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**EASTERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**

CAM/00KF/OLR/2006/0010

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN
APPLICATION UNDER SECTION 48 LEASEHOLD REFORM, HOUSING
and URBAN DEVELOPMENT ACT 1993**

Applicant: Trevor Anthony Murray

Respondents: (1) Mrs Jane Harwood
(2) Mrs Norah Mary Woodward
(3) Mr Bernard Paul Brown

Property: 5A Alexander Road, Leigh-on-Sea Essex SS9 1QD

Date of Application: 13 January 2006

Date of Hearing: 10 May 2006

Date of Decision: 29 June 2006

Tribunal: Mr John Hewitt Chairman
Mr Richard Marshall FRICS, FAAV
Mr Edward Pennington FRICS

DECISION OF THE TRIBUNAL

Decision

1. The decision of the Tribunal is that:
 - 1.1 The appropriate sum to be paid into court pursuant to sub-section 51(5) of the Leasehold Reform, Housing and Urban Development Act 1993 (the Act) is the sum of £9,242.50 in accordance with paragraph 25 below and the valuation comprising Appendix 1 hereto, and
 - 1.2 The terms of the new lease shall be in the form of the draft new lease provided for in paragraph 28 below and the draft comprising Appendix 2 hereto.
2. The findings of the Tribunal and the reasons for its decisions are set out below.

Background

3. The Applicant is the lessee by assignment of a lease the Property dated 7th December 1965 granted by Charles Alexander Woodward and Mary Norah Woodward to Sydney Arthur Robert Pitt and Jenny May Pitt for a term of 99 years from 7th December 1965 at a ground rent of £10 per annum payable by equal half yearly instalments on 25th March and 29th September in each year and on other terms and conditions as therein set out.

4. The Property comprises a self-contained ground floor converted flat originally part of a three storey semi detached house built around 1915 known as 5 Alexander Road (the Building). The Property is described in more detail in the report of Mr David Plaskow FRICS dated 3 April 2006.
5. The lease of the Property has been assigned from time to time. In or about 1998 the lease was assigned to Hannah Louise Murray, the Applicant's daughter, who in turn later assigned it to the Applicant.
6. The freehold is evidently not registered at the Land Registry. It appears that the freehold interest in the Building was, at one time vested in Charles Alexander Woodward and the Second Respondent. Mr Charles Alexander Woodward died on 3 January 1982 and probate was granted to the Third Respondent. The First Respondent asserts that the freehold interest was transferred by Mr Charles Alexander Woodward to her late husband, Mr Nigel Harwood sometime in 1979. The transfer was not registered at the Land Registry. Evidently the transfer and title deeds have since been lost, and as noted Mr Nigel Harwood has since died.
7. The Applicant is keen to acquire a new lease of the Property pursuant to s39 of the Act. On 3rd August 2005 the Applicant made an application to Southend County Court pursuant to s50 of the Act on the footing that the landlord (as defined) could not be found. The Applicant joined the Three Respondents as defendants in the proceedings. It appears that the court has not yet determined whether the First Respondent is the landlord for the purposes of the Act or whether she has any interest in the Property. These are matters for the court and not for us to determine.
8. On 13 January 2006 District Judge Chandler sitting in Southend County Court ordered that:
 - 8.1 a vesting order be made pursuant to s50(1) of the Act for the surrender of the current lease and for the grant of the new lease to expire on 6 December 2154 at a peppercorn rent and otherwise on such terms as may be determined by a leasehold valuation tribunal to be appropriate as if the claimant had given notice under s42 of the Act
 - 8.2 the claim be transferred to the leasehold valuation tribunal for determination of the terms of the new lease to be granted including determination of an appropriate sum to be paid into court pursuant to s51(3) of the Act and for approval of the form of the new lease
 - 8.3 within 28 days of the claimant paying into court the sum determined by the leasehold valuation tribunal there shall be executed by an officer of the court a new lease compliant with s53 (3) of the Act, and
 - 8.4 The claimant be entitled to reduce the sum to be paid into court costs to be summarily assessed if not agreed incurred by the claimant by reason of the landlord being unable to be found.
9. It is against the above background that the Tribunal is required, in accordance with paragraph 2 of the order to determine the terms of the new lease

including the determination of an appropriate sum to be paid into court and the form of the new lease.

10. Directions were given and the matter came on for hearing by the Tribunal on 10th May 2006. The Applicant, who is a retired solicitor, attended in person and was accompanied by his daughter, Hannah Murray. Later he was joined by Mr David Plaskow FRICS, his valuation expert witness. The First Respondent attended and was accompanied by Mr David Parker and Mr Christopher Pinnion of Jeffries, Solicitors. The Second and Third Respondents were neither present nor represented. Prior to the hearing the Tribunal inspected the Property, internally and externally, and the general location
11. At the outset of the hearing The Applicant objected to the First Respondent being present and/or represented at the hearing. His objection was based on the failure of the First Respondent to adduce any title or other evidence to support her contention that she had an interest in the freehold interest of the Building.
12. Representations were made on behalf of the First Respondent. The Tribunal retired to consider the objection.
13. The Tribunal decided to reject the objection because the First Defendant had been joined into the court proceedings by the Applicant, no application had been made in those proceedings for the First Respondent to be debarred as a party and the court had transferred the claim (with the parties as enjoined therein) to the Tribunal for certain matters to be determined. The Tribunal decided that it was not for it to determine who should or should not be parties because that was a matter for the court. Further, the First Respondent had a contingent interest in the matters to be determined by the Tribunal, namely the premium for the new lease and the terms thereof because the court might later rule in her favour on her contention that she has an interest in the Building. The Tribunal concluded that the First Respondent was entitled to be present and represented at the hearing. Of course, in arriving at this decision, the Tribunal makes no finding as to whether or not the First Respondent does in fact or in law have any interest in the freehold of the Building.

The Case for the Applicant

14. Mr Murray gave evidence and explained the background to the matter, largely as outlined above. Mr Murray spoke to his witness statement dated 25 March 2006 and he said it was true. Mr Murray said that his daughter had tried to sell the leasehold interest in the Property but it had not been possible. He said that three potential sales were lost in 2003 due to the absence of a landlord and perceived problems with insurance and communal repairs and services.
15. Mr Murray produced original title documents and a draft of the new lease contended for by him. Mr Murray agreed to send through a copy of his draft lease in electronic format. Mr Murray said that he had paid ground rent up to and including 25th March 2003 and produced a copy of his letter to the First Respondent sending her a cheque.

16. Mr Murray's evidence was not challenged by or on behalf of the First Respondent.
17. Mr Murray called Mr David Plaskow FRICS as an expert valuation witness. Mr Plaskow told us of his CV and his expertise in residential enfranchisement casework in and around Southend and Leigh-on-Sea. Mr Plaskow spoke to his report dated 3 April 2006. Mr Plaskow explained to us how he had arrived at his short lease and long lease valuations. He said that there were no recent market transactions that he rely could upon. He had selected a 15% discount which he said reflected his experience and, as a check, was supported by the Savill's graphs. He was however unable to produce the graphs to support his evidence.
Mr Plaskow has selected a deferment rate of 6.5% which he again said reflected his local experience. He said that settlements had analysed out at this figure but he did not have full details to hand and was unable to say if all components of the analysis were agreed. He said that he focused on August 2005 materials and contended that his figure was supported by auction sales, but again he was unable to cite specific examples that he had relied upon. He accepted, following questions from members that the range could be 6.5 to 7% and that he would not quarrel with 7%.
18. Mr Plaskow's evidence was not challenged by or on behalf of the First Respondent.

The First Respondent's Case

19. The First Respondent did not wish to call evidence or make any submissions. Mr Pinnion said that the First Respondent was content to leave the decision to the Tribunal.

Valuation

20. The Tribunal accepted Mr Plaskow's long lease valuation at £132,500 because this was supported by comparables and reflected the Tribunal members own experience. The Tribunal was unable to accept Mr Plaskow's discount of 15% to short lease value of £112,625 because Mr Plaskow was unable to produce any evidence to support it and it did not reflect members' experience of the market in the Leigh-on-Sea area. The Tribunal preferred a discount of 12%, which produced a short lease value of £116,600.
21. The Tribunal noted that Mr Plaskow did not quarrel with a deferment rate of 7% and adopted this because was in keeping with member's experience of the market at the relevant time.
23. In consequence the Tribunal finds that the premium payable for the new lease, in conformity with the provisions of Schedule 13 to the Act is £9,212.50 as shown in the valuation set out in Appendix 1 hereto.
24. In addition the Tribunal is required, by virtue of s51(5)(c) of the Act to determine any amounts or estimated amounts due to the landlord from the tenant under the (old) lease. In the absence of any insurance rent or service

charge demands, the only other sum payable, at the present time, is the ground rent of £10 pa. In the past ground rent has been paid to the late Mr Harwood, and after his death the First Respondent. However this arrangement ceased when Mr Murray became aware that title could not be proved. The ground rent is payable by instalments on 25th March and 29th September in each year. We accept Mr Murray's unchallenged evidence and find that £30 arrears of ground rent are payable. Thus we determine that a further £30 is to be paid into court.

25. Accordingly we find that there shall be paid into court:

Premium for the new lease	£9,212.50
Arrears of ground rent	<u>£ 30.00</u>
Total	<u>£9,242.50</u>

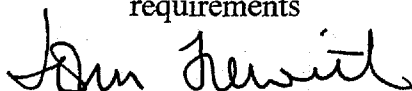
26. The Tribunal has not given any consideration to any deduction from the sum of £9,242.50 by reason of the matters set out in the fourth paragraph of the court order made on 13th January 2006 because:-

- 26.1 the Tribunal does not have jurisdiction to assess costs summarily within the meaning on the Civil Practice Rules
- 26.2 the tribunal does not have any jurisdiction to determine any claims that the First Respondent might have as to title to the freehold interest
- 26.3 the court is the appropriate forum to determine if court fees and disbursements have been increased by reason of the landlord being unable to be found, and
- 26.4 this was not one of the issues which the court transferred to the Tribunal to determine.

Lease Terms

27. Section 57 of the Act sets out the terms on which the new lease is to be granted. The draft new lease contended for the Applicant was not challenged by the First Respondent.

28. The Tribunal is grateful to the Applicant for submitting a copy of the draft in electronic format. The Tribunal has scrutinised it carefully and has consequential amendments as considered necessary and appropriate. The Tribunal finds that the new lease shall be in the form of the draft annexed hereto which is approved by the Tribunal, and is such format as is compliant with current Land Registry requirements. In addition there shall be annexed to the new lease a lease plan in the same basic format as that attached to the current lease but it shall be in compliant with current Land Registry requirements



John Hewitt
Chairman

Dated 29 June 2006

Appendix 1

Valuation of Lease Extension Schedule 13 of the Act

Summary

Converted ground floor one bedroom flat let for 99 years from December 1965 at a fixed ground rent of £10 pa.

Vacant possession value assuming long lease and standard general condition		£132,500
Value assuming a 59 year lease, 12% discount		£116,600

Current Value of Freehold Investment

Income £10 pa		
YP 59 years @7%	14.02	£ 140.00
Reversion to vacant possession excluding any tenants improvements £132,500		
Present value of £1 deferred 59 years @7%	0.018	<u>£2,385.00</u>
Current value of Freehold investment		£2,525.00

Valuation of the Lease

1. As extended 149 year term at a nil ground rent	£132,500
2. As now, 59 year term at £10 pa	£116,600

Marriage Value

Extended lease		£132,500
Less: Value of 59 year lease	£116,600	
Freehold investment	£ 2525	<u>£119,125</u>
		£ 13,375

50% Marriage value	<u>£6,687.50</u>
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Total Payable for New Lease	£9,212.50
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Appendix 2

The New Lease

THIS LEASE is made the day of 2006
BETWEEN CHARLES ALEXANDER WOODWARD and MARY NORHA WOODWARD his wife (and/or his or her or their successors in title) both formerly of Number 5 Alexander Road Leigh-on- Sea Essex SS9 1QD (hereinafter called "the Landlord" which expression shall where the context so admits include the person or persons for the time being entitled to the reversion immediately expectant on the determination of the term hereby created of the one part and TREVOR ANTHONY MURRAY of 36, Hillborough Road, Westcliff-on-Sea Essex SS0)SSA (hereinafter called "the Tenant" which expression shall where the context so admits include ~~their~~ his successors in title) of the other part

W H E R E A S:

- (1) The Landlords are the owners in fee simple in possession of a property known as Number 5 Alexandra Road Leigh on Sea in the County of Essex and which property has been converted into two maisonettes
- (2) The Landlords have agreed to demise the lower maisonette upon the terms hereinafter contained

NOW THIS LEASE made in consideration of the sum of £9,212.50

pounds paid by the Tenant to the Landlords (the receipt whereof the Landlords hereby acknowledge) and of the rent and covenants on the part of the Tenants hereinafter reserved and contained WITNESSETH as follows:

- 1 THE Landlords hereby demise unto the Tenant all that the ground floor being the lower maisonette in the property known as Number 5a Alexandra Road Leigh on Sea in the County Borough of Southend on Sea the site whereof is more particularly shown on the plan annexed hereto and thereon edged red TOGETHER also with

- 1 The site of a wooden coal bunker with corrugated roof in the rear garden¹
 - 2 The right in common with the Landlords and the occupiers for the time being of the upper maisonette to use for the purposes of access and egress only
 - a the pathway from the street to the door of the maisonette
 - b The passageway coloured green on the said plan and
 - c The common entrance hall coloured blue on the said plan and
 - d (so far as the Landlords can grant such rights and in common with all other persons having the like right) the passageway coloured brown on the said plan
 - 3 The right in common with the Landlords the use the back garden of the demised premises hatched blue on the said plan
 - 4 The right to the free passage and running of water soil gas and electricity from and to the lower maisonette through the pipes wires and drains in under or upon the upper maisonette as now enjoyed
 - 5 All rights of support and protection now enjoyed by the lower maisonette TO HOLD the same unto the Tenant for a term from the date hereof and expiring on 6 December 2154 at a rent of a peppercorn (if demanded) payable on the 1st day of January in each year commencing on 1st January 2007 the first of such payments to be made on the date hereof but SUBJECT however to the obligations and rights set out in Clause two hereof
- 2 THE demise hereinbefore contained is subject to the following matters:-
- 1 The covenants hereinafter contained including the restrictions and stipulations contained in the Schedule hereto
 - 2 The rights of support and protection now enjoyed by the upper maisonette
 - 3 The right to the free passage and running of water soil gas and electricity from and to the upper maisonette through the pipes wires and drains in under or upon the lower maisonette, as now enjoyed
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- 4 The right of the Landlords and the occupiers for the time being of the upper maisonette and all persons authorised by them (a) to pass and repass at all times and for all purposes over and along the part of the side passageway coloured yellow on the said plan and that part of the back garden hatched black on the said plan and (b) to place a dustbin underneath the staircase at the rear of the building and (c) to use the back garden on two days every week for hanging out washing
- 5 All easements and similar rights now enjoyed by the upper maisonette
- 3 THE Tenant hereby covenants with the Landlords as follows
 - 1 To pay the reserved rent on the day and in manner aforesaid
 - 2 To pay all existing and future rates taxes assessments and outgoings whatsoever whether parliamentary local or otherwise now or hereafter imposed or charged upon the lower maisonette or any part thereof or on the Landlords or the Tenants respectively (except income tax)
 - 3 From time to time and at all times during the said term well and substantially to repair cleanse maintain amend and keep the lower maisonette and the fixtures therein including the ceilings and floors of and in the said maisonette and the joists or beams on which the said floors are laid and also the windows thereof
 - 4 In every seventh year and in the last year of the said term to paint all the inside wood and iron work usually painted of the said maisonette with two coats at least of good oil and white lead paint in a proper and workmanlike manner and to varnish the parts usually varnished and also wash distemper and whiten all ceilings and colour all walls and re-paper all rooms now papered with as good a quality paper as before
 - 5 At all times to keep the back garden and the parts of the premises hatched black and coloured yellow on the said plan clean and tidy and free from weeds
 - 6 Not at any time to keep or place in the common entrance hall or on the passageways coloured yellow brown and green on the said plan or on the front path any article or thing which might obstruct the free use thereof by any other persons

- 7 To sweep and thoroughly cleanse the chimneys of the said maisonette at such times as may be necessary and so that not more than twelve months elapses between any two successive cleanings
- 8 To keep in repair and replace when necessary all cisterns pipes wires ducts other things installed for the purpose of supplying water (cold or hot) gas electricity or for the purpose of draining away water soil or for allowing the escape of steam or other deleterious matter from the lower maisonette in so far as such things are installed and used only for the purpose of the lower maisonette and for the purpose of such repairs the Tenant and his workmen shall have access to such pipes wires ducts and other things where they are in upon or under the upper maisonette upon proper notice being given to the occupiers of the Upper maisonette
- 9 To permit the Landlords and their Agents with or without workmen and others twice a year at reasonable times to enter upon and examine the condition of the maisonette and thereupon the Landlords may serve upon the Tenants notice in writing specifying any repairs necessary to be done and require the Tenants forthwith to execute the same and if the Tenants shall not within one month after the service of such notice proceed diligently with the execution of such repairs then to permit the Landlords to enter upon the lower maisonette and execute such repairs and the cost thereof shall be a debt due to the Landlords from the Tenants and be forthwith recoverable by action
- 10 Not to make any alterations in the lower maisonette without the approval in writing of the Landlords to the plans and specification thereof and to make all such alterations in accordance with such Plans and specifications. The Tenants shall at their own expense in all respects obtain all licences approval of plans permissions and other things necessary for the carrying out of such alterations and comply with the byelaws and regulations and other matters prescribed by any competent authority either generally or in respect of the specific works involved in such alterations
- 11 Not to do or permit or suffer to be done in or upon the lower maisonette anything which may be or become a nuisance annoyance or cause damage or inconvenience to the Landlords or the occupiers of the other maisonette or neighbouring owners and occupiers or whereby any insurance for the time

being effected on the upper and lower maisonettes or either of them may be rendered void or voidable or whereby the rate of premium may be increased

- 12 During the term hereby granted to perform and observe the restrictions and stipulations and conditions set forth in the Schedule hereto
 - 13 Within one month after every assignment assent transfer (otherwise than by way of Mortgage) of the said lower maisonette to give notice thereof if possible in writing with particulars thereof to the Landlords and to produce such assignment assent transfer or underlease to the Landlords in the case of a devolution of the interest of the Tenants not perfected by an assent within twelve months after the happening thereof to produce to the Landlords the Probate of the Will or letters of Administration under which such devolution arose and to pay to the Landlords a registration fee of two guineas in respect of each such assignment assent transfer underlease or devolution
 - 14 To pay to the Landlords one half of any premium or premiums payable by the landlords for any insurance of the building comprising the upper and lower maisonette in pursuance of the covenant on their behalf hereinafter contained such payment to be made by the Tenants to the Landlords with the payment of the ground rent next due after the payment of such premium by the Landlords.
 - 15 To pay to the Landlords one half of the cost of repairing or keeping in tenantable repair and maintaining and where necessary painting the exterior of the said building comprising the upper and lower maisonettes and all additions thereto and the walls fences and drains thereof and such payment to be made by the Tenants to the Landlords within one calendar month of production by the Landlords to the Tenants of receipted bills for all work in connection therewith
 - 16 At the termination of the tenancy to yield up the lower maisonette and all fittings and fixtures therein in tenantable repair in accordance with the Tenants covenants herein contained
- 4 THE Landlords hereby jointly and severally covenant with the Tenant as follows:-
- 1 To insure and keep insured the building comprised of the upper and lower maisonettes and any building erected in connection with them during the term hereby granted against loss or damage by fire and aircraft and any other risks which the Landlords may think proper in an insurance office of repute to the full value thereof and to make all payments necessary for the above purposes

within seven days after the same shall respectively become payable and to produce to the Tenants on demand the policy or policies of such insurance and the receipt for every such payment

- 2 As often as the upper or lower or both maisonettes or any part of either of them shall be destroyed or damaged as aforesaid to rebuild and reinstate the same to the satisfaction of the Tenants and it is hereby agreed that any moneys received in respect of such insurance shall be applied so far as the same shall extend in rebuilding or reinstating the upper and lower maisonette in accordance with the then existing byelaw regulations and planning and development schemes of any competent authority then affecting the same and if the moneys received under such policy or policies of insurance shall be insufficient for the full and proper rebuilding and reinstatement of the said maisonette then to make up any deficiency out of their own money
 - 3 To repair and keep in tenantable repair and maintain and when and where necessary to paint the exterior of the building comprising the upper and lower maisonettes and all additions thereto and the walls fences and drains thereof throughout the term subject to payment by the Tenants of one half of the cost as hereinbefore provided
 - 4 To keep the said common entrance clean and tidy and free from any obstructions
 - 5 The Tenants paying the rent hereby reserved and performing and observing the covenants hereinbefore contained shall peaceably hold and enjoy the demised premises for the term hereby granted without any interruption by the Landlords or any person lawfully claiming through under or in trust for them
- 5 PROVIDED ALWAYS:
- 1 if at any time during the term hereby created the Landlords shall refuse or neglect to perform and observe the covenants or any of them on their part herein contained then upon a requisition signed by the occupier of either of the maisonettes requiring the Landlords within one month of the date of the service of such requisition to perform and observe the said covenants or such of them as the Landlords have neglected or failed to perform or observe such requisition specifying the covenants which have not been observed or performed it shall be lawful as from the expiration of the said period of one

month to suspend the payment of the rent hereby reserved until such time as the Landlords shall have fully observed and performed the said covenants and any dispute or difference in reference to this proviso shall be referred to a single arbitrator in accordance with the Arbitration Act 1950 or any statutory enactment in that behalf or the time being in force This proviso shall have no application to damage against which the Landlords are hereby required to effect and maintain a Policy of insurance if payment of the whole or any part of the money recoverable under such insurance shall have been lawfully refused in consequence of any Act or default on the part of the Tenants For the purposes of this proviso any such requisition as aforesaid shall be sufficiently served upon the Landlords if posted (the postage being prepaid) to their last known address in the United Kingdom or to their agents collecting the rent hereby reserved and such service shall be deemed complete at the time of posting

2 If the rent hereby reserved or any part thereof shall be unpaid for twenty one days after becoming payable (whether formally demanded or not) or if any of the covenants on the part of the Tenants herein contained shall not be observed and performed then and in any such case it shall be lawful for the Landlords or any person or persons authorised by them in that behalf at any time hereafter to re-enter the maisonette or any part thereof in the name of the whole and thereupon the term hereby created shall absolutely determine but without prejudice to any right of action or remedy of the Landlords in respect of any breach of the covenants by the Tenants hereinbefore contained

6 SECTION 196 of the Law of Property Act 1925 shall apply as regards any notice as if such notice were a notice authorised by the Act

7 This Lease is granted under section 56 of the Leasehold Reform, Housing and Urban Development Act 1993.

8 IT IS HEREBY CERTIFIED that the transaction hereby effected does not form part of a larger transaction or of a series of transactions in respect of which the amount or value or the aggregate amount or value of the consideration exceeds One hundred and twenty thousand pounds

IN WITNESS whereof the parties hereto have hereunto set their hands and seals the day and year first before written

THE SCHEDULE above referred to

1. The said maisonette shall be used as a private residence only and for no other purpose whatsoever
2. No person of unsound mind shall be permitted to reside in the said maisonette
3. No name sign notice or advertisement shall be placed or exhibited on any part of the said maisonette or at or through any of the windows thereof
4. The Tenants shall not use the said maisonette or permit or suffer the same to be used for any purpose of an illegal immoral or improper nature or permit or suffer persons of a character objectionable to the Landlords to resort thereto
5. All refuse shall be deposited in the dustbin which shall be supplied by the Tenants and shall be kept in the rear of the building
6. No animals shall be kept in the said maisonette except one cat or one dog
7. The Tenants shall not use or permit to be used any gramophone radiogramme piano wireless or television loud-speaker or musical instrument in such a manner as in the opinion of the Landlords or their agents to constitute a nuisance or annoyance to the occupiers of the other maisonette or of the adjoining property and in any event not between the hours of 11 p.m. and 7 a.m.
8. No aerial or other apparatus in connection with a radio or television receiving set shall be fixed or placed on the outside of the said maisonette and an indoor aerial only shall be used No oil heaters of any kind shall be kept or used in the said maisonette

Signed as Deed by

An officer of the Southend County Court
appointed by a judge of the court to execute
this Deed in accordance with the Order
made 13 January 2006

Ref: Claim No 5SS03022

In the presence of:

Witness:

Name (block capitals):.....

Signature:

Address:.....

.....

.....

Occupation:.....