



**FIRST-TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)**

<b>Case Reference</b>	:	CHI/21UF/LUS/2023/0001
<b>Property</b>	:	Flats 10-25, Block 2 Meeching Place, Church Road, Newhaven, East Sussex BN9 9LP
<b>Applicant</b>	:	Meeching Place (Block 2) RTM Company Limited.
<b>Representative</b>	:	Martin Horne (Counsel) Instructed by Sussex Legal Consultants
<b>Respondent Freeholder</b>	:	Adelaide Homes (Sussex) Limited
<b>Representative</b>	:	Anthony Scrivens of Adelaide Property Management Limited
<b>Type of Application</b>	:	Applications relating to Right to Manage: Chapter 1 Commonhold and Leasehold Reform Act 2002. Application under Section 94 (3) for determination as to payment of accrued uncommitted service charges
<b>Tribunal</b>	:	Judge T. Hingston P. Smith FRICS T. Wong
<b>Date of Decision</b>	:	23 <sup>rd</sup> September 2024

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**DECISION**

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**Summary of Decision**

**The Tribunal determines that the amount of accrued uncommitted service charges to be paid to the Applicant RTM Company by the Respondent is £29,360.70, together with interest in the sum of £344.11.**

**The Application by the RTM Company for costs is granted and costs are summarily assessed at £7,238.00.**

**The total of £36,942.81. is payable within 28 days.**

## **BACKGROUND**

1. The Application is for a determination under Section 94(3) of the Commonhold and Leasehold Reform Act 2002 ('The Act') of the amount of accrued uncommitted service charges payable to the 'Right to Manage' Company at the time they took over management, i.e. on the 23<sup>rd</sup> of December 2022.

2. The property in question is a block of 15 flats, which are owned on long leases by the leaseholders or 'Lessees.'

3. All parties are agreed that the Applicant RTM company took over the management of the block on the 23<sup>rd</sup> of December 2022.

4. At the time of the management being transferred from Adelaide Property Management to the RTM company (who in turn now employ Charles Cox Property Management on their behalf), all relevant documentation was handed over from one company to the other, but despite numerous requests there was no transfer of the service charge funds.

5. After several letters to the Respondent went unanswered, on the 22<sup>nd</sup> of September 2023 the new RTM company therefore filed their Application to the Tribunal under Section 94(3) as above, seeking a determination as to the amount of accrued uncommitted service charges held at the time of the transfer and a determination as to the amount to be paid over.

6. An Application for Costs, pursuant to Rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules, was also lodged on behalf of the RTM company.

7. The Tribunal issued Directions dated the 29<sup>th</sup> April 2024, which required the Respondent, by 20<sup>th</sup> May 2024, to serve its Statement of Case and give information about the sums held. The Respondent did not comply with the Directions and no documents were filed.

9. Further Directions were issued by the Tribunal on the 12<sup>th</sup> of June 2024, requiring the Respondent to produce financial information, invoices and bank statements by 28<sup>th</sup> June 2024.

10. On the 28<sup>th</sup> June 2024 the Respondent finally sent an email to the Tribunal [Page 125 of the PDF bundle] and to the Applicant's legal representatives, providing some

(but not all) of the required information and stating that he was having trouble producing the relevant bank statements.

11. Attached to the email were the following documents: -

- (a) A *'Summary of Costs relating to service charges for the period 25<sup>th</sup> December 2021 to 22<sup>nd</sup> December 2022.'* [Page 127, hereafter referred to as the Respondent's 'Costs Summary'].
- (b) List of: *'Service charges - creditors as at 22<sup>nd</sup> December 2022'* [Page 128]
- (c) A list of the 'Closing balances' of all 15 flats as at 22<sup>nd</sup> December 2022 showing the total credit balance of £11,300,57, and
- (d) 'Statements of Account' in respect of each individual flat.

12. Bank statements were later provided on the 2<sup>nd</sup> of July, relating to a Barclays 'Current' Business account number 50505773 in the name of Adelaide Property Management Limited, and from a Barclays Business 'Premium' Account number 00395048 in the same name [Pages 191 – 194]. These statements cover the period from 7<sup>th</sup> December 2022 to the 6<sup>th</sup> of March 2023 and they are heavily redacted, with the Respondent's note that: *'Transactions not related to the subject property have been obscured...'* [Page 198]

13. The Applicants then filed their Reply.

14. In due course the matter was set down for hearing, on the 4<sup>th</sup> of September 2024.

15. On the afternoon of the 2<sup>nd</sup> of September the Respondent sent another email to the Tribunal and to the Applicant's solicitors, stating that he was attaching a 'revised account' for the relevant period and setting out his calculations as to the amount which was payable to the Applicant. This email also had a 'statement of truth' at the bottom, and there were the following attachments: -

- (a) A revised *'Summary of Costs relating to service charges for the period 25<sup>th</sup> December 2021 to 22<sup>nd</sup> December 2022.'*
- (b) A spreadsheet entitled: *'Excess (credit) on Service charges for Period Ended 22<sup>nd</sup> December 2022'* (Referred to as 'The spreadsheet' hereafter)
- (c) A list of: *'Service charges - creditors as at 22<sup>nd</sup> December 2022'*, and
- (d) detailed *'Statements of Account'* in respect of each individual flat.

16. Also attached to this email of the 2<sup>nd</sup> of September the Respondent sent the same two heavily- redacted Barclays Bank statements as above, with the comment: *'...These are not exclusive to this property. We are able to identify the sums for different properties.'*

17. The hearing took place on the 4<sup>th</sup> of September 2024.

## **RELEVANT LAW**

18. See Appendix herewith.

## **HEARING**

19. No inspection was requested by either of the parties.

20. The hearing was held at Havant Justice Centre, and all parties attended in person.
21. The Applicants were represented by Mr. Horne of Counsel, and two of the Directors of the RTM company, Mr. Trevor Dodsworth and Mr. Garth Singleton, also attended.
22. Mr. Anthony Scrivens appeared as Respondent, being a Director of both Adelaide Homes (Sussex) Ltd and Adelaide Property Management Ltd.

### **PRELIMINARY ISSUES**

23. The Tribunal considered firstly whether the hearing should continue, because of Mr. Scriven's failure to file a proper, sworn Statement of Case and because of the late production of limited financial information.
24. The Respondent Mr. Scrivens, in his email of the 2<sup>nd</sup> of September, had requested an adjournment to take legal advice, or, failing that, permission to give oral evidence.
25. At the outset of the hearing on September the 4<sup>th</sup> Mr. Scrivens told the Tribunal that he had suffered health problems in the past few months, and he had only received limited legal advice, but he was able to present his own case.
26. On behalf of the Applicants it was submitted that the absence of a Statement of Case from the Respondent had hampered the preparation of the bundle and that Mr. Scrivens had also failed to comply with Direction 7(b), in that no current bank statements had been provided.
27. Mr. Horne, for the Applicants, did concede that the Respondent's emails of 28<sup>th</sup> June and 2<sup>nd</sup> September did purport to be 'Statements', with the signed declaration of truth at the end, and he agreed that he had had an opportunity to look at the redacted bank statements and the 'Summary of Service charge costs' etc. as above.
28. However, as to the question of oral evidence at the hearing, Mr. Horne confirmed that the Applicants would resist any suggestion that Mr. Scrivens might give oral evidence, because of the absence of a clear case and because of his lack of compliance with the directions.
29. After adjourning to consider the submissions on this point, the Tribunal found that it would be in the interests of justice, and to the benefit of all concerned, for the hearing to go ahead and the case to be resolved as soon as possible in order that the RTM company could proceed to carry out its proper functions. The Respondent's 'Statement(s) of Case', although not in the proper format, did indicate what his case was in respect of the financial position and summarised his reasoning.
30. It was determined that Mr. Scrivens would be permitted to give oral evidence to a limited extent, simply by explaining and clarifying his case on the appropriate sums to be transferred but without introducing any new or extra material.

### **APPLICANT'S CASE**

Service charges.

31. The Applicant's case was set out in the Statement of Case, in the Reply and in oral submissions made by Mr. Horne at the hearing.

32. Mr. Horne very helpfully took the Tribunal through the history of the matter and explained the reasoning behind his submissions and conclusions, the main points of which were summarised at Paragraph 25 of the Reply [Page 199].

33. Essentially, on behalf of the Applicant it was agreed that the 'Reserve fund' for the property held £39,401.44 at the time the RTM company took over, as stated by Mr. Scrivens. The actual service charge receipts for December 2021 – December 2022 were £11,290 in total (once separated from Ground Rent payments). Both these figures were taken from the Respondent's spreadsheet of service charge calculations, and they amounted to a total figure of £50,691.73 of available funds as at 22<sup>nd</sup> December 2022.

34. The total agreed service charge costs/outgoings for the year to December 2022 were £21,331.03 (as evidenced by Mr. Scrivens' receipts and his 'Costs Summary'), and this figure included all the 'creditors' on Mr. Scrivens' separate list at Page 128.

35. If the costs were paid off in full from the available funds, the remaining balance would be £29,360.70 as follows: -

Available funds	£50,691.73
Total costs	- £21,331.03
	<b>£29,360.70.</b>

36. The Applicants submitted that this was the amount of accrued uncommitted service charges which should have been paid to the RTM company either immediately on the 23<sup>rd</sup> of December 2022 or as soon as possible thereafter, in accordance with Section 94(4) of the Act.

37. Debts by way of unpaid service charge contributions, and liabilities to pay creditors and general outgoings, were all taken over by the RTM company at the time of the transfer.

38. In respect of the Respondent's figures and calculations as set out in the 'Statements' and on the spreadsheet, Mr. Horne pointed out that some of the figures were inconsistent and/or unsubstantiated.

39. However, he was able to agree some of the amounts on the Respondent's spreadsheet, whilst disputing others, as follows: -

Column 1 – Mr. Horne submitted that previous unpaid service charges in the 'Opening Balance – 25.12.21' column were not disputed, but they should not be taken into account because they did not form part of the 'accrued uncommitted service charge' figure as at 23<sup>rd</sup> December 2022.

Column 2 – it was not disputed that the total costs for the year were £21,331.03.

Column 3 - the actual service charge receipts for the same period, excluding ground rent, were agreed at £11,290.29.

Column 4 – the 'Closing balance 1' as at December 2022 was calculated from the starting point of Column 1 as above.

Column 5 – Interest due on unpaid service charges was not challenged, but it was noted that this was the first time that interest of any kind had been mentioned, possibly because the issue had been raised in the Applicant’s Reply.

Column 6 – It was not clear what the ‘Additional fees’ were.

Column 7 – The ‘Closing balance 2’ figures were calculated on the same basis as the balance in Column 4 above, and the same objections applied.

Column 8 – The Applicants did not agree either with the manner in which the Reserve funds appeared to have been credited against the individual service charge accounts, or the method of apportionment according to percentage share of service charges rather than according to the amount which had actually been contributed. In any event, it was submitted that the Reserve Fund should not have been utilised in this way.

Column 9 – The so-called ‘Closing Balance 3’ figure of £11.447.08 was disputed, because of the same starting point.

40. In terms of the Barclays bank accounts used by Mr. Scrivens for holding service charge payments and the Reserve Fund, Mr. Horne raised the question of whether the monies were held in trust in a designated bank account in accordance with the requirements of Sections 42 and 42A of the Landlord and Tenant Act 1987, as the ‘redacted’ transactions on the bank statements appeared to indicate that the accounts were used for payments relating to other properties. Mr. Scrivens had conceded as much in his correspondence.

41. It was further queried on behalf of the Applicant whether the ‘Current Account’, which mixed service charges with ground rents and also mixed payments from other properties, was managed in accordance with the above provisions.

#### Interest.

42. Mr. Horne argued that interest should be payable both on funds held at the time of the transfer in December 2022 and on sums unreasonably withheld between the 23<sup>rd</sup> December 2022 and the date of the hearing – a period of 713 days.

43. He submitted that potentially the amount payable could be calculated by requiring further details from the Respondent as to interest received on the bank accounts during the relevant period, but the Applicants would accept an award for interest simply on the balance held by the Respondent since the transfer, as calculated by the Tribunal.

#### Closing submission:

44. In conclusion, Mr Horne sought an Order from the Tribunal for transfer of the sum of **£29,360.70** from the Respondent to the Meeching Place (Block 2) RTM Company Limited, together with an award for interest on that sum as above.

### **RESPONDENT’S CASE**

45. In his first ‘Statement’ dated 28<sup>th</sup> June 2024 [Page 125], the Respondent simply appeared to be relying upon his list of ‘Closing Balances’ for each flat at Page 129 of the bundle. This document, headed ‘*Service Charges – Creditors as at 22 December 2022*’ set out a list of exactly how much credit there was, or how much was outstanding, on each service charge account for each of the 15 flats as at 22<sup>nd</sup> December 2022. The total credit balance of service charges on that date (described as ‘Aggregated

sums' in the body of the email) was given as £11,300.57, with £7,917.10 apparently still outstanding.

46. There is no evidence of this £11,300.57 sum in any bank statement or anywhere else, and it is not clear whether the 'credit' was actually held in a designated bank account or not at the relevant time.

47. No mention was made in the body of Mr. Scrivens' first 'statement' of any Reserve fund or account, but the attached document 'Summary of Costs' [Page 127] purports to offset a 'Transfer from Reserves' of £39,401.44 against the Service charge costs total of £21,331.03, leaving a credit of £18,070.41. This figure was later revised.

48. It is not clear what the Respondent was saying about the figure of £18,070.41 in respect of the amount which should have been transferred to the RTM Company on the 23<sup>rd</sup> of December 2022, as no final figure or proposal was put forward in this first 'Statement'.

49. Elsewhere in the first 'Statement' there was reference to an outstanding debt of £7,574.04 between the Respondent and Charles Cox Property Management Ltd. Mr Scrivens stated that he instructed Charles Cox to pay the money directly into the Meeching Place service charge accounts in respect of Flats 21 and 24 in order to discharge the debt.

50. Mr. Scrivens also referred to difficulties in transferring the EDF electricity account into the name of the new Management company in December 2022, and to other resulting debts outstanding.

51. In his second 'Statement' of 2<sup>nd</sup> September 2024 Mr. Scrivens set out his calculations as to what is due to the RTM company, as illustrated by a revised spreadsheet. A summary of the spreadsheet is as follows: -

Column 1 - 'Opening Balance 25.12.21': he takes the outstanding debt of unpaid service charges at the end of December 2021 as his 'Opening balance', total £14,856.57

Column 2 - 'Share of costs': he lists the amount of contribution to the £21,331.03 total service charge costs payable by each flat owner for the year 2021 - 2022, according to their proportion shares

Column 3 - he lists the actual receipts from each flat for the relevant period, excluding Ground rent, total £11,290.29

Column 4 - 'Closing Balance 1': he lists the resultant outstanding debt of unpaid service charges for each flat as at December 2022, total £24,897.31

Column 5 - he lists the interest payable by each flat owner (but apparently still outstanding) in respect of unpaid service charges: total £1,113.35

Column 6 - he lists outstanding 'additional fees' in respect of some of the flats (total £1,943.71)

Column 7 - 'Closing Balance 2': he lists the new total of outstanding charges for each flat, taking into account the items in Columns 5 and 6: total owing £27,954.36

Column 8 - 'Reserves': he removes the liability for apportioned shares of the contribution to the reserve fund which had been payable by individual flat owners, amounting to a total of £39,401.44

Column 9 - 'Closing Balance 3': he lists the amounts in credit or outstanding in respect of each flat as a result of the balancing exercise in column 8.

52. In oral evidence at the hearing Mr. Scrivens agreed that the Reserve fund stood at £39,401.44 at the time of the RTM takeover. However, he argued that the Applicant was wrongly equating ‘cash’ with ‘reserves’.

53. He told the Tribunal that he personally owned Flats 21 and 24.

54. Mr. Scrivens submitted that the service charge debt of December 2021 should be carried forward and deducted from the amount of credit held on December 23<sup>rd</sup> 2022, and therefore the £11,290.29 of service charge contributions actually received in the year December 2021 – December 2022 should not be treated as ‘available funds’ or ‘accrued uncommitted service charges’ at the time of the transfer.

If the outstanding unpaid service charge contributions in Column 1 of the spreadsheet were deducted from the available funds, the total deficit (as shown in Column 7) was £27,954.36, and a much lower figure was available for transfer to the RTM company.

55. According to Mr. Scrivens’ documentation and his oral submissions at the hearing the total ‘credit’ in the service charge accounts as at 23<sup>rd</sup> December 2022, as shown on his spreadsheet Column 9 – ‘Closing balance 3’, was £11,447.08. This figure would be the balance remaining if the Reserve fund (£39,401.44) was offset against the deficit (£27,954.36).

56. His calculation was as follows: -

Reserve fund	£39,401.44
Deficit	<u>-£27,954.36</u>
	<b>£11,447.08</b>

57. As for the question of whether the bank accounts complied with Sections 42 and 42A of the 1987 Act, Mr. Scrivens stated that the service charge monies were held on trust in accordance with the statutory requirements, and that it was normal for service charges and ground rent to be paid together, at the same time. In fact the service charges and ground rent payments in respect of Meeching Place (Block 2) were made on 25<sup>th</sup> June and 25<sup>th</sup> December each year. The redacted figures on the bank statements represented transactions in respect of trust funds for other properties, and although he was not prepared to divulge the exact number of other properties that he managed, he indicated that it was only a small number: perhaps 4 or 5.

#### Interest

58. Mr. Scrivens accepted that interest should be paid on the outstanding amount. He suggested that a rate of 0.6%, as per the bank rate, would be appropriate

#### Closing Submission

59. Mr. Scrivens therefore submitted that the amount to be transferred to the RTM Company should be determined at **£11,447.08**, plus interest.

### **SUBMISSIONS AS TO COSTS**

60. The Applicant had submitted a Statement of costs (CPR PD44 9.5) under Rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules [Page 208 of the bundle]. The total figure for costs at that stage (17<sup>th</sup> July 2024) was £5,713.90.



61. On the 2<sup>nd</sup> of September 2024 the Applicant made a Case Management Application for permission to submit an updated figure for costs, to include the £2,000 fee for Counsel's attendance at the hearing and associated extra expenses. There was also the addition of a fee of £220 for the hearing as directed by Judge Dutton.

62. It was argued on behalf of the Applicant that costs should be awarded against the Respondent because of his unreasonable conduct throughout the process.

63. The Respondent Mr. Scrivens told the Tribunal that there had been 'ill will' between himself and Charles Cox Property Management, and that he accepted that, due to various factors, he had been 'dilatory' in this matter. He stated that he had no grounds to defend an application for costs to be awarded against him, and said that he could only apologise to everyone.

## **TRIBUNAL FINDINGS AND DETERMINATION**

### Service charges.

64. The Tribunal had regard to actual funds held in trust for the lessees, as evidenced by the bank statements, when assessing the amount which should have been transferred to the RTM Company at the time they assumed control of the property.

65. The requirement to pay accrued uncommitted service charges to the RTM company in accordance with Section 94 of the Act is mandatory, and the payment should have been made by the Respondent either at the time of the transfer or as soon as was reasonably practicable thereafter. The delay in this case has been unacceptable.

66. The Tribunal found that the service charge 'Receipts' of £11, 290.29 for the period December 2021 – December 2022 did form part of the 'uncommitted service charges' for the purposes of this determination, and these monies should be included in any calculation of the amount payable.

67. The Tribunal found that the so-called '*Opening balances as at 25<sup>th</sup> December 2021*' from Column 1 of Mr. Scrivens' spreadsheet should not be deducted from the 'receipts' figure, because any outstanding debts from individual flat-owners who had not paid their contributions in full would likewise be transferred to the new managers, who would then have the duty to pursue them.

68. It was noted that the debts in respect of the two flats owned by Mr. Scrivens, Flats 21 and 24, had the largest outstanding amounts, which represented a substantial proportion of the deficit.

69. The Tribunal did not find that the Applicant was wrongly equating 'cash' with 'reserves': the Barclays bank statements were rightly taken as evidence that the sum was indeed available in cash (credit in the bank) at the relevant time.

70. The agreed 'Reserve fund' figure of £39,401.44 at the time of the transfer was taken as the starting point for any calculations.

71. Although the Respondent did not produce any evidence of the current bank balances in respect of the property, since the fund was held in trust for the lessees and

since Mr. Scrivens and Adelaide Property Management had no further liabilities or responsibility for payments from the account after December 23rd 2022, it is inferred from the evidence that the reserves remain at the same level now as they were on that date.

72. The Tribunal determined that the debt between Mr. Scrivens and Charles Cox Property Management was a private debt which was not relevant to the considerations in this case.

73. It was further determined that the failure to transfer the electricity account into the correct name after 23<sup>rd</sup> December 2023 had no bearing upon the case.

74. As to any possible breaches of Sections 42 and 42A of the 1987 Act, and as to the method of keeping service charge payments in trust in designated bank accounts, the Tribunal was not required to make any findings in the course of this determination.

75. In conclusion, the Tribunal found that the correct method of calculating what figure should be transferred to the Applicant company was to add the reserve fund figure to the service charge receipts, giving a total available of £50, 691.73. The total service charge outgoings or costs for the year, as agreed at £21,331.03, should be deducted, giving a final figure of **£29,360.70**.

#### Interest

76. The Tribunal determined that the Respondent should pay interest on that sum, calculated at 0.6% over the period of 713 days during which the funds were wrongly retained, i.e. **£344.11**.

#### Costs

77. The Tribunal allowed the Case Management Application for an updated statement of Costs to be submitted by the Applicant, and the updated statement gave a total figure of £9,525 including application and hearing fees.

78. The Tribunal exercised its discretion in determining that costs were payable, because of the extra work which had been caused by the Respondent's unreasonable conduct in failing to engage with the process and/or comply with the Directions. The extensive legal work in preparing this case would not have been necessary if the Respondent had cooperated with the RTM company from the outset.

79. The Tribunal also had regard to the Respondent's failure to keep the service charge funds in the proper manner during his period as Manager, and to the length of the delay before those funds could be made available to the RTM company.

80. In terms of the amount ordered, the Tribunal found that the costs were not payable in their entirety because that would have been excessively punitive.

81. Taking the figure of £5,017.26 costs from the original schedule, the Tribunal determined that it was reasonable for Counsel to be instructed in the particular circumstances of the case and that Mr. Horne's assistance had been invaluable to all

those present, so £2,000 in counsel's fees was allowed in addition to the original amount.

82. Costs are therefore awarded to the Applicant in pursuance of Rule 13(1)(b) at £7,018, plus the £220 hearing fee, making a total of **£7,238**.

## **CONCLUSION**

**The total amount payable by the Respondent is therefore as follows:-**

<b>Transfer of funds -</b>	<b>£29,360.70</b>
<b>Interest</b>	<b>£344.11</b>
<b>Costs</b>	<b><u>£7,238.00</u></b>
	<b>£36,942.81.</b>

## RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to [rpsouthern@justice.gov.uk](mailto:rpsouthern@justice.gov.uk) to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.