement and/or the Terms of Appointment may be referred at the instance of either or both parties to and determined by a sole arbitrator to be agreed between the Client and the Agent, or in default or agreement within 30 days of the dispute being identified - appointed by the President or a Vice-President for the time being of the Royal Institution of Chartered Surveyors.

## **ANNEXE**

The following are not part of the Service described in the Terms of Appointment to which this is an Annexe:

- (a) Carrying out an inspection of the property (other than the common parts thereof) or a building survey or valuation of the property as a security or for insurance purposes or preparing any Schedule of Dilapidations or Inventory.
- (b) Offering vacant property to let, advising the Client on the terms of any Lease or negotiating the terms of any new or varied Lease.

- (c) Initiating, conducting, preparing evidence for an attending hearings for an otherwise dealing with any rent review, party wall proceedings, application for a Grant, or for consent, insurance claim, arbitration or litigation.
- (d) Dealing with Local Government matters including Council Tax Valuations, Planning Permission, Building Regulation Consent, and Grant Applications.
- (e) Engaging, instructing, supervising and paying the fees, other charges and disbursements, from funds held of any contractor or other professional or consultant engaged with the prior consent of the Client.
- (f) Preparing Specifications and Tenders for supervising and measuring works - the cost of which exceeds the specified expenditure limits, and for non-routine matters and where expenditure is in excess of the limits contained in the Landlord and Tenant Acts 1985 and 1987 - or as subsequently amended.
- (g) Advising on safety or health.
- (h) Any advertising and recruitment of staff on behalf of the Client.
- (i) Supplying extra copies of Statements or account and copies of any other Documents.
- (j) If the Client is a company acting as Company Secretary - and
- (k) Dealing or advising upon applications for assignment of tenancies or Leases, sub-lettings, alterations and changes of use.

## AGREEMENT

*The Royal Institution of Chartered Surveyors' Terms of Appointment as attached shall apply to this Agreement between the undermentioned parties - subject to the following which also applies:-*

A Date of this Agreement:

B 'The Client'  
(name and registered office or address)

C 'The Agent'  
(name and address)

**DACK PROPERTY MANAGEMENT COMPANY LTD, 67 OSBORNE ROAD, SOUTHSEA,  
HANTS PO5 3LS**

D 'The Property' the subject of this Agreement  
(address(es)/description)



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SIGNED BY OR on behalf of the Client:-

\_\_\_\_\_  
Name in capitals \_\_\_\_\_

Signing as: \_\_\_\_\_  
Director duly authorised to do so

in the presence of:  
Signature of witness \_\_\_\_\_

Name of Witness in capitals \_\_\_\_\_

+

SIGNED by the Agent **DACK PROPERTY MANAGEMENT COMPANY LTD**

\_\_\_\_\_  
Name in capitals \_\_\_\_\_

in the presence of:  
Signature of witness \_\_\_\_\_

Name of witness in capitals \_\_\_\_\_

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE**  
**SOUTHERN RENT ASSESSMENT PANEL**  
**LEASEHOLD VALUATION TRIBUNAL**

**Case No. CHI/00MR/LAM/2010/0010**

**1 & 2 Lennox Mansions, Clarence Parade, Southsea, Hants, PO5 2HZ**

**Appendix 4**

**Order Appointing Proposed Manager as Receiver and Manager**

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE**  
**SOUTHERN RENT ASSESSMENT PANEL**  
**LEASEHOLD VALUATION TRIBUNAL**

**Case No. CHI/00MR/LAM/2010/0010**

**ORDER FOR THE APPOINTMENT OF A MANAGER AND  
RECEIVER UNDER SECTION 24 OF THE LANDLORD AND TENANT ACT  
1987 ("THE 1987 ACT")**

**Applicant/Leaseholders** : Mr Thomas McPhail (Flat 1D), Miss Dee Davison (Flat 1C), Ms Jayne Bennett (Flat 1A), Miss Karen Cahill (Flat 2E), Mr Christopher Newhouse (Flat 2B/2D), Ms Dyanne Holland (Flat 2F), and Mr Ross Barker (Flat 2C)

**Respondent/Landlord** : Mr Bennet Charles Grenville Coulson

**Proposed Manager** : Mr Peter Dack, FRICS, of Dack Property Management

**Building** : 1 & 2 Lennox Mansions, Clarence Parade, Southsea, Hants, PO5 2HZ

**Flats** : the flats in the Building

**Leases** : the leases of the Flats

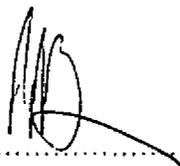
**Date of Order** : 10 December 2010

The Tribunal orders that :

1. The Proposed Manager be appointed manager and receiver of the Building with effect from 13 December 2010
2. The Proposed Manager shall manage the property in accordance with:
  - a. the respective obligations on the part of the landlord and the lessees under the Leases including in particular the obligations for the repair, decoration, provision of services to, and insurance of, the Building
  - b. the duties of a manager set out in the Service Charge Residential Management Code ("the Code") published from time to time 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
3. He shall receive all sums whether by way of ground rent, insurance premiums, payment of service charges, or otherwise arising under the Leases

4. He shall account forthwith to the person for the time being entitled to the reversion immediately expectant on the leases, being currently the Respondent/Landlord, for the payments of ground rent received by him and shall apply the remaining amounts received by him (other than those representing his fees) in the performance of the covenants on the part of the landlord contained in the Leases
5. He shall make arrangements with the present insurers of the building to make any payments under the insurance policy presently effected by the Respondent/Landlord to him
6. He shall be entitled to the following remuneration (which for the avoidance of doubt shall be recoverable as part of the said service charges in accordance with the Leases) namely :
  - a. a basic annual fee of £150 per Flat, reviewable annually, for performing the duties set out in the Code and
  - b. in the case of works of a net cost of greater than £2,750 the Proposed Manager shall further be remunerated at a rate to be agreed in advance with the Applicant/Leaseholders
7. Value Added Tax shall be payable in addition to the remuneration mentioned in the preceding paragraph
8. This Order shall remain in force until varied or revoked by further order of the Tribunal and the Applicant/Leaseholders the Respondent/Landlord and the Proposed Manager shall each have liberty to apply to the Tribunal for further directions

Dated 10 December 2010



.....  
P R Boardman  
(Chairman)

A Member of the Tribunal appointed by the Lord Chancellor