FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	HAV/45UH/LUS/2025/0003
Property	**:**	Stoke Abbott Court, Stoke Abbott Road, Worthing, West Sussex, BN11 1HJ
Applicant	**:**	StokeAbbottWorthing RTM Company Limited
Representative	**:**	Mr Parra-Chokier (counsel) GWCA Solicitors
Respondent	**:**	Olivertom Limited (Head Lessee)
Representative	**:**	Mr Nicholas Selmes (director)
Type of Application	**:**	Application in relation to the amount of the payment of any accrued uncommitted service charges under s.94(3) of the Commonhold and Leasehold Reform Act 2002
Tribunal Members	**:**	Tribunal Judge Pattni-Evans
Date and venue of Hearing	**:**	29 July 2026 (CVP), adjourned part-heard 25 September 2026 (in person) at Havant Justice Centre
Date of Decision	**:**	1 October 2026

DECISION

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DECISION OF THE TRIBUNAL

The Tribunal hereby determines that £61,444 constituted accrued uncommitted service charges held at the acquisition date pursuant to section 94(3) of the Commonhold and Leasehold Reform Act 2002.

Reasons for the Decision are given below.

Introduction

1. Stoke Abbott Court is a block of 48 flats in Worthing. The Respondent, Olivertom Limited (head lessee), managed the building through its agents, initially Alexander Faulkner Partnership and later Housemartins Management Ltd. The Applicant, StokeAbbottWorthing RTM Company Limited, acquired the right to manage on 24 February 2025.

2. By application under section 94(3) of the Commonhold and Leasehold Reform Act 2002 ('the 2002 Act'), the Applicant sought a determination of the amount of accrued uncommitted service charges payable following acquisition of the right to manage. It was common ground that no money was transferred to the Applicant on acquisition.

3. The Applicant contended that the standing balance of the service charge account should have been paid over. The Respondent contended that any funds held in the service charge account were subject to a liability, namely the repayment of a loan advanced to the service charge account, with the consequence that no accrued uncommitted service charges were payable. The Respondent's explanation was that the leases provided for different recovery mechanisms where some leases required service charge payments in advance and others in arrears. This made management of the estate difficult and as such, it was

necessary to loan the service charge account funds so that works could be carried out.

4. Although the issue before the Tribunal was a narrow one, the determination of the application was significantly hampered by the Respondent's persistent failure to comply with case management directions and to provide proper information. The procedural history is set out in the hearing note dated 29 July 2026 and need not be repeated in full. It is sufficient to record that the Tribunal nevertheless afforded the Respondent a final opportunity to produce the relevant material and explain the Respondent's position at the resumed in-person hearing at Havant Justice Centre. Even then, the Tribunal was not provided with the clear and coherent documentary evidence that had long been sought.

The Legal Framework

5. Under Section 94(1) of the 2002 Act, where the right to manage premises is acquired by an RTM Company, the landlord must make to the company a payment equal to the amount of any accrued uncommitted service charges held on the acquisition date. In *Churchill Retirement Living Limited v Hampton Lodge RTM Company Limited* [2026] UKUT 164 (LC), Upper Tribunal Judge Cooke explained that

   The rationale for that provision is obvious; if at the date the RTM company takes over the landlord is holding service charges paid by the leaseholders which it has not yet spent in providing services for them, it has to pass those funds over to the RTM company for it to provide those services instead. Disputes can arise about this, as they did in this case, and on 8 November 2024 the respondent applied to the FTT for a determination under section 94(3) .

6. The expression ‘costs incurred’ is not defined in the legislation. However, the authors of Service Charges and Management 5th Ed at 27-21 note:

The expression "costs incurred" is not defined, but as noted earlier the same phrase appears in Commonhold and Leasehold Reform Act 2002 s.97(5) and must mean the same thing in both places if the provisions are to dovetail satisfactorily. In context, it appears that "costs incurred" has a restricted meaning, limited to sums that have actually fallen due for payment before the acquisition date.

It is also consistent with the restricted meaning that has been given to when costs are incurred for the purposes of Landlord and Tenant Act 1985 s.20B (time limits on making service charge demands). In Burr v OM Property Management[3], it was held that a cost and a liability are separate things and that a liability does not become a cost until the "obligation to pay has crystallised". The Court of Appeal did not find it necessary to decide whether crystallisation arose on presentation of an invoice or demand for payment, or when payment was actually made…

7. Further support for that proposition is found in: *OM Ltd v New River Head RTM Co Ltd* [2010] WL4276050, where Upper Tribunal Judge Mole QC provided a particularly poignant observation as to the mechanism underlying these provisions as follows:

> *23. The words of section 94 (1) are deliberately limited. The payment of accrued uncommitted service charges is confined to those accrued uncommitted service charges 'held by' the landlord or manager on the acquisition date. The natural meaning of those words is that what has to be paid is what the landlord or manager has actually got; not what he was entitled to have but failed to get or had at one stage but does not have now. Quite how broadly "held-by-him" should be interpreted in any particular case will depend upon the facts of that case. In dealing with an argument that appears to have troubled the*

LVT, I would have little hesitation in deciding that such charges were "held by him" within the section in a case where a manager had for his own reasons, dishonest or not, decided to put the service charges in cash in a box under his bed. That will be a matter for the LVT to determine under section 94 (3). Nor am I concerned that, as the LVT said, "one can easily imagine devices by which managers who were in similar positions to the respondent could reduce assets to avoid payment to a RTM." Managers could lawfully and properly reduce the payment by making sure they used the accrued service charges to make sure they had paid their suppliers what they owed them by the acquisition date. There would be nothing wrong with that. Apart from that, it is difficult to see how managers could lawfully and honestly, bearing in mind their position as trustees, reduce the payment. Indeed, it is difficult to see why a rational and honest manager would wish to do so.

Findings

8. The Tribunal approached the statutory exercise by applying the two-stage process set out in section 94(2) of the 2002 Act: it first determined the amount of the service charge and then considered whether any deductions should be made in respect of costs incurred before the acquisition date.

9. In writing this decision the Tribunal has had regard to the Senior President of Tribunals Practice Direction – Reasons for Decisions, dated 4 June 2024 in that the Tribunal has focused on the key issues identified that require determination.

The relevant amount on the acquisition date

10. The Applicant proposed two alternatives as the relevant amount on the acquisition date, the first was the figure of £72,187 and in the

alternative £61,444.00. The factual basis for each proposition is set out below.

The sum of £72,187

11. During cross-examination at the hearing on 29 July 2026, Mr Selmes said that two transactions had taken place in March 2025 transferring to the Respondent £44,187 from the 'ground rent' account and £28,000 from the 'service charge' account. Mr Selmes sought to justify this by claiming it was the repayment of a service charge loan.

12. On the Applicant's primary case, the total sum of £72,187 represented the accrued uncommitted service charge. This was on the basis that Mr Selmes had 'admitted it'. The fact that these sums couldn't be reconciled with any bank statements or service charge accounts did not arise due to any fault on the part of the Applicant – indeed, the Tribunal had given Mr Selmes no less than four opportunities to produce supporting documentation- directions made on 11 February 2026, 22 September 2026, 25 June 2026 and 29 July 2026 were not complied with and there was no credible evidence of a loan agreement.

13. The Tribunal found the Respondent's evidence on these matters to be unsatisfactory. At the earlier hearing, Mr Selmes repeatedly asserted that supporting documentation existed and could be produced. In particular, when asked about the balance of the service charge account at the acquisition date, Mr Selmes informed the Tribunal that he could obtain the relevant bank statements, stating: *"100% I can get the bank statements."* He further indicated that he would contact Housemartins that same afternoon.

14. Despite those assurances, no bank statement was subsequently produced to evidence the balance of the service charge account at the acquisition date. The absence of this readily available documentary evidence was significant. In those circumstances, the Applicant invited

the Tribunal to draw the adverse inference that the sum of £72,187 properly belonged to the service charge account; it would be manifestly unjust for the Applicant to recover a lesser sum where the inability to establish the precise position resulted from the Respondent's failure to maintain or disclose adequate financial records.

15. In the Tribunal's view, the principal difficulty with the Applicant's argument is that the figure of £44,187 derived solely from Mr Selmes' oral evidence related to *ground rent* monies. Section 94 is concerned only with accrued uncommitted service charges held at the acquisition date. It does not extend to ground rent income or other sums falling outside the statutory definition.

16. In those circumstances, the Tribunal is not satisfied that the figure of £72,187 can properly be treated as accrued uncommitted service charges for the purposes of section 94. The Tribunal considers that the observations of the Upper Tribunal in *New River Head RTM Co Ltd v East & City Property Management Ltd* are particularly instructive. His Honour Judge Mole KC stated:

"The words of section 94(1) are deliberately limited. The payment of accrued uncommitted service charges is confined to those accrued uncommitted service charges 'held by' the landlord or manager on the acquisition date. The natural meaning of those words is that what has to be paid is what the landlord or manager has actually got; not what he was entitled to have but failed to get or had at one stage but does not have now..."

17. In other words, the section 94 process does not permit the Tribunal to right an earlier wrong, and inferences of wrongdoing cannot justify the recategorisation, as service charges, of sums identified as ground rent within the meaning of section 94. On the evidence before it, the Tribunal is not satisfied that the statutory requirements are met in respect of that sum. Accordingly, whilst the Tribunal takes account of

the deficiencies in the Respondent's evidence and disclosure, it declines to adopt the service charge figure of £72,187.

The sum of £61,444

18. The service charge accounts for the year ending 24 March 2025 recorded total service charge income of £71,747 – comprised of £70,942 with £805 as interest, and total expenditure of £181,478, producing a deficit for the year of £109,731. The expenditure included a substantial accrual of £95,152 described as "Accrued External Works - Phase 1". The accounts were prepared by Housemartins Management Ltd and reported upon by Shoreline Accountants Ltd.

19. The balance sheet disclosed 'current assets' of £241,134, comprising:
    Bank balance: £61,444
    Service charge debtors: £50,880
    Deficit to be recharged: £109,731
    Prepayments: £19,078.

20. Against those assets, the accounts disclosed liabilities of £208,156, comprising:
    Payments in advance: £41
    Loan: £17,000
    Accruals: £129,660
    Trade creditors: £61,455.

21. For the purposes of this application, the most significant figure is the recorded bank balance of £61,444 as at 24 March 2025, approximately one month after the acquisition date. The Respondent did not identify any alternative bank balance nor produce evidence demonstrating that this figure was incorrect. The Applicant invited the Tribunal to adopt this sum as the accrued uncommitted service charge.

22. Whilst the service charge accounts were not audited, the Tribunal places some weight on the Accountants' Report of Factual Findings. The report confirms that accountants found that the service charge monies were held in a client account. The Tribunal therefore accepts that there is evidence that service charge funds were maintained in a designated client account. However, the report was not an audit and does not provide assurance as to the overall accuracy of the accounts or the propriety of the expenditure recorded within them.

23. The Tribunal therefore considered other strands of available evidence. One of the Applicant witnesses, Mr Richard Lewry, is a leaseholder at Stoke Abbott Court and was actively involved in the establishment of the RTM company. His evidence focused primarily on the service charge arrangements, the alleged loan to the service charge account, and the position at the time of the RTM handover. He was unaware that the service charge account was allegedly operating at a deficit. However, he was aware that the leases operated with different mechanisms where some of the leases only permitted recovery in arrears.

24. Mr Lewry explained that in the final year before the RTM took over, the leaseholders had paid a substantial contribution towards the costs of major works which did not take place. The latest service charge bill received in 2024 was for the sum of £3,787.64 and included within that was approximately £2,000 for maintenance work to be carried out on the building's exterior.

25. The Applicant relied on evidence from a significant number of leaseholders concerning the service charges and additional demands paid in the period immediately preceding the acquisition of the Right to Manage.

26. The Tribunal read the evidence of a significant number of leaseholders regarding the level of service charge demands issued by Housemartins.

A consistent theme was that substantial sums were demanded. Carla Symonds (Flat 54) paid approximately £2,000 towards the proposed works. Andrew Baldock (Flat 4) explained that his service charge liability had risen to approximately £4,000 by the time the RTM took over. Manuela Caltabiano (Flat 74) paid £4,080.29, whilst Mark Bourne stated that he received a demand for approximately £3,400. Toby West (Flat 66) paid approximately £4,000 in 2024 and a further £2,135.99 during the 2024-2025 service charge year, which was not refunded. John Christopher Wilson (Flat 2) paid £3,062.29 during 2024-2025 and a further £1,360 during 2025-2026. Rachel Ayuba (Flat 94) stated that service charge demands issued in 2025 were approximately £4,000.

27. Several leaseholders described concerns regarding increases in service charges over time. Kernesa Escott (Flat 12) stated that service charges had increased despite little visible work being undertaken. Vishal Patel (Flat 24) recalled paying approximately £2,000 in the relevant accounting period. Imogen Harris (Flat 22) stated that she received quarterly demands of £946.91. Michael Cook stated that he paid approximately £1,174.54 in October 2024. The evidence generally reflected concerns that service charge liabilities had increased substantially during the period preceding the RTM acquisition.

28. The Tribunal also read evidence from leaseholders who challenged the basis of the charges demanded. Ioanna Fournari (Flat 14) produced detailed correspondence with Housemartins concerning what she considered to be inconsistent and fluctuating service charge demands. Paul Hemington (Flat 52) stated that supporting invoices requested in relation to service charge expenditure were not provided. Robert Knight (Flat 96) said that he was pursued for alleged arrears without adequate supporting documentation being produced.

29. A further recurring issue concerned enforcement action taken in respect of disputed service charges. Samy Darweesh stated that he

disputed service charge demands issued by Housemartins and the case against him was dropped before trial. James Sheridan (Flat 72) stated that he was pursued through solicitors for alleged service charge arrears whilst contemporaneously disputing the sums claimed. Matthew Baker (Flat 16) explained that Housemartins sought recovery of £4,933.64, including sums which he understood related to a period before he acquired the flat.

30. Taking the evidence as a whole, the Tribunal finds that a substantial number of leaseholders experienced significant service charge demands, and that concerns were widely expressed regarding the level of those demands. The Tribunal notes the striking consistency of the evidence in relation to escalating charges, difficulties in obtaining supporting documentation, and disputes concerning the accuracy or basis of sums claimed.

31. The Tribunal observes that the evidence of these leaseholders does not, of itself, establish the precise balance standing to the credit of the service charge account on 24 February 2025. However, it provides important contextual evidence. The evidence demonstrates that substantial sums had been collected from leaseholders shortly before acquisition and is consistent with the Applicant's contention that funds ought reasonably to have been available within the service charge account at the time management transferred to the RTM company.

32. The Tribunal therefore regards the leaseholder evidence as supporting, albeit indirectly, the Applicant's case that a significant balance existed within the service charge account and that the figure of £61,444 shown as the bank balance in the 2024-2025 service charge accounts is a reflection of the funds held at or around the acquisition date.

33. To that end, the Tribunal found that, at least in relation to the first issue, namely the amount held in the service charge bank account at the acquisition date, there was limited dispute between the parties. The

Respondent did not identify any alternative bank balance and did not produce evidence demonstrating that the figure of £61,444 was incorrect. Indeed, none of the leaseholder evidence was directly challenged by the Respondent.

34. The Tribunal is satisfied, on the balance of probabilities, that the Applicant has established the amount held at or around the acquisition date. The Respondent's failure to produce contrary evidence reinforces that conclusion.

Whether any deductions should be made in respect of costs incurred before the acquisition date.

35. The Respondent's case was that, notwithstanding the balance standing to the credit of the service charge account, no accrued uncommitted service charge was payable to the Applicant. The Respondent contended that the funds held in that account were offset by liabilities, principally monies said to have been advanced by the Respondent to the service charge account over a number of years.

36. The Respondent relied in particular upon a note contained within the service charge accounts for the year ending 24 March 2025. That note recorded an opening loan balance of £77,679, reduced by repayments of £32,679 and £28,000, leaving a closing balance of £17,000. The note stated simply:

"Loan to freeholder has been repaid in part with balance remaining due of £17,000."

37. However, no loan agreement, statement of account, repayment schedule or other contemporaneous documentation was produced to support the existence, terms or operation of the alleged loan. Shoreline Accounts confirm in their 'factual findings' that they had not inspected

receipts or other documentation, and the Tribunal considers that to be significant.

38. Even accepting, for the purposes of argument, that monies were historically advanced from the Respondent to the service charge account, the Respondent produced no evidence capable of establishing that repayment of those monies constituted a ‘cost incurred’ before the acquisition date within the meaning of section 94. The Tribunal agrees with the Applicants’ (in the alternative) submissions even if a loan existed, there was no evidence that the liability to repay it crystallised prior to 24 February 2025.

39. The furthest the evidence goes is that the Respondent regarded the service charge account as indebted to the freeholder. That is insufficient. A historic accounting entry described as a "loan" does not, without more, establish a cost incurred for the purposes of section 94. Still less does it entitle a landlord or manager unilaterally to appropriate service charge monies immediately before or after the acquisition date.

40. The accounts also referred to substantial accruals and trade creditors. However, the underlying documentation supporting those figures was not produced in a form that enabled the Tribunal to determine their nature, composition or status as at the acquisition date. In particular, the Tribunal was unable to determine whether the liabilities relied upon by the Respondent had arisen before 24 February 2025 or whether they represented accounting provisions entered after that date.

41. The Tribunal does not find as a fact that the accruals and trade creditors were not genuine liabilities. Rather, the Respondent failed to establish that they represented ‘costs incurred’ before the acquisition date within the meaning of section 94, or that they reduced the amount of accrued uncommitted service charges held on that date.

42. The Tribunal also takes account of the evidence given by the Applicant's witnesses concerning the expenditure said to have been incurred from the service charge account. A consistent theme running through that evidence was that substantial service charge demands had been paid, including sums collected towards anticipated major works, but that those works were never carried out. That evidence was not challenged by the Respondent.

43. The Applicants' witnesses consistently stated that leaseholders were unaware that the service charge account was allegedly operating at a deficit, and that they were never provided with details of the loan. The Tribunal accepts the Applicants' evidence. Whilst leaseholders were not in a position to comment upon the accounting treatment of expenditure, they were plainly able to give evidence as to whether substantial works had been carried out to the building and if the service charge account operated in such a manner, it is unlikely that none of the leaseholders would have known about it. This is particularly so as the relationship between the Applicant and Respondent appeared to have been amicable and at one time very relaxed, such that meetings took place in a local pub.

44. The Tribunal accepts the largely unchallenged evidence of leaseholders that major works for which contributions had been collected had not been carried out or had not been carried out to the extent anticipated. The Tribunal would reasonably have expected clear documentary evidence explaining why those funds were nevertheless unavailable at the acquisition date. No such evidence was produced.

Conclusion

45. Taking the evidence as a whole, the Tribunal is satisfied on the balance of probabilities that the sum of £61,444 represented accrued uncommitted service charge funds held at or around the acquisition date.

46. That conclusion is supported by the contemporaneous service charge accounts, the evidence concerning substantial service charge contributions collected from leaseholders, and the absence of evidence that those monies had been expended, committed, or otherwise ceased to be held for the purposes of the service charge fund.

47. Whilst the Tribunal has considered the Respondent's reliance upon accruals, the loan, trade creditors and alleged inter-account transfers, the Respondent has failed to produce sufficient documentary evidence to establish that those matters reduced or displaced the amount of accrued uncommitted service charges required to be transferred under section 94.

48. Accordingly, the Tribunal finds that £61,444 constituted accrued uncommitted service charges held at the acquisition date.

APPEAL RIGHTS

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 .

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.

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.

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.