

HER MAJESTY'S COURTS AND TRIBUNALS SERVICE

LEASEHOLD VALUATION TRIBUNAL

LANDLORD AND TENANT ACT 1985, SECTIONS 27(A), 19 AND 20(C)

IN THE MATTER OF 117 RIVERSIDE DRIVE, LINCOLN, LN5 7PB

APPLICANTS: Mr. Anthony Gerald Fisher.

RESPONDENT: Anchor Quay Management Company Limited.

HEARING: 22/10/2012.

TRIBUNAL MEMBERS: Mr. C. P. Tonge, LLB, BA.
MR. P. E. Mountain, FRICS, FNAEA.

SUMMARY OF THE DECISION

1. The service charges in so far as they relate to water for the years 2006 to 2011 were potentially payable on the dates that they were demanded, but are not due for payment because the demands for payment do not comply with section 47 of the Landlord and Tenant Act 1987. As a result water charges as they form part of the service charges are not payable.
2. If the demands had been both due and payable the Tribunal decides that they are unfair and unreasonable, because they have not been calculated based on the readings that the management agents already have to calculate the cost of actual use of water and estimated usage of water.
3. The only way to make the charges for the use of water by the Applicant fair and reasonable is to recalculate them as described in paragraph 54 of this decision.
4. **Section 20c of the Landlord and Tenant Act 1985.** The Applicant having raised this matter, the Tribunal decides that it is just and equitable to make an order that the Respondents costs incurred in connection with these proceedings are not to be considered as a relevant cost to be taken into account in determining the amount of service charges payable.

THE BACKGROUND TO THE APPLICATION

5. This application came before the Leasehold Valuation Tribunal by an application from the Leaseholder of apartment 117, Riverside Drive, Lincoln, LN5 7PB, dated 7/6/2012 and received by the Tribunal on 8/6/2012. The application was for the Tribunal to consider service charge years 2006, 2007, 2008, 2009, 2010 and 2011. The application was limited to consideration of the proportion of the service charge that related to charges for the provision of water to this property by the Landlord.

6. The Applicant held the remainder of a lease that had been granted on 27/10/2006 for a period of 125 years that was specified as commencing on 29/9/2005.
7. In the application form the Applicant pointed out that he found the lease to be confusing and notified the Tribunal that his relative Mr B.E. Dring would act as his representative in the case.
8. There was then an exchange of letters between Mr B. E. Dring and the Tribunal in an effort to ascertain who the Respondent in the case should be. As a result it was decided that the Anchor Quay Management Company Limited should be Respondents in the case.
9. Directions were given on 17/7/2012. Direction one was that the case would be determined without a hearing unless either party requested a hearing within 21 days. Neither party requested a hearing. The Tribunal therefore dealt with the case by inspecting the property and convening for deliberations on 22/10/2012. In addition Mrs. J. Brown of the Tribunal Panel was also in attendance as an observer. Mrs Brown took no part in the deliberations or decisions taken by the Tribunal.
10. Both parties served a statement of case and hearing bundle and these were served on the other party.

THE INSPECTION

11. The Tribunal inspected the premises on 22/10/12. The Applicant was present at the inspection but his representative was not present. No one was present who was able to say that he was the Landlord or employed directly by the Landlord as part of the Landlords Company. No one was present as part of the Respondents company. There were 2 employees of the management agent Residential Management Group (R. M. G.) present on behalf of the Respondent. These were Mr. Paul Sanderson, Regional Manager and Colin Clifford, Property Manager.
12. The complex had 116 purpose built apartments in various blocks that were provided with the usual common services. The complex was in good condition and close to the centre of Lincoln. The complex was provided with mains cold water by Anglian water to bulk water meters. The bulk water meters and mains pipes to those meters would therefore remain the responsibility of Anglian water. Thereafter the complex had a system of pipes to supply each apartment with its own water supply.
13. Apartment 117 was on the ground floor of one of those blocks and was provided with a parking space. The exterior door that gave access to the common parts of the block was provided with an electronic door buzzer entry system. The apartment had been designed to have two bedrooms although one of those had been taken into use as a reception room. The apartment consisted of an entrance hallway, a kitchen, bathroom, living room, dining room and a double bedroom.

14. The apartment had its own water meter. That was situated in a locked cupboard in the common hallway of the block a short distance from the apartment. The meter was a small round device fitted to the pipe supplying cold water to the apartment.

THE LAW

Landlord and Tenant Act 1985

S27A Liability to pay service charges: jurisdiction

- (1) An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to—
- (a) the person by whom it is payable,
 - (b) the person to whom it is payable,
 - (c) the amount which is payable,
 - (d) the date at or by which it is payable, and
 - (e) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to a leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to—
- (a) the person by whom it would be payable,
 - (b) the person to whom it would be payable,
 - (c) the amount which would be payable,
 - (d) the date at or by which it would be payable, and
 - (e) the manner in which it would be payable.

S19 Limitation of service charges: reasonableness.

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period—
- (a) only to the extent that they are reasonably incurred, and
 - (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard; and the amount payable shall be limited accordingly.

S20C "Limitation of service charges: costs of proceedings.

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court or leasehold valuation tribunal, or the Lands Tribunal, or in connection with arbitration 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 tenant or any other person or persons specified in the application.
- (2) The application shall be made—
- (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
 - (b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;

S47 Landlord's name and address to be contained in demands for rent etc.

(1) Where any written demand is given to a tenant of premises to which this Part applies, the demand must contain the following information, namely—

- (a) the name and address of the landlord, and
- (b) if that address is not in England and Wales, an address in England and Wales at which notices (including notices in proceedings) may be served on the landlord by the tenant.

(2) Where—

- (a) a tenant of any such premises is given such a demand, but
- (b) it does not contain any information required to be contained in it by virtue of subsection (1), then (subject to subsection (3)) any part of the amount demanded which consists of a service charge or an administration charge ("the relevant amount") shall be treated for all purposes as not being due from the tenant to the landlord at any time before that information is furnished by the landlord by notice given to the tenant.

THE LEASE

PRESCRIBED CLAUSES LEASE

LR1. Date of Lease	27 October 2006
LR2. Title Number(2)	<p>LR2.1 Landlord's Title Number(s) LL24697</p> <p>LR2.2 Other Title Numbers</p>
<p>LR3. Parties to this Lease</p> <p><i>Give full names, address and company's registered number, if any, of each of the parties. For Scottish companies use a SC prefix and for limited liability partnerships use an OC prefix. For foreign companies give territory in which incorporated</i></p>	<p>Landlord</p> <p>ALLISON HOMES EASTERN LIMITED the registered office of which is at Holland Place Wardentree Park Pinchbeck Spalding Lincolnshire PE11 3ZN (Company Registration No 4280860)</p> <p>Tenant</p> <p>ANTHONY GERALD FISHER of 41 Slade End Theydon Bois Epping Essex CM16 7EP</p> <p>Other parties</p> <p>ANCHOR QUAY MANAGEMENT COMPANY LIMITED the registered office of which is at Holland Place Wardentree Park Pinchbeck Spalding Lincolnshire PE11 3ZN (Company Registration No 5741742) ("the Management Company")</p>

including, without prejudice to the generality of the foregoing, the roofs and roof space, the foundations, and all external, structural or load-bearing walls, columns, beams, joists, floor slabs and supports of the Buildings and such other parts of the Buildings as are not included in the Flat and are not and would not be included in premises demised by leases of the Other Flats if let on the same terms as this Lease.

1.1.25 'The Review Date'

'The Review Date' means any one of 29 September 2015 and every tenth anniversary of that date during the Term.

1.1.26 'The Service Charge'

'The Service Charge' means the Service Charge Percentage of the Expenses of the Services and of Insurance.

1.1.27 'The Service Charge Percentage'

'The Service Charge Percentage' means 0.87%.

1.1.28 'The Services'

'The Services' means the services, facilities and amenities specified in Schedule 7 paragraph 7-3 as added to, withheld or varied from time to time in accordance with the provisions of this Lease.

1.1.29 'The Surveyor'

'The Surveyor', in relation to any matter arising under this Lease between the Landlord and the Lessee or between the Management Company and the Lessee, means an independent surveyor appointed by the Landlord and of whose appointment notice is given to the Lessee or, if the Lessee gives notice to the Landlord within 14 days of his receiving notice of the appointment that he objects to the person so appointed, means an independent surveyor appointed on the request of either of the Landlord or the Lessee by or on behalf of the President for the time being of the Royal Institution of Chartered Surveyors.

1.1.30 'The Term'

'The Term' means 125 years commencing on and including 29 September 2005.

1.1.31 'VAT'

'VAT' means value added tax or any other tax of a similar nature and, unless otherwise expressly stated, all references to rents or other sums payable by the Lessee are exclusive of VAT.

1.2 Interpretation

In this Lease:

1.2.1 Covenants

1.2.1.1 Where any party to this Lease for the time being comprises two or more persons, obligations expressed or implied to be made by or with that party are deemed to be made by or with the persons comprising that party jointly and severally.

1.2.1.2 A covenant expressed to be made by more than one party is a covenant made jointly and severally by each of those parties.

1.2.1.3 A covenant expressed to be made with more than one party is a covenant made separately with each of those parties.

1.2.2 Gender and number

Words importing one gender include all other genders; words importing the singular include the plural and vice versa.

1.2.3 Headings

The clause, paragraph and Schedule headings and the table of contents do not form part of this document and are not to be taken into account in its construction or interpretation.

1.2.4 Interpretation of 'the Landlord'

The Lessee must not unreasonably withhold consent to a request made by the Landlord under the Landlord and Tenant (Covenants) Act 1995 Section 8 for a release from all or any of the landlord covenants of this Lease, 'landlord covenants' having the meaning given to that expression by Section 28(1) of that Act.

5-6 Outgoings and VAT

5-6.1 *Outgoings exclusive to the Flat and the Car Parking Space*

The Lessee must pay:

- 5-6.1.1 all council tax and water rates, and all other taxes, rates, assessments, duties, charges, impositions and outgoings that are now or may at any time during the Term be charged, assessed or imposed on the Flat and the Car Parking Space or on the owner or occupier of them, excluding any payable by the Landlord occasioned by receipt of the Rent or the Service Charge or by any disposition of or dealing with this Lease or ownership of any interest reversionary to the interest created by it;
- 5-6.1.2 if any VAT or tax of a similar nature is or becomes chargeable in respect of any payment made by or supply to the Lessee under this Lease, or if any tax, charge or imposition becomes payable in respect of the Flat and the Car Parking Space because of any act or omission of the Lessee, the amount of the VAT, tax, charge or imposition; and
- 5-6.1.3 all VAT incurred in relation to any costs that the Lessee is obliged to pay or in respect of which he is required to indemnify the Landlord under the terms of this Lease, save to the extent that such VAT is recoverable or available for set-off by the Landlord as input tax.

5-6.2 *Outgoings assessed on the Flat and the Car Parking Space and other property*

The Lessee must pay the proportion reasonably attributable to the Flat and the Car Parking Space—and agreed between the Landlord and the Lessee and if not agreed to be determined from time to time by the Surveyor, acting as an expert and not as an arbitrator—of all rates, taxes, assessments, duties, charges, impositions and outgoings that are now or at any time during the Term may be charged, assessed or imposed on the Flat and the Car Parking Space and any other property, including the rest of the Estate or any adjoining property of the Landlord, or on the owner or occupier of it.

5-7 Cost of services consumed

The Lessee must pay to the suppliers all charges for electricity, water, gas, telecommunications and other services consumed or used at or in relation to the Flat and the Car Parking Space, including meter rents and standing charges, except any such charges that form part of the Expenses of the Services and of Insurance to which the Lessee contributes through the Service Charge, and must comply with the lawful requirements and regulations of the respective suppliers.

5-8 Repayment of Landlord and Management Company

If the Landlord or the Management Company makes any payment to a third party for which the Lessee is responsible under this Lease, the Lessee must repay the Landlord or the Management Company when requested to do so.

5-9 Decoration

The Lessee must redecorate the interior of the Flat in a good and workmanlike manner, with appropriate materials of good quality, as often as is reasonably necessary and in any event in the last year of the Term however it may have determined.

5-10 Internal alterations

The Lessee must not make any internal non-structural alterations to the Flat unless he first:

- 5-10.1 obtains and complies with the necessary consents of the competent authorities and pays their charges for them;

7-3 The Services

The Services are:

- 7-3.1 repairing and, whenever the Landlord, acting reasonably, regards it as necessary in order to repair, replacing or renewing the Retained Parts and the car parking spaces on the Estate whether or not included in this Lease or in the lease of any Other Flat;
- 7-3.2 decorating the Retained Parts where appropriate or necessary;
- 7-3.3 operating, maintaining, repairing and, whenever the Landlord, acting reasonably, considers it appropriate, renewing, replacing or modifying the Plant;
- 7-3.4 placing and running maintenance contracts for the Estate;
- 7-3.5 providing the Plant necessary for the Estate;
- 7-3.6 providing suitable facilities for disposing of refuse, compacting it or removing it from the Estate;
- 7-3.7 providing reasonable lighting in the Common Parts inside the Buildings and for the Common Parts outside the Buildings;
- 7-3.8 providing reasonable central heating to the Common Parts within the Buildings;
- 7-3.9 cleaning the windows and other glass of the Retained Parts;
- 7-3.10 supplying, maintaining, servicing and keeping in good condition and, wherever the Landlord considers it appropriate, renewing and replacing all fixtures, fittings, furnishings, equipment and any other things the Landlord may consider desirable for performing the Services or for the appearance or upkeep of the Retained Parts;
- 7-3.11 carrying out inspections and tests of the Retained Parts, including the Plant, that the Landlord from time to time considers necessary or desirable;
- 7-3.12 planting, tidying, tending and landscaping any appropriate part of the Common Parts in such manner as the Landlord from time to time considers appropriate;
- 7-3.13 providing, replacing and renewing trees, shrubs, flowers, grass and other plants in the grounds of the Estate;
- 7-3.14 employing such persons as the Landlord, acting reasonably, considers necessary or desirable from time to time in connection with providing any of the Services, performing the Landlord's other obligations in this Lease and collecting rents accruing to the Landlord from the Estate, with all incidental expenditure including, but without limiting the generality of the above, remuneration, payment of statutory contributions and such other health, pension, welfare, redundancy and similar or ancillary payments and any other payments the Landlord, acting reasonably, thinks desirable or necessary, and providing work clothing;
- 7-3.15 discharging any amounts the Landlord may be liable to pay towards the expense of making, repairing, maintaining, rebuilding and cleaning anything—for example ways, roads, pavements, sewers, drains, pipes, watercourses, party walls, party structures, party fences and other conveniences—that are appurtenant to the Estate or are used for the Estate in common with any adjoining property of the Landlord;
- 7-3.16 erecting, providing, maintaining, renewing and replacing notice boards, notices and other signs in the Buildings as the Landlord, acting reasonably, from time to time considers appropriate;
- 7-3.17 administering and managing the Buildings, performing the Services, performing the Landlord's other obligations in this Lease and preparing statements or certificates of and auditing the Expenses of the Services and of Insurance;
- 7-3.18 discharging all existing or future taxes, rates, charges, duties, assessments, impositions and outgoings whatsoever in respect of the Retained Parts, including, without prejudice to the generality of the above, those for water, electricity, gas and telecommunications;
- 7-3.19 paying any interest on any loan or overdraft raised for the purpose of defraying the Expenses of the Services and of Insurance;

THE WRITTEN REPRESENTATIONS

THE APPLICANT

15. The Applicant bought the long lease to this apartment in 2006. The apartment had a water meter fitted and he had expected the meter to be read and used to calculate a bill for his water use. This had not happened and instead he had been billed for a 0.87% share of the water use of the whole complex. That percentage share is stated in clause 1.1.27. of the lease "The Service Charge Percentage". It was calculated by dividing the service charges between 116 apartments.
16. The Applicant stated year by year the amount that was at issue between the parties, the total being £540.54.
17. The Applicant submitted that the Respondent had no right to charge for the cost of supplying water at all because the lease did not provide for that to be charged for as a service charge.
18. The Applicant submitted that any service charge must be reasonable and the only way to charge a reasonable service charge for the Applicants water was to read his meter and charge him accordingly. He was happy to pay for his own water use, but not to subsidise the water use of other tenants.
19. The Applicant submitted that managing agents R. M. G. had only recently started reading his meter. He believed that he would in the future be charged in accordance with the meter readings.
20. He was aware that the management agents were saying that they had not charged by meter readings in the past because there had 5 apartments that did not have meters fitted. The Applicant pointed out that there had been an excessive delay in fitting those last few apartments' water meters. This delay was in the face of residents meetings with management officials in which it was made clear on numerous occasions that the residents all wanted their water use to be metered.
21. The Applicant was confused as to exactly who the freeholder Landlords were of this complex. This issue was raised in the application. This confusion was made worse by the content of the Respondents evidence bundle that suggested that Freehold Managers (Nominees) Limited were in fact the Landlords and not the Respondents. This issue was again raised in the Applicants, "Comments" dated 28/9/12.
22. At a late stage in the proceedings and after both parties had served their statement of case the Applicant sought to raise an issue in relation to electricity costs.
23. The Applicant asked that the Tribunal make an order preventing the Respondent from recovering his costs in responding to this application because his apartment had a water meter fitted to it in 2006 and the management agent was in the wrong by failing to read it.

THE RESPONDENT

24. The Respondent submitted that the water usage of this flat could properly be charged as a service charge under the terms of the lease and that the charges demanded were reasonable.
25. The water was provided to the complex by Anglian Water who were responsible for the bulk water meters. The complex then had its own pipes to each individual apartment most of which had been metered from the start. The meters had not been read because the apartments were not all metered. The management agents had therefore decided to charge for the supply of water by dividing the cost between the apartments.
26. The Respondent dealt with the amounts demanded by way of service charges for the provision of water to the Applicant in a "Reply" dated 21/9/2012 in which the Respondent stated that the total figure charged to the Applicant over the period in question was £1067.74. In relation to the sum at issue between the parties, an invoice in the Respondents bundle of evidence dated 22/12/2011 appeared to be in general agreement with the Applicant.
27. As from 11/1/2012 the last few water meters had been fitted and all water meters across the complex were now being read by the management agents every quarter. The water meter at this apartment had been read since the beginning of 2011.
28. The Respondent dealt with the issue as to who was the Landlord in the "Reply" dated 21/9/12, paragraph 2, stating, "It is not clear what point the Applicant is making in relation to the name of the landlord. The respondent is the Management Company, who instruct the Residential Management Group to act as their management agents. The Respondent is named as the Management Company in the Lease."
29. The Respondents evidence bundle contained the lease, various Land Registry documents, service charge demands and accounts.

THE DELIBERATIONS

30. The Tribunal first considered the fact that the Chairperson of the Tribunal had received that morning very late evidence from the Respondents by way of a document dated 19/10/2012. The Tribunal decided that it would have been impossible for the Applicant and his representative to have received and considered this document, let alone reply to it. The Tribunal excluded the document from any further consideration.
31. The Tribunal then considered the issue raised for the first time by the Applicant in a document entitled, "Applicants Comments on the Respondents Case...". This document raised for the first time an issue in relation to electricity costs that did not correspond to the budget of R. M. G. This had not been included in the application or dealt with in statements of case of either party and as such the Tribunal decided that the issues to be decided in this case would be limited to the issues raised in the application.

32. The Tribunal then considered the issue as to who was the Landlord in this case? This is an issue that would not normally have to be addressed by the Tribunal because the identity of the Landlord is not usually an issue. The Tribunal found the stance of the Respondent as described in paragraph 28 above to be very unhelpful.
33. The starting point for the Tribunal's deliberations on this issue was the lease of the property to the Applicant. The lease dated 27/10/2006 stated that the Landlord at that date was Allison Homes Eastern Limited, Holland Place, Wardentree Park, Pinchbeck, Spalding, Lincolnshire, PE11 3ZN. Anchor Quay Management Company Limited of the same address were recorded as being an "other party" and described as being the management company.
34. There were various clauses that permitted the management company to act as if it were the Landlord, but the separation of Landlord and Management Company was clear. The Tribunal decided that as of 27/10/2006 the Landlord was Allison Homes Eastern Limited.
35. The next document to consider was part of the Applicants bundle of evidence, a letter dated 8/2/2008 from Kier Homes Northern Limited, 4 Alpha Court, Kingsley Road, Lincoln, LN6 3TA. The first paragraph of that letter reads, "You may not be aware that, from 1/1/2008 the development you live on has been transferred to the management team of Kier Homes Northern, a sister company of Allison Homes." The letter goes on to refer to a re-drawing of boundaries between 5 companies.
36. The Tribunal found this to be a very confusing letter. It spoke about management changing hands. It did not use the word Landlord at all. However, it suggested that Allison Homes were now nothing to do with the property. The Tribunal concluded that this was a very unhelpful document to send to the Applicant.
37. The Tribunal had been provided with copies of the Land Registry Title Documents and noted that there was nothing that indicated that the freehold had been transferred to a new owner on 1/1/2008. The Tribunal therefore decided that whatever that letter meant to convey to the Applicant, the Landlord remained Allison Homes Eastern Limited.
38. The Tribunal then considered the Land Registry Title Documents.
39. These documents established that as at 14/6/2010 Anchor Quay Management Company Limited, Tempsford Hall, Sandy, Bedfordshire, SG19 2BD, acquired title absolute. There were no changes of ownership between the commencement of the lease and this date. Therefore as at that date Anchor Quay Management Company became the Landlord.
40. Further on 3/4/2012 Freehold Managers (Nominees) Limited, Mount Manor House, 16 The Mount, Guildford, Surrey, GU2 4HS acquired title absolute so as of that date they became the Landlord.

41. The Tribunal then considered the terms of section 47 of the Landlord and Tenant Act 1987 that requires that the Landlords name and address be contained within any demand for payment of service charges. Failure to include that information resulting in the service charge demanded as not being due for payment until such time as the information is furnished by the landlord by notice to the tenant.
42. The service charge demands were included in the Respondents bundle at exhibit F.
43. The Tribunal went through each service charge demand to see if the name and address of the Landlord had been put upon those demands.
44. Service charge demands from 2/11/2006 to and including 3/3/2009. They make no reference to the word landlord at all. There is a reference to the Respondent Management Company, but their address is not given. The only address given is that of CPM Asset Management Ltd, at RMG House. All of these demands are clearly made in breach of section 47.
45. Service charge demands from 26/3/2010 to and including 27/7/2012 took on a slightly different format. They make no reference to the word landlord at all. They do make reference to the Respondents, but not as landlord. The only address given is the R. M. G. address. All of these demands are clearly made in breach of section 47.
46. The Tribunal then went on to consider the water charges irrespective of section 47.
47. The Tribunal considered the whole of the lease to see if there was a term that clearly dealt with the cost of water provided. There is such a term contained in schedule 5 at clause 5-7.
48. The Tribunal reminded itself that water was supplied to bulk water meters by Anglian Water. Thereafter it was supplied to individual apartments by the Landlord. The Landlord then became the supplier of the water to individual apartments. The clause could have no other meaning because Anglian Water have no interest in what happens to the water once it has passed the bulk water meters, it is at that point that Anglian Water meters the water and calculates their bill to be sent to the Landlord. Read in that way clause 5-7 requires the Applicant to pay for water supplied to him by the Landlord.
49. That being case it is perfectly reasonable for that water supply to be part of the services charges demand. Schedule 7, clause 7-3.17 provides for the Landlord recover as a service charge the cost of "managing the buildings, performing the services, performing the Landlord's other obligations under the lease..." This is both an obligation and service that the Landlord is required to provide. Clause 7-3.18 deals with charges for water.
50. The Tribunal then considered how that water charge should be calculated. The Applicant had his water meter fitted in 2006, as did most of the other apartments. There was no point in this being done if they were not going to be read. The Applicant wants pay water charges based upon his use of water.

51. It is common ground that only the Landlord or his management agent could arrange for the meter to be read. The Applicants meter has been read since the beginning of 2011. Meters throughout the whole of the complex have been read since 11/1/2012. R. M. G. management agents have been taking those readings.
52. The service charge demands have not been calculated based upon meter readings simply because not every apartment had meters fitted. That cannot possibly be the fault of this Applicant. The Tribunal noted that fitting these meters was a fairly straightforward matter, inserting them into a pipe in a wall.
53. The Respondent seeks to charge the Applicant a 0.87% flat charge on the whole of the water usage of the complex. The Tribunal decided that the approach of the management agents is unreasonable. The Applicants water meter should have been read from the outset and he should then have been billed accordingly.
54. The Tribunal decided that the only way to rectify this fault was to use the meter readings that the management agent has now taken since the beginning of 2011. As such the Landlord or his agent could easily bill the Applicant for the water he has used since the meter was read. Prior to that The Landlord should estimate the Applicants annual water consumption based on those readings. The management agent could then easily bill the Applicant for his estimated use of water, rather than a flat percentage of the use of the whole complex.
55. The Applicant has raised the matter of section 20c of the Landlord and Tenant Act 1925. The Tribunal noted that in its deliberations it has found that the service charge demands are in breach of section 47 of the Landlord and Tenant act 1987. Further, that those demands are calculated in an unreasonable and unfair manner.

THE TRIBUNALS DECISION

56. The service charges in so far as they relate to water for the years 2006 to 2011 were potentially payable on the dates that they were demanded, but are not due for payment because the demands for payment do not comply with section 47 of the Landlord and Tenant Act 1987. As a result water charges as they form part of the service charges are not payable.
57. If the demands had been both due and payable the Tribunal decides that they are unfair and unreasonable, because they have not been calculated based on the readings that the management agents already have to calculate the cost of actual use of water and estimated usage of water.
58. The only way to make the charges for the use of water by the Applicant fair and reasonable is to recalculate them as described in paragraph 54 of this decision.
59. **Section 20c of the Landlord and Tenant Act 1985.** The Applicant having raised this matter, the Tribunal decides that it is just and equitable to make an order that the Respondents costs incurred in connection with these proceedings are not to be

considered as a relevant cost to be taken into account in determining the amount of service charges payable.

Mr. C. P. Tonge. LLB. BA.

Chairperson.