FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**HAV/00HH/LSC/2025/0779**
Property	**:**	**Water Meadows, Cockington Lane, Torquay, Devon, TQ2 6QT**
Applicant	**:**	**Water Meadows (Torquay) Limited**
Representative	**:**	**Mr Hayden Mudford**
Respondents	**:**	**The leaseholders out in appendix 1**
Representative	**:**	**Mr David Bell**
Type of application	**:**	**For the determination of the liability to pay service charges**
Tribunal members	**:**	**Judge R Percival** **Mr M Ayres FRICS**
Venue and date of hearing	**:**	**Newton Abbot Magistrates' Court** **8 June 2026**
Date of decision	**:**	**10 November 2026**

DECISION

© CROWN COPYRIGHT

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 the landlord's costs of the tribunal proceedings may not be passed to the lessees through any service charge, except in respect of the Tribunal's application and hearing fees.

(3) The Tribunal makes an order under paragraph 5A of schedule 11 to the Commonhold and Leasehold Reform Act 2002 extinguishing any liability of the Applicants to pay an administration charge in respect of litigation costs of the application, except in respect of the Tribunal's application and hearing fees

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Respondents in respect of the service charge years 2024/25 and 2025/26.

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. Water Meadows is a purpose-built block of two and three bedroom flats completed in 2010. It is a four-storey structure, with balconies to flats on the first and fourth floors. It is close to the sea front in Torquay.

4. The Applicant is a company owned by 11 of the 12 leaseholders. It acquired the freehold interest in December 2021, having purchased the freehold by way of collective enfranchisement.

The leases

5. We were provided with the lease for flat 1, which is dated 11 December 2020. We were told that the leases were all to similar substantive effect. The lease is for a term of 125 years. The demise is limited to the internal area of the flat, including internal plaster etc but excluding internal load bearing walls (schedule 1)

6. The "Development" is defined as the land and the buildings. The retained parts include the structure, roof, external and all load bearing walls, and structural timbers (clause 1).

7. The service charge broadly covers the conventional matters (insurance is covered by a separate mechanism, but still amounts to a service charge as defined in the 1985 Act, section 18). The service charge includes (in the definition of "the Services" in clause 1.1) the costs of the repairing covenant, which is expressed in these terms:

> "cleaning, maintaining, decorating, repairing, relaying and replacing the Retained Parts and remedying any inherent defect".

8. The definition of the "Service Costs" includes, in addition to "the Services", the following:

> "the reasonably and properly incurred costs fees and disbursements of any managing agent or other person retained by the Landlord to act on the Landlord's behalf in connection with the Development or the provision of the Services".

9. In addition, the definition of "the Services" also includes

> "the costs, fees and disbursements (on a full indemnity basis) of:
>
> (i) managing agents employed by the Landlord for the carrying out and provision of the Services or, where managing agents are not employed, a management fee for the same;
>
> (ii) accountants employed by the Landlord to prepare and audit the service charge accounts; …"

10. Also referable to the service charge are the costs of complying with "all laws" in relation to the retained parts.

11. There is provision for a sinking fund. The definition of "service costs" lists the matters that fall within that category, and includes "such sum as the Landlord deems reasonably sufficient to be placed annually in a sinking fund for the Development". The only other mention of the sinking fund in the lease is in the definition of "services", which includes the costs of maintaining a sinking fund. There is no specification of what a sinking fund can be used for, or limits thereto.

12. The tenant covenants to pay the costs of the enforcement of covenants and preparing and servicing various notices, including under section 146 of the Law of Property Act 1925, and a charge for communicating in respect of breaches of covenant (schedule 4, paragraph 7).

13. The service charge year is defined as from 25 September to 24 September in clause 1. The service charge mechanism is covered in schedule 4, the tenant's covenants, at paragraph 2 (although the mechanism does impose covenants on the landlord).

14. "Before, or as soon as practicable after the start" of the service charge year the landlord must send the tenant a statement of the estimated service charge, which must be paid in two equal parts on the rent days.

15. The rent days are specified as being (in that order) 25 March and 25 September.

16. It seems evident to the Tribunal that the two payments for a service charge demand served (at the latest), as soon as possible after the end of the service charge year must be, first, in March of the following year, and secondly in September of the following year – that is, the first day of the next service charge year. However, the Applicant, continuing the practice it inherited from the previous freeholder, operated the service charge so that the first payment was (notionally) payable on the 25 September, and the second in the following March.

17. We consider that the correct interpretation of the lease is that the order of the instalments is March then September, for two reasons. First, it makes more sense to have a first payment some months after the start of the service charge year, rather than for the lease to provide for the first instalment to be payable before, potentially, any demand has been served. Secondly, the rent days are specified in that order. That the service charge estimate (which is effectively the demand) may be served as soon as practicable after the start of the service charge year is incompatible with a reading of the least to the effect that the first instalment is to be paid on, not after, the first day.

18. However, as we note below, no issue as to the sequencing of the interim service charge arose between the parties.

19. Thereafter, "as soon as practicable after the end of each Service Charge Year", the landlord must provide a certificate of (the actual) service charge. Provision is made for reconciliation, deficits being payable on demand, surpluses credited against the following year's first instalment. If a cost is omitted from the calculation of the service charge, the landlord can include it in the estimate and certificate of the following year (paragraph2.5).

The hearing

Introductory

20. There are four directors of the Applicant company. Of those, three, Mr Haydn Mudford, Ms Lynne Witt, and Mr Stephen Huxley, signed a form of statement of proof in respect of the Applicant's case. The fourth director is Mr David Bell, who opposes the application as a leaseholder.

21. It had been ordered that all 12 tenants should be identified as the Respondents, and we have listed them in appendix 1 to this decision.

22. At the hearing, Mr Mudford primarily spoke for the Applicant. Ms Witt was also present in a representative capacity for the Applicant, and sometimes spoke for the Applicant.

23. Mr Bell mainly spoke for the Respondents. Mr Malcolm Purcell, Ms Laura Brady, Ms Susan Coghlan, representing her mother, Ms Maureen Coghlan, and Mr Richard Ratcliffe, representing his mother, Ms Beryl Ratcliffe, attended as Respondents.

24. The Tribunal ordered that the statements of case of the Applicant and of Mr David Bell, for the Respondents, stand as their evidence in chief in the absence of witness statements. Mr Purcell and Mr Ratcliffe had provided witness statements.

The issues

25. The Applicant's statement rehearses the following history. The building has suffered from water ingress since 2012. The upper stories are of timber construction. In 2022, chartered surveyors, Crofts, were engaged to investigate the problem, and found that the water ingress had led to deterioration of the timber structure, to the extent that original building defects and inadequate repairs mean that the building is now structurally compromised.

26. Specifically, some of the posi-joists supporting the top floor balconies had rotted, and other timbers were infected with dry rot. The whole roof and top floor balcony areas needed replacing because the structure and materials used caused a condensation build up leading to further timber deterioration.

27. A meeting was held to which all leaseholders were invited. The surveyor made a presentation to the meeting. The estimated cost of the remediation work was of the order of £940,000 for the preferred option. The Applicant states that those attending voted to accept the preferred option.

28. The statement gives an account of the Applicant's efforts to secure external funding, but without success.

29. A further report by structural engineers, Milner Associates, in September 2024 stated that some parts of the building structure were unsafe, and that temporary propping might be required to support the posi-joists and balconies, which required further investigation.

30. The Applicant issued a service charge demand for the financial year from September 2024, which included the costs of further investigations required by the structural engineer, an estimate for the temporary propping and professional fees for the drawing up of a full specification of works, and then the evaluation of tenders. This is what was stated in

the statement, and, despite some initial lack of clarity, this was confirmed in the hearing.

31. The service charge budget for 2024/25 was supplied in the bundle. The specific sums in issue were given as £69,736 described as legal and professional fees, and £37,600, described as "exceptional work", which together amount to £107,336. The charges were further broken down as follows for the professional fees:

Chartered Surveyor - Crofts Fees	£48000
Structural Engineer - Milner Fees Phases 1-3	£4920
Structural Engineer - Milner Fees Phase 4 (including expenses estimate)	£7000
Solicitors Fees - Section 20 Demand Confirmation and specific points	£3816
MODBURY Section 20 Fees for major works	£6000

Modbury are the Applicant's current managing agents.

32. And for the exceptional works:

Extraordinary temporary repairs (including S20 costs)	£7000
Opening up and closing ceilings of second floor including S20 costs)	£11400
Building Regulations	£2400
Planning Permission	£4000
Temporay internal propping safety works (Croft estimate) including S20 costs	£12800

33. In the hearing, Mr Bell expressed some scepticism towards the assertions made by the Surveyor, at least in a meeting with residents, that there was any immediate danger of the building collapsing.

34. Mr Bell contested the payability of the service charge demand, insofar as it related to the professional fees and exceptional works. The service charge demand was in fact served in June 2025, which Mr Bell said was almost nine months after the start of the service charge year (which, he maintained, contrary to our view, is when the first instalment of the interim charge should be paid). He argued that the demand was invalid.

35. Specifically, he argued that the demand was, or contained elements which were, such that it was not possible that the sums demanded could be spent in that service charge year. No certificate showing the actual expenditure, as required by schedule 4, paragraph 2.4, had been issued (an uncontested point). There had been no reconciliation.

36. It was Mr Bell's submission that in these circumstances, a demand is invalid to the extent that it relates to costs that cannot be incurred during the year to which the demand related. He noted that he had paid the

ordinary service charges demanded. He supported this case with the argument that the costs for professional fees would have had to have been subject to a consultation exercise under section 20 of the 1985 Act, which would make it a clear impossibility that the costs could be spent.

37. As to reasonableness, Mr Bell argued that the costs for the surveyor to write the specification etc were premature, as that could not be done until the further investigation had taken place.

38. More fundamentally, he submitted that the total works were unaffordable in any event. He said that he had had a quantity surveyor consider the documentation, who concluded that the estimated total cost was, in fact, too low. These conclusions had not been disclosed in advance, and had not in fact been put into writing. He said he might raise this issue in a future application to the Tribunal.

39. As to the Milner fees (£4,920), Mr Bell said that as the work had been undertaken in 2024, the fees must have already been paid. He said that his understanding was that there was a balance on reconciliation in 2023/24 that could or would have been used to pay these fees. We assume Mr Bell was referring to a surplus in that year (although it is not clear to the Tribunal how a surplus could be used in any way other than as a credit to the leaseholders).

40. Mr Bell thought that the £7,000 was part of the investigatory work, and so was reasonable to be charged. Relatedly, he noted that he had paid the £11,400 for the opening up of the ceilings etc, as he recognised that that was necessary.

41. The charges for building regulations and planning permission would occur later, and so should not be charged to this year. Similarly premature was the charge for temporary propping etc. The same was true of the £6,000 fee for further section 20 consultations, which it appears would be the fee for the consultation on the main major works, that is, the final remedial works.

42. As to the solicitors' fees, he thought that these had also already been paid, the advice having been given in 2024.

43. In reply, we asked Mr Mudford to assist us as to the lateness of the demand, the effect of that on the possibility of spending the monies sought to be raised before September 2025, and the lack of reconciliation.

44. Mr Mudford and Ms Will explained that service was so late because of problems with the managing agents, who were remiss, she said, in providing the required figures. They relied on their solicitors' advice that there was no specific date by which the service charge must be

demanded. Essentially, it was not practicable to issue the demands earlier than June 2025 because of the problems with the managing agents, First Port. Ms Watt explained the course of a dispute with First Port as to their fees for undertaking the section 20 consultation on the major remedial works. At the same time, leaseholders were pressuring the Applicant not to raise funds to pay First Port's fees.

45. The Applicant subsequently engaged the current managing agent, Modbury, who were responsible for drawing up the demand. For some reason alleged to relate to data protection rules, it was the directors, rather than Modbury, who emailed the demands to leaseholders.

46. Mr Mudford said, when asked by the Tribunal, that when the demand was made, the directors considered that the section 20 consultations for the investigation work and the propping could have been conducted at the same time, and before the end of the service charge year. If all leaseholders had paid the demand in full, the programme was achievable.

47. As to the professional fees, Ms Watt said that they could not commission the work until they had the money in hand. If the required sums had not been demanded in June, then there would be further delay, because they could not have engaged Crofts until after March 2026. As it stood, they had not had full payment of the demand and so in any event could not go ahead.

48. The demand for service charges for 2025/26 were sent out in April 2026, and only contained provision for the normal service charge. Ms Witt said that the delay was caused in part by issues with the new managing agent, Modbury. The main delay, she said, was with how to assess what should go into that service charge, given the issues with the demand for 2024/25. We asked why a reconciliation was not conducted, the effect of which would have been that the leaseholders who had paid money in excess of that actually expended would have been credited with those sums in the following year. We were told that the managing agents advised that the Applicant could simply retain the surpluses and run them forward to the following year. There was no discussion about undertaking the reconciliation process required by the lease. Ms Witt said that reconciliation was simply not mentioned.

Determination

49. First, we make a preliminary point about the application of the consultation requirements in section 20 of the 1985 Act to professional fees, which are a feature of this application. Where there are separately billed professional fees in relation to works which themselves attract the consultation requirements, those separate fees do not require a section 20 consultation. *Rose v Bracknell Gate Properties Ltd* [2025] UKUT 386 (LC), [2026] H.L.R. 11 is authority for the proposition that the consultation requirements *only* relate to physical works to a building. So

professional fees relating to physical works to a building do not contribute to the threshold for a section 20 consultation, and those fees, even if they themselves reach the threshold, do not require their own section 20 consultation.

50. We reject the arguments we heard, insofar as there were any, that the service charge items included in the service charge demand for 2024/25 were themselves *unreasonable in amount*. There was really no challenge to say that, for instance, the surveyors' or the building engineers' fees were just too high for the services that were being paid for, or that the underpinning estimate was too high. On the contrary, the materials in the bundle provided reasonable support for all of these costs.

51. We also reject Mr Bell's assertion that some of the fees must have been paid earlier, in which case a charge for them could not be made now. There was no foundation for this challenge beyond the assertion that the relevant work had been carried out some time ago. There was no suggestion that the work had been previously charged to the service charge, such as to support a contention that it was being double-charged. His reference to a "balance" on reconciliation in an earlier year seems to us to be purely speculative, and inapt in terms of how the lease works.

52. Mr Bell's primary submission, however, was that by the time that the demand was issued in June 2025, there was no prospect of the sums, or most of them, being demanded being spent during the course of the rest of the year.

53. We accept this submission in part. The provisions relating to the service charge in the lease effectively limit the service charge to sums expendable within a service charge year. The statement of estimated service charges relates to the service costs within the service charge year, and the reconciliation process assess the interim service charge against the actual expenditure in that year.

54. So even though the demand for the year before us was demanded as late as June 2025, it was still limited to expenditure in the relevant service charge year, which ended on 24 September 2025. The question is not whether the sums demanded were in fact spent in that year – that is a matter for the reconciliation process. Rather, the question is whether it was reasonable for the Applicant to make the demands it did make, knowing what it knew at the time that the demand was made.

55. We consider that the question for us, therefore, is whether in June 2025 a reasonable person in the position of the Applicant's directors could have had a reasonable expectation that the relevant monies could have been spent before 24September 2025.

56. At that point, it must have been clear that the Croft fees for drafting the specification and assessing quotations could not have been spent (£48,000). The section 20 fees marked Modbury were for the main remedial work, and we do not think the reasonable person could have considered that they would be expended in the relevant time period.

57. The Milner fees, however, either had been or could have reasonably be expected to have been expended before September (£11,920), as would the Solicitors' fees (£3,816).

58. As for the exceptional maintenance issues, we accept that it would have been possible to consider that the temporary repairs (£7,000) and the opening of the ceilings (£11,400) could have been done.

59. On the other hand, it is absolutely clear that the fees for building regulations and planning could not have been expended (£6,400). On balance, we also do not think that a reasonable person would have considered that the temporary propping work would have been achieved (£12,800).

60. Accordingly, those elements of the service charge were not reasonably demanded, and are not payable.

61. The Applicant should now ensure that a certificate is issued and that reconciliation of the interim service charge with the actual expenditure for 2024/25 takes place. If there is a surplus (as we would expect), it will be credited the leaseholders' service charge accounts. We note that if expenditure in that year exceeds the estimate, which we were told was based on normal expenditure only, that excess can be charged in the following year's service charge, by virtue of paragraph 2.5 of schedule 4 to the lease, which allows expenditure omitted from one year's service charge to be included in the next year's service charge.

62. The Applicant has not, as we understand it, historically used its ability to maintain a sinking fund, as allowed in the lease. The terms sinking fund and reserve fund are nowadays used interchangeably. They denote a fund established by a landlord for the purpose of making provision for future major expenditure which is not of a normal annually recurring nature (see, for instance, the definition in the glossary in the RICS service charge residential management code).

63. It is common for leases to set out the usage to which a sinking fund can be put. This lease does not do so. There is nothing to stop the landlord from collecting contributions to a sinking fund, which it may then use immediately, provided it is for a purpose that comes within the general definition of sinking or reserve funds that we have indicated above, unless there is some specific clause in the lease that prevents that. There is no such clause in this lease. The Applicant is at liberty to fund the

remedial works, and expenditures preparatory to the remedial works themselves, by means of demands for contributions to the sinking fund. Such a fund does not, of course, have to be expended in any one year.

Applications for additional orders

64. The Respondents who appeared before us 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.

65. At the conclusion of the meeting, Ms Witt told us that the Applicant did not intend to make any charges either through the service charge or as administration charges in the relation to the cost of these proceedings, save for the application and hearing costs.

66. We accordingly make the orders to secure that concession in respect of any costs sought to be put through the service charge, excluding the Tribunal's own fees.

67. We do not make an order in respect of those fees.

68. We consider that the Applicant was amply justified in bringing the application, given the very difficult circumstances facing this building and its leaseholders and residents. The orders are an interference with the landlord's contractual rights, and must never be made as a matter of course. We must also take account of 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. In this case, the Applicant is a leaseholder owned company, with, we assume, little or no ability to raise funds other than through the service charge or administration charges. The Tribunal fees, we were told, were personally covered by the three directors who supported the Applicant's position.

69. Both sides have had some success before us, but in truth, nothing in our decision will make a significant difference to the brute fact that this building is in a parlous condition and it will eventually be remediated at the expense of the leaseholders.

70. Taking all these circumstances into account, we do not think it would be just and equitable to extend our orders to include the Tribunal fees in issue.

71. *Decision*: The Tribunal orders

(1) under section 20C of the 1985 Act that 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 Respondents, except in respect of the Tribunal's application and hearing fees; 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, except in respect of the Tribunal's application and hearing fees.

Rights of appeal

72. 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.

73. 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.

74. 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.

75. 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.

Costs Applications

76. If either party wishes to make an application for costs under Rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013, that party must send or deliver an application on form Order 1 to the Tribunal and to the other party within 28 days after the date on which this decision is sent to the parties (rule 13(4) and (5)).

77. If an application is made, the Tribunal will issue directions for its determination.

Name: Judge R Percival **Date:** 10 November 2026

APPENDIX 1: THE RESPONDENTS

Maureen Coghlan	**Flat 1**
Malcolm Purcell	**Flat 2**
Michael Blake and Joanne Watson	**Flat 3**
Richard Boyfield	**Flat 4**
Haydn and Lynda Mudford	**Flat 5**
Stephanie McDaniel	**Flat 6**
Rachel Varnam	**Flat 7**
Laura Brady	**Flat 8**
Stephen and Katie Huxley	**Flat 9**
Beryl Ratcliffe	**Flat 10**
David Bell	**Flat 11**
Trevor and Lynne Witt	**Flat 12**

APPENDIX 2: 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.