SOUTHERN RENT ASSESSMENT PANEL
AND
LEASEHOLD VALUATION TRIBUNAL

Case Number CHI/00HG/LSC/2004.0013

48 HADDINGTON ROAD STOKE
PLYMOUTH DEVON PL2 1RR

Between

ANDREW GORDON-DUFF
("The Applicant")

and

DR VALERIE J REARDON
MISS AMANDA JANE HYDE
MISS CLAIRE MILLS
and
MR N T S GAWADZYN
("The Tenants")

In The Matter of

Sections 20C and 27A of the Landlord and Tenant Act 1985

And in The Matter of

The Rent Assessment Committee (England and Wales)
Leasehold Valuation Tribunal (Service Charges Etc) Order 1997

Applicant's Application for Determination of Liability
To Pay Service Charges in Respect of the Financial Year 2003 to 2004

Tenants' Application for Determination of Reasonableness of
Service Charges (Both Incurred and to be Incurred)
for the years 1999 to 2005 Inclusive

TRIBUNAL

R Batho MA BSc LLB FRICS FCIArb (Chairman
Ms C Rai LLB
M C Woodrow MRICS

DETERMINATION

Introduction

1. On the 25th March 2004 Mr Andrew Gordon-Duff of Blantyre House Widcombe Hill Bath BA2 6AE made an application to the Leasehold Valuation Tribunal under the provisions of Section 27a of the Landlord and Tenant Act 1985 for a determination of the reasonableness of the service charge costs for the financial year 2003/2004 in respect of Flat 2 48 Haddington Road Stoke Plymouth PL2 1RR.

2. Specifically, Mr Gordon-Duff said that he was seeking a determination in connection with major works costing £1,727.75 per flat together with professional fees of £172.75 per flat. His description of the question that he wished the Tribunal to decide was

> "to seek a determination as to the reasonableness of the sums the freeholders are trying to recover from one of the tenants of the property. This work is in respect of repair to the roof and parapet walls of the property. Additionally internal plastering is also required as a result of damage caused by a leaking roof. The sum requested of the individual leaseholder is £1,900.50, this is in respect of the work required."

3. There was the additional comment that

> "the Landlord is willing to make a 40% contribution in respect of the major works. This means the sum required from each individual leaseholder is in the sum of £1,140.30."

4. On 24th April 2004 Miss Amanda Jane Hyde, the tenant of Flat 2, made an application to the Leasehold Valuation Tribunal, also under the provisions of Section 27a of the Landlord and Tenant Act 1985, for a determination of the reasonableness of the service charge costs incurred during the financial years 1999 to 2004. She also sought an Order limiting the inclusion of the landlord's costs of the proceedings in the service charge under Section 20c of the Landlord and Tenant Act 1985.

5. By way of amplification of her application, Miss Hyde said that she wanted the Tribunal to decide the fairness of the costs claimed by the freeholder of £2,966.49 in relation to her flat for the period 1999 to 2004 but she also referred to damage to interior walls in the bedroom and lounge of her flat; she questioned the fact that ownership of the building as a whole appeared to have been transferred without notice being given to the tenants; and she sought proof that, when ownership had changed, the relevant accounting details had been passed from the old landlord to the new landlords.

Pre-Trial Review

6. On 24th May 2004 a formal pre-trial review hearing was held by the Chairman of the Tribunal listed above. The solicitors acting for Blantyre West Country Properties Limited had given notice that the landlords would not be represented at that hearing, but Miss Hyde attended in person, together with Dr Valerie J Reardon, the tenant of Flat 1 and Miss Claire Mills, the tenant of Flat 3.

7. A Directions Order was made following that review hearing, whereby leave was granted for Dr Valerie Reardon, Miss Claire Mills and Mr Nick Gawadzyn (the leaseholder for Flat 4) to be joined as co-applicants with Miss Hyde in respect of her application. Leave was further granted for the tenant applicants to amend their application so as to include consideration of the on-account service charge for the year 2004-2005.

8. The Directions Order further provided that

> "The tenants jointly must provide a written statement to the Tribunal, by 5th July 2004, setting out the grounds for their challenge to the service charges for the respective years, identifying those elements of the service charge (if any) which they accept and those which they contest. This statement should be accompanied by copies of all documents which they consider relevant to their case and which they wish the Tribunal to see at the hearing. The originals of those documents must be brought to the hearing."

9. It was further ordered that

> "The landlords shall by 5th July 2004 supply the Tribunal, to the extent that the information is available to them, with a breakdown/analysis/explanation of how the service charges for years in question are calculated, together with copies of all relevant account details, invoices, statements, estimates and other documents which they consider may be relevant to the calculation of actual and on-account service charges for the relevant years, including year on year reconciliations. The originals of such documents should be made available at the hearing."

10. There was also a provision that

> "Either party may submit to the Tribunal within six weeks of the date of this Order a brief report from a surveyor as to the structural and external condition of the building, the repairs which may have been done during the relevant periods and those repairs which are now required to put the property into good condition. If either party intends to produce evidence from such a witness, a copy of the report shall be provided to the other party at the same time as it is supplied to the Tribunal.
>
> If expert reports are prepared, the experts should meet within two weeks of their production and prepare a joint report setting down those matters on which they agree or disagree, giving reasons for any such disagreement."

Documentation submitted

11. The parties did submit documentation in response to this Directions Order within the timetable specified, but then the landlords produced a further bundle of documents which was not received at the Tribunal's offices until the day before the hearing and was not seen by the Tribunal members until immediately before the commencement of the hearing: a copy of this bundle was sent to Miss Hyde and arrived on the day prior to the hearing. Although this late bundle did include some additional documentation, the Applicant did not at any time supply the full accounting information which had been directed should be produced, and the absence of that information is reflected in the Tribunal's decision.

12. The tenants jointly confirmed that they did not wish to instruct a surveyor expert. The Applicant produced as a part of his documentation a "Report on Condition of Property" prepared by Robin Hancock FRICS, a chartered building surveyor of Monks House 8 Abbotts Road Peverell PL3 4PB in July 2004: this report was expressed to be based on an external examination of the property only. Although put forward as though it were an expert witness report, this report lacked any statement of truth or any statement of compliance with the RICS Practice Direction in respect of Surveyors Acting as Expert Witnesses and the Tribunal therefore considered its content to be of limited use

Hearing

13. A hearing was held on Wednesday 11th August 2004, the members of the Tribunal having inspected the property at 48 Haddington Road immediately beforehand. This inspection was carried out in the presence of Counsel for the Applicant and the tenants of Flats 1, 2 and 3: the leaseholder of Flat 4 was not present at the time of inspection and accordingly his flat was not inspected.

14. By way of introduction to the hearing, the Chairman explained to the parties that he knew Mr Robin Hancock as a fellow professional. He further explained that Mr Michael Woodrow knew Mr Hancock as a member of the same Rotary Club and because, some years previously, he had engaged Mr Hancock to prepare plans for the extension of his own home. Those present at the hearing confirmed that they had no objection to Mr Woodrow taking part in the proceedings on that basis. The Chairman also advised the parties that Mr Woodrow had previously inspected one of the flats in the building for the purposes of undertaking a mortgage valuation, and again the parties confirmed that they did not see that as an obstacle to Mr Woodrow continuing with the case. In the event, Mr Hancock did not appear as a witness, and no specific reference was made to his report.

15. At the hearing, the Applicant was represented by Mr Petts his Counsel. Miss Hyde, Dr Reardon and Miss Mills appeared in person.

The Property

16. 48 Haddington Road is a mid terraced property, probably built between one hundred and one hundred and fifty years ago. Probably in about 1985 it was converted to provide the present four flats, which are served by a communal entrance hall. Flat 3, on the ground floor, comprises a kitchen/living room, a central bathroom and a bedroom, but Flat 4, which was not inspected by the Tribunal, is apparently slightly larger in that it extends out into the rear tenement area. Flats 1 and 2, at first floor level, are of similar layout, each with a living room/kitchen at the front, a toilet in the central area and a double bedroom at the rear, each bedroom having an en-suite bathroom. There is a small garden area to the front of the building whilst to the rear, the rear part of the tenement section provides a utility/storage area for Flat 2, and there are two car parking spaces allocated to Flats 3 and 4 respectively.

The Lease

17. The lease in respect of Flat 2 is dated 31st October 1986 and made between Susan Elizabeth Midson Rickard of Long Stratton Golf Links Road Yelverton Devon as Landlord and Julie Gaynor Walters of Ground Floor Flat 38 Admiralty Street Stonehouse Plymouth for a term of 99 years from that date. It is expressed to have been granted in similar terms to leases already granted in respect of the other flats.

18. All of the leases provided for payment of an annual rent of £25, and provided for the tenant

> "ALSO PAYING by way of further or additional rent an annual sum as a service charge to be calculated in accordance with the provisions of the Fourth Schedule hereto for each and every year of the term and proportionately for any part of the year in advance on the 24th day of June in each year ….. "

19. Under Clause 5 of the lease, the Landlord entered into various covenants with the Tenant including, at sub-clause (iii)

> "That (subject to the contribution and payment as herein provided) the Landlord will maintain and keep in good repair and condition
>
> (a) The external and structural walls of the building and the foundations and roofs thereof with their gutters and rainwater pipes including the external front door of the building
>
> (b) The paths steps porch hall stairways and doors used by the tenants in common with the landlord and/or the tenant or occupiers of the building or any part or parts thereof and the rear and front gardens and the boundary walls and fences thereof.
>
> (c) The drains cables pipes and wires in under or upon the building and enjoyed or used by the tenant in common with the landlord and/or the tenant or occupiers of the building or any part or parts thereof and
>
> (d) that (subject to the contribution as aforesaid) the landlord will in every fifth year decorate the exterior of the building in the manner in which the same was previously decorated."

20. The Fourth Schedule of the lease provides as follows in relation to the service charge

> "1. The service charge shall (subject as hereinafter provided) be a one quarter part of the sum which on the twenty fourth day of May in every year of the said term the landlord or his authorised agents estimate and certify in writing to be the cost and expense to the landlord for the 12 months immediately following of
>
> (a) Performing their obligations under Clause 5 (ii) (iii) (iv) (v) (vi) and (ix) hereof
> (b) Administrative costs interest charges professional and management fees incurred in connection with any matters referred to in this Clause including (without prejudice to the generality of the foregoing) accountancy and audit fees the cost of supplying an audited statement of the service charge to each Tenant and the cost of preparing estimates of the service charge for any period or of future maintenance expenditure.

2. Whenever applicable in arriving at the estimated cost as aforesaid for each and every period of twelve months the landlord shall take account of any difference between the sum which the tenant has paid in advance for the immediately preceding period of twelve months and the costs and expense actually incurred by them for such period and shall increase or decrease the estimated cost as aforesaid as the case may be by the amount of such difference Provided Always that upon the expiration of each twelve month period the landlord or tenant shall pay or repay as the case may be to the other of them the appropriate proportion of the amount by which the estimated cost of the said year falls short."

Ownership and Management

21. Mr Petts explained to the Tribunal that, as a result of transfers of ownership after the original leases were granted, the freehold was acquired by company called Hickling Properties Limited and Blantyre West Country Properties Limited purchased their interest from that company. He went on to say that, initially, Blantyre West Country Properties Limited had instructed Watson Property Management to manage the property for them. Mr Gordon-Duff, the applicant in the present case, was employed by Watson Property Management as surveyor with responsibility for this and other properties, but he was also a director of Blantyre West Country Properties Limited.

22. Mr Petts went on to explain that the directors of Blantyre West Country Properties Limited, including Mr Gordon-Duff, had sold their interest in the company early in 2004, before the application before the Tribunal had been made, by transferring their shares. Mr Gordon-Duff's letter of 8th March 2004, addressed to Last Cawthra Feather, does indeed say "John and I have recently sold the company." The new directors did not continue to use the services of Watson Property Management. It had nonetheless been agreed that Mr Gordon-Duff would deal with the application to the Tribunal, since it related to the period of his involvement of the property. His application was therefore made on behalf of and with the authority of the current freeholder

23. One of the tenants' concerns had been that ownership of the property had changed without their having been given proper notice. In the light of this evidence the Tribunal accept that the tenants' reasonable concerns were not, in fact, justified, and that ownership of the property has not been transferred by the company, although the shareholders of the company have changed.

The Applicant's Case

24. For the Applicant, attention was drawn to the service charge provision as set down in the above quoted sections of the lease, and to the definition of repair given in Clause 5. It was said that the works which were the subject of the application related to preventing water penetration through or around the roof covering and associated upstand fire-stop walls between the subject property and the properties on either side of it, and internal replastering which had been made necessary by that leakage.

25. It was conceded by the Applicant that the tenants had no liability to contribute to any money expended by the landlord on internal decoration. As the deterioration of the plaster finishes in Miss Hyde's flat had been caused by the water penetration which the works were designed to overcome, and that water penetration had been allowed to continue for some time, the applicant was not seeking to recover the cost of this plastering work from the tenants. His application related only to the works of repair at and above roof level.

26. The works in question counted as major works, and notice had been given to the tenants under Section 20 of the Landlord and Tenant Act 1985 on 30th September 2003. These notices had in each case apparently been accompanied by a copy of a letter which Mr Robin Hancock had written to various companies on 21st July 2003 and the quotations provided by two of those companies in response.

27. Under the lease provisions, the service charge payment was due in advance on 24th June, but no in advance payment had been requested for the year 2003/2004 because, at the relevant date, the quotations in respect of the costs of the exterior works were still awaited. The tenants had been advised of that. The tenants had argued that no valid Section 20 Notice had been served on them, but the principle objection in this respect appeared to come from Dr Reardon: she had only purchased her flat at about the time when the notice was served, and notice of her purchase had only been registered fourteen days after the notice had been served.

28. The position now was that the work had actually been done in accordance with the lower of the two quotations, which was from D & P O'Leary Building Contractors of 10a Mannamead Road Mutley Plymouth PL4 7AA. Accordingly the Applicant now sought payment of the relevant contribution towards the amount of that invoice, together with Mr Hancock's fees calculated at 10% of the amount of the invoice plus an originally allowed contingency sum of £1,000. The internal plastering work had not been done, but that was because Miss Hyde had not allowed access for it to be done, although the Applicant was and would not be seeking payment of the cost of plastering in any event.

29. What the Applicant now sought, therefore, was the £2,548.96 + VAT (£2,995.03) being the sum expended, plus Mr Hancock's fees calculated at 10% plus VAT on £3,548.96 (the £1,000 difference being the contingency allowance addition) or a total of £3,412.02, to be divided equally between the four tenants.

30. In their written representation, the tenants had said that they did not dispute the fact that payment was due in respect of the roofing works, but they were seeking evidence that the money had actually been paid. That evidence (in relation to an invoice from O' Leary Building Contractors) was produced (by way of a photocopy of the invoice, rather than the original which the Tribunal had asked for) at the time of the hearing. No evidence of any payment made to Mr Hancock was produced.

31. The Tribunal members were concerned that although Mr Hancock was engaged by the landlord's as their building surveyor, he had not actually produced a detailed specification of the works required to overcome the problems of dampness at 48 Haddington Road: all he had done was to seek quotations for works outlined in his letter of 21st July 2003.

32. Further, the quotation submitted by D & P O'Leary Building Contractors (which, presumably by way of typing error, referred to 48 Reddington Road Stoke) appeared to be a copy of a quotation sent to the previous owner of the property on 19th February 2003, and so was not necessarily based upon the limited specification which Mr Hancock had prepared. Nonetheless, the Tribunal noted that Mr Hancock appeared to have accepted the quotation as relating to the work which he had said was needed, and Mr Gordon-Duff had recommended that it was that quotation which should be accepted.

33. The tenants accepted that the work had been done. The quotation which had been submitted by D & P O'Leary Building Contractors was very similar to the alternative quotation put forward by G V A Construction and accordingly the Tribunal concluded that they should accept as reasonable the cost of the works done in the sum of £2,548.96.

34. The Tribunal was less willing to accept the amount claimed in respect of Mr Hancock's fee in the matter. The contingency allowance had not been expended and accordingly it seemed unreasonable that Mr Hancock's fee should in any way allow for it. Further, in a letter which Mr Gordon-Duff wrote to Last Cawthra Feather, the landlord's solicitors, on 8th June 2004, he had said that

> "a contingency of £1,000 was included to cover any additional works that proved necessary and although not mentioned any decoration to the reinstated plasterwork. As you know only the outside work has been done and I attach a receipt for this. I do not have any specific correspondence with Robin Hancock, building surveyor on his charges but his fees are 10% plus VAT."

35. Leaving aside the fact that any money in respect of decoration of the reinstated plasterwork would not have been recoverable from the tenants under the terms of the lease (a matter which the Applicant had admitted in relation to the plastering itself) for the reasons already given, the Applicant appeared to be seeking payment of an invoice which had not actually been produced: he was basing his claim on an assumption of what Mr Hancock's charges would be.

36. The Tribunal concluded that it could not accept that assumption, although it accepts in principle that that it might be reasonable for Mr Hancock to charge a fee of 10% plus VAT on the sum actually expended. The Tribunal determined as reasonable, therefore, that the landlord be entitled to recover the £2,548.96 (+VAT) actually expended, (and as evidenced by the photocopy of the invoice now produced) plus a fee payable to Mr Hancock at 10% of that sum (£254.90), with VAT at the standard rate on that fee. The total sum which the Tribunal determined as reasonable, therefore, amounts to £3,294.54

The Tenants' Application

37. In making their application, the tenants had expressed a number of concerns. One of these related to what was shown in the statements which had been produced as a "service charge deficit" of £401.78 for the year 2002/2003. For the Applicant, it was conceded at the outset of the presentation of the tenants' case that the landlords could offer no explanation of or justification for this sum, and that the claim to it was accordingly abandoned.

38. Another of the tenants concerns related to a request for a contribution of £300.00 from them jointly, in respect of the year 2003/2004, for "general maintenance"; the amount of the management fee, with particular reference to the increase from £240.00 for the year 2001/2002 to £629.80 for the following year; and the landlord's continued failure to provide accounts, invoices, or any detailed explanation of the financial transactions relating to the building.

39. In relation to the sum in respect of "general maintenance", it was the tenants' case that no work which could be seen as falling into this category had ever been done, and that accordingly there could be no justification for seeking a sum on account of this for the year in question. It was stated that Miss Hyde had done all the routine work which needed to be done, including such things as maintaining the small communal garden area, cleaning and decorating the common parts and even doing some external maintenance and decoration work.

40. The Applicant's response was that it was normal to request such a general sum, and that accordingly it was not unreasonable to ask for it in this case.

41. The Tribunal concluded, as a matter of fact on the evidence before it, that there was no history of general maintenance work having been done to this property, either within the very limited accounts, to which further reference is made below, or on Miss Hyde's evidence of the work which she had done, evidence which was not contested by the Applicant. The Tribunal therefore concluded that it was not reasonable in this case. Furthermore it could never be reasonable to demand sums on account without providing estimates in relation to those sums, as was required by the lease provisions, and this had not been done either.

42. With regard to the management fee, the tenants took the view that the increase of which they complained was wholly unjustified as an increase, but also on the basis that they saw no practical evidence of any management function being performed.

43. For the applicant it was argued that, whilst the building had been in the ownership of Hickling Properties Limited, it had largely been left to "run itself", as evidenced by all of the work that Miss Hyde had taken upon herself. In those circumstances, a relatively low management fee was appropriate. When Blantyre West Country Properties Limited acquired the property in November 2002, however, they wished to adopt a more formal management approach and instructed Watson Property Management accordingly. The increased charge apparently reflected the costs associated with that that difference of approach.

44. The letter which Watson Property Management had written to Dr Reardon on 17th November 2003 explained the service that they provided in terms that

> "The management fee is based on £134.00 per flat per annum, before VAT. This is calculated on a unit (per flat) basis, recommended by the Royal Institute (sic) of Chartered Surveyors for this type of property, allowing leaseholders to budget accordingly. The alternative method of charging is based on hourly rates which is mainly used for commercial purposes, as this could lead to quite substantial variations in charges from one year to another. The services provided within the management fee includes administration, accountancy and management thereof. This includes the employment of a locally based building surveyor and full time chartered surveyor. In addition, administrative and accountancy staff based at Wetherby, whose duties include the preparation of statements, rendering of invoices for both rent and service charges along with additional correspondence and telephone enquiries received from the leaseholders. They also process works orders, expenditure invoices, payments to contractors/main services and all insurance claims."

45. Mr Gordon-Duff stated that it had been his policy to inspect the building monthly, at the same time as he inspected other buildings in the vicinity, but that he had only been able to inspect from the exterior as the tenants had declined to give him a key and would not let him into the building.

46. Based upon their knowledge of property management services in Plymouth, the Tribunal, as an expert tribunal, agree that a charge of £134.00 per flat per annum is reasonable in itself, but consider it regrettable that neither the Applicant, the landlords nor the agents gave any explanation of the service to be provided by Watson Property Management until they were specifically asked for an explanation by Dr Reardon, soon after she bought her flat. Better management practice would have required an explanation at the outset: the Service Charge Residential Management Code advises that "managing agents and their clients should enter into written management contracts" but there is no clear evidence that any such contract exists in relation to this property

47. Quite apart from this, however, the evidence before them led the Tribunal to conclude, as a matter of fact, that Watson Property Management had not provided the services which they said they would provide: "accountancy" had been minimal and "management" had, by Mr Gordon-Duff's evidence, involved no more than a cursory external examination of the building from time to time. There was no evidence that the administrative and accountancy staff based at Wetherby had prepared statements. The Tribunal therefore concluded that, although some charge might be justified, it should not exceed more than £75.00 plus VAT per flat per annum.

48. The tenants' greatest concern, however, related to the general question of accounting. The Tribunal found that no accounts had been produced either to the tenants or the Tribunal. The invoice/statement addressed to Dr Reardon by Blantyre West Country Properties in January 2004, for example, listed a series of transactions going back to June 2000 without any explanation of the transactions listed or any supporting documentation.

49. Different statements or invoices seemed to show different figures and the tenants had no certainty that any money paid to the freeholder or his agent had been properly recorded, or that any such records as had been made properly transferred, on a change of ownership or management. It seemed that different tenants were being asked to pay different amounts, and Dr Reardon's evidence was that every demand she received seemed to refer to different amounts Requests for information were not properly answered.

50. Despite the Tribunal's direction that the landlord's should supply the Tribunal

> "with a breakdown/analysis/explanation of how the service charges for the years in question are calculated, together with copies of all relevant account details, invoices, statements, estimates and other documents which they consider may be relevant to the calculation of actual and on account services charges for the relevant years, including year on year reconciliations"

the Applicant had not produced, and appeared unable to produce, any such documentation. This was despite the fact that it would appear to be available, as evidenced by the fact that on 8th June 2004 Mr Gordon-Duff had written to Last Cawthra Feather saying

> "As you know only the outside work has been done and I attach a receipt for this. I do not have any specific correspondence with Robin Hancock, building surveyor on his charges but his fees are 10% plus VAT. This leaves receipts for the insurance premium and management charge and if you require these could you please as above contact Dolores Charlesworth.

All that the Applicant seemed able to say to the Tribunal was that the accounts for the last financial year had not yet been produced, and that matters relating to the landlord company since he sold his interest in it were outside his control, thus preventing him from giving any information on the projected service charge for the year 2004/2005.

51. The Tribunal found the Applicant's failure to produce the relevant documentation, despite the Direction that it should be produced, wholly unacceptable. It nonetheless appears to reflect the management attitude to which the tenants have been subject.

52. Although the Fourth Schedule of the lease refers to the service charge as being

> "the sum which on the twenty-fourth day of May in every year on the said term the landlord or his authorised agents estimate and certify in writing to be the cost and expense to the landlord for the twelve months immediately following"

there was no evidence that any proper estimate or certification had ever been produced.

53. Similarly, although the Fourth Schedule allows the landlord to include in the service charge

> "administrative costs interest charges professional and management fees incurred in connection with any matters referred to in this clause including (without prejudice to the generality of the foregoing) accountancy and audit fees the cost of supplying an audited statement of the service charge to each tenant and the cost of preparing estimates of the service charge for any period or of future maintenance expenditure"

there was no evidence that any audited statements had ever been produced or any proper estimates.

54. Further, although the Fourth Schedule provides that

> "whenever applicable in arriving at the estimated cost as aforesaid for each and every period of twelve months the landlord shall take account of any difference between the sum which the tenant has paid in advance for the immediately preceding period of twelve months and the cost and expense actually incurred by them for such period and shall increase or decrease the estimated cost as aforesaid as the case may be by the amount of such difference,"

with provision for an actual cash adjustment between the landlord and the tenant in the event that there was a difference, no evidence was produced that any such reconciliation had ever been undertaken.

55. The only evidence before the Tribunal was invoices/statements in relation to Dr Reardon's account, with no explanation or supporting documentation. One statement included transactions which neither formed part of the service charge nor related to rent on the flat. No evidence was given on bank transactions or how the money was held. The only receipt that had been produced (and that a photocopy rather than an original) related to the recently completed major works.

56. The Tribunal's decision in relation to those major works is set out above, and the Tribunal concluded that the actual cost of those works was a reasonable sum to be included in the service charge account for the year 2003/2004, together with the adjusted fees to be payable to Mr Robin Hancock. The Tribunal had already also decided that it would be reasonable to include a sum of £75.00 plus VAT for each flat in respect of management.

57. The question of insurance of the building is more difficult. No evidence whatsoever was produced to indicate which company insures the building, or the amount of the insurance, or the amount of the premium, and indeed it can only be assumed that the building is actually insured. References are made to insurance premiums having been paid in previous years, but again there is no documentation to support those claims and, even if there were, the fact that an insurance premium had been paid in the previous year is no evidence that it has been paid for the year 2003/2004. The Tribunal were minded, therefore, to say that the charge in respect of insurance for this period was not reasonable, but note that it is not disputed on the part of the tenants, and for that reason alone they are prepared to allow it.

58. In summary, therefore, in relation to the year 2003/2004 the Tribunal consider reasonable the charges relating to the major refurbishment amounting to £3,294.54 (including VAT) ; management fees totalling £352.50; and the insurance premium of £411.97. This amounts to £4,059.01 or £1,014.75 per flat.

59. The tenants' application also relates to the reasonableness of the service charge costs incurred for the years 1999/2000, 2000/2001, 2001/2002 and 2002/2003. As already explained, despite the Tribunal's direction, the Applicant produced none of the requested documentation in relation to any of these service charge years. Apparently no audited accounts or indeed any accounts exist; there are no reconciliations; there are no receipts and there is no other evidence to show how monies may have been dealt with or kept. The service charge provisions of the lease, and the service charge and audit provisions of the Service Charge Residential Management Code, appear to have been ignored.

60. Given this lack of information and these apparent failings, the Tribunal found as a matter of fact that it was quite impossible to determine that the sums in question were reasonable: the Tribunal therefore determined, again as a matter of fact, that they were unreasonable. The logical implication of this is that any sums paid on account by any tenant should be refunded.

61. Following the pre-trial review held on 24th May 2004, leave had been granted for the tenants to amend their application to include consideration of the on-account service charge for the year 2004/2005. No evidence whatsoever was produced in relation to that, and although the Tribunal accept that that may be the responsibility of the company in which the Applicant no longer has any interest, there is no evidence that he gave that new owners of the company the opportunity to present the relevant information.

62. The Tribunal does not consider that it would be right to penalise the new owners for Mr Gordon-Duff's apparent failure on this part, and finds itself unable to make any ruling: in fact, no request for on-account payment appears to have been made, and it would therefore seem impossible to judge it either reasonable or unreasonable.

Summary and Conclusion

63. The original application put before the Tribunal was made not, as had been thought, by the owners of 48 Haddington Road Stoke but by a former shareholder in, and at one time surveyor for, the company which acquired the freehold, that former shareholder having, by his evidence, severed both of his connections with the company before the application was made. He had made the application with the knowledge and, it would, appear the authority of the current owner. From his point of view, therefore, the application was intended as a "tidying up" exercise which would allow the new owners of the company to start, as it were, with a clean slate. That is not an unreasonable objective but, despite the opportunity offered to him, and despite the Tribunal's direction, the Applicant has failed to provide the Tribunal with the evidence necessary to enable the Tribunal to make a decision that could achieve that

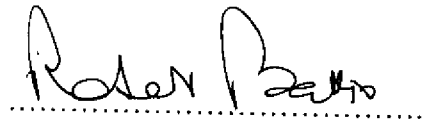
64. The tenants' application, made originally by Miss Amanda Hyde but supported by the other three tenants in the building, sought to clarify the confusion in accounting, the failures of management and the questionable approach to repairs which had developed over the past four or five years. They have used all reasonable endeavours to present their case

65. It is because of the Applicant's failure to produce relevant evidence that the Tribunal has concluded that, although it would be proper for the tenants to pay the cost of the major works which have actually been done during the year 2003/2004; to pay something towards the management of the building for that year; and to pay for insurance for that year, in respect of which there is no documentation but for which the tenants feel obliged to pay; they cannot consider any charges for other years to have been reasonable, and they are unable to rule on the reasonableness of what may happen during this current financial year.

Costs of the Application

66. The final aspect of tenants' application was made under Section 20c of the Landlord and Tenant Act 1985, which gives the Tribunal power, on application by a leaseholder, to make an order preventing a landlord from recovering the costs incurred in connection with the proceedings before the Leasehold Valuation Tribunal as part of the service charge.

67. The Tribunal conclude that, in the light of their decisions in relation to other aspects of the application, that it would be wholly inappropriate for the Applicant to recover the cost that he has incurred in these proceedings from the tenants, and the Order which they seek is therefore granted.



Robert Batho (Chairman)

A member of the Southern Leasehold Valuation Tribunal
Appointed by the Lord Chancellor

Dated 26 August 2004

SOUTHERN RENT ASSESSMENT PANEL
AND
LEASEHOLD VALUATION TRIBUNAL

Case Number CHI/00HG/LSC/2004.0013

48 HADDINGTON ROAD STOKE PLYMOUTH DEVON PL2 1RR

Between

ANDREW GORDON-DUFF
("The Applicant")

and

DR VALERIE J REARDON
MISS AMANDA JANE HYDE
MISS CLAIRE MILLS
and
MR N T S GAWADZYN
("The Tenants")

In The Matter of

Sections 20C and 27A of the Landlord and Tenant Act 1985

And in The Matter of

The Rent Assessment Committee (England and Wales)
Leasehold Valuation Tribunal (Service Charges Etc) Order 1997

Applicant's Application for Determination of Liability
To Pay Service Charges in Respect of the Financial Year 2003 to 2004

Tenants' Application for Determination of Reasonableness of
Service Charges (Both Incurred and to be Incurred)
for the years 1999 to 2005 Inclusive

TRIBUNAL

R Batho MA BSc LLB FRICS FCIArb (Chairman
Ms C Rai LLB
M C Woodrow MRICS

DETERMINATION

Introduction

1. On the 25th March 2004 Mr Andrew Gordon-Duff of Blantyre House Widcombe Hill Bath BA2 6AE made an application to the Leasehold Valuation Tribunal under the provisions of Section 27a of the Landlord and Tenant Act 1985 for a determination of the reasonableness of the service charge costs for the financial year 2003/2004 in respect of Flat 2 48 Haddington Road Stoke Plymouth PL2 1RR.

2. Specifically, Mr Gordon-Duff said that he was seeking a determination in connection with major works costing £1,727.75 per flat together with professional fees of £172.75 per flat. His description of the question that he wished the Tribunal to decide was

> "to seek a determination as to the reasonableness of the sums the freeholders are trying to recover from one of the tenants of the property. This work is in respect of repair to the roof and parapet walls of the property. Additionally internal plastering is also required as a result of damage caused by a leaking roof. The sum requested of the individual leaseholder is £1,900.50, this is in respect of the work required."

3. There was the additional comment that

> "the Landlord is willing to make a 40% contribution in respect of the major works. This means the sum required from each individual leaseholder is in the sum of £1,140.30."

4. On 24th April 2004 Miss Amanda Jane Hyde, the tenant of Flat 2, made an application to the Leasehold Valuation Tribunal, also under the provisions of Section 27a of the Landlord and Tenant Act 1985, for a determination of the reasonableness of the service charge costs incurred during the financial years 1999 to 2004. She also sought an Order limiting the inclusion of the landlord's costs of the proceedings in the service charge under Section 20c of the Landlord and Tenant Act 1985.

5. By way of amplification of her application, Miss Hyde said that she wanted the Tribunal to decide the fairness of the costs claimed by the freeholder of £2,966.49 in relation to her flat for the period 1999 to 2004 but she also referred to damage to interior walls in the bedroom and lounge of her flat; she questioned the fact that ownership of the building as a whole appeared to have been transferred without notice being given to the tenants; and she sought proof that, when ownership had changed, the relevant accounting details had been passed from the old landlord to the new landlords.

Pre-Trial Review

6. On 24th May 2004 a formal pre-trial review hearing was held by the Chairman of the Tribunal listed above. The solicitors acting for Blantyre West Country Properties Limited had given notice that the landlords would not be represented at that hearing, but Miss Hyde attended in person, together with Dr Valerie J Reardon, the tenant of Flat 1 and Miss Claire Mills, the tenant of Flat 3.

7. A Directions Order was made following that review hearing, whereby leave was granted for Dr Valerie Reardon, Miss Claire Mills and Mr Nick Gawadzyn (the leaseholder for Flat 4) to be joined as co-applicants with Miss Hyde in respect of her application. Leave was further granted for the tenant applicants to amend their application so as to include consideration of the on-account service charge for the year 2004-2005.

8. The Directions Order further provided that

> "The tenants jointly must provide a written statement to the Tribunal, by 5th July 2004, setting out the grounds for their challenge to the service charges for the respective years, identifying those elements of the service charge (if any) which they accept and those which they contest. This statement should be accompanied by copies of all documents which they consider relevant to their case and which they wish the Tribunal to see at the hearing. The originals of those documents must be brought to the hearing."

9. It was further ordered that

> "The landlords shall by 5th July 2004 supply the Tribunal, to the extent that the information is available to them, with a breakdown/analysis/explanation of how the service charges for years in question are calculated, together with copies of all relevant account details, invoices, statements, estimates and other documents which they consider may be relevant to the calculation of actual and on-account service charges for the relevant years, including year on year reconciliations. The originals of such documents should be made available at the hearing."

10. There was also a provision that

> "Either party may submit to the Tribunal within six weeks of the date of this Order a brief report from a surveyor as to the structural and external condition of the building, the repairs which may have been done during the relevant periods and those repairs which are now required to put the property into good condition. If either party intends to produce evidence from such a witness, a copy of the report shall be provided to the other party at the same time as it is supplied to the Tribunal.
>
> If expert reports are prepared, the experts should meet within two weeks of their production and prepare a joint report setting down those matters on which they agree or disagree, giving reasons for any such disagreement."

Documentation submitted

11. The parties did submit documentation in response to this Directions Order within the timetable specified, but then the landlords produced a further bundle of documents which was not received at the Tribunal's offices until the day before the hearing and was not seen by the Tribunal members until immediately before the commencement of the hearing: a copy of this bundle was sent to Miss Hyde and arrived on the day prior to the hearing. Although this late bundle did include some additional documentation, the Applicant did not at any time supply the full accounting information which had been directed should be produced, and the absence of that information is reflected in the Tribunal's decision.

12. The tenants jointly confirmed that they did not wish to instruct a surveyor expert. The Applicant produced as a part of his documentation a "Report on Condition of Property" prepared by Robin Hancock FRICS, a chartered building surveyor of Monks House 8 Abbotts Road Peverell PL3 4PB in July 2004: this report was expressed to be based on an external examination of the property only. Although put forward as though it were an expert witness report, this report lacked any statement of truth or any statement of compliance with the RICS Practice Direction in respect of Surveyors Acting as Expert Witnesses and the Tribunal therefore considered its content to be of limited use

Hearing

13. A hearing was held on Wednesday 11th August 2004, the members of the Tribunal having inspected the property at 48 Haddington Road immediately beforehand. This inspection was carried out in the presence of Counsel for the Applicant and the tenants of Flats 1, 2 and 3: the leaseholder of Flat 4 was not present at the time of inspection and accordingly his flat was not inspected.

14. By way of introduction to the hearing, the Chairman explained to the parties that he knew Mr Robin Hancock as a fellow professional. He further explained that Mr Michael Woodrow knew Mr Hancock as a member of the same Rotary Club and because, some years previously, he had engaged Mr Hancock to prepare plans for the extension of his own home. Those present at the hearing confirmed that they had no objection to Mr Woodrow taking part in the proceedings on that basis. The Chairman also advised the parties that Mr Woodrow had previously inspected one of the flats in the building for the purposes of undertaking a mortgage valuation, and again the parties confirmed that they did not see that as an obstacle to Mr Woodrow continuing with the case. In the event, Mr Hancock did not appear as a witness, and no specific reference was made to his report.

15. At the hearing, the Applicant was represented by Mr Petts his Counsel. Miss Hyde, Dr Reardon and Miss Mills appeared in person.

The Property

16. 48 Haddington Road is a mid terraced property, probably built between one hundred and one hundred and fifty years ago. Probably in about 1985 it was converted to provide the present four flats, which are served by a communal entrance hall. Flat 3, on the ground floor, comprises a kitchen/living room, a central bathroom and a bedroom, but Flat 4, which was not inspected by the Tribunal, is apparently slightly larger in that it extends out into the rear tenement area. Flats 1 and 2, at first floor level, are of similar layout, each with a living room/kitchen at the front, a toilet in the central area and a double bedroom at the rear, each bedroom having an en-suite bathroom. There is a small garden area to the front of the building whilst to the rear, the rear part of the tenement section provides a utility/storage area for Flat 2, and there are two car parking spaces allocated to Flats 3 and 4 respectively.

The Lease

17. The lease in respect of Flat 2 is dated 31st October 1986 and made between Susan Elizabeth Midson Rickard of Long Stratton Golf Links Road Yelverton Devon as Landlord and Julie Gaynor Walters of Ground Floor Flat 38 Admiralty Street Stonehouse Plymouth for a term of 99 years from that date. It is expressed to have been granted in similar terms to leases already granted in respect of the other flats.

18. All of the leases provided for payment of an annual rent of £25, and provided for the tenant

> "ALSO PAYING by way of further or additional rent an annual sum as a service charge to be calculated in accordance with the provisions of the Fourth Schedule hereto for each and every year of the term and proportionately for any part of the year in advance on the 24th day of June in each year ..... "

19. Under Clause 5 of the lease, the Landlord entered into various covenants with the Tenant including, at sub-clause (iii)

> "That (subject to the contribution and payment as herein provided) the Landlord will maintain and keep in good repair and condition
>
> (a) The external and structural walls of the building and the foundations and roofs thereof with their gutters and rainwater pipes including the external front door of the building
>
> (b) The paths steps porch hall stairways and doors used by the tenants in common with the landlord and/or the tenant or occupiers of the building or any part or parts thereof and the rear and front gardens and the boundary walls and fences thereof.
>
> (c) The drains cables pipes and wires in under or upon the building and enjoyed or used by the tenant in common with the landlord and/or the tenant or occupiers of the building or any part or parts thereof and
>
> (d) that (subject to the contribution as aforesaid) the landlord will in every fifth year decorate the exterior of the building in the manner in which the same was previously decorated."

20. The Fourth Schedule of the lease provides as follows in relation to the service charge

> "1. The service charge shall (subject as hereinafter provided) be a one quarter part of the sum which on the twenty fourth day of May in every year of the said term the landlord or his authorised agents estimate and certify in writing to be the cost and expense to the landlord for the 12 months immediately following of
>
> (a) Performing their obligations under Clause 5 (ii) (iii) (iv) (v) (vi) and (ix) hereof
> (b) Administrative costs interest charges professional and management fees incurred in connection with any matters referred to in this Clause including (without prejudice to the generality of the foregoing) accountancy and audit fees the cost of supplying an audited statement of the service charge to each Tenant and the cost of preparing estimates of the service charge for any period or of future maintenance expenditure.

2. Whenever applicable in arriving at the estimated cost as aforesaid for each and every period of twelve months the landlord shall take account of any difference between the sum which the tenant has paid in advance for the immediately preceding period of twelve months and the costs and expense actually incurred by them for such period and shall increase or decrease the estimated cost as aforesaid as the case may be by the amount of such difference Provided Always that upon the expiration of each twelve month period the landlord or tenant shall pay or repay as the case may be to the other of them the appropriate proportion of the amount by which the estimated cost of the said year falls short."

Ownership and Management

21. Mr Petts explained to the Tribunal that, as a result of transfers of ownership after the original leases were granted, the freehold was acquired by company called Hickling Properties Limited and Blantyre West Country Properties Limited purchased their interest from that company. He went on to say that, initially, Blantyre West Country Properties Limited had instructed Watson Property Management to manage the property for them. Mr Gordon-Duff, the applicant in the present case, was employed by Watson Property Management as surveyor with responsibility for this and other properties, but he was also a director of Blantyre West Country Properties Limited.

22. Mr Petts went on to explain that the directors of Blantyre West Country Properties Limited, including Mr Gordon-Duff, had sold their interest in the company early in 2004, before the application before the Tribunal had been made, by transferring their shares. Mr Gordon-Duff's letter of 8th March 2004, addressed to Last Cawthra Feather, does indeed say "John and I have recently sold the company." The new directors did not continue to use the services of Watson Property Management. It had nonetheless been agreed that Mr Gordon-Duff would deal with the application to the Tribunal, since it related to the period of his involvement of the property. His application was therefore made on behalf of and with the authority of the current freeholder

23. One of the tenants' concerns had been that ownership of the property had changed without their having been given proper notice. In the light of this evidence the Tribunal accept that the tenants' reasonable concerns were not, in fact, justified, and that ownership of the property has not been transferred by the company, although the shareholders of the company have changed.

The Applicant's Case

24. For the Applicant, attention was drawn to the service charge provision as set down in the above quoted sections of the lease, and to the definition of repair given in Clause 5. It was said that the works which were the subject of the application related to preventing water penetration through or around the roof covering and associated upstand fire-stop walls between the subject property and the properties on either side of it, and internal replastering which had been made necessary by that leakage.

25. It was conceded by the Applicant that the tenants had no liability to contribute to any money expended by the landlord on internal decoration. As the deterioration of the plaster finishes in Miss Hyde's flat had been caused by the water penetration which the works were designed to overcome, and that water penetration had been allowed to continue for some time, the applicant was not seeking to recover the cost of this plastering work from the tenants. His application related only to the works of repair at and above roof level.

26. The works in question counted as major works, and notice had been given to the tenants under Section 20 of the Landlord and Tenant Act 1985 on 30th September 2003. These notices had in each case apparently been accompanied by a copy of a letter which Mr Robin Hancock had written to various companies on 21st July 2003 and the quotations provided by two of those companies in response.

27. Under the lease provisions, the service charge payment was due in advance on 24th June, but no in advance payment had been requested for the year 2003/2004 because, at the relevant date, the quotations in respect of the costs of the exterior works were still awaited. The tenants had been advised of that. The tenants had argued that no valid Section 20 Notice had been served on them, but the principle objection in this respect appeared to come from Dr Reardon: she had only purchased her flat at about the time when the notice was served, and notice of her purchase had only been registered fourteen days after the notice had been served.

28. The position now was that the work had actually been done in accordance with the lower of the two quotations, which was from D & P O'Leary Building Contractors of 10a Mannamead Road Mutley Plymouth PL4 7AA. Accordingly the Applicant now sought payment of the relevant contribution towards the amount of that invoice, together with Mr Hancock's fees calculated at 10% of the amount of the invoice plus an originally allowed contingency sum of £1,000. The internal plastering work had not been done, but that was because Miss Hyde had not allowed access for it to be done, although the Applicant was and would not be seeking payment of the cost of plastering in any event.

29. What the Applicant now sought, therefore, was the £2,548.96 + VAT (£2,995.03) being the sum expended, plus Mr Hancock's fees calculated at 10% plus VAT on £3,548.96 (the £1,000 difference being the contingency allowance addition) or a total of £3,412.02, to be divided equally between the four tenants.

30. In their written representation, the tenants had said that they did not dispute the fact that payment was due in respect of the roofing works, but they were seeking evidence that the money had actually been paid. That evidence (in relation to an invoice from O' Leary Building Contractors) was produced (by way of a photocopy of the invoice, rather than the original which the Tribunal had asked for) at the time of the hearing. No evidence of any payment made to Mr Hancock was produced.

31. The Tribunal members were concerned that although Mr Hancock was engaged by the landlord's as their building surveyor, he had not actually produced a detailed specification of the works required to overcome the problems of dampness at 48 Haddington Road: all he had done was to seek quotations for works outlined in his letter of 21st July 2003.

32. Further, the quotation submitted by D & P O'Leary Building Contractors (which, presumably by way of typing error, referred to 48 Reddington Road Stoke) appeared to be a copy of a quotation sent to the previous owner of the property on 19th February 2003, and so was not necessarily based upon the limited specification which Mr Hancock had prepared. Nonetheless, the Tribunal noted that Mr Hancock appeared to have accepted the quotation as relating to the work which he had said was needed, and Mr Gordon-Duff had recommended that it was that quotation which should be accepted.

33. The tenants accepted that the work had been done. The quotation which had been submitted by D & P O'Leary Building Contractors was very similar to the alternative quotation put forward by G V A Construction and accordingly the Tribunal concluded that they should accept as reasonable the cost of the works done in the sum of £2,548.96.

34. The Tribunal was less willing to accept the amount claimed in respect of Mr Hancock's fee in the matter. The contingency allowance had not been expended and accordingly it seemed unreasonable that Mr Hancock's fee should in any way allow for it. Further, in a letter which Mr Gordon-Duff wrote to Last Cawthra Feather, the landlord's solicitors, on 8th June 2004, he had said that

> "a contingency of £1,000 was included to cover any additional works that proved necessary and although not mentioned any decoration to the reinstated plasterwork. As you know only the outside work has been done and I attach a receipt for this. I do not have any specific correspondence with Robin Hancock, building surveyor on his charges but his fees are 10% plus VAT."

35. Leaving aside the fact that any money in respect of decoration of the reinstated plasterwork would not have been recoverable from the tenants under the terms of the lease (a matter which the Applicant had admitted in relation to the plastering itself) for the reasons already given, the Applicant appeared to be seeking payment of an invoice which had not actually been produced: he was basing his claim on an assumption of what Mr Hancock's charges would be.

36. The Tribunal concluded that it could not accept that assumption, although it accepts in principle that that it might be reasonable for Mr Hancock to charge a fee of 10% plus VAT on the sum actually expended. The Tribunal determined as reasonable, therefore, that the landlord be entitled to recover the £2,548.96 (+VAT) actually expended, (and as evidenced by the photocopy of the invoice now produced) plus a fee payable to Mr Hancock at 10% of that sum (£254.90), with VAT at the standard rate on that fee. The total sum which the Tribunal determined as reasonable, therefore, amounts to £3,294.54

The Tenants' Application

37. In making their application, the tenants had expressed a number of concerns. One of these related to what was shown in the statements which had been produced as a "service charge deficit" of £401.78 for the year 2002/2003. For the Applicant, it was conceded at the outset of the presentation of the tenants' case that the landlords could offer no explanation of or justification for this sum, and that the claim to it was accordingly abandoned.

38. Another of the tenants concerns related to a request for a contribution of £300.00 from them jointly, in respect of the year 2003/2004, for "general maintenance"; the amount of the management fee, with particular reference to the increase from £240.00 for the year 2001/2002 to £629.80 for the following year; and the landlord's continued failure to provide accounts, invoices, or any detailed explanation of the financial transactions relating to the building.

39. In relation to the sum in respect of "general maintenance", it was the tenants' case that no work which could be seen as falling into this category had ever been done, and that accordingly there could be no justification for seeking a sum on account of this for the year in question. It was stated that Miss Hyde had done all the routine work which needed to be done, including such things as maintaining the small communal garden area, cleaning and decorating the common parts and even doing some external maintenance and decoration work.

40. The Applicant's response was that it was normal to request such a general sum, and that accordingly it was not unreasonable to ask for it in this case.

41. The Tribunal concluded, as a matter of fact on the evidence before it, that there was no history of general maintenance work having been done to this property, either within the very limited accounts, to which further reference is made below, or on Miss Hyde's evidence of the work which she had done, evidence which was not contested by the Applicant. The Tribunal therefore concluded that it was not reasonable in this case. Furthermore it could never be reasonable to demand sums on account without providing estimates in relation to those sums, as was required by the lease provisions, and this had not been done either.

42. With regard to the management fee, the tenants took the view that the increase of which they complained was wholly unjustified as an increase, but also on the basis that they saw no practical evidence of any management function being performed.

43. For the applicant it was argued that, whilst the building had been in the ownership of Hickling Properties Limited, it had largely been left to "run itself", as evidenced by all of the work that Miss Hyde had taken upon herself. In those circumstances, a relatively low management fee was appropriate. When Blantyre West Country Properties Limited acquired the property in November 2002, however, they wished to adopt a more formal management approach and instructed Watson Property Management accordingly. The increased charge apparently reflected the costs associated with that that difference of approach.

44. The letter which Watson Property Management had written to Dr Reardon on 17th November 2003 explained the service that they provided in terms that

> "The management fee is based on £134.00 per flat per annum, before VAT. This is calculated on a unit (per flat) basis, recommended by the Royal Institute (sic) of Chartered Surveyors for this type of property, allowing leaseholders to budget accordingly. The alternative method of charging is based on hourly rates which is mainly used for commercial purposes, as this could lead to quite substantial variations in charges from one year to another. The services provided within the management fee includes administration, accountancy and management thereof. This includes the employment of a locally based building surveyor and full time chartered surveyor. In addition, administrative and accountancy staff based at Wetherby, whose duties include the preparation of statements, rendering of invoices for both rent and service charges along with additional correspondence and telephone enquiries received from the leaseholders. They also process works orders, expenditure invoices, payments to contractors/main services and all insurance claims."

45. Mr Gordon-Duff stated that it had been his policy to inspect the building monthly, at the same time as he inspected other buildings in the vicinity, but that he had only been able to inspect from the exterior as the tenants had declined to give him a key and would not let him into the building.

46. Based upon their knowledge of property management services in Plymouth, the Tribunal, as an expert tribunal, agree that a charge of £134.00 per flat per annum is reasonable in itself, but consider it regrettable that neither the Applicant, the landlords nor the agents gave any explanation of the service to be provided by Watson Property Management until they were specifically asked for an explanation by Dr Reardon, soon after she bought her flat. Better management practice would have required an explanation at the outset: the Service Charge Residential Management Code advises that "managing agents and their clients should enter into written management contracts" but there is no clear evidence that any such contract exists in relation to this property

47. Quite apart from this, however, the evidence before them led the Tribunal to conclude, as a matter of fact, that Watson Property Management had not provided the services which they said they would provide: "accountancy" had been minimal and "management" had, by Mr Gordon-Duff's evidence, involved no more than a cursory external examination of the building from time to time. There was no evidence that the administrative and accountancy staff based at Wetherby had prepared statements. The Tribunal therefore concluded that, although some charge might be justified, it should not exceed more than £75.00 plus VAT per flat per annum.

48. The tenants' greatest concern, however, related to the general question of accounting. The Tribunal found that no accounts had been produced either to the tenants or the Tribunal. The invoice/statement addressed to Dr Reardon by Blantyre West Country Properties in January 2004, for example, listed a series of transactions going back to June 2000 without any explanation of the transactions listed or any supporting documentation.

49. Different statements or invoices seemed to show different figures and the tenants had no certainty that any money paid to the freeholder or his agent had been properly recorded, or that any such records as had been made properly transferred, on a change of ownership or management. It seemed that different tenants were being asked to pay different amounts, and Dr Reardon's evidence was that every demand she received seemed to refer to different amounts Requests for information were not properly answered.

50. Despite the Tribunal's direction that the landlord's should supply the Tribunal

> "with a breakdown/analysis/explanation of how the service charges for the years in question are calculated, together with copies of all relevant account details, invoices, statements, estimates and other documents which they consider may be relevant to the calculation of actual and on account services charges for the relevant years, including year on year reconciliations"

the Applicant had not produced, and appeared unable to produce, any such documentation. This was despite the fact that it would appear to be available, as evidenced by the fact that on 8th June 2004 Mr Gordon-Duff had written to Last Cawthra Feather saying

> "As you know only the outside work has been done and I attach a receipt for this. I do not have any specific correspondence with Robin Hancock, building surveyor on his charges but his fees are 10% plus VAT. This leaves receipts for the insurance premium and management charge and if you require these could you please as above contact Dolores Charlesworth.

All that the Applicant seemed able to say to the Tribunal was that the accounts for the last financial year had not yet been produced, and that matters relating to the landlord company since he sold his interest in it were outside his control, thus preventing him from giving any information on the projected service charge for the year 2004/2005.

51. The Tribunal found the Applicant's failure to produce the relevant documentation, despite the Direction that it should be produced, wholly unacceptable. It nonetheless appears to reflect the management attitude to which the tenants have been subject.

52. Although the Fourth Schedule of the lease refers to the service charge as being

> "the sum which on the twenty-fourth day of May in every year on the said term the landlord or his authorised agents estimate and certify in writing to be the cost and expense to the landlord for the twelve months immediately following"

there was no evidence that any proper estimate or certification had ever been produced.

53. Similarly, although the Fourth Schedule allows the landlord to include in the service charge

> "administrative costs interest charges professional and management fees incurred in connection with any matters referred to in this clause including (without prejudice to the generality of the foregoing) accountancy and audit fees the cost of supplying an audited statement of the service charge to each tenant and the cost of preparing estimates of the service charge for any period or of future maintenance expenditure"

there was no evidence that any audited statements had ever been produced or any proper estimates.

54. Further, although the Fourth Schedule provides that

> "whenever applicable in arriving at the estimated cost as aforesaid for each and every period of twelve months the landlord shall take account of any difference between the sum which the tenant has paid in advance for the immediately preceding period of twelve months and the cost and expense actually incurred by them for such period and shall increase or decrease the estimated cost as aforesaid as the case may be by the amount of such difference,"

with provision for an actual cash adjustment between the landlord and the tenant in the event that there was a difference, no evidence was produced that any such reconciliation had ever been undertaken.

55. The only evidence before the Tribunal was invoices/statements in relation to Dr Reardon's account, with no explanation or supporting documentation. One statement included transactions which neither formed part of the service charge nor related to rent on the flat. No evidence was given on bank transactions or how the money was held. The only receipt that had been produced (and that a photocopy rather than an original) related to the recently completed major works.

56. The Tribunal's decision in relation to those major works is set out above, and the Tribunal concluded that the actual cost of those works was a reasonable sum to be included in the service charge account for the year 2003/2004, together with the adjusted fees to be payable to Mr Robin Hancock. The Tribunal had already also decided that it would be reasonable to include a sum of £75.00 plus VAT for each flat in respect of management.

57. The question of insurance of the building is more difficult. No evidence whatsoever was produced to indicate which company insures the building, or the amount of the insurance, or the amount of the premium, and indeed it can only be assumed that the building is actually insured. References are made to insurance premiums having been paid in previous years, but again there is no documentation to support those claims and, even if there were, the fact that an insurance premium had been paid in the previous year is no evidence that it has been paid for the year 2003/2004. The Tribunal were minded, therefore, to say that the charge in respect of insurance for this period was not reasonable, but note that it is not disputed on the part of the tenants, and for that reason alone they are prepared to allow it.

58. In summary, therefore, in relation to the year 2003/2004 the Tribunal consider reasonable the charges relating to the major refurbishment amounting to £3,294.54 (including VAT) ; management fees totalling £352.50; and the insurance premium of £411.97. This amounts to £4,059.01 or £1,014.75 per flat.

59. The tenants' application also relates to the reasonableness of the service charge costs incurred for the years 1999/2000, 2000/2001, 2001/2002 and 2002/2003. As already explained, despite the Tribunal's direction, the Applicant produced none of the requested documentation in relation to any of these service charge years. Apparently no audited accounts or indeed any accounts exist; there are no reconciliations; there are no receipts and there is no other evidence to show how monies may have been dealt with or kept. The service charge provisions of the lease, and the service charge and audit provisions of the Service Charge Residential Management Code, appear to have been ignored.

60. Given this lack of information and these apparent failings, the Tribunal found as a matter of fact that it was quite impossible to determine that the sums in question were reasonable: the Tribunal therefore determined, again as a matter of fact, that they were unreasonable. The logical implication of this is that any sums paid on account by any tenant should be refunded.

61. Following the pre-trial review held on 24th May 2004, leave had been granted for the tenants to amend their application to include consideration of the on-account service charge for the year 2004/2005. No evidence whatsoever was produced in relation to that, and although the Tribunal accept that that may be the responsibility of the company in which the Applicant no longer has any interest, there is no evidence that he gave that new owners of the company the opportunity to present the relevant information.

62. The Tribunal does not consider that it would be right to penalise the new owners for Mr Gordon-Duff's apparent failure on this part, and finds itself unable to make any ruling: in fact, no request for on-account payment appears to have been made, and it would therefore seem impossible to judge it either reasonable or unreasonable.

Summary and Conclusion

63. The original application put before the Tribunal was made not, as had been thought, by the owners of 48 Haddington Road Stoke but by a former shareholder in, and at one time surveyor for, the company which acquired the freehold, that former shareholder having, by his evidence, severed both of his connections with the company before the application was made. He had made the application with the knowledge and, it would, appear the authority of the current owner. From his point of view, therefore, the application was intended as a "tidying up" exercise which would allow the new owners of the company to start, as it were, with a clean slate. That is not an unreasonable objective but, despite the opportunity offered to him, and despite the Tribunal's direction, the Applicant has failed to provide the Tribunal with the evidence necessary to enable the Tribunal to make a decision that could achieve that

64. The tenants' application, made originally by Miss Amanda Hyde but supported by the other three tenants in the building, sought to clarify the confusion in accounting, the failures of management and the questionable approach to repairs which had developed over the past four or five years. They have used all reasonable endeavours to present their case

65. It is because of the Applicant's failure to produce relevant evidence that the Tribunal has concluded that, although it would be proper for the tenants to pay the cost of the major works which have actually been done during the year 2003/2004; to pay something towards the management of the building for that year; and to pay for insurance for that year, in respect of which there is no documentation but for which the tenants feel obliged to pay; they cannot consider any charges for other years to have been reasonable, and they are unable to rule on the reasonableness of what may happen during this current financial year.

Costs of the Application

66. The final aspect of tenants' application was made under Section 20c of the Landlord and Tenant Act 1985, which gives the Tribunal power, on application by a leaseholder, to make an order preventing a landlord from recovering the costs incurred in connection with the proceedings before the Leasehold Valuation Tribunal as part of the service charge.

67. The Tribunal conclude that, in the light of their decisions in relation to other aspects of the application, that it would be wholly inappropriate for the Applicant to recover the cost that he has incurred in these proceedings from the tenants, and the Order which they seek is therefore granted.

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Robert Batho (Chairman)

A member of the Southern Leasehold Valuation Tribunal
Appointed by the Lord Chancellor

Dated 25th August 2004