IN THE MATTER OF THE ARBITRATION ACT 1996

AND IN THE MATTER OF AN ARBITRATION

BETWEEN:-

[CHEVIOT HILLS LIMITED] Claimant

- and -

[HIGHGATE REHABILITATION LIMITED] (By Guarantee) Respondent

AWARD

1. This Arbitration concerns [Highgate Rehabilitation] ("[Highgate Rehabilitation]"), a company limited by guarantee and registered as a charity having a registered office in Highgate, London and [Cheviot Hills] ("[Cheviot Hills]"), a limited company having a registered office in Alnwick, Northumberland.

2. The dispute between [Cheviot Hills] and [Highgate Rehabilitation] arises out of an agreement into which they entered on 23rd July 2003 ("the Agreement"). Under Clause 14 of this Agreement it is stated:

> *"Any dispute arising under or in connection with this Agreement shall be referred to arbitration by a single Arbitrator appointed by agreement of*

the parties…."

3. Pursuant to this Clause both parties agreed that I should be appointed Sole Arbitrator and accordingly the parties entered into an Arbitrator Appointment Agreement ("the Appointment Agreement"), which was signed by the Claimant on 5th October 2005 by the Respondent on 6th December 2005 and by myself, as Arbitrator, on 14th December 2005.

4. At the outset of the Arbitration I convened a preliminary meeting, which was held in a conference telephone call on 19th October 2005. In that conference telephone call it was agreed (inter alia) that the Seat of this Arbitration should be England and that the Governing Law should be English Law. It was also agreed that this Arbitration should be conducted under the English Arbitration Act 1996 under certain terms, which are recorded in my Orders for Directions of 19th October 2005.

5. In the above conference telephone call, as recorded in Orders 6 and 7 of Orders for Directions of 19th October 2005, it was also agreed that:

   "Strict rules of evidence will not apply in the conduct of this arbitration and that I have liberty, concerning evidence adduced in this arbitration, to admit or not to admit it and/or give it such weight to it as I think fit."

   and that, in the conduct of this arbitration, I have:

   "…general authority to take my own initiatives to ascertain the facts and/or the law".

These are important provisions, deriving from Section 34 of the Arbitration Act 1996, that give an arbitrator scope, which is not available in Court proceedings, to achieve a process and a result that manifests greater fairness in deciding the dispute between the parties. This is particularly important in a case, such as this one, where one party is appearing in person and may be unable to prepare and present his claim in a way, which reflects the justice of it. As later noted in this Award, I have thought it right to invoke both these provisions.

6. In the course of the exchange of pleadings, the Respondent admitted liability and since then the arbitration has just been directed to the assessment of the damages to which the Claimant is entitled.

7. After the exchange of pleadings and certain requests for disclosure of documents and information, I convened an oral hearing which took place on 13th September 2006 in my Chambers in London. At this hearing [Mr. Harry Scott] ("[Mr. Scott]") represented the Claimant and [Mr. Anthony Sharpe] of Counsel ("[Mr. Sharpe]") represented the Respondent. [Mr. Scott] is the sole active director of [Cheviot Hills] – the other director being his daughter, who is not, according to [Mr. Scott], involved in the management of the company. As I understand it, she fulfils her statutory role as a director and no more. In support of this claim, [Mr. Scott], in addition to appearing before me, submitted written statements. On its side [Highgate Rehabilitation] has five directors including a Chairman, Vice Chairman and Treasurer. Its Chief Executive is [Mr. William Mainprize] ("[Mr.

Mainprize]") who submitted a written statement and attended the oral hearing before me together with [Miss Sally Pearson] of [Pleasedale Legal Advisory Service] ("Miss Pearson") and [Mr. George Shine], ("[Mr. Shine]") the Financial Director of [Highgate Rehabilitation]. On the Claimant's side [Mr. Leslie Pickford] ("Mr. Pickford") also attended, with [Mr. Scott], the oral hearing.

8. The principal business of the Claimant is running a centre, with hostel accommodation, [Blaydon House] ("[Blaydon House]"), which provides educational courses with an emphasis on outdoor activities. The principal business of the Respondent is to arrange residential and training courses for the long term homeless and unemployed of London with the objective of encouraging these persons off the streets and into employment. The Respondent relies upon government funding for its work.

9. At this stage I should mention that there appeared in the Agreed Bundles several statements, which were prepared in 2001 apparently at an earlier stage in the dispute between the Claimant and the Respondent. While one of these statements is quite favourable to [Mr. Scott], the others are very critical of him, both in his running of [Blaydon House] and in his personal behaviour. However, I have decided, that in the conduct of this arbitration, to ignore the contents of these statements – like I ignored a critical outburst of [Mr. Mainprize] against [Mr. Scott] during the Oral Hearing. I have decided to take this course, as [Mr. Scott] requested me to do, for two reasons. Firstly, neither [Mr. Sharpe] nor [Mr. Scott] referred to these statements during the Oral Hearing – let alone sought to rely

upon them. Secondly, all of these statements refer to events that took place before the Agreement of July 2003 was negotiated and agreed.

10. In the Agreement of 23rd July 2003, the Claimant agreed to assist the Respondent by providing that two programmes run from its centre in Northumberland. The first of these programmes was an 'engagement project' in which selected persons from among London's homeless and unemployed were provided with a five day residential course concentrating on a range of outdoor activities in a rural environment to enable the participants to develop self reliance and confidence in themselves. The second programme, which the Claimant agreed to provide to the Respondent, was a six month 'supported employment project' for five participants in which the objective was to enable the participants to rehabilitate into open employment in fields such as construction, domestic work and work involving interpersonal skills. Those participating in the 'supported employment project' were principally chosen from those who had participated successfully in the 'engagement project' programme.

11. Under Clause 2.8 of the Agreement the Claimant was to run the two programmes for the period from 1st April 2003 to 31st March 2005. Also under Clause 4.1 of the Agreement the Respondent was to pay the Claimant £1,200 for each of the 'engagement' courses and, under Clause 4.2 of the Agreement, to pay to the Respondent £40,000 for each 'supported employment' course in three separate payments of £8,000 and in a final payment of £16,000 to be made at various stages during the period of the Agreement. Although I have not been specifically

told, my assumption is that the six month 'supported employment' course was separately designed for each participant and was not run contemporaneously with all 5 participants participating in the same six month period.

12. On 31st March 2004, in breach of the Agreement as the Respondent now recognises, it cancelled the 'supported employment' course for its second year, which would have run from 31st March 2004 to 31st March 2005. Although cancelling the 'supported employment' programme for this second period of the contract, the Respondent maintained the 'engagement project' until the end of the contract period on 31st March 2005. Thus, in the Claimant's claims before me, it seeks damages for the Respondent's breach of contract in cancelling the 'supported employment' course.

13. Under its first head of damages, the Claimant seeks to be paid the £40,000 due under Clause 4.2 of the Agreement. However [Mr. Scott] recognises that he has to bring into account the monies which, under the Agreement, he would have had to pay each participant in the 'supported employment' programme. In the Schedule of Loss, Counsel, who was then acting for the Claimant, set the monthly payment to each participant in the 'supported employment' programme at £715 per month. Since this payment had been increased to £800 per month per participant by the beginning of the second period of the contract, [Mr. Scott] agreed at the oral hearing that, as a start, these payments should be calculated at £800 per month for five participants in the programme for a period of six months. According to my arithmetic this produces a figure of £24,000, which should be

deducted from the damages claim of £40,000 to reduce it to £16,000. However, as intimated at the oral hearing, I should set a lower sum against the loss of payment of £40,000.00 because the likelihood is that there would have been some shortfall in the attendance, during the period April 2004 to March 2005, on the 'supported employment' course and hence less payments out by [Mr. Scott] to the attendees.

14. The figures revealed in the two Profit and Loss Accounts of the Claimant on pages 142 and 145 of the Agreed Bundle covering the years ending 30th November 2003 and 30th November 2004 are of help. In the Profit and Loss Account for year ending 30th November 2003 there is recorded as expenditure £6,500 for "Supported employment allowances" and in the Profit and Loss Account for the year ending 30th November 2004 there is £13,106 for the same expenditure. Hence adding those two expenditures together the figure of £19,606.00 is reached. Since these Profit and Loss Accounts cover respectively the first eight months and then the second four months of the first contract period, the evidence is that under £20,000 was paid out to the 'supported employees' during the period April 2003 to March 2004 – the cause of these lesser payments out being, as explained by [Mr. Scott] at the Oral Hearing, that the 'supported employment' programme did not commence until about August 2003 and was not at full complement of participants until October 2003. There is, however, another factor – [Mr. Scott] was paying, at that time, £715 per month to each participant not £800. Thus, on the basis of five participants at £715 per participant, each taking a six month course, [Mr. Scott]' full payment out for the

'supported employees' for the period April 2003 to March 2004 would have been £21,450 – a difference of about £2,000 from the money the Claimant's Profit and Loss Accounts record that [Mr. Scott] paid out during this period.

15. Therefore, exercising the powers, which I have identified in paragraph 5 above, I must take an overall view. Different factors would have applied in the second period from April 2004 to March 2005 but the high probability is that there would not have been a full five participant turn out of 'supported employees' for the full six months of each course during this period. I think, therefore, I should make a reduction of £22,000 on the monies likely to have been paid out to the 'supported employees' during the second period which reduces the Claimant's loss under this head to £18,000.

16. [Mr. Sharpe], however, argues that there should be further deductions from the damages of £40,000. He first of all points to the Profit and Loss Account ending 30th November 2003 and to the "premises costs" and "materials", which expenditures arose from the "supported employment" programme. These total £6,887.00.

17. [Mr. Sharpe] also points to other overheads that the Claimant was able to save by not running the 'supported employment' programmes for the period 31st March 2004 to 31st March 2005 such as savings in the use of oil, electricity, gas, and water. On the former, [Mr. Scott] argued that the "premises costs" and "materials" expenditures were 'one offs' and were therefore not expenditures

repeated in the period 31st March 2004 to 31st March 2005, pointing to the absence of any record of these expenditures in the Profit and Loss Account for the period ending 30th November 2004. Concerning expenditures on oil and other utilities [Mr. Scott] gave the per annum figures for oil (£600-£700), for electricity (£600), for gas (less than £100) and for water (£60 per quarter) for the [Blaydon House] premises. [Mr. Sharpe] adds these up to £1,640 and, taking into account the other premises at [Banburgh Mount] (also operated by [Mr. Scott] as part of his Northumberland centre) [Mr. Sharpe] seeks to add half of the [Blaydon House] expenditure (£820) as representing the expenditure for the [Banburgh Mount] premises to bring out a saving for [Mr. Scott] of £2,460.00. Hence [Mr. Sharpe] argues that, under this head, there should be a further deduction from the £40,000 of between £2,250 and £2,500. Finally, [Mr. Sharpe] points out that [Mr. Scott] conceded in his Further Specific Disclosure of 23rd July 2006 that he had a saving of £2,033 on food, which would have been provided to the participants in the 'supported employment' programme for the period March 2004 to March 2005.

18. Once again I must, I think, release myself from applying the strict rules of evidence and take an overall view. There must have been some continuation of savings in premises, costs and materials expenditure during the period March 2004 to March 2005, which I set at the nominal figure of £2,000. Turning to the expenditures on utilities at least the [Blaydon House] premises were still being used for the 'engagement project' programme and, in any event, it would have been unwise for [Mr. Scott] to cut out heating, during the winter months, of either

of these premises. I am therefore minded to only deduct a further £500 for these potential savings for [Mr. Scott]. However, as conceded by [Mr. Scott], I should make a full deduction of £2,033 for the food, which would otherwise have been provided to the 'supported' employees. Hence I reduce his £40,000 damages claim by a further £4,533 bringing it down to £13,467.

19. Under his second head of damages [Mr. Scott], for the Claimant, sought £1,625 for loss of profit in respect of payments made by the participants in the 'supported employment' programme for their board and lodging. The Respondent strongly objected to this claim alleging that it was in breach of the terms of the Agreement of July 2003, in particular Clause 3.9 thereof, and alleging that it was unethical for there to be any profits raised on the payments by the participants in this programme for board and lodging. After discussion at the oral hearing [Mr. Scott], in my judgement quite rightly, abandoned this claim.

20. Under the third head of damages the Claimant claims for work that [Mr. Scott] had to undertake in place of the 'supported employees' after their programme had been cancelled. He stated that the 'supported employees' played a critical role in assisting the 'engagement project' programme by cleaning and tidying up the premises prior to each 'engagement project' programme, undertaking certain maintenance work, collecting firewood, and even undertaking cooking duties. All of this fell on [Mr. Scott] after the cancellation of the 'support employment' programme. To this end [Mr. Scott] claimed £400 per week for the 15 'engagement' courses that were scheduled to take place in the period March 2004

to March 2005 – making a total claim under this head of £6,000.

21. [Mr. Sharpe] argued that this head of damage was most unsatisfactory. Before the 'breach of contract' of March 2004 [Mr. Scott], through the Claimant, only allocated £270 per week for his services and he was now seeking £400 per week. There were no invoices anywhere to support these payments to [Mr. Scott] and the cheque stubs and bank accounts revealed that [Mr. Scott] had only been paid £5,900 during the post breach period. Therefore in the absence of proper invoices and in the proper identification of the payments being made to [Mr. Scott], [Mr. Sharpe] asked for this head of damage to be struck out.

22. I agree with [Mr. Sharpe]. [Mr. Scott] is under a duty, albeit appearing in person, to produce satisfactory evidence to support his claims. He was pressed to do so in the Respondent's Requests for Further and Better Particulars of 31st May 2006, in the Respondent's Request for Specific Disclosure of 3rd July 2006 and in the Respondent's Request for Further Specific Disclosure of 20th July 2006 but failed to do so. I therefore have to hold that regrettably the Claimant, having given it every allowance, has not discharged its burden of proof in respect to this head of damage.

23. In the last head of damages, which appears in the final (unnumbered) paragraph in the Schedule of Loss of 27th February 2006 relates to "notional" losses arising out of "the adverse impact upon its business caused by the [Respondent's] ….breach of contract" - this notional loss being set at £13,704.85. This claim

was never properly particularised but, at the oral hearing, [Mr. Scott] presented this claim in this way. He asserted that, having been deprived of the services of the 'supported employees', he had had to incur costs in the labour market for the work that they would otherwise have undertaken. In doing so he identified that [Mr. Dave Sutton] had had to undertake stone and blockwork, pointing, concreting and general labouring at a cost of about £2,000 and [Mr. Charlie Bright] had had to undertake labouring, painting and decorating costing £4,800. [Mr. Scott] stated that the Claimant had also had to employ joiners, an electrician and other labourers for which the total cost the Claimant had (including the work of Dave Sutton and Charlie Bright) come to £12,680.00.

24. Once again [Mr. Sharpe] asserted that the obligation on the Claimant was properly to prove its case and that there were no invoices that could properly support any of these items of claim. Indeed the only invoices that [Mr. Scott] had produced were those contained in Exhibits 49 – 54 of the Agreed Bundle and these were wholly inadequate for supporting this part of [Mr. Scott]' case. More than that the only record from the bank account counterfoils of payments to [Mr. Bright] was one of £800 and although the recorded payments to [Mr. Sutton] came to £2,900, there was no identification whatsoever of the work that [Mr. Sutton] had carried out against these payments.

25. While I am fully mindful of [Mr. Sharpe]'s submissions, I have to conclude that the Claimant must have incurred some expenditures, which it would not have incurred if the Respondent had not cancelled the 'supported employment'

programme and deprived the Claimant of the services of the 'supported employees'. In coming to this conclusion I take into account [Mr. Mainprize's] point that the 'supported employees' (with the background from which they came) had few, if any, skills to offer and this programme was not being run to provide "cheap labour" for the Claimant. However, [Mr. Scott] does make the counter point that some of them did have skills, which could be reasonably harnessed. I further hold, contrary to as pleaded by the Respondent, that these were foreseen expenditures that the Claimant is entitled to recover. In this regard it is to be noted that, a much earlier stage in their relationship, [Mr. Mainprize] was writing to [Mr. Scott] in June 2000 expressly referring to 'supported employees', being employed at [Blaydon House], on building and other works (see page 100 of Agreed Bundle). [Mr. Mainprize] made a similar statement in a document called "ASH Project Proposal", which he wrote and signed on 7th November 2000.

26. For all the reasons advanced by [Mr. Sharpe], I do not find that the evidence put before me by [Mr. Scott] under this head of damages is very satisfactory, but, as stated, he must have incurred some additional expenditure arising out of the loss of the services of the 'supported employees' and I conclude that it would be reasonable to calculate these losses at £3,000.

27. Before I close my findings in this Award I should refer to two further arguments which [Mr. Sharpe] advanced at the Oral Hearing. Firstly, [Mr. Sharpe] argued that since [Mr. Scott] (not the Claimant) owned the properties, [Blaydon House]

and [Banburgh Mount], the monies expended by the Claimant on these properties should be treated as benefiting [Mr. Scott], not the Claimant, and should not be treated as monies, which the Claimant can claim against the Respondent. Secondly [Mr. Sharpe] argued that the Claimant should bring into account in this arbitration the profits, which it made on the four additional 'engagement' courses, that the Claimant ran for the Respondent between January and March 2005 – these additional courses being funded out of surplus funds available to it after cancelling the 'supported employment' courses for the second period of them. In making this argument [Mr. Sharpe] pointed to the letter of 17th January 2005 from [Mr. Scott] to [Mr. Shine] (Exhibit 208 in the Agreed Bundle) and suggested that the uplift in the costs of these additional courses (from £1,200 to £1,600) should be treated as profit for the Claimant. Hence [Mr. Sharpe] argued that this alleged additional profit of £400 for each additional course (ie £1,600) should be set against the damages claimed by the Claimant.

28. I have to reject these two further arguments. As to the first argument, both properties were used by the Claimant in running its activities centre in Alnwick. It was, therefore, proper expenditure (in so far as it can be proved) for the Claimant to make. As to the second argument of [Mr. Sharpe], I do not believe it can be sustained. Quite apart from the absence of evidence before me that the uplift did, in part or in whole, represent profit for the Claimant, this uplift related to a quite separate part of the Agreement (as extended) of 23rd July 2003 – namely the running of the 'engagement project' courses – and cannot be set off against damages arising out of the unlawful cancellation of the 'supported

employment' courses when (albeit suggested in [Mr. Mainprize's] statement) such a set off has not been pleaded against his Claimant.

29. Turning to interest, [Mr. Sharpe] has agreed that for the claims under the first three heads of damages, the interest should be set at 8% per annum and the interest should be triggered at the mid point of the second period of the Agreement namely on 30th November 2004. Accordingly, I award interest at the rate of £2.95 per day from 30th November 2004 to the date of this Award (644 days) in the sum of £1,899.80. I have not been asked to award anything more than simple interest and accordingly only order simple interest.

30. Concerning the interest on the last head of damage, I also set the interest at 8% per annum on the basis of simple interest and not compound interest. Finally I set the trigger date for interest for this head of damages as 31st March 2005 being the end of the second period of the Agreement. Accordingly I award interest at the rate of £0.66 per day from 31st March 2005 to the date of this Award (523 days) in the sum of £345.18.

31. Concerning costs, I have been asked to reserve costs until the parties have been able to put before me any notices which they may have served upon the other relating to their respective liability on costs. Accordingly I reserve costs but order that all representations on costs should be made to me in writing no later than 21 days after the issue of this Award.

ACCORDINGLY, IN FULL AND FINAL SETTLEMENT OF THE DISPUTE HEREIN BETWEEN THE PARTIES, I MAKE AND PUBLISH (SAVE FOR ORDERS RELATING TO COSTS) THIS, MY FINAL AWARD, AS FOLLOWS:

(1) THAT THE CLAIMANT IS AWARDED, UNDER THE FIRST THREE HEADS OF DAMAGE, THE SUM OF £13,467.00 TOGETHER WITH INTEREST THEREON IN THE SUM OF £1,899.80;

(2) THAT THE RESPONDENT PAYS THE ABOVE SUM OF £15,366.80 TO THE CLAIMANT WITHIN 28 DAYS OF THE ISSUE OF THIS AWARD;

(3) THAT THE CLAIMANT IS AWARDED, UNDER THE FOURTH HEAD OF DAMAGE, THE SUM OF £3,000.00 TOGETHER WITH INTEREST THEREON IN THE SUM OF £345.18;

(4) THAT THE RESPONDENT PAYS THE ABOVE SUM OF £3,345.18 TO THE CLAIMANT WITHIN 28 DAYS OF THE ISSUE OF THIS AWARD;

(5) THAT THE RESPONDENT PAYS THE CLAIMANT INTEREST AT 8% ON THE ABOVE DAMAGES FROM THE DATE OF THIS AWARD UNTIL PAYMENT – NAMELY AT £3.61 PER DAY.

(6) THAT ALL ORDERS AS TO COSTS ARE RESERVED;

(7) THAT THE RESPONDENT MAKES ITS REPRESENTATIONS IN WRITING AS TO COSTS WITHIN THE NEXT 14 DAYS INCLUDING PRODUCING A SCHEDULE OF THE COSTS WHICH IT MAY SEEK TO CLAIM AGAINST THE CLAIMANT;

(8) THAT THE CLAIMANT MAKES ITS REPRESENTATIONS IN WRITING AS TO COSTS WITHIN 14 DAYS THEREAFTER INCLUDING PRODUCING A SCHEDULE OF THE COSTS WHICH IT MAY SEEK TO CLAIM AGAINST THE RESPONDENT;

MADE AND PUBLISHED IN LONDON, ENGLAND BEING THE SEAT OF THIS ARBITRATION.

DAVID HACKING

ARBITRATOR **October 2006**