LEASEHOLD VALUATION TRIBUNAL FOR THE SOUTHERN RENT ASSESSMENT PANEL

In the matter of Section 27(A) of the Landlord and Tenant Act 1985 as amended

Tribunal: M J Greenleaves Chairman
P G Harrison FRICS
J Mills

Re: Flat 12, Fairview Park, Overbury Road, Poole, BH14 9JZ

Applicant: Fairview Park Management Company Limited

Respondents: Mr B E S Timms & Mrs H A Timms

Introduction

1. On 17th July 2003 the Applicant had issued proceedings in the Poole County Court (Claim No: PH303456) claiming payment of the sum £1,620.20 in respect of service charge and interest in respect of Fairview Park, Overbury Road, Poole (the Estate).The Respondents had filed a Defence denying the sum was due, claiming that the notice requirements of Section 20 of the Act had not been complied with and alleging breach of accounting provisions of their lease

2. Of its own motion, on 12th September 2003, the Court had transferred the matter to the Leasehold Valuation Tribunal, the matter being received by the Tribunal on 26th September 2003. On such date the Tribunal's jurisdiction in the matter was limited to questions of reasonableness of service charge under Section 19 of the Act, as the Act stood on that date by virtue of The Commonhold and Leasehold Reform Act 2002 (Commencement No 2 and Savings)(England) Order 2003, Schedule 2, paragraph 6.

3. Accordingly an application was made to the Tribunal by Fairview Park Management Company Limited (the Applicant) under Section 27A of the Landlord and Tenant Act 1985 (the Act), in respect of Flat 12 Fairview Park, Overbury Road, Poole (the Property) enabling the Tribunal, under that Section, to determine all issues arising between the parties, being

   3.1. whether service charges claimed by the Applicant were payable by the Respondents to the Applicant

   3.2. In respect of the period ending 31st December 2001 (the 2001 year)

   3.3. whether the service charge costs of £244.44 were payable in respect of balcony work

   3.4. whether the service charge costs of £166.67 in respect of professional fees were (a) payable and (b) reasonable

3.5. whether the service charge costs of £211.11 were payable in respect of carpeting

Inspection

4. On 1st April 2004 the Tribunal inspected Flat 12 in the presence of Mrs Timms and Flat 15 in the presence of the flatowner both in respect of balcony works

5. The Estate comprises five blocks of flats and garages laid out in communal grounds, the blocks having been built over a number of years in the 1980s or thereabouts. The Estate and the blocks are maintained in a good condition for their age and character. There are a total of 48 flats on the Estate, nine of which are contained in Block B in which Flats 11,12 and 15 are situated. The Flats face south-west and include substantial balconies. The common entranceways and staircases are carpeted.

Hearing

6. On the same day the Tribunal held a hearing which was attended by Mr Owen, a Director of the Applicant, together with witnesses and Mrs Timms one of the Respondents. The Applicant was represented by Ms Bath of Counsel and the Respondents by Mr Keen of Counsel. The Tribunal heard evidence from Mr Owen, Mr Cooke, Chartered Accountant, and Mr Green, Building Surveyor on behalf of the Applicant. Mrs Timms gave evidence on behalf of the Respondents. The Tribunal also received documents.

7. The Tribunal had a copy of the lease (the lease) of Flat 12 (it being understood that all the leases were in similar terms)

8. From the lease of Flat 12, the provisions relevant to the issues before the Tribunal are:

   8.1. The flat is demised for a term of 99 years from 1st May 1982. The flat is described as being on the first floor and including one half part in height of the joists between the ceiling of the first floor flat and the floor of the flat or flats above.

   8.2. The Respondents covenant (in terms) to pay the Applicant

   8.3. one equal ninth part of the cost of maintaining repairing redecorating and renewing (inter alia) the structure of Block B, its communal internal access ways and their cleaning and lighting and "all other expenses (if any) incurred in and about the maintenance and proper and convenient management and running of the building"

   8.4. one equal forty seventh part of the costs in respect of the common parts of the Estate

   8.5. those contributions "shall be estimated by the [Applicant] or their managing agents (whose decision shall be final) as soon as practicable after the beginning of the year and the [Respondents] shall pay the estimated contribution by two equal instalments on March 25th and September 29th in that year"

8.6. "as soon as reasonably may be after the end of the year 1983 and each succeeding third year when the actual amount of the said costs expenses and outgoings and matters for the period ending 31st December 1986 or each succeeding period of three years (as the case may be) has been ascertained the [Respondents] shall forthwith pay the balance due to the [Applicant] or be credited in the [Applicant's] books with any amount overpaid"

Evidence for the Applicant included the following:

9. Mr R T Owen had submitted a written statement. He had been a Director for most of the period since 2001. Service charge payments are collected in March and September. Estimates are circulated for consultation in accordance with Section 20 of the Act and comments taken into account. The service charge collection times result in cash flow problems which are dealt with by rolling over accumulated surpluses from the previous year. Annual statements of account are produced. All but the Respondents are happy with this method of operation.

10. Mr Owen confirmed the procedure adopted for consultation in respect of works to which Section 20 applied. Notices complying with the Act were issued by Foxes Property Management on behalf of the Applicant accompanied by estimates. In the case anyway of balcony consultation arising from the notice dated 19th February 2003, Mrs Timms had written with comments and these had been fully taken into account. Likewise Mrs Timms had been consulted personally in relation to carpeting in December 2003.

11. The original service charge estimate (p133 Respondents' bundle) was amended to that at p137 as a result of the Respondents' queries and p139 showed the final charges including the sums disputed by the Respondents in respect of balcony repairs, carpeting and professional fees.

12. Mr Owen explained that although some charges are stated in the lease to be payable as to 1/47th per flat, there are actually 48 flats. However, the leases have not been amended. Nevertheless all owners including the Respondents agree the 1/48th division. He accepted, in relation to the chronology at p127, that because of changing estimates, it was possible that owners might not know what they were supposed to pay.

13. While the leases require adjustment, by way of further payment by the Lessees or being given credit for sums overpaid, every three years, the Applicant prepares estimates for service charge payments to include the following year as necessary to alleviate cash flow problems which would otherwise result from the service charge payment dates. The Applicant had not considered borrowing as that would cost the Lessees money. Surpluses resulting in the annual accounts are brought forward to the following year: this is a reasonable interpretation of the requirements of the leases.

14. His understanding of Section 20 was that notice had to be given prior to the work being contracted for, but did not have to be issued with the service charge account. In relation to paragraph 14.19 of The Management Code (the Code) issued by the Royal Institution of Chartered Surveyors, he did not think that technical information had to be given.

15. Mr A R Cooke. He is a Chartered Accountant and his firm is instructed by the Applicant to prepare the accounts.

16. The three year period for dealing with surpluses and deficits referred to in the leases could cause complications because that three year period is different for each of the five blocks on the Estate. Accordingly their practice has been to deal with it on an annual basis thereby reducing or increasing the budget for the following year. Accordingly the Applicant is not building up reserves to the Respondents' prejudice. To the contrary, by dealing with this annually, the Respondents receive credit for any surpluses annually rather than every three years.

17. The preparation of annual company accounts is required by law. Their cost falls on the shareholders. The cost of annual service charge accounts rather than three yearly is not greater, as the annual account would be necessary anyway to enable preparation of the statutory accounts. Their bill includes the statutory accounts and the service charge accounts.

18. Mr D Green is a Director of Bennington Green Associates Limited who provided chartered building surveying services to the Applicant.

19. They were instructed in 1999 to report on damp in Flat 12. They also reported on the balconies of Flats 8 and 11. In 2000 they prepared a specification for remedial work to the balconies of Flats 12, 14 and 15. They were not involved in monitoring the work but gave Certificates for Payment to the contractor.

20. Their fees included all their work, calculated on a time basis and related solely to the balconies and not carpeting. Not all their work was actually used.

21. Most of the damp to Flat 12 was condensation. Once work had been done to Flat 15 above, the only remaining problem with Flat 12 was the condensation.

22. Mrs Timms gave evidence for the Respondents including the following:

23. While the lease provides for two payment dates each year, in 2001 there had been three bills. They paid £1000 in April 2001. When they received the service charge estimates (pp 133 and 137) neither they nor the Applicant knew what balcony work or carpeting was to be done at that stage. The balcony work was not done until February 2002. Service charge demands were generally received before any estimates for specific works.

24. They had not paid anything more: they are people who pay their bills but they had had no detail. Nor had they had any information about surpluses or Members' Funds. In respect of the demand for £1,620.20 no details had been received.

25. In cross-examination, Mrs Timms confirmed that prior to 2001 they had paid the service charges as they were reasonable. From 2001 the service charge demands had not been accompanied by Section 20 notices and details of the work to be done so she had not paid. She accepted that she had paid in March 2000 without any estimates. She was referred to paragraph 9.9 of the Code which she had put in evidence. Her interpretation of Section 20 of the Act was that notices should be accompanied by specifications but she didn't obtain advice about it. She was shown relevant documents concerning Section 20 notices, estimates and invoices.

26. In June 2001 they had been sent a cheque for an adjustment of £208.81, but had sent that cheque back as they hadn't known whether that was the end of the matter.

27. She accepted that the professional fees related solely to the balcony works

The parties submissions by Counsel were:

28. The Applicant:

    28.1. Section 20 notices under the Act relate to the giving of information about proposed qualifying works but not to demands for payment whether in advance or otherwise

    28.2. Paragraph 9.9 of the Code requires provision of reasonable budgets which do not need to be supported by quotations or estimates.

    28.3. Payment had been made up to 2000 without question

    28.4. In 2001 there had been consultation which resulted in changing service charge estimates

    28.5. The professional fees did not constitute qualifying works

    28.6. Proper accounts are produced and credits shown in the accounts

29. The Respondents

    29.1. The accounting provisions are governed by the lease, albeit that they are clumsy

    29.2. Section 20(1) provides that the excess above [the limit of £1000] shall not be included in the service charges if the provisions of the Section are not complied with

    29.3. Requiring payment before Section 20 notices are issued undermines the purpose of the Section

    29.4. There is now money owing to the Respondents

    29.5. The work done was shoddy so the Respondents should be credited with their proportion of the £414 not recovered from the contractor

Consideration

30. The Tribunal considered all the documents received and all the evidence given on behalf of both parties, including the evidence referred to above, and the submissions of Counsel

31. The terms of the Lease.

    31.1. The Lease provides, in effect, for a three year accounting period, the end of that period being 31st December 1983 and each third year thereafter. The last of those three year periods ended on 31st December 2001. The Lease provides, in terms, that as soon as reasonably practicable after that

date when actual costs and so on have been ascertained, the Lessees shall forthwith pay any underpayment or be credited in the Management Company's books with any overpayment.

31.2. The Lease also provides that in respect of common parts, the Lessee shall pay 1/47th of the costs when in fact there are 48 flats on the Estate. Further Mr Cooke's evidence is that the accounting year end for each block on the estate is different.

31.3. The Respondents say that the accounting provisions are governed by the Lease. While that is a valid proposition, it would mean the Respondents would be paying a higher proportion of the common parts costs on the Estate. It would also mean that, because of the differing accounting years, it would be extremely difficult to work out and probably impracticable. The Respondents do not argue that those provisions should be strictly construed and it seems to the Tribunal that that inconsistency makes it difficult to sustain the argument.

31.4. The terms of the Lease concerning accounting are intended, albeit over a three year period, to ensure that Lessees have a regular balancing of the books. The Applicant has decided to conduct that annually. That does not adversely affect the Respondents or other Lessees unless it resulted in more than reasonable maintenance charge being paid in advance. There appears to be no evidence that that is the case. On the contrary, the Respondents have an annual account and the documents before the Tribunal show that they have an ongoing account of their position, showing whether they are in credit or in arrear.

31.5. Is the accounting procedure adopted by the Applicant in breach of the Lease? It appears to the Tribunal that the Lease is complied with - it is just that the Applicant's procedure goes further than required in that it balances the books at each year end. The Tribunal is satisfied from Mr Cooke's evidence that this does not cause additional expense. It was submitted on behalf of the Respondents that service charge provisions are governed by the Lease. That is an understandable proposition, but in that event, the Respondents, and the other Lessees too, would be paying 1/47th each of the service charge costs. They actually pay 1/48th each. Unsurprisingly the Respondents do not complain of that breach. In the same way, the Tribunal finds they have no justifiable complaint if and to the extent that the present accounting procedures are not strictly in accordance with the Lease

31.6. The Tribunal accepts that the Respondents may not find the accounting procedures easy to follow, but nevertheless is satisfied that they are satisfactory and comply with the lease as informally amended and, indeed, the Code.

32. The quality of the balcony work.

32.1. The Tribunal accepts that some of the original work was not satisfactory and had to be remedied; that the work was only finally completed in November 2003. Concerning the Respondents' request for crediting of a proportion of £414 not recovered from the contractor, the Tribunal is satisfied that the cost of trying to recover that sum would have outweighed the value and would only have increased the service charge. The work having been completed satisfactorily, the Tribunal finds that the Respondents have no

further cause for complaint about that. The Tribunal noted that the Respondents may remain concerned about the dampness in their flat but, bearing also in mind their own professional knowledge and experience, accept the professional judgement of Mr Green that it is only condensation: that is a matter for the Respondents to deal with and not the Applicant.

33. Section 20 of the Act.

33.1. The terms of the Section, in respect of any qualifying work, must either be complied with or dispensed with by the court, otherwise the cost of the work recoverable as service charge is limited to £1,000.

33.2. Section 20(4) requires, in terms and in so far as material to the issues in this matter, that at least two estimates must be obtained; they must be sent to tenants with a notice describing the works and inviting observations.

33.3. Paragraph 14.19 of the Code also refers to the notice "describing" the works and to be accompanied by at least two estimates.

33.4. Neither the Section nor the Code refers to a specification being required.

33.5. In this case, each instance of relevant qualifying works is dealt with by a letter from Foxes on behalf of the Applicant and at least two estimates. As an example, on 26th October 2001 Foxes wrote to each Lessee referring to "Cavity tray works re The Balcony of Flat 11". It enclosed estimates from Iford Roofing Services and All-Pro Limited. All-Pro's estimate, which was accepted, referred to the location of the proposed installations. The Tribunal is satisfied that these documents gave sufficient description to comply with Section 20. It is also so satisfied for the same reasons in respect of the other qualifying work the subject of this application.

33.6. The Respondents say, though, that these notices did not comply with Section 20 as they were too late: that they should have accompanied the demand for payment which preceded the notices when actually given; that the purpose of Section was therefore undermined.

33.7. The Tribunal finds that the purpose of Section 20 is simply to ensure that Lessees have a proper opportunity of making representations about proposed work before their service charge money is actually committed for payment to a contractor. It does not require that notices and estimates should accompany a demand for service charge payment. The requirement of any such demand is that it be reasonable (Code 9.1) but not necessarily be supported at the same time with estimates. Accordingly, the Tribunal finds that it was not contrary to Section 20 that the Respondents received demand for payment before having any estimates for the work.

34. Professional fees of Bennington Green.

34.1. These are not qualifying works and did not therefore require Section 20 notices. The Tribunal found that the fees were reasonable for the work actually done. It makes no difference if all the work carried out by Bennington Green was not utilised

35. Money owing to the Respondents.

35.1. The Tenant Account Summary referred to above shows the Respondents owing, at 16th February 2004, a sum of £3,011.59. The Tribunal does not accept the Respondents' submission that the Applicant owes money to them. The Respondents have been given appropriate credits.

Decision

36. The Tribunal accordingly finds:

36.1. The sum of £244.44 is payable by the Respondents in respect of the balcony

36.2. The sum of £211.11 is payable by the Respondents in respect of carpeting

36.3. The sum of £166.67 is payable by the Respondents in respect of professional fees

36.4. The sum of £1620.20, being the balance shown on the Tenant Account Summary as at 28th March 2003 and being the subject of the proceedings issued in the Poole County Court is due and owing by the Respondents to the Applicant.

36.5. Costs. The Tribunal found there was no substance in the Respondents' case. The Tribunal accordingly requires, pursuant to paragraph 9(1) of the Leasehold Valuation Tribunals (Fees)(England) Regulations 2003, that the Respondents shall reimburse to the Applicant the whole of any fees paid under those Regulations by the Applicant in respect of these proceedings. The Tribunal also expresses the hope that the Respondents will take professional advice in the future.

Dated 1st May 2004

M J Greenleaves

Chairman

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Introduction

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Inspection

4. On 1st April 2004 the Tribunal inspected Flat 12 in the presence of Mrs Timms and Flat 15 in the presence of the flatowner both in respect of balcony works

5. The Estate comprises five blocks of flats and garages laid out in communal grounds, the blocks having been built over a number of years in the 1980s or thereabouts. The Estate and the blocks are maintained in a good condition for their age and character. There are a total of 48 flats on the Estate, nine of which are contained in Block B in which Flats 11,12 and 15 are situated. The Flats face south-west and include substantial balconies. The common entranceways and staircases are carpeted.

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6. On the same day the Tribunal held a hearing which was attended by Mr Owen, a Director of the Applicant, together with witnesses and Mrs Timms one of the Respondents. The Applicant was represented by Ms Bath of Counsel and the Respondents by Mr Keen of Counsel. The Tribunal heard evidence from Mr Owen, Mr Cooke, Chartered Accountant, and Mr Green, Building Surveyor on behalf of the Applicant. Mrs Timms gave evidence on behalf of the Respondents. The Tribunal also received documents.

7. The Tribunal had a copy of the lease (the lease) of Flat 12 (it being understood that all the leases were in similar terms)

8. From the lease of Flat 12, the provisions relevant to the issues before the Tribunal are:

8.1. The flat is demised for a term of 99 years from 1st May 1982. The flat is described as being on the first floor and including one half part in height of the joists between the ceiling of the first floor flat and the floor of the flat or flats above.

8.2. The Respondents covenant (in terms) to pay the Applicant

8.3. one equal ninth part of the cost of maintaining repairing redecorating and renewing (inter alia) the structure of Block B, its communal internal access ways and their cleaning and lighting and "all other expenses (if any) incurred in and about the maintenance and proper and convenient management and running of the building"

8.4. one equal forty seventh part of the costs in respect of the common parts of the Estate

8.5. those contributions payable by the Respondents "shall be estimated by the [Applicant] or their managing agents (whose decision shall be final) as soon as practicable after the beginning of the year and the [Respondents] shall pay the estimated contribution by two equal instalments on March 25th and September 29th in that year"

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Evidence for the Applicant included the following:

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10. Mr Owen confirmed the procedure adopted for consultation in respect of works to which Section 20 applied. Notices complying with the Act were issued by Foxes Property Management on behalf of the Applicant accompanied by estimates. In the case anyway of balcony consultation arising from the notice dated 19th February 2003, Mrs Timms had written with comments and these had been fully taken into account. Likewise Mrs Timms had been consulted personally in relation to carpeting in December 2003.

11. The original service charge estimate (p133 Respondents' bundle) was amended to that at p137 as a result of the Respondents' queries and p139 showed the final charges including the sums disputed by the Respondents in respect of balcony repairs, carpeting and professional fees.

12. Mr Owen explained that although some charges are stated in the lease to be payable as to 1/47th per flat, there are actually 48 flats. However, the leases have not been amended. Nevertheless all owners including the Respondents agree the 1/48th division. He accepted, in relation to the chronology at p127, that because of changing estimates, it was possible that owners might not know what they were supposed to pay.

13. While the leases require adjustment, by way of further payment by the Lessees or being given credit for sums overpaid, every three years, the Applicant prepares estimates for service charge payments to include the following year as necessary to alleviate cash flow problems which would otherwise result from the service charge payment dates. The Applicant had not considered borrowing as that would cost the Lessees money. Surpluses resulting in the annual accounts are brought forward to the following year: this is a reasonable interpretation of the requirements of the leases.

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15. Mr A R Cooke. He is a Chartered Accountant and his firm is instructed by the Applicant to prepare the accounts.

16. The three year period for dealing with surpluses and deficits referred to in the leases could cause complications because that three year period is different for each of the five blocks on the Estate. Accordingly their practice has been to deal with it on an annual basis thereby reducing or increasing the budget for the following year. Accordingly the Applicant is not building up reserves to the Respondents' prejudice. To the contrary, by dealing with this annually, the Respondents receive credit for any surpluses annually rather than every three years.

17. The preparation of annual company accounts is required by law. Their cost falls on the shareholders. The cost of annual service charge accounts rather than three yearly is not greater, as the annual account would be necessary anyway to enable preparation of the statutory accounts. Their bill includes the statutory accounts and the service charge accounts.

18. Mr D Green is a Director of Bennington Green Associates Limited who provided chartered building surveying services to the Applicant.

19. They were instructed in 1999 to report on damp in Flat 12. They also reported on the balconies of Flats 8 and 11. In 2000 they prepared a specification for remedial work to the balconies of Flats 12, 14 and 15. They were not involved in monitoring the work but gave Certificates for Payment to the contractor.

20. Their fees included all their work, calculated on a time basis and related solely to the balconies and not carpeting. Not all their work was actually used.

21. The damp to Flat 12 was caused by condensation. Once work had been done to Flat 15 above, the only remaining problem with Flat 12 was the condensation.

22. Mrs Timms gave evidence for the Respondents including the following:

23. While the lease provides for two payment dates each year, in 2001 there had been three bills. They paid £1000 in April 2001. When they received the service charge estimates (pp 133 and 137) neither they nor the Applicant knew what balcony work or carpeting was to be done at that stage. The balcony work was not done until February 2002. Service charge demands were generally received before any estimates for specific works.

24. They had not paid anything more: they are people who pay their bills but they had had no detail. Nor had they had any information about surpluses or Members' Funds. In respect of the demand for £1,620.20 no details had been received.

25. In cross-examination, Mrs Timms confirmed that prior to 2001 they had paid the service charges as they were reasonable. From 2001 the service charge demands had not been accompanied by Section 20 notices and details of the work to be done so she had not paid. She accepted that she had paid in March 2000 without any S20 notice or estimates. She was referred to paragraph 9.9 of the Code which she had put in evidence. Her interpretation of Section 20 of the Act was that notices should be accompanied by specifications but she didn't obtain advice about it. She was shown relevant documents concerning Section 20 notices, estimates and invoices.

26. In June 2001 they had been sent a cheque for an adjustment of £208.81, but had sent that cheque back as they hadn't known whether that was the end of the matter.

27. She accepted that the professional fees related solely to the balcony works

The parties' submissions by Counsel were:

28. The Applicant:

28.1. Section 20 notices under the Act relate to the giving of information about proposed qualifying works but not to demands for payment whether in advance or otherwise

28.2. Paragraph 9.9 of the Code requires provision of reasonable budgets which do not need to be supported by quotations or estimates.

28.3. Payment had been made up to 2000 without question

28.4. In 2001 there had been consultation which resulted in changing service charge estimates

28.5. The professional fees did not constitute qualifying works and so did not require consultation

28.6. Proper accounts are produced and credits shown in the accounts

29. The Respondents

29.1. The accounting provisions are governed by the lease, albeit that they are clumsy

29.2. Section 20(1) provides that the excess above [the limit of £1000] shall not be included in the service charges if the provisions of the Section are not complied with

29.3. Requiring payment before Section 20 notices are issued undermines the purpose of the Section

29.4. There is now money owing to the Respondents

29.5. The first repair to a balcony was shoddy so the Respondents should be credited with their proportion of the £414 not recovered from the contractor

Consideration

30. The Tribunal considered all the documents received and all the evidence given on behalf of both parties, including the evidence referred to above, and the submissions of Counsel

31. The terms of the Lease.

31.1. The Lease provides, in effect, for a three year accounting period, the end of that period being 31st December 1983 and each third year thereafter.

The last of those three year periods ended on 31st December 2001. The Lease provides, in terms, that as soon as reasonably practicable after that date when actual costs and so on have been ascertained, the Lessees shall forthwith pay any underpayment or be credited in the Management Company's books with any overpayment.

31.2. The Lease also provides that in respect of common parts, the Lessee shall pay 1/47th of the costs when in fact there are 48 flats on the Estate. Further Mr Cooke's evidence is that the accounting year end for each block on the estate is different.

31.3. The Respondents say that the accounting provisions are governed by the Lease. While that is a valid proposition, it would mean the Respondents would be paying a higher proportion of the common parts costs on the Estate. It would also mean that, because of the differing accounting years, it would be extremely difficult to work out and probably impracticable. The Respondents do not argue that those provisions should be strictly construed and it seems to the Tribunal that that inconsistency makes it difficult to sustain the argument.

31.4. The terms of the Lease concerning accounting are intended, albeit over a three year period, to ensure that Lessees have a regular balancing of the books. The Applicant has decided to conduct that annually. That does not adversely affect the Respondents or other Lessees unless it resulted in more than reasonable maintenance charge being paid in advance. There appears to be no evidence that that is the case. On the contrary, the Respondents have an annual account and the documents before the Tribunal show that they have an ongoing account of their position, showing whether they are in credit or in arrear.

31.5. Is the accounting procedure adopted by the Applicant in breach of the Lease? It appears to the Tribunal that the Lease is complied with - it is just that the Applicant's procedure goes further than required in that it balances the books at each year end. The Tribunal is satisfied from Mr Cooke's evidence that this does not cause additional expense. It was submitted on behalf of the Respondents that service charge provisions are governed by the Lease. That is an understandable proposition, but in that event, the Respondents, and the other Lessees too, would be paying 1/47th each of the service charge costs. They actually pay 1/48th each. Unsurprisingly the Respondents do not complain of that breach. In the same way, the Tribunal finds they have no justifiable complaint if and to the extent that the present accounting procedures are not strictly in accordance with the Lease

31.6. The Tribunal accepts that the Respondents may not find the accounting procedures easy to follow, but nevertheless is satisfied that they are satisfactory and comply with the lease as informally amended and, indeed, the Code.

32. The quality of the balcony work.

32.1. The Tribunal accepts that some of the original work was not satisfactory and had to be remedied; that the work was only finally completed in November 2003. Concerning the Respondents' request for crediting of a proportion of £414 not recovered from the contractor, the Tribunal is satisfied that the cost of trying to recover that sum would have outweighed the value

and would only have increased the service charge. The work having been completed satisfactorily, the Tribunal finds that the Respondents have no further cause for complaint about that. The Tribunal noted that the Respondents may remain concerned about the dampness in their flat but, bearing also in mind their own professional knowledge and experience, accept the professional judgement of Mr Green that it is only condensation: that is a matter for the Respondents to deal with and not the Applicant.

33. Section 20 of the Act.

33.1. The terms of the Section, in respect of any qualifying work, must either be complied with or dispensed with by the court, otherwise the cost of the work recoverable as service charge in respect of the block is limited to £1,000.

33.2. Section 20(4) requires, in terms and in so far as material to the issues in this matter, that at least two estimates must be obtained; they must be sent to tenants with a notice describing the works and inviting observations.

33.3. Paragraph 14.19 of the Code also refers to the notice "describing" the works and to be accompanied by at least two estimates.

33.4. Neither the Section nor the Code refers to a specification being required.

33.5. In this case, each instance of relevant qualifying works is dealt with by a letter from Foxes on behalf of the Applicant and at least two estimates. As an example, on 26th October 2001 Foxes wrote to each Lessee referring to "Cavity tray works re The Balcony of Flat 11". It enclosed estimates from Iford Roofing Services and All-Pro Limited. All-Pro's estimate, which was accepted, referred to the location of the proposed installations. The Tribunal is satisfied that these documents gave sufficient description to comply with Section 20. It is also so satisfied for the same reasons in respect of the other qualifying work the subject of this application.

33.6. The Respondents say, though, that these notices did not comply with Section 20 as they were too late: that they should have accompanied the demand for payment which preceded the notices when actually given; that the purpose of Section was therefore undermined.

33.7. The Tribunal finds that the purpose of Section 20 is simply to ensure that Lessees have a proper opportunity of making representations about proposed work before their service charge money is actually committed for payment to a contractor. It does not require that notices and estimates should accompany a demand for service charge payment. The requirement of any such demand is that it be reasonable (Code 9.1) but not necessarily be supported at the same time with estimates. Accordingly, the Tribunal finds that it was not contrary to Section 20 that the Respondents received demand for payment before having any estimates for the work.

34. Professional fees of Bennington Green.

34.1. These are not qualifying works and did not therefore require Section 20 notices. The Tribunal found that the fees were reasonable for the work

actually done. It makes no difference if all the work carried out by Bennington Green was not utilised

35. Money owing to the Respondents.

35.1. The Tenant Account Summary referred to above shows the Respondents owing, at 16th February 2004, a sum of £3,011.59. The Tribunal does not accept the Respondents' submission that the Applicant owes money to them. The Respondents have been given appropriate credits.

Decision

36. The Tribunal accordingly finds:

36.1. The sum of £244.44 is payable by the Respondents in respect of the balcony

36.2. The sum of £211.11 is payable by the Respondents in respect of carpeting

36.3. The sum of £166.67 is payable by the Respondents in respect of professional fees

36.4. The sum of £1620.20, being the balance shown on the Tenant Account Summary as at 28th March 2003 and being the subject of the proceedings issued in the Poole County Court is due and owing by the Respondents to the Applicant.

36.5. Costs. The Tribunal found there was no substance in the Respondents' case. The Tribunal accordingly requires, pursuant to paragraph 9(1) of the Leasehold Valuation Tribunals (Fees)(England) Regulations 2003, that the Respondents shall reimburse to the Applicant the whole of any fees paid under those Regulations by the Applicant in respect of these proceedings. The Tribunal also expresses the hope that the Respondents will take professional advice in the future.

Dated 1st May 2004

M J Greenleaves

Chairman