

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**HAV/00HE/LSC/2025/0749**
Property	**:**	**Flats at The Yard, Lostwithiel, Cornwall, PL22 0FD**
Applicants	**:**	**Miss Susan Taylor** **Ms Judy Lean** **Mrs Hayley Bianco** **Mr Byron Burnhill** **Mr Bruce Connor** **Mrs Carolyn Fortescue** **Mr John Hulbert** **Mr Alf Littler** **Mrs Jacqueline Martin** **Mr Mike Priestley** **Mr Ian Ringer** **Mrs Sandra Searle**
Representative	**:**	**Miss Taylor**
Respondent	**:**	**(1) Wombwell Homes (Lostwithiel) Limited** **(2) Brunel Two Management Company Limited**
Representative	**:**	**Mr Foy and Mr Williams, Belmont Property Management, and Mr Gilly**
Type of application	**:**	**For the determination of the liability to pay service charges**
Tribunal members	**:**	**Judge R Percival** **Mr J Reichel MRICS**
Venue and date of hearing	**:**	**Bodmin Law Courts, The Law Courts, Launceston Road, Bodmin, PL31 2AL** **6 May 2026**
Date of decision	**:**	**29 September 2026**

DECISION

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Decisions of the tribunal

(1) The Tribunal makes the determinations as set out under the various headings in this Decision.

(2) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that no more than 50% of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge.

(3) The Tribunal makes an order under paragraph 5A of schedule 11 to the Commonhold and Leasehold Reform Act 2002 extinguishing 50% of the liability of the Applicants to pay an administration charge in respect of litigation costs of the application.

The application

1. The Applicants seek determinations pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Applicants in respect of the service charge years from (variously) 2017 to 2022.

2. Copies of the legislation referred to in this decision and other sources of free legal information are set out in the appendix to this decision.

The background

3. The Yard is a new development. It was built in stages, with the first occupiers moving in in Spring 2017. Phase 1 of the building comprised 24 units. Phase 2, which was delayed by the Covid-19 pandemic, comprised a further 20 units and was completed in 2023.

4. The Applicants hold long leases of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. Details of the relevant provisions are set out below.

The lease

5. We were provided with the lease for Ms Taylor's flat, number 14. We were told that the other leases were similar.

6. The lease is dated 30 November 2018. It is in tripartite form, the other parties being the Wombwell Homes (Lostwithiel) Limited and Brunel Two Management Company Ltd.

7. In cause 1, the "services" are defined as those set out in the fourth schedule, part two and the fifth schedule, and the service charge as one forty-fourth of the cost of providing the services plus other sums due, "or such other proportion as the Landlord shall reasonably determine". We were told that all of the leases made the same provision. We were told that the proportion had not been varied. However, the evidence was that when the first phase only of the development, which consisted of 24 flats, was occupied, the operative proportions were one twenty-fourth, so it seems clear that the proportion was varied for this earlier period.

8. Clause 3 is headed "covenants". It sets out that the tenant covenants with the landlord, the Management Company and the other tenants are in schedule 3. The Landlord's covenants with the tenant are specified as those in both parts of the fourth schedule. The Management Company's covenants with the tenant are in part two of the fourth schedule.

9. Clause 3 goes on to set out that the Management Company covenants to provide "the Services" (and then covers when failure to provide services do not attract liability in damages).

10. The heading of part one of the fourth schedule is "covenants by the Landlord", and that of part two "covenants by the Management Company", the latter being somewhat in conflict with the terms of clause 3. 1.

11. The Management Company's covenants in part two of the fourth schedule are to insure the building, to repair etc the structure, common parts and pathways, service installations and car park spaces, painting the common parts and exterior, cleaning the common parts, keeping the car parking spaces clean and tidy, gardening where required, and lighting and heating the common parts (Fourth schedule, part two, paragraphs 1 to 6). There are also covenants in respect of litigating, employing managing agents and others, and a sweeper clause covenanting to provide other services (paragraphs 7 to 14).

12. The tenant's covenants are in the third schedule, and are owed to the landlord, the Management Company and each of the other tenants.

13. The tenant covenants in Paragraph 2 provides for the tenant:

> "2.1 To pay to the Management Company as an interim payment in two equal amounts in advance on 15 April and 15 October in each year the amount of the Service Charge actually charged to the Tenant in each previous half year without deduction or set off
> 2.2 To pay to the Management Company within 21 days of receiving a demand the final Service Charge payment due in each year without deduction or set off".

14. The definition in clause 1 of "the Interim Service Charge" is "as defined in clause 2.1 of the Third Schedule".

15. Clause 1 defines "the initial service charge" as £900 per year. At paragraph 2.3 of the third schedule, the tenant covenants:

"Until the first final Service Charge is calculated to pay to the Management Company (he Initial Service Charge or a proportion from the date of this lease to the following 15 April or 15 October as the case may be…".

The text here is rendered exactly as it appears in the lease copy we were provided with. "(he" must be a misprint for "the".

16. However, the fifth schedule, which is headed "administration of the service charge" makes alternative provision in relation to the interim charge. The "covenants" clause does not refer to whom the covenants in the fifth schedule are by or with. Rather, the language of the schedule utilises a quasi-legislative "shall" to impose obligations on the Management Company and "may" to indicate its discretions.

17. The fifth schedule does not deal at all with an initial service charge.

18. Under the heading "the estimate", the following text appears at paragraph 1:

> "The Management Company shall as soon as reasonably practicable after the first day of January in every year prepare an estimate of the sums to be spent or reserved by it in such year and may if it thinks proper increase or decrease the amount of the Interim Service Charge payable by the Tenant."

19. Paragraph 2 is headed "sinking fund" and reads:

> "The Management Company shall make reasonable provision in calculating the Service Charge towards a sinking fund which it shall place in a separate account representing the anticipated cost of renewal or replacement of the Common Parts …".

Sums in the fund are expressed to be held on trust for tenants.

20. Accounts are to be kept by the Management Company in respect of sums "spent each year", and the Company "shall as soon as practicable after the end of such year notify the Tenant of the total sums spent and the amount due from the Tenant" (paragraph 3 of the fifth schedule).

The hearing

Introductory

21. Miss Taylor represented the Applicants. Ms Lean, Ms Bianco and Mr Holbert also attended the hearing. Mr Foy and Mr Williams of Belmont Property Management, the managing agent, and Mr Gilly, the director of the second Respondent, represented the Respondents.

22. We proceeded by first establishing how the Respondents did, as a matter of fact, operate the lease. We then went on to consider individual issues raised by the Applicants in turn. In doing so, we have to some extent varied or adapted the descriptions or content of the issues as presented.

The operation of the lease

23. At the opening of the hearing, the Tribunal put to the Respondent the apparent contradiction between the service charge system set out in third schedule, the tenant's covenants, and the fifth schedule, the management company's obligations and responsibilities.

24. We asked first how, in practice, the service charge was operated at the development.

25. Mr Foy told us that the service charge year ran from 15 October to the 14 October the following year. The service charge was invoiced at six monthly intervals in October and April, providing for six monthly payments in advance. However, a number of leaseholders paid, permissively, on a monthly basis. The service charge accounts were drawn up after the end of the service charge year. The advance service charge was based on a budget drawn up by the managing agent. If there was a deficit at the end of the service charge year, there would be an additional demand, normally within six months of the end of the relevant service charge year. If there was a surplus, it would be retained and set against the advance service charge for the next year (rather than credited to individual leaseholders). For this reconciliation process, the Respondents relied on paragraph 3 of the fifth schedule, and in particular the words "notify the Tenant of … the amount due to or from the Tenant".

26. As to how this system relates to the lease, Mr Foy said that this effectively worked on the basis of the fifth schedule. He agreed that they disregarded paragraph 2.1 of the third schedule.

27. Miss Taylor noted that the first deficit demand was made in March 2023.

28. In the view of the Tribunal, it is most unfortunate that the lease is seriously defective in creating two distinct and contradictory systems for the service charge. It is particularly striking that this is so in what are very modern leases. However, the Applicants have not raised the drafting of the lease as an issue, and as a result we are spared the task of trying to make sense of it as it appears. We appreciate that the Respondents, or, particularly, the second Respondent, has had to choose how to operate

the service charge system. The approach they have adopted is at least reasonably in line with the fifth schedule version, and mirrors the most usual process found in modern leases. The only appropriate course for the Tribunal to adopt is to apply this process, subject to the partial exception we refer to below (at paragraph [40] and following).

29. However, the parties may like to consider whether the leases should be varied to remove the patent conflict between different provisions, either on a co-operative, voluntary basis or by way of the provisions in part IV of the Landlord and Tenant Act 1987.

Section 20B and the deficit demand

30. At the hearing, two issues first arose in relation to the challenge to landscaping/gardening costs (see below). It is clearer, however, to deal with them under their own headings first (that is, this heading and the one immediately following).

31. The uncontradicted evidence of the Applicants was that no accounts were produced in 2017 and 2018. The first were those relating to the year ending 14 October 2019. Further, the first deficit demand (termed an invoice on its face, and by the parties) was issued on 29 March 2023. There was subsequently another deficit demand in 2024.

32. The first issue relates to Section 20B of the Landlord and Tenant Act 1985. That section reads as follows:

> "(1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.
>
> (2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

33. A cost is incurred for the purposes of section 20B standardly when the landlord receives an invoice from its supplier or contractor: *Burr v OM Property Management* [2013] EWCA Civ 479; *Ground Rents (Regisport) v Dowlen* [2014] UKUT 0144 9 (LC).

34. Where a landlord's costs exceed an amount charged on account, and a further balancing demand is made, section 20B applies to the balancing charge so that, if the costs incurred relevant to the balancing charge were incurred more than 18 months later than the balancing charge was made,

the balancing charge is not payable: *Holding & Management (Solitaire) v Sherwin* [2010] UKUT 412. There was no suggestion that a notice under section 20B(2) had been served in this case

35. Our conclusion is that the effect of section 20B is that the 2023 deficit demand is not payable insofar as the sums charged relate to any invoice dated more than 18 months before 29 March 2023.

36. In general, section 20B does not apply to an interim or advance service charge, where the expenditure relevant to the service charge does not exceed the payment on account (so the landlord does not need to make a further demand): *Gilje v Charlegrove Securities* [2004] 1 All E.R. 91. However, section 20B does apply to a demand for an interim or advance service charge which is only served *after* the relevant cost has been incurred. So if any cost is actually incurred (ie invoiced) more than 18 months before the interim or advance service charge is demanded, then it is not payable: *Skelton v DBS Homes (Kings Hill)* [2017] EWCA Civ 1139.

37. Although the general application of the section was raised by the Applicants, we do not understand the Applicants to have claimed that the circumstances set out in the paragraph above. However, if it were to appear that there was such a factual situation, then it would also be covered by the 18 month time limit.

38. *Decisions*:

(1) The deficit demand (invoice) made on 29 March 2023 is only payable insofar as the sum charged relates to invoices dated on or after 29 October 2021.

(2) If any of the advance service charge demands (invoices) were served more than 18 months after the cost to which they relate were incurred, they will not be payable in respect of those costs.

39. In respect of decision (1) above, we do not have the dates of the relevant invoices, so cannot specify what is and is not payable. The Respondent should now provide the Applicants with a schedule of invoices (with copies) it considers *are* payable, and to thereby calculate what refund or credit to make to the Applicants in respect of invoices dated before the cut-off date.

The initial contributions; and the deficit demand

40. The second issue relates to the initial contributions made by leaseholders in the first year after they purchased their new leases.

41. The two issues interrelate, in that the issues dealt with in this section only have an effect to the extent that costs are not already irrecoverable

in the service charge as a result section 20B, in accordance with our determination at paragraph 38 above.

42. As we note above, the only provision made in the leases is in the definition section and the third schedule – that is, the schedule that sets down the version of the service charge which has not been operational.

43. That provision sits most easily with the inoperative, third schedule service charge system rather than that in the fifth schedule. But it is not strictly incompatible with the fifth schedule system. It makes provision that can work for the first, usually incomplete, year of each leaseholder's possession, after which the full fifth schedule system can be operative. In these circumstances, we conclude that it must be the only existing initial system that should be followed.

44. It is a consequence of this approach that the deficit demand cannot be made in relation to the first year or part-year in respect of which a leaseholder was in possession as a result of a new lease.

45. There is a further distinct issue, in that it appears that the deficit demand in 2023 was made of all leaseholders then in possession. Where an existing lease is purchased, then the new purchaser will be liable for a reconciliation deficit demand made after they took possession, and the conveyance is capable of making arrangements in respect of outstanding service charge payments. Where a new lease is granted, however, there are no previous legal relations, and no liability for a deficit payment relating to costs incurred before the lease is granted arises (possibly subject to specific provision in the lease, of which there is none here).

46. It is apparent that the Respondent charged a proportion of the interim charge to new leaseholders. For the reasons we give above, we do not think that is the correct approach, where there is no provision set out in the lease for initial contributions in the schedule 5 system, but there is in the schedule 3 system, with the result that we come to the decision set out at paragraph 43 above. But in any event, that does not affect the fact that the same amount was demanded from each leaseholder then in possession in the deficit demand in 2023. Any deficit demand could only be made in relation to costs in the year following the year or part year in which the leaseholder's lease was granted, and that will vary for each leaseholder.

47. The result will be that a proper deficit demand cannot be in equal amounts. We add that this would be true, even if it were correct to charge a proportion of the interim demand to new leaseholders, contrary to our determination. Any leaseholder who was charged too much, given the date of their grant is not liable to pay that excess, and it should be repaid or credited to them. Other leaseholder, having been in possession longer, would have paid too little. However, they would now only be obliged to pay the deficit charge that was demanded in 2023. In principle, it would

be open to the Respondent to now make a further demand for the shortfall, but the costs to which the deficit demand in 2023 relate cannot have been incurred within 18 months of a demand issued in 2026.

48. *Decisions*:

(1) In the first year of a new lease, the whole-year service charge should have been £900; and where a new lease was acquired part-way through the first service charge year, that sum should be reduced in proportion to the proportion of the year in which the leaseholder was in possession. Any deficit payment demanded of a leaseholder in respect of what would have been a deficit, had the interim/final service charge system been in operation in the first year or part year, is not payable.

(2) Leaseholders are not liable for deficit demands made in respect of costs incurred before their lease was granted.

49. As with the section 20B point, we were not provided with sufficient material to calculate what repayment or crediting of service charge is consequent on this determination. That must be identified by the Respondent and given effect by it.

50. We should make clear that the determination under paragraph 48(1) above only applies to new leases. The service charge of a leaseholder who purchased their lease from an existing leaseholder will be governed by the fifth schedule.

The specific issues

51. We now turn to consider the specific issues on a year-by-year basis that the Applicants put before us at the hearing. For understandable reasons, the year-by-year discussion provided by the Applicants in the bundle included a large number of queries, rather than only direct challenges. We were accordingly led by Miss Taylor, the Applicants representative, in setting out what the challenges were under each heading, which she did orally. As a result, not all of the headings in the documents provided were dealt with at the hearing, and therefore are similarly not dealt with in this decision. This also means that some of our decisions below relate to specific years, and some to all years, as we indicate in the headings. Different periods were discussed at different times during the hearing, but since many of the issues were the same, we have amalgamated discussions of specific issues in different years under one heading, where it is convenient to do so.

52. Our decisions on the individual items below relate to costs that remain payable after our decisions in relation to section 20B of the 1985 Act and leaseholders initial contributions are taken into account – where appropriate, we emphasise this by stating the decision applies only to the extent that the service charge component under consideration is otherwise payable.

Landscaping/gardening, 2017 to 2019

53. The issue was argued largely on the basis of the first reconciliation accounts provided by the Respondent in 2019.

54. The dispute related to whether service charges related to gardening, which it was accepted meant they were payable under the lease, or whether they related to the landscaping undertaken to turn parts of the wider estate from a building site into a finished state, which it was accepted were part of the building costs, and therefore not chargeable to the service charge.

55. In the first year (2017/18), the cost attributed to gardening was £160 a month, which, as available flats, and occupation, increased, the costs went up to £280 and then £360 per month.

56. Mr Foy argued that there was, even in the initial period when there were only eight leaseholders in possession, some gardening costs, and the amount charged was appropriate for the gardening required. Although the term "landscaping" was sometimes used to refer to what was in fact gardening, the developer paid for what could properly be called landscaping – that is, the one-of finishing of the outside spaces around and pertaining to the properties.

57. We asked what gardening was covered by the charges. It was agreed that it related to the borders each side of the roadway entering the development. There were also both communal gardens and front or back gardens provided in relation to each of the flats. The gardening maintenance of both categories was covered by the Respondent's obligations and charged to the service charge – unusually, although the front and back gardens were allocated to the use of specific flats, they were not demised (the demise is in the definitions clause, at clause 1.1).

58. We were told that the gardeners charged an annual sum, payable monthly, but the number of visits per month depended on the time of year and thus the demand for gardening services. There were occasional additional works, when required.

59. We accept Mr Foy's evidence that the invoices in issue were indeed for gardening, not for the one-off landscaping post construction. The character of the contract, the regularity of the charging, and the amount charged all suggest that the contracts were for on-going gardening services to the already-landscaped parts of the site.

60. As a simple reasonableness issue, we do not think that the Applicants' have demonstrated that the amount charged is unreasonable in amount. Having had the arrangement explained, including that the gardening pertained to the individual gardens as well as the truly communal areas, we do not think that the sums themselves, without more, are such as to

raise a prima facie case that they are unreasonable. The Applicants have not gone beyond such an assertion, by, for instance, providing figures from comparators or providing alternative quotations.

61. *Decision*: To the extent that they are otherwise payable, the sums charged for gardening are payable and reasonable in amount.

Common areas issues, all years

62. The Applicants raised two issues relating to work on common areas not used by some leaseholders. There had been charges for fire risk and health and safety assessments, and in relation to cleaning, of two stairwells serving upstairs flats. The issue raised by the Applicants was whether the leaseholders of the downstairs flats were liable. Miss Taylor, observing that the Applicants had raised the issues as questions, conceded that the leaseholders as a body were responsible for common areas not serving their particular flats under the leases. No issue of reasonableness of amount was raised.

63. *Decision*: To the extent that they are otherwise payable, service charges in relation to fire safety/health and safety assessments and cleaning of stairwells were payable and reasonably incurred.

Window cleaning, all years

64. It was agreed that all the windows in the development were cleaned save for some Velux windows and a small number of inaccessible windows.

65. The Applicants' case was that the budget provided a figure of £750 for window cleaning, but the reconciliation figures provided in 2019 gave figures of £2,560 for 2017/2018 and £3,600 for 2018/2019.

66. In respect of all years, Miss Taylor argued that there were a number of duplicated invoices, which appeared to show over-payment.

67. In respect of 2021/22, Miss Taylor queried why there were 15 payments in that year.

68. Mr Foy candidly stated that the discrepancies in 2017/2018 were a result of what he described as bad budgeting. The frequency of window cleaning had changed over time. Initially, the period was six weeks, but was then changed to four weekly. The contractor had changed at some point, as a result of unhappiness with the first contractor, and the per visit fee was now lower with the current contractor. Mr Foy argued that it was, overall, more economic to undertake the cleaning every four weeks with the new contractor.

69. The dispute resolved into the Applicants arguing that the six week period should have been persisted with, rather than the frequency increased to

four weekly, and indeed, it seemed to be accepted that the Respondents had agreed to move back to six weekly periods. The budget for 2021/22 assumed that frequency.

70. As to alleged overpayments, Mr Foy said that there were occasions when an invoice was paid twice, but whenever that happened, the matter was dealt with informally, by the contractor forgoing payment for the next period. The fifteen payments in 2021/22 was simply a result of some payment for other years occurring at that point. We assume that Miss Taylor's figure must have come from a document giving dates of payment of the relevant invoices rather than the accruals based service charge accounts.

71. We accept that the charges for window cleaning were reasonable. Initially, we inclined to the view that it was not necessary to clean the windows more frequently than every six weeks. However, we were persuaded by Mr Foy's argument that the monthly clean at a lower cost was more economic overall. When discussing 2021/22, Mr Foy could not produce the exact figures, but suggested that if the four weekly cleaning approach was more expensive than six weekly, it was only marginally so. If one calculates the yearly sums on the basis of the figures for 2020/21 budget versus actual, the annual sum for the six weekly cleans would have been £3,814, whereas the monthly sum amounted to £3,156 annually.

72. We also accept Mr Foy's explanation for apparent overpayments. Taking account of the schedule of payments made given in the bundle, it did not appear to the Tribunal that the Applicants case for double payment could be made out. There were, in the end, the same number of payments as there were cleans.

73. *Decision:* To the extent that they are otherwise payable, the service charges referable to window cleaning are payable and reasonably incurred.

Water charges 2017 to 2019

74. This challenge related to the cost of water supplied by an outside tap, access to which was not available, on the Applicants' case, to the leaseholders. The tap was separately metered.

75. The relevant sum (in, we think, the 2019 reconciliation) was budgeted at £250 and the outturn was £301.10.

76. Mr Foy argued that it was a communal supply, for the use of contractors, including the gardeners and cleaners. It was thus referable to maintenance of the common areas. Mr Foy thought that it had been available to leaseholders at an early stage, but that had been stopped because it was used to clean cars. This was contested by Miss Taylor.

77. The Applicants argued that it was likely that the tap was used by the developers during the earlier period.

78. We note that this is a small amount of money – on its face, about six or twelve pounds per leaseholder over two years, depending on the percentage in play at the relevant time.

79. Taking into account Mr Foy's explanation of the use to which the water had been put, we do not think that the Applicants have established that the water was not payable under the lease, or unreasonable in amount. It seems intrinsically unlikely to us that it was the main or a significant source of water for the construction of the development itself, which would have required a great deal of water.

80. *Decision*: To the extent that they are otherwise payable, the service charge referable to the outside water tap is payable and reasonable in amount.

Electricity, all years

81. The electricity usage in issue was that for communal lighting etc and to power a sewerage pump.

82. Miss Taylor's general point was that there were marked differences between budgeted and outturn figures, and various apparent inconsistencies in payment and accounting for electricity. The budget figure for each of 2017 to 2019/20 was £1,483. The outturn was £4,445, for example. The Applicants' case was that these discrepancy alone created a presumption of unreasonableness.

83. Mr Foy argued that the increase would have been partly driven by the increase in occupation. Both communal lighting, which was on a sensor system, and the use of the sewerage pump, would increase with greater numbers of users.

84. Mr Foy also noted that there had been a contribution from the developer of £1,130 to the cost of electricity. Mr Foy explained that at some point, the developer had been using this supply, before a dedicated supply was established. While it was not altogether clear to us to what part of the building work this related to at the hearing, it seems that, according to a note on the schedule of service charges (for the benefit of the parties, that supplied on page 344 of the bundle), it was in relation to the start of phase 2, during the service charge year from October 2021 to October 2022 (it being agreed that phase 2 started during the course of 2022).

85. It was argued that some of the apparent inconsistencies were explained by accrual accounting for service charge purposes, complicated by the possibility of advance payments to the electricity supplier which were subsequently rectified when meter readings were supplied. Mr Williams,

for the Respondents, made the point (when the later period was under consideration) that the electricity supplier held a running account for the property, and whatever over or under payments had been made would be resolved over time.

86. Having heard the evidence, we do not think that the disparity between the budgeted figure and the outturn figure alone is sufficient to raise a prima facie case of unreasonableness. We have already heard that the budgeted figures were not very reliable, and on the face of it, this is another example of that.

87. We should add that, in relation to the later period, and at the conclusion of what was quite a long investigation of the figures, Miss Taylor conceded Mr Williams point about the effect of the electricity supplier's account.

88. *Decision*: To the extent that they are otherwise payable, the service charge referable to communal electricity is payable and reasonable in amount.

Insurance, 2017 to 2019

89. The Applicants' case, as we understood it, was that there was a difference of £564 between the service charge accounts relating to 2017/2019 and the "reconciliation figure" – that is, the actual costs derived from the managing agent's software – in respect of insurance during the period.

90. It now seems to the Tribunal that the issue only related to the treatment of the difference between the insurance policy year and the service charge year when dealt with on an accruals basis in the service charge accounts. As such, it does not affect the overall amount of the service charge referable to insurance, although it may affect when it was payable.

91. *Decision*: There is no effective challenge to the service charge referable to insurance premiums (if they are otherwise payable).

Tank cleaning and maintenance, 2017 to 2019

92. The sewerage system for the developed includes an effluent storage tank which was required to be cleaned out from time to time.

93. The costs of doing so did not appear in the budgets for 2017, 2018 or 2019. The 2019 reconciliation figures showed two sets of figures. The first was for cleaning. It totalled £2,860.80. The second was for maintenance, and comprised charges for £299.44 (November 2017), £570 (January 2018), £570 (July 2018) and £48 (June 2019).

94. Ms Taylor told us that the annual charge for cleaning and maintenance had been about £750 in each year since, a figure not challenged by the Respondent.

95. We accept that the basic argument of the Applicants provides a clear prima facie case of unreasonableness just on the face of the figures. The figure for cleaning and maintenance of the sewerage system when the development was fully occupied was, we heard, about £750 a year. Where the charges relating to cleaning in the calendar year 2018, when the development was not fully occupied, and indeed was under construction, were £2,860.80 and that for maintenance for about the same period (November 2017 to July 2018) were £1,439.44, something must be wrong. Mr Foy's observation that the costs looked like reasonable charges for the work done is not enough to displace that case.

96. Doing the best we can, even if any of these charges remain payable, the total charge for the year 2018 should be limited to £750.

97. *Decision*: To the extent they are otherwise payable, the service charges in relation to sewerage plant cleaning and maintenance are limited to £750 in each year.

Biffa costs, 2018 and 2019

98. Charges for a contractor, Biffa, to remove refuse from November 2018 to July 2019 amounted to £977, and the purchase of new bins in July 2019 was £178.20.

99. The Applicants case was that the bins were, in general, emptied by the Council in the usual way, without a further fee. Mr Foy told us that the Biffa charges related to one-off special removals of excess rubbish. One example was the removal of some barge boards, the provenance of which was unknown. It was also the case that it had been necessary to purchase extra bins in July 2019.

100. We do not think that, without more, the Applicants have discharged the burden of making a case that these charges are on their face unreasonable (if they survive the section 20B point). Merely because the main refuse collection was made by the Council does not of itself mean that there may not be occasions when special collections become necessary in any development of this size.

101. *Decision*: To the extent they are otherwise payable, the service charges in relation to extra refuse charges are reasonable in amount.

Management fees, all years

102. The Applicants' argument was that they had had themselves to put a great deal of work into analysing and understanding the service charge

position, and in doing so had uncovered various discrepancies etc. The managing agents had not been sufficiently open and transparent in the dealings, and we should take account of these factors in reducing the management fees.

103. Mr Foy explained that the management fee was calculated on the basis of £180 per unit. There was no list of additional fees, such as undertaking consultation processes.

104. The Tribunal indicated to the parties that our experience of managing agents fees in relation to such development (our knowledge being of a general nature not amenable to the disclosure of specific pieces of evidence) was that £180 per unit was a low fee. We also observed that it was normal for unit fees to be accompanied by a list of other charges for specific services.

105. We accept that the performance of the managing agents in relation to the transparency of the service charge accounts is open to reasonable criticism. The Tribunal had found it not straightforward to understand how and why charges were made, including over time, and we are not surprised that the Applicants were similarly challenged.

106. However, as we indicated, we considered the fee to be a low one, and it is not a situation in which we think we can properly reduce it further by way of marking the criticisms made by the Applicants, at least some of which appear to us to have some foundation.

107. *Decision*: To the extent that they are otherwise payable, the managing agent's charges are reasonable in amount.

Bank charges, all years

108. The Applicants noted that there had been small payments of bank charges. Miss Taylor observed that the code of practice of The Property Institute and ARMA recommended that sufficient funds should be retained so as to ensure that bank charges were not payable. We do not think that incurring the occasional charge for, say, a direct debit not being honoured is sufficient to raise a prima facie case of unreasonableness, particularly in circumstances where not all service charges were being paid.

109. To the extent that they are otherwise payable, the bank charges are reasonable in amount and are payable.

Sinking fund, all years

110. As clarified by the parties, the position was that, while the budgets made provision for a sinking fund, the service charge demands did not. This was so because the funds collected, we were told, were not such as to

justify establishing a sinking fund. Effectively, we were told that had there been surpluses, they would have been applied to a sinking fund.

111. As Miss Taylor submitted, the lease required the making of provision for a sinking fund, and required it to be held in a separate account. However, since no demand has included a charge for a sinking fund, there is nothing on which an application under section 27A of the 1985 Act can bite, and we pass over the issue.

112. We do observe, however, that it would be very much to the benefit of all parties if a sinking fund were to be established, and it is a requirement of the lease that this be done. The RICS code considers it good practice to hold a reserve or sinking fund when the lease permits it. A sinking fund should be demanded as such, rather than merely being the repository of surpluses; and should thereafter be expended on the items specified in the lease, not as a contingency amount in respect of in-year, normal service charge expenses. This is, as we say, merely an observation, and not in any way determinative.

113. *Decision*: The failure to make provision for a sinking fund is not relevant to the reasonableness or payability of service charges.

Landlord's void payments

114. This issue arose as a note following on from the Applicants' issue in relation to the sinking fund, but is distinct.

115. It appears that there had been, in correspondence before the hearing, a difference between the parties as to how much the freeholder should have contributed in respect of un-demised flats. The Respondent calculated the sum as £8,068, the Applicants at £10,481. To resolve the dispute, the Respondent freeholder agreed to make up the difference and pay the Applicants' sum. At the hearing, the question posed by the Applicants was whether the initial £8,068 had been paid. Mr Foy said that it had, and that it would always have appeared in each unit's own service charge statement, which were not in the bundle. He also said that there were invoices raised by the managing agent to the freeholder showing these payments, broken down by the individual units in respect of which they were payable. He offered to share those invoices with the Applicants' representatives.

116. The result is that we do not consider that there is an issue for us to determine in respect of the void payments.

Cleaning common areas 2021/22

117. The budget for common cleaning in this year was £360. The outturn on reconciliation was £723. Mr Foy's explanation was that it was simply under-budgeted. The cost of cleaning was £54 a month, for two fortnightly cleans. There had also been an additional amount in respect

of a canopy clean, which, Mr Foy suggested, might have been better accounted for under a different heading.

118. The actual cost and frequency of cleaning was not contested by the Applicants. In these circumstances, we do not think that the Applicants have raised a prima facie case, albeit that, again, the Respondent's budgeting appears to have been defective.

119. *Decision*: To the extent that they are otherwise payable, the service charge relating to communal area cleaning costs in 2021/22 are reasonable in amount.

Water damage to flat 3, 2021/22

120. Water ingress in a flat (flat 3, used as a holiday let) was caused by the flat above. There was no damage to the structure, communal areas or any other retained area. The cost of repairing the damage in the flat was £362.88.

121. Mr Foy explained that, looked at practically, the person to whom the damage was done would have seen it as an insurance matter. However, the excess was such that it was not economic to make an insurance claim, so the cost of the repair was passed on to the service charge.

122. We see no basis for charging damage suffered within one demised flat, caused by water from another flat, to the service charge.

123. *Decision*: the service charge relating to the repair of the damage to flat 3 is not payable.

Bin Store cleaning 2021/22

124. The Applicants challenged a series of invoices relating to cleaning of the bin store, or associated matters, from November 2021 to March 2022. Four invoices totalled £613.32.

125. Mr Foy explained that these did not represent routine cleaning, but rather on-demand cleans based on complaints from residents, or as a result of an observation by one of the general communal area cleaners. The primary problem, he said, was with items that residents placed in the bin store, but were not taken away by the refuse collectors.

126. In the light of Mr Foy's explanation, we do not consider that we can find this expenditure unreasonable. There was no challenge to the amounts charged for the work done.

127. Decision: To the extent that they are otherwise payable, the service charge relating to bin store cleaning costs from November 2021 to March 2022 are reasonable in amount.

Emergency light replacement

128. The Applicants challenged an invoice for £1,050.68 for, the Applicants thought, the replacement of emergency lights, and two weeks later, the replacement of two hall lights. However, the invoice, which (unlike most others) had been provided showed that the charge was also for the provision of an EICR, which we think had been overlooked by the Applicants. We speculated that the EICR would have accounted for most of the cost. On that basis, Miss Taylor withdrew the challenge.

Applications for additional orders

129. The Applicant applied for an order under section 20C of the 1985 Act that the costs of these proceedings may not be considered relevant costs for the purposes of determining a service charge; and an order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 extinguishing any liability to pay an administration charge in respect of litigation cost in relation to the proceedings.

130. Insofar as the orders under section 20C and paragraph 5A are concerned, we consider these applications on the basis that the leases do provide for such costs to be passed on either in the service charge or as administration charges, without deciding whether that was the case or not. Whether the lease does, in fact, make such provision is, accordingly, an open question should the matter be litigated in the future.

131. An application under section 20C is to be determined on the basis of what is just and equitable in all the circumstances (*Tenants of Langford Court v Doren Ltd* (LRX/37/2000). The approach must be the same under paragraph 5A, which was enacted to ensure that a parallel jurisdiction existed in relation to administration charges to that conferred by section 20C.

132. Such orders are an interference with the landlord's contractual rights, and must never be made as a matter of course.

133. We should take into account the effect of the order on others affected, including the landlord: *Re SCMLLA (Freehold) Ltd* [2014] UKUT 58 (LC); *Conway v Jam Factory Freehold Ltd* [2013] UKUT 592 (LC); [2014] 1 EGLR 111.

134. The success or failure of a party to the proceedings is not determinative. Comparative success is, however, a significant matter in weighing up what is just and equitable in the circumstances.

135. In this case, we consider that the balance of advantage is fairly evenly matched. In numerical terms, we have decided more individual issues in the Respondents favour than the Applicants. However, while not quantified, our decisions in relation to the effect of section 20B and the

responsibility of new leaseholder once their lease were granted is likely to have substantial financial effects in favour of the Applicants.

136. We also, as a subordinate point, accept the Applicants' argument that the Respondents could have been much more transparent in the way in which the service charge process was handled.

137. *Decision*: The Tribunal orders

(1) under section 20C of the 1985 Act that 50% of the costs incurred by the Respondent in proceedings before the Tribunal are not to be taken into account in determining the amount of any service charge payable by the Applicant; and

(2) under Commonhold and Leasehold Reform Act 2002, schedule 11, paragraph 5A that any liability of the Applicant to pay litigation costs as defined in that paragraph be extinguished to the extent of 50%.

Rights of appeal

138. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Southern regional office. The application should be on form RP-PTA, which is available on the Tribunal's website, or by application to the case officer.

139. The application for permission to appeal must arrive at the office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

140. If the application is not made within the 28 day time limit, the application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at these reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

141. The application for permission to appeal must identify the decision of the Tribunal to which it relates, give the date, the property and the case number; state the grounds of appeal; and state the result the party making the application is seeking.

Name: Judge R Percival **Date:** 29 September 2026

APPENDIX: SOURCES FOR FREE LEGAL MATERIALS

Legislation

The legislation referred to in this decision may be found at:

https://www.legislation.gov.uk/ukpga/1985/70
https://www.legislation.gov.uk/ukpga/2002/15/contents

Case Law

The dedicated website for Upper Tribunal (UT) cases, which are binding on this Tribunal, is:

https://landschamber.decisions.tribunals.gov.uk/Aspx/Default.aspx

The search engine does not allow for free text searching. Sufficient information to use the provided search engine (such as the date of the case or the parties names) may be available via a google search.

Alternatively, the official National Archive website is at:

https://caselaw.nationalarchives.gov.uk/

This has a better search engine, but does not contain UT decisions before 2015, and there may be gaps in its provision thereafter.

The National Archive website can also be used for finding cases in higher courts, including those referred to in UT decisions.

Alternatively, many UT decisions, and most other important cases in all courts, are available on:

https://www.bailii.org/ .

Bailii stands for British and Irish Legal Information Institute. It is a charity that has published free caselaw for many years, and has in some cases loaded up earlier case law.