RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL &
LEASEHOLD VALUATION TRIBUNAL

Case No: CHI/00HP/LAM/2009/0007
In the matter of an application under Section 24 of the Landlord & Tenant Act 1987 (as amended) and under Section 20C of the Landlord and Tenant Act 1985 (as amended)
And in the matter of Cedar Grange, 22 Lindsay Road, Poole, Dorset BH13 6BD

Between:

Mr. John Ewin Applicant

and

Cedar Grange (Poole) Management Company Limited 1st Respondent

and

Mrs. J M Davies 2nd Respondent

Order for the appointment of a manager and receiver of the Property at Cedar Grange, 22 Lindsay Road, Poole, Dorset, BH13 6BD

Upon hearing the Applicant in person and a representative of the 1st Respondent and the 2nd Respondent in person

The Leasehold Valuation Tribunal orders as follows:

1. That Aileen Lacey-Payne BA AIRPM of Napier Management Services Ltd, Elizabeth House, Unit 13 Fordingbridge Business Park, Ashford Road, Fordingbridge, Hampshire SP6 1BZ ("the Manager") be appointed manager and receiver of the Property with effect from 1 January 2010.
2. That she shall manage the Property in accordance with:
   a. The respective obligations of the landlord and the lessees under the various leases (as amended by deeds of variation) by which the flats at the Property are demised and in particular, but without prejudice to the generality of the foregoing, with regard to the obligations to maintain, repair, decorate and insure the Property.
   b. The duties of a manager set out in the Service Charge Residential Management Code ("2nd Edition") published by the Royal Institution of Chartered Surveyors ("the Code") approved by the Secretary of State for England under the terms of Section

87 of the Leasehold Reform, Housing and Urban Development Act 1993.

3. That she shall receive all sums whether by way of ground rent, insurance premiums, payment of service charges or otherwise arising under the said leases. The 1st Respondent is to transfer to her any sums standing to the credit of the lessees' service charge accounts on 1 January 2010 except for any sums required to pay outstanding liabilities of the 1st Respondent which are properly to be charged to the service charge account.

4. That she shall apply the sums so received by her (other than those representing her fees hereby specified) in the performance of the landlord's covenants contained in the said leases.

5. That she shall make arrangements with the present insurers of the Property to make to her any payments due under the insurance policy presently effected by the 1st Respondent.

6. That she shall be entitled to the following remuneration (which for the avoidance of doubt shall be recoverable as part of the said service charges in accordance with Schedule 5 of the said leases) namely:
   a. A basic annual fee of £140.00 per unit for performing the duties set out in paragraph 2.4 of the Code; and
   b. An additional hourly charge of £47 for work properly undertaken by her which is not included within paragraph 2.4 of the Code.

7. Value added tax shall be payable in addition to the remuneration mentioned in the preceding paragraph, if appropriate.

8. This order shall remain in force until 24 March 2012 unless before that date it is varied or revoked by further order of the Tribunal. The Applicant, the Respondents and the Manager shall each have permission to apply to the Tribunal for further directions.

9. That, pursuant to Section 20C of the Landlord and Tenant Act 1985 (as amended,) all costs incurred by the Respondents in connection with this application are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicant.

Dated 2 December 2009

.....

Mr. J G Orme
Chairman

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And in the matter of Cedar Grange, 22 Lindsay Road, Poole, Dorset, BH13 6BD

Between:

Mr. John Ewin — Applicant

and

Cedar Grange (Poole) Management Company Limited — 1st Respondent

and

Mrs. J M Davies — 2nd Respondent

Date of application: 24 March 2009
Date of hearing: 17 September and 9 November 2009
Members of the Tribunal: Mr. J G Orme (Lawyer chairman)
Mr. S Hodges FRICS (Chartered Surveyor member)
Mr. M R Jenkinson (Lay member)
Date of decision: 2 December 2009

Reasons for the order

Background

1. Cedar Grange, 22 Lindsay Road, Poole, Dorset ("the Property") is a purpose built block of flats. It was built in about 1975. The flats have been sold on long leases. The Applicant, Mr. John Ewin, is the owner of the lease of flat 17 on the 4th floor.

2. The freehold of the Property is vested in the 1st Respondent, Cedar Grange (Poole) Management Company Limited ("the Company"). As freeholder, the Company owes certain obligations to the leaseholders under the terms of their leases. The leaseholders of the flats in the Property are all members of the Company. The 2nd Respondent is the leasehold owner of flat 4.

3. On 26 September 2008, the Applicant served on the Company a notice dated 25 September 2008 under Section 22 of the Landlord and Tenant Act 1987 (as amended) ("the Act"), setting out the grounds on which he intended to apply for an order under Section 24 of the Act and giving the Company a period of 2 months in which to remedy those

matters referred to in the notice which were capable of being remedied. The notice referred to a large number of matters and was 17 pages long.

4. By an application dated 24 March 2009, the Applicant applied to the Tribunal under Section 24 of the Act for an order appointing a manager to manage the Property. The Applicant nominated Napier Management Services as manager. The Applicant relied on the matters set out in his Section 22 notice as the grounds for the application. In particular, the Applicant alleged that:
   a. the Company was in breach of obligations owed to the Applicant under his lease (Section 24(2)(a));
   b. that the Company had made or proposed unreasonable service charges (Section 24(2)(ab));
   c. that the Company had failed to comply with a code of practice approved by the Secretary of State under section 87 of the Leasehold Reform Housing and Urban Development Act 1993 (Section 24(2)(ac)); and
   d. that other circumstances exist which make it just and convenient to appoint a manager (Section 24(2)(b)).

   In addition, the Applicant asked the Tribunal to make an order under Section 20C of the Landlord and Tenant Act 1985 ("the 1985 Act").

5. On 17 April 2009 the Tribunal issued directions providing for the Applicant and the Company to exchange written statements of case and for the Applicant to serve a copy of the directions on a partner of Napier Management Services, inviting her to provide details of her qualifications to act as manager.

6. On 29 May 2009 Mrs. Aileen Lacey-Paine BA AIRPM, a director of Napier Management Services Ltd wrote to the Tribunal giving details of her qualifications and confirming that she was willing to accept an appointment as manager.

7. A copy of the application was served on each of the leasehold owners in the Property. Mrs. J M Davies applied to be joined as a Respondent and she was joined by order of the Tribunal dated 8 June 2009.

8. The application was listed for hearing on 13 July 2009. On 26 June 2009, the Applicant applied to the Tribunal for the hearing date to be adjourned as he had not been able to prepare a statement of case. The Company consented to the adjournment. On 6 July 2009, the Tribunal made an order adjourning the hearing and extending the time for the parties to exchange statements of case. Both the Applicant and the Company have subsequently exchanged written statements of case.

The inspection

9. The Tribunal inspected the Property on 17 September 2009 in the presence of the Applicant, Mr. John Defty, who is the chairman of the Company and one of the leasehold owners of flat 3 and Mrs. Suzanne

Waller, who is the secretary of the Company and one of the leasehold owners of flat 10.

10. The Property is a purpose built block of flats arranged on 9 floors. There are 3 flats on each of 8 floors (ground to 7th floors) and a penthouse flat above making a total of 25 flats. The exterior is clad with bricks with some concrete panels. The Property is set in its own grounds.

11. The Tribunal inspected the communal entrance lobby. It noted that it was in reasonable decorative order although it had a dated appearance. One light was not working in the lobby.

12. The Property is serviced by 2 lifts and 2 staircases. The east lift and staircase serves one flat on each floor whilst the west lift and staircase serves 2 flats on each floor. The Tribunal inspected the lifts and noted that they were functioning and in reasonable decorative order but, again, appeared dated.

13. In the passageway outside the door to the Applicant's flat on the 4th floor, the Tribunal noted the carpet which was of a different quality and style to that on the communal stairs, the lighting which the Applicant had altered, the lift door and storage cupboards which he had painted and the window in the passageway which he had repaired and painted.

14. Inside the Applicant's flat, the Applicant showed the Tribunal the discoloured water and particles which came out of his bathroom taps, the service pipes in his hallway, the location of his hot water cylinder in the airing cupboard with an expansion tank above and the location of the gas-fired boiler with internal flue in the kitchen. On his balcony, the Applicant pointed out some staining on a small area of tiles in the centre of the floor and signs of cracking and a small patch of moss on the underside of the balcony above. It was also possible to inspect the cracks on the outside of the front wall of the balcony which had been filled and then painted.

15. From the balcony, it was possible to look down on the flat roofs of the garage blocks. The Tribunal noted some leaves and pooling of water on the roofs.

16. The Tribunal inspected the water tanks on the roof of the Property. There is one tank above the east lift motor room and 2 above the west lift motor room. The tanks are of made of galvanised metal. There are no bunds beneath the tanks to catch escaping water before it enters the lift motor rooms. It was possible to see some deposits inside one tank. Access to the west tank room and lift motor room was by an external ladder up the outside of the penthouse and across the roof. There were no safety rails or other means of preventing a fall from the ladder or the penthouse roof.

17. The Tribunal noted that, as set out in the Hoare Lea report which is referred to later, cold water is supplied from the town main via an outhouse booster pump plant room situated in the gardens in front of the Property. Fresh potable water is supplied to the kitchens of the flats only. A direct main supply is taken to feed potable water to the first 4 floors. A second fresh water connection is taken via a booster pump to feed potable water to the remaining floors and to the water storage tanks on the roof. Pipes from the storage tanks supply water to the hot and cold water systems in each flat. There are 2 sets of pipe-work, one rising to the east tank and one to the west tanks.

18. Externally, the Tribunal noted some minor staining on the brickwork at the ground and first floor levels at the front of the Property. The Applicant also pointed out the positioning of exhaust flues from "combi" boilers which have been installed beside the kitchen windows in some flats. At the rear of the Property, the Tribunal noted the cracks in the concrete up-stands of the balconies which have been filled and painted. The filler had shrunk, resulting in an unsightly appearance.

19. The gardens and pathways in the grounds of the Property appeared to be well maintained. The lawn at the rear was in reasonable condition. The Tribunal was informed that it had been infected by chafer grubs but had been treated. The Applicant pointed out where holes had been dug in the drive to locate a leak in the water main and where water pooled in the drive at the front of the Property. The Applicant pointed out the drain between the 2 garage blocks which he said was subject to flooding. He also pointed out some areas of mud and moss.

The Law

20. Part II of the Act provides a mechanism enabling a tenant of a flat who is dissatisfied with the standard of management of the building which contains the flat, to apply for a manager to be appointed to manage the building. Section 21(1) of the Act gives the tenant of a flat contained in premises containing 2 or more flats, a right, subject to certain exceptions and conditions, to apply to a leasehold valuation tribunal under Section 24 for an order appointing a manager to act in relation to the premises.

21. Before making an application under Section 24, the tenant must serve on his landlord and any other person responsible for managing the property, a notice under Section 22 warning that he intends to make such an application; specifying the grounds on which he intends to do so and the matters on which he intends to rely to establish those grounds; and giving a reasonable time for those items which are capable of being remedied to be remedied.

22. Section 24 of the Act provides:
(1) A leasehold valuation tribunal may, on an application for an order under this section, by order (whether interlocutory or final) appoint a manager to carry out in relation to any premises to which this Part applies-

(a) such functions in connection with the management of the premises, or
(b) such functions of a receiver,
or both, as the tribunal thinks fit.

(2) A leasehold valuation tribunal may only make an order under this section in the following circumstances, namely
(a) where the tribunal is satisfied
(i) that any relevant person either is in breach of any obligation owed by him to the tenant under his tenancy and relating to the management of the premises in question or any part of them or (in the case of an obligation dependent on notice) would be in breach of any such obligation but for the fact that it has not been reasonably practicable for the tenant to give him the appropriate notice, and
(ii) ....
(iii) that it is just and convenient to make the order in all the circumstances of the case;
(ab) where the tribunal is satisfied -
(i) that unreasonable service charges have been made, or are proposed or likely to be made, and
(ii) that it is just and convenient to make the order in all the circumstances of the case;
(aba)
(abb)
(ac) where the tribunal is satisfied -
(i) that any relevant person has failed to comply with any relevant provision of a code of practice approved by the Secretary of State under Section 87 of the Leasehold Reform, Housing and Urban Development Act 1993 (codes of management practice), and
(ii) that it is just and convenient to make the order in all the circumstances of the case; or
(b) where the tribunal is satisfied that other circumstances exist which make it just and convenient for the order to be made.

(2ZA) In this section "relevant person" means a person -
(a) on whom a notice has been served under Section 22, or
(b) in the case of whom the requirement to serve a notice under that section has been dispensed with by an order under subsection (3) of that section.
(2A) ....
(2B) ....

(3) The premises in respect of which an order is made under this section may, if the tribunal thinks fit, be either more or less extensive than the premises specified in the application on which the order is made.

(4) An order under this section may make provision with respect to-
(a) such matters relating to the exercise by the manager of his functions under the order, and

(b) such incidental or ancillary matters,
as the tribunal thinks fit; and, on any subsequent application made for the purpose by the manager, the tribunal may give him directions with respect to any such matters.

(5) Without prejudice to the generality of subsection (4), an order under this section may provide -
(a) for rights and liabilities arising under contracts to which the manager is not a party to become rights and liabilities of the manager;
(b) for the manager to be entitled to prosecute claims in respect of causes of action (whether contractual or tortious) accruing before or after the date of his appointment;
(c) for remuneration to be paid to the manager by any relevant person, or by the tenants of the premises in respect of which the order is made or by all or any of those persons;
(d) for the manager's functions to be exercisable by him (subject to subsection (9)) either during a specified period or without limit of time.

(6) Any such order may be granted subject to such conditions as the tribunal thinks fit, and in particular its operation may be suspended on terms fixed by the tribunal.

(11) References in this part to the management of any premises include references to the repair, maintenance, improvement or insurance of those premises.

Subsections 7 to 10 are not relevant to this application.

23. The "Service Charge Residential Management Code" (2nd Edition) published by the Royal Institution of Chartered Surveyors ("the Code") has been approved by the Secretary of State for England under the terms of Section 87 of the Leasehold Reform, Housing and Urban Development Act 1993.

24. Section 20C(1) of the 1985 Act provides that *"a tenant may make an application for an order that all or any costs incurred, or to be incurred, by the landlord in connection with proceedings before a ... leasehold valuation tribunal ... 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."* Subsection 20C(3) provides that *"the court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances."*

The Lease

25. The Tribunal was provided with a copy of the lease of flat 14. The lease is dated 27 November 1972 and was made between Dilley Construction Company Limited as lessor and Ronald Stuart Montgomerie and Doris Evelyn Montgomerie as lessees. The lease was varied by a deed of variation. The Tribunal was provided with a

copy of the deed of variation relating to flat 10 which is dated 12 December 1997 and which was made between the then leasehold owner of flat 10 and the Company which, by that time, was the freehold owner of the Property. Any further reference to the lease is to the lease as varied by the deed of variation. There was no suggestion by any party that any of the flats were let on terms different to those before the Tribunal.

26. The lease is for a term of 999 years from 29 September 1971 at a rent of a peppercorn. The lease was of the flat and a garage. The lease includes *"the free and uninterrupted passage and running of water ... from and to the demised premises through the ... watercourses ... pipes and wires which now are or may at any time hereafter be in or under or passing through the Property or any part thereof."*

27. The lease contains a covenant by the lessee to keep the flat in good and tenantable repair. It also contains a covenant at clause 3(iii) to pay a service charge. The service charge is calculated as 4% of the total cost of the Company performing its obligations under the lease together with an additional sum as a reserve fund. At clause 3(v) the lessee covenants *"To permit the lessor ... to enter into and upon the demised premises or any part thereof for the following purposes namely:- (a) to repair any part of the Property or the adjoining or contiguous premises and to repair maintain ... all ... pipes ... cisterns wires party structures and other conveniences belonging to or serving or used for the same ..."*

28. The lease contains a covenant by the Company to observe and perform the obligations set out in the 4th schedule. The 4th schedule, which was added by the deed of variation, includes the following obligations:
"1. Well and substantially to repair maintain paint pave clean amend redecorate and renew (a) the exterior and the structure (including in particular but without prejudice to the generality of the foregoing the roofs walls floors structure of the balconies foundations gutters and downpipes) of the Building other than and except any parts thereof comprised in this demise or in the demise of any of the other flats in the Building (b) the gas and water pipes electric cables cisterns tanks sewers drains pipes radiators ducts flues conduits wires meters masts aerials and hot water and central heating installations (if any) in under and upon the Property and the Building (except in so far as the same or any of them solely serve and are incorporated solely within the demised premises or solely serving and are incorporated solely within any other part or parts of the Property demised to the lessees thereof) and (c) the steps approaches entrance hall lifts staircases landings and other parts (including all rails and all doors and windows and the frames thereof except the windows and window frames of the demised premises) of the Building (together with the fixtures fittings floor coverings machinery and apparatus for the time being thereon or therein) the use and enjoyment of which are common to the lessees of

the flats in the Building or to some of them.
2. To keep the paths driveways parking spaces and visitors' parking spaces in good and substantial repair and condition and (if appropriate) reasonably lit and such parts of the Property as consists of garden grounds in a neat and orderly state of cultivation.
4. So far as practicable to keep clean and reasonably lit the steps approaches entrance halls passage landings and staircases and other parts of the Building the use and enjoyment of which are common to the lessees of the flats in the Building."
There are other obligations to paint the exterior, keep the boundaries in repair, to insure the Property and to keep books of account.

The hearing and the issues

29. The hearing took place at the Royal Bath Hotel, Bournemouth on 17 September and 9 November 2009. The Applicant appeared in person. The Company was represented by Mr. Defty and Mrs. Waller together with Mr. Strong, Head of Residential Management at Rebbeck Brothers, the Chartered Surveyors employed by the Company as managing agents. The 2nd Respondent appeared in person.

30. During the first day of the hearing, the Tribunal identified that there was a legal issue as to whether the manner in which the Company proposed to carry out works to the water supply system came within the ambit of work contemplated by paragraph 1 of the 4th schedule to the lease and therefore whether the cost of those works would be recoverable as service charge under the terms of the lease. The Tribunal advised the parties to seek advice on that issue during the adjournment.

31. At the start of the second day of the hearing, the Applicant applied for a further adjournment on the basis that he had not had sufficient time in which to obtain advice. He was financially unable to employ a solicitor, the Citizen's Advice Bureau had been unable to help him and he had sought assistance from LEASE which was not able to provide advice for a number of weeks. The Tribunal refused that application on the basis that the Applicant had had sufficient time during the adjournment to seek advice, there was a need for certainty by concluding the application and further delay would prejudice the Respondents.

32. The issues that arose for consideration by the Tribunal and which were addressed by the parties at the hearing were:
    a. Is the Tribunal satisfied that the 1st Respondent is in breach of any obligation owed to the Applicant under his tenancy relating to the management of the Property? There were a number of allegations to consider under this heading, namely:
        i. Failure to repair or replace the water supply pipes and tanks;
        ii. Wasted attempts to repair the water main at the front of the Property;
        iii. The poor state of the lobby;
        iv. Failure to install entrance gates;

v. Failure to maintain the lifts;
vi. Failure to clean brick work at the front of the Property;
vii. Failure to keep the lawn, paths and drives in good order;
viii. Failure to light landings and corridors;
ix. Failure to repair and decorate windows and woodwork;
x. Failure to clean moss and debris from external windows;
xi. Failure to keep the garage roofs clean;
xii. Failure to properly repair cracks in balcony up-stands;
xiii. Failure to prepare a management plan;
xiv. Failure to follow the constitution of the Company;

b. Is the Tribunal satisfied that unreasonable service charges have been made or are proposed by the Company?
c. Is the Tribunal satisfied that the 1st Respondent has failed to comply with any relevant provision of the Code?
d. In the case of (a), (b) and (c) above, is the Tribunal satisfied that it is just and convenient to make an order in all the circumstances of the case?
e. Are there other circumstances which make it just and convenient for an order to be made under Section 24(2)(b)?
f. If the Tribunal is minded to appoint a manager,
   i. Is the manager nominated by the Applicant suitable?
   ii. What functions and powers should she have and for what period should she be appointed?
g. Is it appropriate to make an order under Section 20C of the 1985 Act?

33. The Tribunal has heard and read a substantial amount of evidence during the course of the hearing, much of it being muddled and not set out in a clear order. Much of it was not relevant to the issues and much of it was based on the parties' recollections and unsupported by documentary evidence. What is set out below is a summary of the evidence relevant to the issues.

The Applicant's Evidence

34. The Applicant purchased flat 17 in 1999. Since that time he has raised a number of issues relating to the management of the Property, the most important of which relates to the water supply being contaminated. He raised these issues directly with Mr. Defty and other directors of the Company as well as with Foxes who managed the Property before Rebbecks were appointed. He does not consider that he has received proper responses to his complaints. As a result, the Applicant has become extremely frustrated with the state of management of the Property. That frustration is borne out by the length and content of his written submissions to the Tribunal.

35. **Water supply pipes and tanks:** Shortly after moving to the Property, the Applicant found that the water coming from the taps in his bathroom and kitchen was discoloured and that there were metal shards in it. He was told by a previous owner of flat 14 (Mr. Matthews deceased) that the water problems had started in June 1997. Mr.

Matthews provided him with a copy of a water quality report dated 7 October 1997 prepared by Bournemouth & West Hampshire Water ("Bournemouth Water"). The Applicant produced a copy of that report and a subsequent letter dated 20 October 1997. The report records that the water contained particles from the iron and copper pipes as well as fungal biomass. The report states *"If the tanks are in poor condition then there could be a health risk from anyone drinking this water by mistake or possibly from legionella."* The Applicant says that he notified Mr. P George, a director of the Company, on 20 March 2000 about the state of his water.

36. At this stage it is helpful to set out what is shown by the documents produced by the Applicant and the Company in relation to the water supply:

25.02.04	The cold water storage tanks were cleaned by Pure-Well Water Services.
23.08.04	A letter from Aquacare (a division of Bournemouth Water) provided an estimate of £28,297.68 for replacing the cold water distribution system including the rising mains and the down pipes but excluding the tanks.
07.10.04	The minutes of the Company's AGM record that a complaint had been received about the water quality at the Property. The directors had arranged for Bournemouth Water to test the water. The mains water had been found to be fine but the tank water contained a high concentration of iron and zinc. The directors believed that ultimately the pipe work will break down and they were commissioning a further survey.
01.03.06	Hoare Lea reported to the Company that the discolouration of the water and the presence of particles was due to corrosion in the system which was beyond its typical economic life. The corrosion had been accelerated by the replacement in most flats of the original galvanized steel hot water storage tanks with copper tanks. Hoare Lea were unable to identify which parts of the pipe work were corroded without cutting the pipes but they thought that the corrosion was worse in the under-floor pipe work serving individual flats. They identified corrosion in the tanks. They recommended replacement of the tanks and pipe work with corrosion resistant materials.
15.06.06	The minutes of a meeting of directors record that Mrs. Waller was to obtain estimates for inspecting and replacing the common risers, down pipes and tanks.

18.07.06	The minutes of a meeting of directors record that Mrs. Waller had obtained an estimate from Bourne Gas and it was resolved to proceed with option 3 which was to provide potable water to all taps in the building by removing the roof tanks.
19.09.06	The minutes of the Company's AGM record that Mrs. Waller had obtained an estimate from Bourne Gas for replacing the roof tanks and down service pipes at £18,400 including VAT. The chairman reported difficulty in obtaining information from other potential contractors.
12.12.07	Mabey Francis and Partners ("MF") reported to the Company having been instructed *"to assess the feasibility and cost of an alternative arrangement whereby the cold water storage tanks are removed and the cold water distribution system is pressurised"*. They provided a comparison of the advantages of a pressurised system with the existing system and provided an estimate of the cost of both systems. They concluded that the pressurised option was likely to be less expensive and recommended that it be given favourable consideration. They pointed out that a pressurised system would require the hot water system in each flat to be replaced by a pressurised system.
28.02.08	The Company held an extraordinary general meeting which was attended by representatives of 20 flats including the Applicant. The meeting was held to discuss the possibility of installing a pressurised water system. The Applicant was recorded as preferring replacement of the existing system. It was recorded that the Company may need to take legal advice as to whether a pressurised system could be imposed on all lessees.
01.07.08	Rebbecks were appointed by the Company as managing agents in place of Foxes.
28.08.08	The minutes of the Company's AGM show that it was attended by representatives from 18 flats but not the Applicant. Rebbecks circulated a briefing note about the continuing water problems. Concern was expressed at the continuing delay in dealing with the matter and it was agreed to instruct MF to review the existing reports and come up with a recommended solution with cost estimates.
23.09.08	MF declined the instructions.

09.10.08 Rebbecks wrote to all leaseholders giving notice of intention to carry out works pursuant to Section 20 of the 1985 Act. This was the first stage of the consultation procedure.

19.12.08 Ramboll Whitbybird ("RM") reported following instructions to assess the installation of the landlord's cold water systems and to report on any necessary remedial work. They recommended the complete replacement of the existing landlord's cold water system (a gravity fed system with roof tanks) with a new pressurised system with cold water storage tanks at ground level, a larger capacity booster pump and new plastic internal pipes to supply water at pressure to individual flats. They advised against a like for like replacement of the existing system. Their proposal involved converting the installations in those flats still with a gravity fed system to an unvented system by installing a pressure limiting valve on the cold feed to the hot water system, a pressure and temperature relief valve on the hot water cylinder and an expansion vessel.

26.01.09 Rebbecks sent to each of the leaseholders a copy of the executive summary of the RW report. They said that the directors had agreed to obtain a specification of works and an estimate from Aquacare. They supplied a timetable.

16.02.09 Rebbecks wrote to the leaseholders informing them that following discussions with Aquacare, they had decided to obtain a specification from RW.

20.03.09 RW produced a specification for the works which they had recommended.

29.04.09 RM provided a tender evaluation report. They had invited tenders from 5 contractors. Only 2 contractors had submitted tenders. They recommended acceptance of the tender from Southern Electric Contracting Ltd ("SEC") in the sum of £33,932.00 excluding VAT. The tender from SEC included additional costs for providing new meters to each flat (£152.80 per flat), and either option 1 – replacing existing hot water cylinders with new unvented cylinders to each flat (£1053.00 per flat); or option 2 – providing a local break tank and a shower booster pump to each flat (£825.00 per flat).

13.05.09 Rebbecks wrote to all leaseholders giving notice of intention to carry out works to the water system. This was the second stage of the Section 20 consultation procedure. The total anticipated cost of the works

	including works within the flats, VAT, contract administration and a contingency was £60,094.
26.06.09	Rebbecks wrote to all leaseholders informing them that no observations had been received as a result of the consultation process and enclosing an invoice for each leaseholder's contribution to the cost of the works amounting to £1,400.
04.09.09	The minutes of the Company's AGM show that the works were being delayed pending the outcome of this application. It was hoped to proceed with the works once the application had been resolved.

37. The Applicant says that he has been complaining about the water quality since March 2000 without any satisfactory response. He had to visit his doctor in July 2000 because he had problems with pieces of metal in his eyes, the metal coming from the water. He was in pain for 6 weeks. He had a recurrence of the eye problem later. Due to rust in the water, he rarely uses his bath and he does not use the shower as often as he would wish. The carpets in his kitchen and bathroom have been stained by rust in the water. Work to replace a shower was delayed whilst he waited to find out what work the Company proposed to carry out. He says that the continuing problems with the water and the worry of what work might have to be done have stopped him carrying out modernisation of his flat. He says that the failure to resolve the problem has reduced the value of the flats and made it difficult to sell.

38. He had always wanted the existing system to be replaced on a like for like basis as is recorded in the minutes of the EGM held on 28.02.08. He believes that it is Mr. Defty and some of the other directors who are pushing for a pressurised system because they have already installed unvented hot water systems and "combi" boilers in their flats. He does not want such a system because it will not supply sufficient hot water when he has his family staying with him. He also says that a pressurised system will fail when there is a power cut unless a backup generator is installed. He does not want to go to the expense and trouble of changing the hot water system in his flat to an unvented, pressurised system. He says that there are other leaseholders who do not support a pressurised system.

39. The Applicant says that a pressurised system will be much more expensive than a like for like replacement of the existing system. He relies on the estimates obtained by the Company from Aquacare and Bourne Gas. His own opinion is that it would cost about £35,000 to replace the pipes and tanks on a like for like basis. He says that the Company has wasted about £10,000 on fees for RM when a contractor would have provided a specification free of charge.

40. **Repair of water main in front of Property:** In May 2009, it was discovered that the water main under the drive in front of the Property was leaking. The Applicant says that the contractor employed to repair the leak wasted money by digging 3 large holes to find the leak rather than digging a trench and replacing the complete length of pipe.

41. **The lobby:** The Applicant says that the lobby is old and outdated. He says that the wallpaper is torn by the lift door, dirty and needs replacing. The doors need updating. The lighting, which was replaced recently, is old fashioned. He says that he has lost 2 prospective purchasers as a result of the appearance of the lobby. He complains that in 2003 the Company refused an offer by another resident to pay £3,500 towards refurbishment of the lobby.

42. **Entrance gates:** The Applicant would like the Company to install electronic gates at the entrance to the Property in order to improve security.

43. **The lifts:** The Applicant complains that the lifts frequently break down. He says that second hand parts have been used to repair the lifts. He says that they are small and smelly and poorly lit. He has to spray deodorant in the lift. He accepted that the lighting had improved since his Section 22 notice.

44. **Brickwork:** The Applicant complains that some of the brickwork at the front of the Property at ground and first floor level is stained. He says that the Company has done nothing despite complaints. He says that it could be sandblasted and that it could have been done when the Property was last painted.

45. **Paths and drives:** The Applicant complains that rain water collects in puddles in front of the Property when it rains. He says that the drains and soak-aways are defective. He also complains of moss on the paths and, in particular, around the edge of the car parking area. He says that this should be cleaned on a regular basis. He was at pains to say that the gardener does his best but is too old. He accepts that the directors have tried to clean this with pressure washers.

46. **Landings and corridors:** The Applicant complained that the landings and corridors leading to the flats are inadequately lit. For some time there were bare electric wires hanging down by the lift door. He accepted that this has been rectified since service of his Section 22 notice.

47. **Windows and woodwork:** The Applicant complained that the window by the entrance to the stairs on his floor was rotten at the bottom and needed painting. He repaired and painted the window himself. He also painted the cupboard and lift doors outside his flat. He says that they were in bad condition for 8 years.

48. **External windows:** The Applicant complains that there is moss on the external windows at first floor level at the front of the Property. He says that he pointed it out to the Company years ago and nothing has been done.

49. **Garage roofs:** The Applicant complains that leaves are allowed to collect on the roofs and that moss is allowed to grow. They have to be scraped off with possible damage to the felt covering.

50. **Balcony up-stands:** The Applicant says that this is a major issue which had been outstanding since 2000. Many of the balcony up-stands had cracks in the concrete. The Company arranged for a contractor to fill the cracks and to paint the up-stands in 2006. The filler has now shrunk and the line of the cracks is clearly visible. This detracts from the appearance of the Property. The Applicant also believes that water is still able to penetrate through the cracks potentially causing spalling of the concrete.

51. **Management plan:** The Applicant says that he raised this issue in 2003/04. He has never seen a schedule for exterior painting etc. He says that the Company works on an ad hoc basis, reacting to events. He complains that there is no plan for routine maintenance and that the Company is reluctant to spend money on the Property. As a result of the service of his Section 22 notice, the carpet on the stairs has been replaced and the lights on the stairs and in the lobby have been improved.

52. **Company constitution:** The Applicant's original complaint was that Mr. Defty was the only director and was controlling the Company on his own. Having been shown the memorandum and articles of association, he accepted that there are 5 directors and that a third of them retire each year in rotation.

53. **Service charges:** The Applicant says that he has not challenged the service charge except when he applied to the leasehold valuation tribunal in 2007. The Company had produced a copy of the decision in application no. CHI/00HP/LIS/2007/0028. That decision shows that the Applicant was disputing a demand dated 25 March 2004 for £1,000 on account of service charge as a special levy to carry out certain works. The Applicant says that he was told by Mr. Defty that this special levy was to pay for the replacement of the water system. It is clear from the tribunal's decision in that application that the levy was for a number of other items and that the tribunal found that the service charge was reasonable.

54. The Applicant's main complaint with regard to service charges is that they are too high when compared to other similar properties. He provided details of service charges payable by lessees of other blocks of flats which he said are comparable.

55. **Breach of the code:** The Applicant produced no evidence to show that the Company had acted in breach of the code.

56. **Suitability of nominee manager:** Mrs. Aileen Lacey-Payne attended the hearing to give further evidence to support her written submission to the Tribunal. She is operations manager and director of Napier Management Services Ltd. She has 12 years experience in property management and currently supervises the management of 240 blocks of flats. She complies with the code and provided details of her professional indemnity insurance cover. She gave evidence as to the number of staff at Napier Management Services Ltd and the facilities available in her office.

57. **Section 20C:** The Applicant says that he should have the benefit of an order because he has been forced to bring this application as a result of inactivity by the Company over a number of years.

The Company's evidence

58. **Water supply pipes and tanks:** Mr. Defty said that he had a slight problem with rust in his bath water when he bought his flat in 1999. He thought that he was first aware of the Applicant's complaints in about 2002. Mrs. Waller thought that the problems were discussed at the AGM in 2003. Bournemouth Water was asked to test the water in 2004. A number of contractors inspected and each offered different suggestions. Foxes were unable to help as they did not have sufficient experience. In 2006 the Company decided to seek professional advice leading to the reports from Hoare Lea, MF and RW. Having gone through that process, the Company was now in a position to proceed with the replacement of the system with a pressurised system. Mrs. Waller confirmed that if a manager is not appointed, the Company will proceed with the pressurised system.

59. Mr. Defty accepted that some (but not all) of the directors have installed a pressurised system in their own flats but he said that the reason why the Company had adopted the proposal for a pressurised system throughout was because it is a more modern system which would be an improvement. He relied on the memorandum and articles of association as authority for the proposition that the Company is entitled to carry out improvements. Mr. Defty accepted that the system would be an improvement although he subsequently said that he did not mean that in a legal sense.

60. In response to the Tribunal's enquiry as to whether such a system could be considered to be a charge which was recoverable under service charge, Mr. Strong produced a letter from Harold G Walker, solicitors instructed by the Company in which they submitted that the provisions of Clause 1 of the 4th schedule are drafted so widely as to encompass any or all eventualities. They also submitted that the Company had a right of access to the flats to carry out works to the hot water systems under clause 3(v)(a) of the lease.

61. Mr. Strong said that 24 out of 25 of the leaseholders had agreed to provide access for the work to be carried out. If the Applicant refused access, a break tank could be installed outside his flat.

62. Mr. Defty said that the Company was justified in calling in consultants rather than relying on contractors in view of the contradictory advice which had been received. He disputed the suggestion that RW's fees were too high. They had been paid £2,000 for the report and survey and £4,400 for the specification and tender.

63. Mr. Strong accepted that it was possible to replace like for like. He said that since September he had been working with Aquacare to investigate the cost of doing so and he had been told that the cost was likely to be similar to the cost of a pressurised system. The Applicant put to him in cross examination a copy of an email dated 7 November 2009 from Aquacare to Mr. Strong in which Aquacare set out indicative costs. This showed an approximate cost of £30,669 plus VAT for replacing the underground pipe from the booster pump to the building, replacing the cold water storage tanks and installing drip trays and replacing the pipe work.

64. Mr. Defty said that the Company had kept everyone informed about the Company's proposals. He complained that the Applicant had been going behind the Company's back by approaching residents direct and sowing seeds of confusion.

65. **Repair of water main at front of Property:** Mr. Defty said that Bournemouth Water had warned them that consumption of water at the Property was high. They had employed a surveyor to locate the leak who identified a leak under the foyer. It had been repaired within 28 days.

66. **The lobby:** Mr. Defty said that the state of the lobby had been considered at meetings of the residents. It was accepted that work was needed sometime but it was not a priority. He said that the offer from a resident to contribute to refurbishment of the lobby was turned down following a decision at the AGM on 12 November 2003. Mr. Strong said that there was a provision of £2,500 in the current budget for refurbishment once some electrical work had been completed.

67. **Entrance gates:** This had been considered by the board but had been rejected as it would be very expensive, security fencing would be required along the front boundary to make it secure and it would be necessary to install a gate access system.

68. **The lifts:** Mr. Defty said that the lifts are regularly maintained on a quarterly basis. The only way to stop break downs would be to install new head gear which would cost £12,000 to £15, 000.

69. **Brickwork:** Mr. Defty said that this had been power washed with little success. If it was sand blasted, the bricks would need re-pointing. It was a minor problem which was not a priority.

70. **Paths and drives:** Mr. Defty accepted that there is some dirt around the drains but elsewhere, they are clean. The gardener is assiduous at cleaning leaves and moss. He said that the soak-aways had been rebuilt about 3 years ago. They were now working well. Any flooding now was due to heavier rain than in the past. He accepted that there remained a problem with pooling in the garage area which is due to imperfect falls. The cost of adjusting the falls would be unjustifiable.

71. **Landings and corridors:** Mr. Defty said that the lighting in the common parts had been upgraded to NICEIC standards. There had been an almost complete rewiring at a cost of about £20,000. He accepted that the Applicant had complained about the carpet on the stairs. As a result it had been replaced. He complained that the Applicant had paid the contractor extra to have a different carpet on his landing without reference to the Company. He said that the wires which the Applicant complained about were from a light which had been installed by another resident which was not the responsibility of the Company. They had been removed.

72. **Windows and woodwork:** Mr. Defty was not aware that the Applicant had carried out this work.

73. **External woodwork:** Mr. Defty was not aware of a problem at first floor level. He thought that it had been dealt with during routine external painting.

74. **Garage roofs:** Mr. Defty said that the roofs are cleaned on a regular basis but they have to be careful not to do it too frequently otherwise they will damage the felt. The roofs were recovered about 6 years ago.

75. **Balcony up-stands:** Mr. Defty said that the cracks were filled with a specialist elasticised filler. Unfortunately it has drawn in as it dried. He accepted that it was slightly unsightly but he said that the cracks are watertight. He said that the shrinkage became apparent soon after the painting had been completed and the Company had not gone back to the contractor to remedy the problem.

76. **Management Plan:** Mr. Defty said that the Company had a schedule of works dated 9 October 2007 but with the prospect of considerable expenditure for replacing the water system, they did not have enough money to pay for routine maintenance. He accepted that the Company had been plugging the dyke for a number of years.

77. **Company constitution:** Mr. Defty said that he had personally responsible for changing the Company's articles in 2004 to provide for directors to retire in rotation.

78. **Service charges:** Mr. Defty denied that the special levy was for replacing the water system. He referred to the terms of the tribunal decision. He said that the other properties referred to by the Applicant were not directly comparable. Mr. Strong thought that the service charge was reasonable in view of the age of the Property.

79. **Nominee manager:** The Company accepted that Mrs. Lacey-Paine was a suitable nominee. Mr. Defty said that the Company had considered appointing Napier Management Services in place of Foxes but had chosen Rebbecks as they were Chartered Surveyors.

80. **Section 20C:** Mr. Defty said that if the costs are not paid through the service charge, they will have to be met by the members of the Company.

The 2nd Respondent's evidence

81. The 2nd Respondent did not tender any further evidence or submissions.

Conclusions

82. **Water supply pipes and tanks:** The Tribunal accepts the evidence set out in the letters dated 7 and 20 October 1997. It is clear that there existed a problem with corrosion of the pipes at that time. The Tribunal accepts that both the Applicant and Mr. Defty knew that there was a problem shortly after they purchased their respective flats in 1999. The Tribunal accepts the Applicant's evidence that he notified the Company about the problems with the water supply in March 2000. In any event, Mrs. Waller believes that the Company was aware of the problem by the date of the AGM in 2003 at the latest.

83. Apart from possibly trying to obtain some estimates for solving the problem, the Company appears to have done nothing substantial until it obtained the Hoare Lea report in March 2006. That advised replacement of the pipes and tanks.

84. The Company is responsible for maintaining the water supply pipes in the common areas and the water tanks. It is clear from the Hoare Lea report that the pipes and tanks are corroded. The corrosion is such that it has been causing contaminated water to be supplied to the flats over a long period of time. The Tribunal finds as a fact that the Company has acted in breach of its obligations by failing to rectify the problems with the water supply system since 2000 when it first knew about them.

85. At some time between 1 March 2006 when the Hoare Lea report was delivered and 18 July 2006 when the directors decided to pursue option 3, someone in the Company formed the idea of having a pressurised system. It is not clear how or when that idea was formed. What is clear is that at no time from then until 17 September 2009 did

the Company consider whether that was a proper discharge of its obligations under the leases. The directors thought that a pressurised system would provide an improved water supply to the Property.

86. The Tribunal is satisfied that once the Company decided to investigate the suggestion of installing a pressurised system, it proceeded with that idea without putting to the residents a properly costed alternative of replacing like for like. Mrs. Waller confirmed at the hearing that it is the Company's intention to continue with the installation of a pressurised system if a manager is not appointed.

87. The Applicant put forward many different figures for the comparative costs of the 2 systems. The Tribunal has found it difficult to untangle those figures. The Company says that the approximate cost of the pressurised system is £60,094. As the hearing was drawing to a close, the Tribunal was told that the Company had obtained some figures from Aquacare for replacing the existing system on a like for like basis. The estimated cost is £30,669 plus VAT. The Tribunal was not impressed that those figures were not produced by Mr. Strong but had to be extracted from him in cross-examination. The Tribunal is satisfied that a like for like replacement could be provided at a cost which is comparable with or less than a pressurised system.

88. The Tribunal accepts that the Company is entitled to install a pressurised system if all the leaseholders agree. In those circumstances they would be agreeing to waive the terms of the lease. The Applicant does not agree to the installation of such a system. The Tribunal does know whether there are other leaseholders who might not agree if the options were put to them. Mr. Strong says that 24 of the leaseholders agree but the Tribunal does not know if that is on the basis of proper information. In those circumstances, it is necessary to consider the terms of the leases.

89. Paragraph 1 of the 4th schedule obliges the Company to repair maintain amend and renew the water pipes and tanks excluding those within the demised premises. The pipes and installations within the flats are the responsibility of the individual leaseholders.

90. The Company may recover through the service charge the cost of work which it does in pursuance of its obligations. If the work does not fall within the definition of repair maintain amend or renew, the leaseholders would be entitled to refuse to pay for the work through the service charge. The Tribunal notes that any costs not recoverable through the service charge would probably be met by the members of the Company who are the same as the leaseholders but that is not a concern of the Tribunal.

91. It is for the Tribunal to construe the terms of the lease and decide whether the work which the Company proposes to do by installing a pressurised system falls within the definition of repair maintain amend

or renew. In construing the lease the Tribunal must give the lease its ordinary common sense meaning within the context of the lease.

92. The Tribunal finds as a fact that, by proposing to install a pressurised system, the Company is proposing to supply water to the flats in a manner which is significantly different from the existing system. In particular, the Company is proposing to supply water to the flats by a boosted main at mains pressure rather than via storage tanks on the roof which would supply water to the flats under gravity. This proposal requires alterations to be made to the existing hot water systems within the flats which do not have pressurised systems. The Tribunal is satisfied that the replacement of the existing system with a like for like system is a practical and economically viable alternative. In those circumstances, the Tribunal finds as a fact that what the Company is proposing goes beyond work of repair, maintenance, renewal or amendment. The Tribunal is of the view that the words renew and amend have to be construed in the context of repair and maintenance and are included to allow amendments to the existing system rather than a wholesale replacement with a different system as is proposed. The Tribunal rejects the Company's submissions on the interpretation of those words.

93. The Tribunal finds that the Company is entitled to improve the common parts of the Property at its own expense but it is not entitled to:
    a. Charge as service charge for work which goes beyond its obligations;
    b. Supply water in a materially different manner which obliges the leaseholders to change their own hot water systems; or
    c. Enter flats without the leaseholder's permission in order to carry out alterations to the leaseholder's own systems. The Tribunal rejects the Company's suggestion that it may use its right of entry under clause 3(v) of the lease to carry out such works.

94. **Repair of water main at the front of the Property:** The Tribunal is satisfied that it was reasonable for the Company to take action to investigate the possibility of a leak in the water main. There is no evidence before the Tribunal as to what additional cost, if any, was incurred by digging holes nor that it would have been cheaper to replace the whole length of pipe. The Tribunal finds that there has been no breach in this respect.

95. **The lobby:** The Tribunal's own inspection showed that the lobby was in good decorative order. It may appear dated and it could be improved but the Tribunal is satisfied that the Company is not in breach of its obligations.

96. **Entrance gates:** There is no obligation on the Company to install entrance gates. This would be an improvement. Therefore there is no breach.

97. **The lifts:** The lift cabins appear dated but they are functional. Although there was evidence of frequent breakdowns, there was no evidence that repairs were not carried out within a reasonable time. The Tribunal finds that there is no breach in this respect. What the Applicant is seeking is an improvement.

98. **Brickwork:** The Tribunal is satisfied from the evidence of its own inspection that the brickwork is not in need of urgent cleaning or repair. The Tribunal is satisfied that the Company is not in breach of its obligations. This is not a priority matter.

99. **Paths and drives:** The Tribunal is satisfied that the Company has taken action to repair the soak-aways. There remains a problem with an imperfect fall but dealing with that would be an improvement rather than a repair. The Tribunal is satisfied from its own inspection that the paths and drives are kept clean and tidy. The Tribunal is satisfied that there is no breach in this respect.

100. **Landings and corridors:** The Applicant accepts that his complaints have now been dealt with. Therefore there is no breach.

101. **Windows and woodwork:** As the Applicant has repaired these items himself, the Company is not in breach.

102. **External woodwork:** The Tribunal finds this complaint to be minimal and is satisfied that the Company is not in breach of its obligations.

103. **Garage roofs:** The Tribunal is satisfied that the problem of cleaning the roofs is addressed on a routine basis and finds that there is no breach of obligation.

104. **Balcony up-stands**: Although the Company has arranged for work to be carried out, the result is cosmetically poor. The Company should have insisted that the contractor make good the defects. The Tribunal finds the Applicant's evidence that the cracks may still be allowing water to penetrate to be inconclusive and does not accept it. However, the Tribunal is satisfied from its own inspection that this is a major cosmetic issue which could put off a prospective purchaser. The Tribunal is satisfied that the Company is in breach of its obligations because it has failed to complete the repair work to an acceptable standard.

105. **Management plan:** The Tribunal accepts that it is good practice to have a management plan but it is not required by the lease and the Tribunal is satisfied that this does not represent a breach.

106. **Company constitution:** This is a matter which concerns the Company's internal affairs and is not a breach of the lease obligations. In any event the Applicant's point does not appear to be a good one.

107. **Service charges:** The Tribunal does not accept the Applicant's comparison of service charges with other blocks of flats. Different buildings and different leases will require different works and different services. What the Applicant must show is that the Company has made an unreasonable service charge. In view of the Tribunal's finding that the pressurised water system does not fall within the Company's obligations, it follows that by demanding payment of £1,400 on account of the cost of that system, the Company has made an unreasonable service charge.

108. **Is it just and convenient?** The Tribunal has found that the Company is in breach of its obligations in two respects. First it has failed to repair and maintain the water supply system since 2000. A clean and safe supply of water is a basic expectation of modern life. It is not acceptable for a landlord to take 9 years to resolve such a problem. The Tribunal reiterates its comments at paragraphs 85 to 93. It is satisfied that the Company is proposing to replace the system in a manner which goes beyond its obligations and which requires the Applicant to change the hot water system in his own flat. The Company intends to proceed with that work if a manager is not appointed and recover the cost through the service charge. It has failed to allow the residents the opportunity to consider a properly costed alternative of replacing like for like. Secondly, it has breached its obligations in respect of the balcony up-stands and it has not shown any intention to rectify the outstanding problem. The breach in respect of the water supply would be sufficient on its own but it is compounded by the balcony up-stands. Both together are symptomatic of a failure by the Company to properly address its obligations to the leaseholders. The Tribunal finds that it is just and convenient in all the circumstances to appoint a manager.

109. The question of whether it is just and convenient must be separately considered in connection with the service charges. The 2 issues are intertwined and it is impossible to separate them. Having found that unreasonable service charges have been made, the Tribunal is satisfied that it is just and convenient to appoint a manager on this ground as well.

110. Having come to that conclusion, it is not necessary for the Tribunal to consider Section 24(2)(b) any further.

111. **Proposed nominee:** Having heard evidence from Mrs. Lacey-Paine, the Tribunal is satisfied that she is a suitable person to be appointed as manager.

112. **Terms of appointment:** The main issue to be resolved is the water supply. The Tribunal has decided to appoint a manager for a period of 2 years to allow that issue to be resolved and to give sufficient time for a properly structured system of management to be put in place. It would be convenient if the appointment commenced at the start of the next service charge year on 25 March but the water supply needs

urgent attention. Therefore the appointment will take effect from 1 January 2010. It will terminate on 24 March 2012. The Tribunal does not see fit to place any limitation on the manager's powers.

113. **Section 20C:** The Tribunal has heard no argument as to whether or not the lease allows the Company to recover its costs through the service charge and it makes no findings in that respect. The Applicant has been successful in his application. If he had not made his application, a pressurised water system would have been imposed on him against his will. In all the circumstances, the Tribunal considers it just and equitable to make such an order.

Dated 2 December 2009

Mr. J G Orme
Chairman