

**Residential Property Tribunal for Wales
Y Tribiwnlys Eiddo Preswyl
Leasehold Valuation Tribunal**

Case Reference : **LVT/0069/03/23**

Property : **Bishops Court, Hay Road, Brecon, LD3 9SW**

Applicant : **Bishops Court Brecon RTM Co Ltd**

Represented by : **Mr Heard (director), assisted by Mr Hill**

Respondents : **Bishops Court West (Brecon) Ltd**

Represented by : **Mr Glenn Stevenson, Stevensons Solicitors**

Type of Application : **Section 94(3) of the Commonhold and Leasehold Reform Act 2002**

Tribunal Members : **Judge Caroline Hunter
Tribunal Member Hefin Lewis FRICS
Tribunal Member Dean Morris**

Date of hearing: : **11 September 2026**

Date of Decision : **18 September 2026**

DECISION

Summary Decision

1. The Tribunal finds that we cannot yet be certain what are 'the accrued, uncommitted service charges' for the purposes of the Commonhold and Leasehold Reform Act 2002, s.94(3). This is because Respondent ran the income and expenditure of the Respondent company through the same accounts as the service charges. This means we cannot be certain what are 'the accrued, uncommitted service charges.' Accordingly, we make the following directions:
 - a. By **18 November 2026 the Respondent** must provide to the Tribunal and the Applicant a reconciliation of the annual service charge accounts from the Respondent's ownership of the building in 2014 to the acquisition by the Applicant with the Lloyds account by removing any income and expenditure of the Respondent company from that account;
 - b. If this amount is not agreed by the parties, either party can apply for a further hearing to decide the s.94 amount payable by the Respondent to the Applicant;
 - c. If there is an application for a hearing, 14 days before the hearing each party must provide a statement explaining their case as to the correct s.94 amount.

Background

2. The Applicant, Bishops Court Brecon RTM Co Ltd, is a Right to Manage company that took over management of a building known as Bishop Court (west), Brecon on 1 March 2024. As originally built, the building had 6 flats. Before the Applicant acquired the right to manage the management was undertaken by the Respondent freeholder, Bishops Court West (Brecon) Ltd. The current directors of that company are Mr John Derrick and Ms Annette Foster. The directors are also leaseholders of a flat in the building. Ms Foster and Mr Derrick were the leaseholders to Flat 7. On 14 October 2019 through a surrender and regrant Ms Foster became the leaseholder of the combined flats 7 and 10, known as 'Maisonette 7 Bishops Court'. Before 2021 a further person was also a director and the leaseholder of Flat 11.
3. On 29 March 2026 the Applicant made an application under the Commonhold and Leasehold Reform Act 2002, s.94(3) for a determination of the amount of any payment of accrued uncommitted service charges.
4. This was not the first application under s.94(3) made by the Applicant. An application was made in October 2024 and heard on 22 October 2025 ('the October 2024 case') by this Tribunal. However, that application was subsequently dealt with as an application under s.93 and also a decision on Ms Foster's liability as leaseholder of Flat 7 (i.e. whether she was liable of 2/6th of the service charges for the maisonette or 1/6th).¹ In relation to s.93 we required:
 - ... the Respondents to provide for the extended 2023-24 period (January 31, 2023 – 1 March 2024) information as to how much the lessees of Flats 7 and 8 were invoiced and the service charges paid by them (if any). That information to be provided to the Applicant by 10 February 2026.

¹ LVT/0045/10/24

5. Following the hearing the parties sought to settle the amount of payment of accrued uncommitted service charges. In a letter dated 12 January 2026 the Respondent's solicitor wrote:

Please be kind enough to write to us to confirm that your client will accept £817.38 in full and final settlement of the amount due to it from our client.

This amount was originally set out in the Respondent's second statement of case for the October 2024 case. The Applicant did not accept this amount. Accordingly, the Applicant made a new application under s.94(3). Directions were made on 1 April 2026. The Tribunal decided that an inspection of the building was not necessary and that the hearing would be on-line.

6. Separately the leaseholder of Flat 9, Mrs Hillier, applied to the Tribunal in relation her payment of service charges from 2017/18 to 2023/24. The matter was heard on 26 August 2025 and the decision was dated 8 October 2025.² The decision was made that:

For each of the following service charge years, the Applicant's service charge account was in credit in the following sums: (1) 2017/2018: £524.50 (2) 2018/2019: £1,040.17 (3) 2019/2020: £861.17 (4) 2020/2021: £926.00 (5) 2021/2022: £28.83 (6) 2022/2023: £456.83 (7) 2023/2024: £691.50

7. The credits arose from the difference between the advance service charge paid by Mrs Hillier and that actual one-sixth of service expenditure costs disclosed from the accounts. Mrs Hillier's claim to be entitled to surplus monies was dismissed. However, the Tribunal found in relation to the appointment of the RTM:

16. Mrs. Hillier was of the view that the appointment of the RTM Company may have affected matters and that any credits prior to 4 March 2024 should be refunded by the Respondent and that the credits cannot be carried over to the service charge periods managed by the RTM Company. Although Mrs. Hillier has carried out some research on the point no authority was cited in support. The Tribunal is sceptical that this is the correct legal position and considers regard must be had to the state of a service charge account at the time of the appointment of the RTM Company, including credits accumulated but not applied, in carrying out future service charge calculations. The appointment does not set a service charge account to zero for the purpose of calculating service charge liability after the appointment.

17. Nevertheless, the Tribunal will not make an express finding as to whether the RTM Company must give credit for accumulated overpayments as it is not a party to these proceedings and it is an issue which is best resolved in the other Tribunal proceedings mentioned above.

8. The evidence seems to show that the Respondent has a single bank account (with Lloyds Bank) that includes the expenditure and income for the service charges, but also other aspects of the business of Bishops Court West (Brecon) Ltd, e.g. ground rents and loans to directors. We say 'seems to show' as we have only one page print-out of the transactions of this account between 1 February 2023 to 09 December 2024. As of 1 March 2024, the date at which the Applicant acquired the right to manage, the account was in credit by £54.55.

² LVT/0035/08/24

The Law

9. Section 94 is set out in the Appendix to this decision. It is a short section requiring the payment of accrued uncommitted service charges to the RTM company.

10. There is one Upper Tribunal on the section: *OM Ltd v New River Head RTM Co. Ltd.* [2010] UKUT 394 (LC). In that case the Judge in considering s.94 said (underlining in the original):

21. The intention of the section is that the relevant person is obliged to hand over to the RTM company whatever he holds on the acquisition date, meaning whatever is either in one or more bank accounts set up by that person or in any investment which represents such sums, as contemplated by section 94(2)(b).

22. The purpose of the legislation seems to me to be strictly limited. Its words suggest an intention to achieve the transfer to the RTM of those assets and powers that need to be transferred to the RTM for it to be an effective management company from the date of acquisition, leaving alone existing rights and relationships before the date of acquisition. I cannot spell out from the words of the act an intention to make substantial changes to the rights and powers of an RTM management company in relation to tenants, as compared with the rights and powers of any other landlord or management company in relation to tenants. Hence section 97(5) makes it plain that the payment of service charges to the RTM in respect of costs incurred before the date of acquisition is neither required nor permitted by subsection (4). If the act had intended to provide remedies where none had existed before it could and should have said so. But I am sure that was not its intention.

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.

24. The sums must have been paid "by way of service charges". Those underlined words, to my mind, are there to make it plain that there is to be no argument so far as the payment is concerned about whether or not the charges are in fact justifiable and reasonable service charges; if they were paid 'by way of service charges' they are service charges for the purpose of section 94.

25. They also have to be uncommitted service charges, so if they have been paid or committed to a particular management debt or function they do not fall within section 94.

26. Such a simple and limited objective, which does not seek to introduce new procedures or rights, seems to me to be eminently workable.

27. I do not find Mr Hawksley's arguments persuasive, well argued though they were. If a manager is committed to pay a suppliers bill for services rendered, he is not merely obliged to pay the proportion of the bill that equates to the proportion of service charges that he has actually received, he has to pay the whole bill. If he holds enough money by way of accrued service charges to pay the whole bill, he is entitled to pay the whole bill out of that fund. If he knows he will have a bill to pay he is entitled to hold enough to pay it as money representing committed accrued service charges. If there still remains an accrued uncommitted balance held by him at the acquisition date, that is the money that must be paid to the RTM. If the former management company or landlord does not hold enough money to pay bills incurred before the acquisition date, it or he may sue the tenant for the relevant unpaid service charge. The RTM company may not do so. (See section 97 (5)). As the payment to the RTM company of service charges in respect of costs incurred before the acquisition date is expressly ruled out by the statute, it is highly unlikely that Parliament can have intended that repayment of service charges in respect of costs incurred before the acquisition date should be made to the RTM company.

28. The relationship of the management company and the tenants and the rights that have arisen between them up to the acquisition date, are preserved. If a tenant succeeds in demonstrating to the County Court or the LVT that service charges paid or demanded are unreasonable, he will recover his payment for himself or successfully resist a claim against him for any payment. The Act gives the RTM company no power, still less a right, to take over a tenant's claim or take over the defence of a claim properly made against a tenant. That does not involve the duplication of proceedings; it keeps things as they are.

11. We quote this decision at length because it is so germane to our decision.

12. Also relevant is the Landlord and Tenant Act 1987, ss.42 and 42A. These sections require that service charge contributions are held in trust (s.42) and in a designated account (s.42A).

The Applicant's case

13. The Applicant made a number of claims as to the missing, unaccounted charges and credits and missing physical assets. Turning to each as submitted by Mr Hill at the hearing.

Rebuttal of the £54.55 Bank Defence & Distinguishing OM Ltd

14. The Applicant pointed to the fact that the Respondent operated a single co-mingled bank account mixing statutory service charge trust money, ground rents, and corporate company expenses. This is demonstrated in the extract from the bank account.
15. Second, the Applicant alleged from the extract the account balance was steadily drained from £470.25 down to £54.55 by regular £44.30 monthly accountancy fees and corporate bank charges. The accountants' own working papers at p.104 of the bundle explicitly confirm that accountancy fees and bank charges are corporate overheads and not service charge expenses.
16. In relation to *OM Ltd v New River Head RTM Co. Ltd*. Mr Hill disagreed with Respondent's argument that 'held by' limits the trust fund to the £54.55 bank balance. *OM Ltd* at paragraph 25 explicitly specifies that monies are only excluded from transfer if committed *to valid service charge functions*. Draining trust cash to pay unapproved corporate bills is a misapplication of trust monies under the Landlord and Tenant 1987, s.42. Under *OM Ltd*, those unapproved corporate withdrawals remain uncommitted statutory trust monies that the landlord must account for and transfer to the RTM.

Primary Cash Demand: Evidenced Overpayment Credits

17. Relying on the decision in Mrs Hillier's case, Mr Hill argued that the statutory account should include a £4,529 credit for Flat 9 covering service charge years 2017 to 2024. He also applied the decision to the Flats 11 and 12 suggesting a further credit of £4,529 for Flat 11 and £3,779 for Flat 12.
18. Further he argued that the Respondents' final service charge summary confirms no arrears for Flat 8. On identical terms, Flat 8 is entitled to the same £4,529 credit. In total, he suggested a total of £17,366 should be in the statutory trust.

Post-RTM Collections Held by Mr Stevenson

19. Post-acquisition £1,500 was directly collected by the Respondent's solicitor, Mr Stevenson, under demands issued after that date (to Flats 9 and 11). Mr Hill argued that because this £1,500 represents actual service charge cash received into the hands of the landlord's agent, statutory trust status attached automatically under s.42 of the Landlord and Tenant Act 1987. As uncommitted trust money, he suggested the Tribunal has direct jurisdiction under section 94(3) to order its immediate transfer.

Physical Trust Assets (£1,968.05)

20. The accounts show that the service charges monies were spent on four physical assets: a lawnmower, a leaf blower, a garden parasol and a chainsaw. Mr Hill argued that under s. 94, the statutory trust includes both cash *and physical assets* acquired with service charge monies. These assets—totalling £1,968.05—belong to the statutory trust and must be ordered physically transferred to the RTM company or their cash value accounted for.
21. More generally he argued that the Respondent annual accounts are entirely unreliable. An example of this was the Respondents charged £5,387 for garden maintenance despite Land Registry Title CWM633757 confirming no garden is included on the freehold title. He urged the Tribunal to reject late, unsubstantiated expense claims—including £920 roof repairs, £1,200 management fees, and a £600 loan repayment which appear in no disclosed service charge accounts from 2017 to 2024.

The Respondent's case

22. Mr Stevenson for the Respondent in the light of decision in *OM Ltd v New River Head RTM Co. Ltd.* essentially argued the amount available is the credit of £54.55 in the Lloyds account. This is the accrued, uncommitted service charges. There is only one account in which service charges have actually gone in to. If money has been used out of statutory trust of service charges, that is not a matter for the RTM, it is an alleged breach of trust and needs to be pursued by the beneficiary of trust - one or more of the leaseholders. The Tribunal cannot be concerned with money which the landlord allegedly should have got but has not got. Section 94 is concerned with money actually in the relevant account at the end of the day and there is only one account.
23. Further s.94 is not concerned with any post-acquisition receipts, nor any physical assets.

Discussion and Decision

24. In effect the Applicant does not believe accounts nor that the Respondent does not have further funds to pay to the Applicant. However, this is to misunderstand the purpose of s.94 and the decision in *OM Ltd v New River Head RTM Co. Ltd.* The purpose of s.94 is to identify 'actual' monies held by in this case the freeholder, as accrued, uncommitted service charges. It cannot include 'credits' that should have been in the account. Nor does it deal with physical assets or make provision for their equivalent in value to be added to the monies.
25. We did consider whether this is a case the freeholder 'had for his own reasons, dishonest or not, decided to put the service charges in cash in a box under his bed' (per *OM Ltd.* para. [23]), but there is no evidence of this. Whether some of the leaseholders wish to emulate the action of Mrs Hillier or collectively or individually to make an application under s.19 of the Landlord and Tenant 1985 that the services charges were not reasonably incurred or take some action for breach of trust is a matter for them. Mr Hill indicated that some of the leaseholders might seek further redress.
26. Technically Mr Stevenson is correct the post-acquisition funds were not covered by s.94. Given that funds are still held by Mr Stevenson and still subject to dispute by

the lessees he may think appropriate that he held until all claims are settled. But that is a matter for him to decide as a solicitor.

27. Accordingly, apart from Mr Hill's submission on the amount in the bank account, the Applicant is in our view seeking to achieve what the Upper Tribunal in *OM Ltd v New River Head RTM Co* decision said is not possible through s.94.

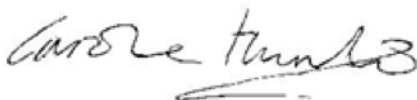
28. Turning to the bank account, when we look at the actual account in which the accrued, uncommitted service charges sit we cannot agree with Mr Stevenson that £54.55 is the correct amount. He admitted that the extract of the Lloyds account included payments of ground rents and it also seemed to include repayments of loans. Sections 42 and 42A of the 1987 Act do not prohibit co-mingling accounts, however, the choice to run the income and expenditure of the Respondent company through the same accounts means that we cannot be certain what are 'the accrued, uncommitted service charges.'

29. In our view, the only way forward is for the Respondents to now split the Lloyds account into company income and expenditure and service charge income and expenditure. We understand given that the company was formed in 2014 this is a major undertaking, but we cannot see any other way forwards to meet the requirement of s.94. We note that most of the annual service charge accounts provided from 2017-2018 to 2023-2024 show a surplus (only 2017-18 shows a deficit), indicating the service charge income and expenditure is likely to be larger than £54.55 by some margin.

30. We hope that the parties can settle the actual amount but if not, we make the following directions:

- a. By **18 November 2026 the Respondent** must provide to the Tribunal and the Applicant a reconciliation of the annual service charge accounts from the Respondent's ownership of the building in 2014 to the acquisition by the Applicant with the Lloyds account by removing any income and expenditure of the Respondent company from that account;
- b. If this amount is not agreed by the parties, either party can apply for a further hearing to decide the s.94 amount payable by the Respondent to the Applicant;
- c. If there is an application for a hearing, 14 days before the hearing each party must provide a statement explaining their case as to the correct s.94 amount.

Signed:



Tribunal Judge Caroline Hunter (Chair)

Dated this 21st day of September 2026

Section 94 Duty to pay accrued uncommitted service charges

(1) Where the right to manage premises is to be acquired by a RTM company, a person who is—

- (a) landlord under a lease of the whole or any part of the premises,
 - (b) party to such a lease otherwise than as landlord or tenant, or
 - (c) a manager appointed under Part 2 of the 1987 Act to act in relation to the premises, or any premises containing or contained in the premises,
- must make to the company a payment equal to the amount of any accrued uncommitted service charges held by him on the acquisition date.

(2) The amount of any accrued uncommitted service charges is the aggregate of—

- (a) any sums which have been paid to the person by way of service charges in respect of the premises, and
- (b) any investments which represent such sums (and any income which has accrued on them),

less so much (if any) of that amount as is required to meet the costs incurred before the acquisition date in connection with the matters for which the service charges were payable.

(3) He or the RTM company may make an application to the appropriate tribunal to determine the amount of any payment which falls to be made under this section.

(4) The duty imposed by this section must be complied with on the acquisition date or as soon after that date as is reasonably practicable.