RESIDENTIAL PROPERTY TRIBUNAL SERVICE

SOUTHERN RENT ASSESSMENT PANEL & LEASEHOLD VALUATION TRIBUNAL

LANDLORD AND TENANT ACT 1985 (AS AMENDED)

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

Case Nos:	**LSI/0010/04** **LAM/0010/04** **LAC/0001/04**
Property:	**Marina Court** **35-37 Marina** **Bexhill on Sea** **East Sussex**
Applicants:	**Mr. D.Moon and other leaseholders at the subject property**
Respondents:	**Grange Management Ltd.**
Dates of Hearing:	**26th, 27th October and 5th November 2004**
Members of the Tribunal:	**Mr. R. Norman (Chairman)** **Mr. B.H.R. Simms FRICS MCIArB** **Mr. T. Sennett MA FCIEH**
Date decision Issued:	2ND DECEMBER 2004

RE: MARINA COURT, 35-37 MARINA, BEXHILL ON SEA, EAST SUSSEX

Background

1. The applications before the Tribunal were for:
(a) A determination as to whether or not actual service charges for 2003 were reasonably incurred
(b) A determination as to whether or not the figure for estimated service charges for 2004 is reasonable
(c) A determination as to the reserve fund.
(d) A determination as to whether or not administration costs are reasonable
(e) The appointment of a manager.
(f) The limitation of service charges: costs of proceedings.

2. The Applicants have supplied a number of statements and documents and the Respondents have supplied a number of statements and documents in response. We have had the opportunity to read those documents.

3. Our determination appears at paragraphs 20 to 35 with a summary at paragraph 36.

Inspection

4. The subject property is a purpose built block of 70 flats (including a manager's flat) owned by the Respondents and designated for occupation by people over 55.

5. We inspected the exterior of the premises, some of the common parts including the residents' lounge and a laundry, and the interior of Flat No. 10 in the presence of Mr. Moon on behalf of the Applicants and Mr. McCallum, Mr. Twinley and Mr. Burton of the Respondents.

6. Mr. Moon pointed out to us matters which he wanted to draw to our attention. The carpets on the landings he considered did not need replacing, as had been suggested by the Respondents, but merely needed cleaning as had been done. His only complaint about the carpets was that the edges were not cleaned as well as they might have been. We also saw from Flat 10 that painting was required to the metal balcony rails and the window surround in that flat.

7. We saw the conservatory at the front of the building which both parties agreed leaks.

8. We also saw the basement corridor which had some obstructions in it which could possibly cause a problem in the event of residents using the corridor as a fire exit. The majority of the items causing obstruction appeared to be items of furniture belonging to residents.

9. We could see where lintels above windows had been replaced.

10. The gardens are a strip across the front of the property and around the sides. There is also a raised bed at either side of the entrance conservatory.

11. Mr. Moon suggested that there should be a fire alarm and a panic alarm in the basement car park.

12. Mr. Newnham, the Chairman of the Residents Association presented us with copies of documents he had sent to the Tribunal Office but which we had not seen. Copies were also given to Mr. Moon and to Mr. McCallum.

Hearing

13. Present at the hearing were, Mr. McCallum, Mr. Twinley and Mr. Burton of the Respondents, Mr. Moon, Mr. Newnham the Chairman of the Residents Association and a number of Residents.

14. Mr. Moon presented the case on behalf of the Applicants and Mr. McCallum, Mr. Twinley and Mr. Burton presented the case on behalf of the Respondents.

15. At our invitation, Mr. Moon indicated the actual charges for 2003 contained in the 2003 service charge accounts and the items in the 2004 budget which the Applicants were challenging and we have dealt with all those items in our determination.

16. Mr. Newnham, the Chairman of the Residents Association stated that the majority of the residents did not want a change of management.

17. Mr. Moon stated that over 21% of residents actively supported him.

18. Mr. Morley and Mr. Hobson both made statements which we read and showed to Mr. McCallum.

19. The members of the Tribunal met in the absence of the parties to consider the evidence.

Determination

20. Managers salary

(a) Mr. Moon considered that the total salary package of the manager when taking into account his salary, accommodation and benefits was high and referred to advertisements for managers which he had produced. The salary for a manager managing 69 units, 5 days a week, 8am to 4 pm (35 hours per week) he thought was too high and should be £10,000 to £11,000 with accommodation if the manager's job description were amended to include some minor maintenance duties. Mr. Moon had based his calculation of the rent which could be charged for the manager's flat on an estate agent's verbal estimate and had no evidence in support of the figure of about £200 per week. He accepted that he had not seen the flat but understood it to comprise two bedrooms, a living room and bathroom and shower room. He also accepted that the manager had no security of tenure and that it was in fact 'tied accommodation'. As to pension, clause 5. (l) in the lease made no mention of paying a pension so no provision should be made. He agreed that the costs in relation to the manager were being incurred.

(b) Mr. McCallum stated that the manager's salary was £13,171 and that the manager other costs included pension and national insurance contributions. The Respondents employ 100 scheme managers and the hours allocated to management varies according to the number of units. For the scheme manager the pension was high but he had explained the reason for this in the papers supplied to the Tribunal and to Mr. Moon. The reduction of working hours of the manager had been because the hours on call fell foul of The Working Time Directive. The hours on call had to be removed and there was no room for consultation.

(c) We found that the salary was more than the salaries offered in almost all of the advertisements produced in evidence but it was not out of proportion bearing in mind the numbers of units in the subject property and that many of the residents are over 85. The more units and the older the residents the more work the manager has to do. A sufficiently attractive salary and benefits package including pension provision must be offered if a

suitable manager is to be employed and retained. The pension provision was high but was explained in the written submissions of the Respondents. We determined that the costs in 2003 and the 2004 budget for the manager's salary and manager other costs were reasonable.

21. Deputy Manager

(a) Mr. Moon pointed out that there is a 24 hours a day 365 days a year call centre alarm, that there was currently no deputy, that a deputy was not called for in the lease and that there should not be one. He accepted that in clause 5.(j) of the lease it states that such others as considered necessary may be employed but argued that if it had been intended that there should be a deputy it would have been mentioned specifically in clause 5.(i) of the lease. Mr. Moon accepted that there had been a poll of residents on the question of having a deputy manager and that the result of that poll was on the notice board at the subject property but he considered that the result needed to be clarified. The vote was ambiguous; some people had misunderstood and had voted incorrectly. Mr. Moon accepted that a deputy manager was needed when the manager was on holiday etc. but he considered that a regular post of deputy was not required. He stated that The Working Hours Directive restricted work to 48 hours per week and that there is a let out for the UK.

(b) Mr. McCallum stated that the part time deputy's salary was £6,757 and that the scheme from day one had budgeted for a scheme manager and a deputy scheme manager. The deputy was not to live in. The deputy works with the manager to give something approaching 24 hour cover. The deputy manager works part time 24 hours per week. There are no guidelines laid down as to the number of units that a manager is expected to manage but for 69 units the Respondents considered that a full time manager and a part time deputy were needed. The Respondents' threshold for this is 65 units. Where there is a single manager the Respondents use a peripatetic manager to cover the manager's holidays but not weekends and the cost would be charged in service charges. At the subject property there are a fair number of residents over the age of 85. This increases the work of the manager. The less active the residents the more work for the manager and deputy manager. There had been a poll of the residents to discover their views on whether or not there should be a deputy. 28 voted in favour of replacing the deputy, 22 voted against and 3 voted in favour of a deputy manager but on reduced hours. The result of that poll dated 26th July 2004 had been displayed on the notice board at the subject property. A letter was sent with the questionnaire and the question was clear.

(c) We found that Mr. Moon accepted the need for a deputy but thought it should not be a regular post. He had no evidence to show that the costs of a deputy manager in 2003 and the budget for 2004 were unreasonable and we determined that the costs in 2003 and the budget for the deputy manager in 2004 were reasonable.

22. Alarm system motoring

(a) Mr. Moon stated that it was a good system but he would like to see competitive tendering from the area. Local competitive tendering was important; the Respondents should carry out competitive tendering before putting anything in the budget and there should be consultation. Asked for his comments on the figures contained in the advertisements produced in evidence for similar services, he stated that from those comparisons obviously this alarm system monitoring is a very good price.

(b) Mr. McCallum pointed out that Mr. Moon had provided papers from Peverels where the cost was £92.52 per unit per annum as against the cost at the subject property of about £20 per unit per annum. Periodically the Respondents test the market and at the moment nobody is beating First Point which is an in-house subsidiary of the Affinity Group (no VAT is added to the payment). Peverels is about the largest monitoring system provider for sheltered schemes in the country.

(c) We found that although Mr. Moon considered that there should be competitive tendering he accepted that from the evidence produced, the price for the alarm system monitoring was very good. We were satisfied that the Respondents routinely tested the market. We determined that the costs in 2003 and the budget for the alarm system monitoring in 2004 were reasonable.

23. <u>Alarm telephone (2004 only challenged).</u>

(a) Mr. Moon did not dispute the 2003 actual figure of £268.04 but did dispute the budget figure for 2004 of £260 and wondered if it could be cheaper. He had no evidence of whether or not the figure was wrong but asked for competitive tendering.

(b) Mr. McCallum explained that this item is the cost of the telephone line system to go to the call centre. The cost of the alarm line includes priority from BT to repair if it goes down.

(c) Mr. Moon did not challenge the cost for 2003 of £268.04 yet disputed the budget of £260 for 2004. We determined that the budget for 2004 was reasonable.

24. <u>Cleaning</u>

(a) Mr. Moon found that unless he was in a position to offer work it was difficult for him to get information and quotes. He was satisfied with the cleaning except that the edges of the landing carpets could be better. He said there were marks on the walls which had not been cleaned off and the skirting boards were not clean. More supervision was needed. He was happy with the stairs cleaning and after he served the preliminary notice things were done such as the carpet cleaning which was very welcome. He had not asked the manager to give him a copy of the cleaning contract and did not know what the contract covered or how many hours work was required to clean the subject property. There was a lack of competitive tendering. In the last two years the budget had gone up by 18.92% which was much more than inflation. He did not know if competitive tendering would produce a more reasonable figure but he thought it was not good management practice to just add a percentage to the previous year to produce the budget. He did however accept that the budget figure usually became the actual figure in due course.

(b) Mr. McCallum stated that the carpet cleaning was not part of the general cleaning and would be part of the service charges next year for carpet cleaning done this year. Proclean clean over 35 of the Respondents' properties and therefore the Respondents are always checking their prices and know they are competitive. They are a Midhurst firm but employ local labour. The scheme manager supervises the cleaning and never until the first day of the hearing had Mr. Moon complained. The carpets are 14 years old and will always look shabby. The residents were asked if they wished to have the carpets replaced. They said they

wanted to have them cleaned and at their request that was done. Mr. Moon at the inspection said the carpets had been cleaned and that that was all that was needed. Mr. Burton stated that the cleaning contract calls for 5 hours a week each of 3 cleaners 52 weeks a year. If there is any specific job required he tells them of it on the day. They clean on Mondays and Thursdays. They clean all the communal areas but do no external cleaning. Very occasionally there are complaints and at the next visit Mr. Burton points this out. On the week of the hearing one cleaner was sick and the other two made up the hours.

(c) At the hearing Mr. Moon mentioned marks on the walls and that the skirting boards were not cleaned properly but at the inspection he pointed out only the edges of the carpets (which are the subject of a separate contract). We saw the problem with the carpet edges and understood that the carpets were 14 years old but had been cleaned rather than replaced as that was preferred by the residents. We saw no other examples of possible cleaning failures. There was no evidence that the cost of cleaning in 2003 or the budget for 2004 for cleaning were unreasonable and we determined that both were reasonable.

25. Window cleaning

(a) Mr. Moon understood that the windows were scheduled to be cleaned monthly but that in 2003 the charge had been reduced because the window cleaners missed two visits. Competitive tendering was required. He accepted that on the day before our inspection the weather had not been very good and that the windows in such conditions could become dirty in one day at the front but not at the back. The windows tilt and swing so are cleaned from inside. The cost is £90 a visit. Although Mr. Moon told us he had taken a year to produce this case, he said he had not had time to get a quote from a window cleaner and that the management should find quotes.

(b) Mr. Burton explained that there are monthly scheduled visits to clean the conservatories and lounge windows and that every other visit the window cleaners additionally clean the communal windows. The windows in the flats are cleaned by the individual residents.

(c) There was no evidence that the cost of window cleaning in 2003 or the budget for 2004 for window cleaning were unreasonable and we determined that both were reasonable.

26. Gardening

(a) Mr. Moon stated that since the preliminary notice had been issued there had been vast improvements in the gardens. In 2003 there had been no access to the gardens because of scaffolding and to pay then for gardening was foolish. The gardeners came from Shoreham which was a long way away but they worked very hard and did a good job. Local competitive tendering was needed. He had no objection to the 2004 budget of £1,200. He believed that £600 had been spent on new plants and they had died for lack of water. This was an example of a lot of money being wasted. He had not yet taken up this matter with the managers. In 2003 the then Chair of the Residents Association contacted a local gardening company Filsham Nurseries and Miss Hopwood of the Respondents told him to cancel the visit. Therefore a quote could not be obtained.

(b) Mr. Twinley stated that scaffolding had been erected on the east side to repair a lintel in May 2003 and then the scaffolding had been increased around the building and scaffolding

had been struck between October and December 2003 in stages as the work progressed. Mr. McCallum explained that it had always been a struggle to find gardeners. In the past residents had given names of gardeners but usually they failed to price. As to the dead plants the Respondents had written to Elite, the gardening contractors at the time, and hoped they would sort it out. Also because the gardens are by the sea and by a public footpath this makes it difficult to look after the gardens. As to the scaffolding, the contractor reduced his price to compensate. £100 per visit was charged for that year. Mr. Burton stated that Filsham Nurseries had been approached by Mrs. Hopwood but had not made a visit to quote. Recently she had again been in touch with local gardeners including Filsham Nurseries, a Peacehaven firm and others seeking tenders and he believed another gardener was going to tender. If residents suggest particular gardeners to Mr. Burton he passes their details onto the Regional Manager of the Respondents who are happy to consider suitable contractors.

(c) There was no evidence that the cost of gardening in 2003 or the budget for 2004 for gardening were unreasonable and we determined that both were reasonable.

27. <u>Repairs</u>

(a) Mr. Moon believed that the distance from which contractors came meant that they were not cost effective. For example, a surveyor came from Worthing and invoiced for 964 miles which cost over £500. Money was paid to Padstone Contractors Ltd. for the total job and the residents were assured it was a fixed price job and the amount of money was paid. However, Mr. Moon accepted the Respondents' response to the Padstone Contractors Ltd. invoice. He could not find the documents he wanted in respect of repairs and therefore we suggested we return to that topic on the following day. On the following day Mr. Moon stated he had no problem with the Padstone invoice. As to the front door Mr. Moon was concerned that guarantees for work and materials were not being obtained, but accepted that the residents had been consulted about the possibility of fitting a new door, they had rejected that proposal, a new closer had been fitted and he considered that the door was now working. Mr. Moon said this was another example of where he doubted that the right thing was obtained when putting things in. He was not querying the two invoices.

(b) Mr. McCallum was pleased to note that Mr. Moon accepted there had been consultation. Mr. Twinley explained that the warden call/door entry system had been under warranty but not the lock, which had cost £208.80. There had been a proposal to install an electric opener which would automatically close the door after a time. That was put to the residents. There were a number of objections and it was felt that it needed 100% agreement to go ahead as it was an improvement. Therefore a new door closer had been fitted and was working but there were reports that when it was windy the door did not close.

(c) Mr. Moon's case was based on his assumption that because contractors were not local the same service could be obtained locally at a lower cost. He had no evidence to support that or to show that the costs for 2003 or the budget for 2004 were unreasonable. He had queried the Padstone contract and the front door repair but at the hearing accepted the response to the Padstone invoice and stated that the front door was working, that he was happy with it and that he was no longer challenging the two invoices. We found that there was nothing unreasonable in relation to the repair costs for 2003 or the budget for repairs in 2004.

28. Service contracts (2004 only)

(a) Mr. Moon again considered that local contractors should be used as opposed to people travelling. He accepted that the lift was now under the correct maintenance contractor and he was happy with the lift service contract. However, the contractors who maintained smoke detectors and, for example, tested small portable appliances, all came from far away. The man who tested small portable appliances was travelling from Reading arriving at 11.30 am and going by 2.00 pm. This contractor was charging on a per unit figure of £2.50 and Mr. Moon thought it must be cheaper if the contractor were local. He thought the price should be 50p per unit but had no evidence of other contractors' prices for the Tribunal to compare.

(b) Mr. McCallum stated that Southern Electric Contracting covered southern England and charged £2.50 per test no matter where. The suggestion of 50p per test was unrealistic and would mean that the contractor would need to do 30 per hour to give him £15 per hour. Long established firms were used. Mr. Twinley stated that last year also the fixed wiring was checked on a per floor basis and that fixed appliances were checked on a per item basis. The garage door to the underground car park was also serviced on a contract.

(c) Mr. Moon was now happy with the lift maintenance contract. He had no evidence to support his suggestion that the charge for testing small portable appliances was too high. We determined that the budget for service contracts in 2004 was reasonable.

29. Insurance

(a) Mr. Moon had tried to get quotes. The insurance premiums had gone up very steeply. RIAS and Frizzell were offering household insurance @ 23p and 31p per £1000 insured. They confirmed that was correct for this postcode but would not insure commercial or large premises such as the subject property. Mr. Moon made an enquiry of a local estate agent, Mr. Findley who expressed no opinion except to say that the budgeted figure seemed a bit high. Mr. Findley gave him the names of three companies and he wrote to them but because he was not able to offer a contract it had been difficult to obtain quotes. A quote of £7,970 which he did obtain from Residents Line was more than the present insurance premiums. As to the Respondents' response that 69p per £1000 was being charged, Mr. Moon thought that seemed high in comparison to what could be obtained for household insurance. On the 6th November 2003 the residents were told that the insurance was similar to what would be paid for house insurance. Mr. Moon thought costs could be better controlled by not claiming on some things as had been done in the past. All he wanted was an individual quote for the subject property. He thought is should be cheaper than on a block policy. He accepted that no insurance commission was taken by the Respondents.

(b) Mr. McCallum was happy to accept the quote from Resident Line if the residents wanted it but it was more expensive and did not cover all that was covered on the present policy. £7,000 was the budget figure from Norwich Union who predicted a 20% increase. The Respondents insured with another company and the increase was about 10% on the previous year and therefore cheaper. It was a lot lower than the quote Mr. Moon had obtained and covered other items such as lifts and public liability. The Respondents did not charge insurance commission. They used a block policy but individual buildings. They managed 150 different schemes and they had different accounting years but there was only one

accounting year for insurance. They budget now for an increase that will not be in place until April 2005 for this scheme.

(c) Mr. Moon considered the premiums to be too high but when he tried to obtain a quote from insurers who offered cheaper rates he found that those rates did not apply to commercial or large properties such as the subject property. The quote he did produce was higher than that obtained by the Respondents and excluded some cover. The Respondents had changed insurers to obtain a better quote than the quote from their previous insurers. We determined that the cost of insurance in 2003 and the budget for 2004 were both reasonable.

30. <u>Reserve fund contributions</u>

(a) Mr. Moon stated that one of the problems was that in the Respondents' projections they were looking at future years for 30 years for example for windows and doors. There was room for consultation but there is no consultation when the budget is produced and then there is a budget meeting but the residents get nowhere. It was wrong to expect current residents to pay for something thirty years hence. The current residents could not be expected to pay for future repairs but he accepted that there should be provision for five or six years ahead at least; well for six years. He accepted that there should be a reserve fund and suggested £10,000 per annum should be paid into it for the next four years but that the conservatory would have to be additional to that. By totalling various figures for the reserve fund and the normal service charges for 2002, 2003 and 2004 and perhaps the reserve fund for 2001 he calculated that the residents had contributed over half a million pounds. £28,000 had still to be paid for major works in 2003 and would be in the 2004 accounts. £18,000 had been over spent. £119,000 had been spent from the reserve fund and was shown separately. A breakdown of the £119,000 spent was needed. Some of the money additionally demanded had been put in the reserve fund for 2003. The residents were assured at a meeting that it was a final fixed price and the residents were continually asking about it. The job went over time and an ad hoc committee was set up by the Residents Association. The residents were aware of additional works. He accepted the cost of the work to the lintels @ £500 per lintel totalling £4,500 for nine lintels and when additional work was found to be necessary he would not want the contractors to take a step back and for tenders to be obtained for additional works. The costs for the lintels he agreed. He stated that he was not disputing the amount for 2003 in the reserve fund expenditure of £119,993.

(b) Mr. Twinley referred to his statement and the Section 20 Landlord and Tenant Act 1985 Notice and explained that the work of repointing and refurbishment was performed under a JCT minor works contract. The works were fixed price for tendered work but there was an additional cost as a result of additional works being necessary. There would be a figure still to pay in 2004 and he did not yet know the figure. There had been a retention and he had not yet got the final figure. Originally the work was to be completed by the beginning of October 2003. It was discussed at the ad hoc committee. No further payment was made from October to December as the contractor failed to get the work done. Mr. Moon was correct in saying that there was a lack of manpower but there was no extra cost to the residents. An extra £2,800 was paid for preliminaries and overrun. This was mentioned at the ad hoc committee. Additional works were agreed with the contractor, they were done and had to be paid for. Mr. McCallum explained that there were two accounts: the service charge and the reserve. The reserve was to provide for the long term. Major works would come from the reserve fund. As to long term expenditure, he understood that Mr. Moon had said earlier that

if for example the alarm were replaced today there was no need to provide for replacement of that equipment. He was wrong. Provision still needed to be made for replacement in fifteen years time. The Respondents had made a calculation for the future using Mr. Moon's suggested £10,000 per annum contribution and the reserve fund went bust. Mr. McCallum did not understand from where Mr. Moon got his figure of £10,000. Mr. Moon now accepted that the conservatory would need replacing at some time and that provision for that would be extra. One off demands for payment could be made or the subject property would fall into disrepair or regular payments into the reserve fund could be made. The lease requires a reserve fund.

(c) Mr. Moon accepted the need for a reserve fund but his approach to the provision of such a fund was unrealistic. We note that the lease requires a reserve fund and we consider the Respondents have been prudent in taking a reasonable long term view in respect of the subject property. We determined that the contributions to the reserve fund for 2003 and 2004 were reasonable.

31. <u>Management Fees</u>

(a) Mr. Moon challenged the amount of money charged for what was done. In recent years the agents because of their incompetence had taken more time than was needed. The cost was £240 per flat in 2003 and £250 per flat for 2004 on average because the charge depends on the size of flat. There is no VAT. For this the residents receive a budget which is simply a percentage increase on the previous year's budget, they receive a visit from the area manager occasionally and nine orders are raised covering the services. They do enough for what is needed but there is duplication of management. What the area manager does could be done by the local manager. The work done was not worth the money claimed. He had looked at the Association of Retirement Housing Managers Code of Practice ("the Code") and based on that and cost effectiveness there should be thirty hours work a year. Invoices are on a quarterly basis. Mr. Findley would charge about £11,000 but he spends more time at places. Mr. Moon had calculated the percentage increases in the service charges and had included those figures in the documents he had supplied to the Tribunal. They were way above RPI. He considered that the charge should be for thirty hours work and that then there should be an RPI increase on each year or whatever the residents had to pay in the market place. In the 2003 accounts the manager's salary, manager other costs, reserve fund and management fees accounted for 60% of the money being demanded from the residents leaving 40% for day to day running of the premises. The Code contains a list of management tasks and calculation of fees. This does not tell the residents what is being done on a year by year basis. There is no resemblance to what is done. Not every item is being done each time. For example, preparing a replacement cost assessment for insurance. However, after Mr. McCallum had stated that that had to be done each year to obtain insurance Mr. Moon accepted that that was done every year. He also accepted that obviously a bank account was not opened every year. He then accepted that the tasks were being done and some only on a yearly basis and that was all that was needed for some of the tasks but he then challenged the cost of performing the tasks. Mr. Moon understood from Mr. Hobson, a resident who spoke to Mr Findley, that he would not charge insurance commission. Mr. Moon said there was a budget meeting last year but very little consultation and correspondence dealing with all aspects. However, he would accept that there was no need to consult about work costing up to £5,000.

(b) Mr. McCallum said that the fees were calculated on a unit basis and that for 2004 that would be £250 per unit. The Respondents are the freeholders so there is no VAT. If for example Peverel were the managers then there would be VAT on top. The Respondents are not registered social landlords but the indicative Housing Corporation figure is £283 + VAT per unit per annum for this type of scheme. Mr. Findley's quote of £11,000 was not inclusive. He would charge 10% of expenditure plus VAT with a minimum £75 per unit. The Code states that a percentage should not be charged. He would not do the accounts, he would always instruct a surveyor to inspect the building and prepare a schedule of works, whereas the Respondents did that. There would be an additional charge of £40 per hour for attending meetings but there is no note of how many. Mr. McCallum thinks Mr. Findley would include 10% of the reserve fund and of surveyor's fees etc. Mr. Moon's calculation endorsed on Mr. Findley's letter is for 10% of budget for 2003 less the managing agent's fee giving £9,773.30 + VAT £1710.32 making a total of £11,483.62. There was no account for the expenditure from the reserve fund of £119,000. Therefore this was an incorrect figure. Mr. Findley's fee could be £22,000 plus. It is also possible that the residents could end up paying more for, for example, gas but less for management. There was no capping. There were no details of what he would pay a manager or if he would have a manager. Provided by Mr. Moon were details of Peverel's management of a 45 unit scheme. It added up to £290 per unit which was more than the Respondents' charge of £250 for 2004 and this example was provided by Mr. Moon. There was no mention about how Peverel would consult. The Respondents consult via a notice board and with the Residents Association, not by writing to every resident about every job. The Respondents do not produce a newsletter. They asked the residents if they wanted a newsletter; the residents asked what it would cost and did not want it. The Regional Manager had regular meetings with the Residents Association and these were in addition to the manager's meetings with the Residents Association. Each year the Respondents present a draft budget and meet the Residents Association and then produce a final budget. If called for there are special meetings to deal with major works and numerous such meetings have been held at the subject property. Some have been attended by Mr. McCallum and some by Mr. Twinley. The Respondents are part of the Affinity Group and have £2,000,000 indemnity insurance.

(c) Mr. Moon alleged that the Respondents through their incompetence had taken more time to do their work than was necessary; that 30 hours a year should be sufficient and that there was duplication of management but he provided no evidence in support of his allegations. He challenged the management charges but his evidence of other agents' charges did not suggest that the Respondents' charges were high. In fact one example supplied by Mr. Moon produced a higher charge and another included a percentage charge which is not in line with the Code. Mr. Moon said that the Code was not being followed but could not identify what from the Code was not being done. Mr. Moon considered that consultation was not required for works costing up to £5,000. However, we noted that under The Service Charges (Consultation Requirements) (England) Regulations 2003 consultation would not normally be required in respect of works up to a higher figure. The Regulations need to be read carefully especially as they contain definitions and exemptions and the figure is calculated in relation to the relevant contribution of any tenant but in general terms where the property has 69 units and if the tenants are all paying an equal proportion of the service charges, the formal Section 20 consultation procedure would not be required unless in respect of a long term qualifying agreement the annual cost exceeded £6,900 and in respect of qualifying works the cost exceeded £17,250. We determined that the fees charged in 2003 and budgeted for in 2004 for management were reasonable.

32. Administration charge

(a) Mr. Moon asked for copies of documents and was provided by the Respondents with a quote for supplying them. The charges were not paid or demanded as Mr. Moon did not pursue his request for the copies. He now does not say copies should be free of charge in all cases. If asking for a great amount (above 12 pages) of photocopying there should be a charge and it would vary according to the sort of document and whether the document had to be traced. He agreed that there was no need for him to have some of the copies he requested in connection with his purchase.

(b) Mr. McCallum says that the Code states that charges must be reasonable and the lessees must be told of the charge is advance. The Respondents do not charge normally but in the odd instance where there is an obsessive resident who demands a lot of copies they then charge. They are not a copy shop. They have to account for everything. The cost of raising the invoice and banking the cash when it comes in can be the most expensive element. For 50 documents it meant 41p per copy and that did not include the cost of looking for the document. Where documents are for major works they are also available in the subject property. If the documents are short all the residents get a copy and a copy of the documents is with Mr. Burton the Manager.

(c) Mr. Moon wanted photocopies and the Respondents informed him of their charges for supplying them. We accepted Mr. McCallum's evidence that usually copies would be supplied free of charge but that when an obsessive resident demanded a lot of copies a charge had to be made. In fact on this occasion no charge was made because Mr. Moon did not pursue his request for copies but in our opinion the charge proposed by the Respondents would have been reasonable in the circumstances if charged.

33. Major works

(a) Mr. Moon said that he still wanted to challenge the major works. He considered that nothing should be paid because the pointing work was done in 1995 and should not have been needed again and that the lintels should not have needed replacement. However, having read the statement from Mr. Twinley, Mr. Moon accepted that there had been no charge to the residents in 1995. The only element he still wished to challenge was the use of Dearle and Henderson, a firm of surveyors from a distance away, which resulted in a charge for 968 miles in travelling expenses. He accepted that the hourly rate of £45 per hour was reasonable. He had no evidence of what others would charge but knew there was a firm of Chartered Surveyors RJK in Bexhill who could have been used.

(b) Mr. McCallum explained that the Respondents used a panel of 5 or 6 different surveyors for different survey work. Which one was used would depend on where they are and their particular expertise. For example if dealing with a listed building, a surveyor with expertise in that field would be used. If a general enquiry they would probably use the most local but he may be some distance away. It is a small panel. The Respondents are familiar with the surveyors on the panel and probably know the individuals and have a working knowledge of them and their cost. They know whether they are competitive. It is not practicable to use yellow pages and find a local surveyor who they do not know. Mr. Twinley stated that this firm was used extensively on the estate and at the same time dealt with a substantial

insurance claim. This was of benefit to the estate. When dealing with pointing work in 2003 they received quotes from Dearle and Henderson against Focus. Focus were the lowest and they were given the work. They were from Eastbourne and had offices elsewhere.

(c) Mr. Moon stated at the hearing that he still wished to challenge the major works but then said that having read the statement of Mr. Twinley he accepted that in 1995 there had been no charge to the residents. His only remaining challenge was the charge for mileage made by a surveyor. He accepted that the hourly rate was reasonable and he had no evidence to suggest that the employment of a local surveyor would have reduced the total charge. We accepted the explanation given by Mr. McCallum and determined that the total charge for the surveyor was reasonable.

34. <u>Appointment of manager</u>

(a) (i) Mr. Moon alleged failures under the lease and the Code. As to the lease, he considered that recital (3) in the lease was relevant. The Respondents were operating for profit. The lease says they shall not trade for profit and if they do then there is scope to reduce management fees. He accepted that a pedantic interpretation of the lease makes a nonsense of it.
(ii) He considered that clause 5.(c) of the lease had not been complied with. The basement carpet was left in a state for 2 years despite complaints from the Residents Association. Clause 5.(c)(ii) had not been complied with. The carpet had been left too long before being put right. It had now been put right. The West lift is the only lift to go to the 6th floor and was out of service for 6 weeks. The local manager could have chased up a bit more and got the repair speeded up or the matter should have been chased up harder from a higher level. There was a better arrangement for the lift now.
(iii) The Respondents wanted to put too much in the reserve fund.
(iv) There was a lack of consultation. The Residents Association and other residents were trying to get things done and there had been an improvement since the preliminary notice. He accepted that there had been an improvement in consultation apart from the ambiguous question in the questionnaire about the deputy manager and the better consultation was very welcome. The front door works, the carpets had been cleaned, the lining had been taken out of the lounge curtains and the basement carpet had been dealt with. In the main there were improvements but there was room for more. Now outstanding was the conservatory which could be sealed and ventilated. Consultation in general could be improved. The residents could do something to for example deal with the garden.
(v) Mr. Moon referred to the answers given in the landlord's questionnaire when he was in the process of buying his flat. It was not brought to his attention that the sinking fund was in a seriously depleted state. Mr. Moon read it as meaning no major works to be done. He did not read it to mean there was not much in the reserve fund. He thought there was enough for small works but not for major works. He considered the answer given in the questionnaire in December 2002 to be misleading. The lintels were not known of at that time but they needed to be done. There were problems with ingress of water into the flats.

(b) (i) Mr. McCallum stated that the Respondents are an Industrial and Provident Society, registered under the Industrial and Provident Societies Act 1965. Their rules state that the Association shall not trade for profit. They do not distribute a profit but have to make a profit to survive. Any surplus is retained in the company and ploughed back into the

organisation. They are registered with the FSA and are controlled by the FSA. Even a charity makes a profit.
(ii) Mr. Twinley said that before Mr. Moon moved in, Stannah Lifts had caused a problem with oil damaging the carpet in the basement and had refused to accept the claim. The Residents Association raised the matter and the Respondents pressed Stannah and they paid for the replacement of the carpet. It was in the basement where there are no flats but a games room and guest suites. If the damaged carpet had been by the flats then it would have been replaced and the residents would have had to pay and then hopefully get back the money later. It was more economic and efficient to wait for claim settlement in this case. It was not dangerous but unsightly. Mr. McCallum agreed that one of the lifts had been out of order. At that time the lifts were serviced by Stannah who were unable to get a part and the manufacturer did not have the part readily available. It therefore took several weeks. There was nothing else the Respondents could do. Stannah made no charge. Mr. Burton stated that he was phoning practically every day and receiving the answer that they were still waiting for the part.
(iii) Putting a reasonable sum of money into the reserve fund was not a breach of the lease.
(iv) Mr. McCallum was pleased to note that Mr. Moon accepted there was more consultation and that he was happy with many things.
(v) Mr. McCallum said the answer to Mr. Moon's query was in paragraphs 2.7, 2.4.1. and 2.2.1 of the questionnaire and enclosed were copies of the last 3 years accounts. Mr. Moon had the letter and the accounts. Mr. McCallum on 3rd April 2003 wrote to the residents warning of the potential problem. The letter was sent to the then owner of the flat Mr. Moon was buying. As Mr. Moon says there was some 50/50 deal between him and the vendor presumably therefore he must have been aware of something. The questionnaire was in December 2002 and contained answers given in good faith. In April 2003 the Respondents explained what the position was then. Mr. Moon had the letter before he decided to complete and his solicitors' letter warned of problems. Legal opinions were obtained on the cost of repointing. The Respondents' solicitors gave advice that they had a good claim against Persimmons. Some things were encouraging and some were not. In spring the advice was very negative for the first time. Counsel's opinion was that there was no chance of success with the claim against Persimmons. Had the Respondents known that in December 2002 then they could have given a different answer. Mr. Twinley stated that eventually in relation to the pointing they received £25,000 from Persimmons as a goodwill payment. It was refunded to the residents and Mr. Moon received a share of that.

(c) The history of the subject property and background to the repointing issue was fully documented in the Respondents' bundles of documents to which we had regard. The Respondents' evidence was that they were registered under the Industrial and Provident Societies Act 1965 as required in the lease. A too literal interpretation of the lease Mr. Moon agreed would be a nonsense but he thought that the Respondents should reduce their management fees. He also thought that the Respondents wanted to put too much money in the reserve fund and that there had been a lack of consultation. We found that these allegations did not amount to breaches of the lease or the Code. We were pleased to note that Mr. Moon was now happy with many things he had originally complained about, but he still complained that when he was in the process of buying his flat he was not properly informed by the Respondents of the depleted state of the reserve fund. We found that he was given information in good faith and it was clear from the evidence he produced that his solicitors were not mislead and advised him accordingly. We were not satisfied that the Respondents were in breach of any obligation owed to the residents, or that unreasonable

service charges had been made or were proposed or likely to be made or that the Respondents had failed to comply with any relevant provision of the Code or that any other circumstances exist which make it just and convenient for an order to be made under Section 24 of the Landlord and Tenant Act 1987 to appoint a manager. We therefore determined that there should be no order to appoint a manager.

35. Limitation of service charges: costs of proceedings

(a) Mr. McCallum stated that it would be harsh on the part of the Respondents to penalise two thirds of the residents for Mr. Moon's application. The Respondents' costs in dealing with the applications before the Tribunal would not be charged to service charges. However, in future in similar circumstances there could be financial consequences which would have to be borne by all the residents whether or not they were party to the application.

(b) We made an order under Section 20C of the Landlord and Tenant Act 1985 that all the costs incurred or to be incurred by the Respondents in connection with these proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the residents of the subject property.

36. Summary

We found the applications to be without merit and determined:
(a) That the charges for 2003 and the budget for 2004 were reasonable.
(b) That the reserve fund provision was reasonable.
(c) That, although the administration charges were not actually made, our opinion was that the charges would have been reasonable in the particular circumstances if charged.
(d) That there should be no order to appoint a manager.
(e) That an order limiting costs be made.

R. Norman
Chairman