



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

<b>Case Reference</b>	:	<b>LON/00AY/LOA/2014/0001</b>
<b>Property</b>	:	<b>1-142 Brixton Hill Court, Brixton Hill, London SW2 1QX</b>
<b>Applicant</b>	:	<b>Brixton Hill Court RTM Company Limited</b>
<b>Representative</b>	:	<b>Ms Margarita Madjirska-Mossop - Mayfield Law Mr Dudley Joiner Right to Manage Federation Limited</b>
<b>Respondent</b>	:	<b>Springquote Limited</b>
<b>Representative</b>	:	<b>Mr Adrian Carr – Counsel instructed by J B Leitch Solicitors</b>
<b>Also in attendance</b>	:	<b>Various leaseholders from Brixton Hill Court (as per Appendix B), Mr Heimann FRICS (Managing agent) Mr Gabay (Managing agent) Mr Charlesworth - Mini-Pupil Mr Turner- Block Porter</b>
<b>Type of Application</b>	:	<b>Application for (No fault) Right to Manage under Section 84(3) of the Commonhold and Leasehold Reform Act 2002</b>
<b>Tribunal Members</b>	:	<b>Judge: N Haria Professional member: C Gowman Lay member: P Clabburn</b>
<b>Date and venue of Hearing</b>	:	<b>7<sup>th</sup> and 8<sup>th</sup> August, 2014 10 Alfred Place, London WC1E 7LR</b>
<b>Date of Decision</b>	:	<b>29 September 2014</b>

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**DECISION**

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**Representative** : **Ms Margarita Madjirska-Mossop - Mayfield Law  
Mr Dudley Joiner Right to Manage Federation Limited**

**Respondent** : **Springquote Limited**

**Representative** : **Mr Adrian Carr – Counsel  
instructed by J B Leitch Solicitors**

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Mr Heimann FRICS (Managing agent)  
Mr Gabay (Managing agent)  
Mr Charlesworth - Mini-Pupil  
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**DECISION**

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## **DECISION**

1. The Tribunal determines that the Applicant was on the relevant date (9 June 2014) entitled to acquire the right to manage the premises.

## **BACKGROUND**

2. The tribunal received an application under section 84(3) of the Commonhold and Leasehold Reform Act 2002 ("the Act").
3. The application relates to the premises known as 1-142 Brixton Hill Court, Brixton, London SW2 ("the premises"). There are a total of 143 flats in the two blocks connected by a concrete colonnade:
  - a. The front block comprises 89 flats numbered Flats 1-88 ("the Front block"). There is no flat number 13 but there is a flat 5A and flat 12A.
  - b. The rear block comprises 54 flats numbered Flats 89-142 ("the Rear block").
4. The Applicant is a private limited company which was incorporated on 30 October 2012 ("the RTM Company").
5. The Respondent is the freehold proprietor of the premises.
6. By two separate claim notices each dated 4 February 2014 (referred to together as "the Claim Notices"), the applicant gave notice pursuant to section 80 of the Act that it intends to acquire the Right to Manage of the premises on 9 June 2014.
7. On the 6 March 2014 the Respondent served two counter- notices and disputed that the Applicant was entitled to acquire the Right to Manage ("the RTM") on the basis of five grounds set out in the schedules to each counter-notice.
8. A case management conference ("CMC") was held by the Tribunal on the 21 May 2014 and both parties were represented. Directions were issued setting the matter down for a hearing on the 7 August 2014.

## **ISSUES**

9. At the start of the hearing the parties confirmed that the following matters remained in dispute:
  - a. Whether the Applicant served a Notice of Invitation to Participate ("a NIP") on the Respondent as landlord in respect of the flats for which the Respondent holds a long lease.
  - b. Whether the RTM company has the requisite number of qualifying tenant members to entitle it to acquire the RTM.

- c. Whether the Respondent is estopped under the principle of Res Judicata (see para 33 [4] below) from challenging the Claim Notices on the basis that the issue of whether one RTM company can manage the premises because it comprises two separate buildings was the subject of a determination by a prior tribunal under Case Number LON/00AY/LRM/2013/00013.

### **NOTICE OF INVITATION TO PARTICIPATE**

10. The Respondent is the qualifying tenant of 10 flats at the Premises:
  - a. Flats 2, 10, 16, 34, 43, 61 and 63 in the Front Block; and
  - b. Flats 116, 130 and 142 in the Rear Block.
11. The relevant provisions as to notice are contained in Section 111 of the Act. Section 111(5) of the Act provides as follows:

*“A company which is a RTM company in relation to premises may give a notice under this Chapter to a person who is the qualifying tenant of a flat contained in the premises at the flat unless it has been notified by the qualifying tenant of a different address in England and Wales at which he wishes to be given any such notice.”*
12. The Applicant relied on:
  - a. The skeleton argument, and
  - b. the witness statements of James Compton, solicitor, and Dorothy Leiper, resident and leasehold owner, in support of its claim that the NIP’s were served by hand on all the flats on 24 January 2013 by James Compton, Sarah Jennings, Angela Saul and Dorothy Leiper, and
  - c. a copy of the list of flats used by James Compton and Sarah Jennings on the 24 January 2013.
13. The Respondent alleged that it did not receive any NIPs that the Applicant claimed were served on the 24 January 2013 on each of the 10 flats for which it is a qualifying tenant. Although it is admitted that on the 24 January 2013, an unidentified qualifying tenant did pass a copy of a NIP to the Respondent, it is the Respondent’s case that this does not evidence service of any NIPs on the Respondent. Mr Carr submitted that even if one of the other qualifying tenants passed a NIP to the Respondent, this does not amount to good service, as the important point is that the Respondent has a NIP addressed to the Respondent inviting the Respondent to become a member of the RTM Company.
14. The Respondent contends that the application should be dismissed as the Applicant has failed to serve NIPs on the Respondent and the Respondent has suffered prejudice. The Respondent relies on the obiter

dictum (a comment which, though carrying weight, does not bear directly on the case in hand and therefore need not influence the decision) of the President Sir Keith Lindblom in the case of Avon Freeholds Ltd v Regent Court RTM Co Ltd [2013] UKHT 213 (LC).

15. The Respondent claimed that NIPs were not served and that it did not receive the NIPs but it has not produced a witness statement and it has not produced witness statements from the tenants that occupied its flats around 24 January 2013 in support.
16. The tribunal finds that the Applicant did serve the NIPs in accordance with Section 111(5) at the flats of all qualifying tenant's. The tribunal is persuaded by the witness statements of James Compton and Dorothy Leiper. The Tribunal finds both witnesses to be honest and credible. The minor inconsistency between the evidence of the James Compton and Dorothy Leiper were not in relation to the issue before the tribunal but in relation to whether or not a NIP was served on all flats including those where there was no qualifying tenant. The tribunal and Mr Carr were able to cross-examine both witnesses and they both clearly recollected attending the premises and delivering envelopes. Mr Compton delivered envelopes to the flats in the Front block and Miss Jennings accompanied by Ms Leiper delivered envelopes to the flats in the Rear block. Mr Compton was adamant that the NIPs were put into the envelopes either by himself or by his assistant under his supervision. When giving evidence on the first day of the hearing, Mr Compton recollected that he and Miss Jennings, a colleague and also a solicitor, had sheets on which they had ticked off each flat as each envelope was delivered. On the second day of the hearing, Mr Compton produced the list which had a tick marked against each qualifying tenant.
17. The list is consistent with the evidence of James Compton, it identifies each flat and records whether there is a qualifying tenant in the flat or whether the flat is retained by the freeholder. It also records whether the qualifying tenant is a member of the RTM Company. The list has been marked with a handwritten tick against each flat of a qualifying tenant and includes all of the flats in respect of which the Respondent is a qualifying tenant.
18. The Applicant had not been notified of a different address in England and Wales other than the address of each flat at which the Respondent wished to be given notice. Accordingly, in order to comply with the provisions as to the service of notices under Section 111(5) of the Act, the NIPs had to be served on the Respondent at the flats at which the Respondent is qualifying tenant.
19. Ms Madjirska-Mossop submitted that the statutory provisions for inviting tenants to participate in a right to manage process is directory as opposed to mandatory. This may be so but as pointed out by the President, Sir Keith Lindblom, in the case of Avon Freeholds Ltd v Regent Court RTM Co Ltd [2013] UKHT 213 (LC), when the same

argument was put to him “...*the right approach .....is to consider whether the statutory provisions have been substantially complied with, and whether such prejudice has been caused as to undermine the right to manage process as a whole. ....*”.

20. In relation to Section 111(5) he stated that “...*the provision for the deemed giving of notice provides a RTM company with a means of achieving valid service on a non participating tenant. This will be so even if the tenant is not living in his flat in the premises and the RTM company does not know where he is*”.
21. On the issue of prejudice he stated “*The number of tenants who have not had notice in accordance with the statutory provisions may be relevant when considering the question of prejudice, both of landlord and to tenant. But in my view it is unlikely to be a decisive factor when prejudice to tenants is being assessed. ....What one ought to do, I believe, is to ascertain –so far as one can – the true effects of the failure to give notice in accordance with the statutory provisions on all those affected by that failure. The question here is not whether a significant number of tenants have been prejudiced but whether any or all of the tenants not given notice in accordance with section 111 has been caused such prejudice through the RTM company’s default as to justify denying the RTM company the right to manage..... The consequences of a failure to comply with the statutory provisions must be considered in the context of what Parliament plainly sought to achieve by those provisions. In section 111(5) of the 2002 Act Parliament embraced the concept of a deemed giving of notice. A qualifying tenant can be treated as having been validly given a notice of invitation to participate even when he has not had actual notice of it. Inherent in the statutory provisions for giving such notices is the possibility that one or more of the qualifying tenants will not know that a right to manage process has begun. Even if notice is given at another address notified by the tenant this in itself is no guarantee of his becoming aware of the process.*”
22. Ms Madjirska-Mossop referred the tribunal to Avon Freehold Limited (20030 UKHT 02314(LC) and Sinclair Gardens Investments (Kensington) Limited v Oak Investments RTM Company Limited LRX/52/2004 where not all qualifying tenants were served but the claim notice was found to be valid.
23. Ms Madjirska-Mossop submitted that in any event the Respondent had admitted that it had received a copy of the NIP (albeit from an unidentified leaseholder), so it was aware that a notice had been served inviting all qualifying tenants who are not already members of the RTM company to become members of the RTM company, and had the Respondent wanted to become a member of the RTM company there was nothing to prevent the Respondent from doing so.
24. Mr Carr submitted that the Respondent is the qualifying tenant of 10 flats in the premises and it had not been afforded the proper

opportunity or indeed any opportunity to become a member of the RTM Company as a result of the failure to serve the NIPs. He drew an analogy with the position of a person who has not received an invitation to a party and stated that unless a person receives an invitation addressed to him or her that person cannot assume that he or she is invited to attend the party simply because he is aware of the party.

25. The tribunal rejected the analogy put forward by Mr Carr, the requirement to serve a Notice of Invitation to Participate is imposed by statute unlike the issue of an invitation to a party and the main question for the tribunal in determining the effect of a failure to serve a Notice of Invitation to Participate is whether the qualifying tenant has in practice the awareness of the procedures as the statute intended.
26. It is accepted by the parties that on the same date as the date the NIPs were delivered to the flats, a copy of the NIP was passed to the Respondent by an unidentified qualifying tenant. The Respondent forwarded the NIP to its solicitors and was advised as to the implications of the NIP. Therefore the tribunal is satisfied that although the Respondent may not have received a NIP addressed to it (even though the tribunal has found that the NIP's were served as required) the tribunal finds on the basis of the facts in this case that the Respondent did in practice have awareness of the NIP and of the procedures as the statute intended.
27. In considering the approach to be taken in relation to a procedural irregularity, the tribunal was guided by the judgment of the President, George Bartlett QC in Sinclair Gardens Investments (Kensington) Limited v Oak Investments RTM Company Limited LRX/52/2004, in which he quoted with approval the guidance offered by Lord Woolf MR in the Court of Appeal decision in R v Immigration Appeal Tribunal ex parte Jeyanthan [1999] 3 ALL ER 231 as follows:

“..In the majority of cases, whether the requirement is categorised as directory or mandatory, the tribunal before whom the defect is properly raised has the task of determining what are to be the consequences of failing to comply with the requirement in the context of all the facts and circumstances of the case in which the issue arises. In such a situation that tribunal's task will be to seek to do what is just in all the circumstances”

Specifically in relation to Notices of Invitation to Participate, the President clarified that the:

“ ... purpose of requiring notice of invitation to participate to be served on a qualifying tenant who neither is nor has agreed to become a member of the RTM Company is clearly to ensure that the interest of that tenant is protected. Under section 79(8) a copy of the claim notice must be given to each person who on the relevant date is the qualifying tenant of a flat contained in the premises. The provisions are thus designed to ensure that every qualifying tenant has the opportunity to

participate in the RTM Company and is informed that a claim notice has been made by the RTM v Company. In determining the effect of the failure to comply with one or other of these requirements the principal question for the Tribunal will be whether the qualifying tenant has in practice has (sic) such awareness of the procedures as the statute intended him to have.”

28. Since the tribunal finds that the NIPs were correctly served the issue of prejudice does not arise.

### **A REQUISITE NUMBER OF QUALIFYING TENANTS**

29. Having heard the evidence and on the basis of the skeleton arguments and submissions made on behalf of the parties, the tribunal finds that on the relevant date (i.e the date on which the notice of claim was given) the membership of the RTM company included sufficient qualifying tenants.

30. At the hearing, Mr Carr stated that although he did not concede the point, he did not think he could pursue it further. He stated that the Respondent was justified in raising concerns on the basis of the applications produced by the Applicant as the register of members of the RTM company did not match the applications. Mr Carr accepted that any inconsistency between the applications and the register of members has been addressed by the following documents which have now been produced by the Applicant:

- a. a copy of the Order of Mr Deputy Registrar Briggs sitting in the High Court dated 17 April 2014 whereby the Register of Members of the RTM Company is rectified under Section 125 of the Companies Act 2006.
- b. copies of letters signed by various tenants confirming that they are members of the RTM company and that they completed and signed the application to become a member of the RTM Company.

31. The tribunal agrees that the Respondent was right to be concerned on receiving copies of applications completed by tenants that there may have been insufficient qualifying members of the RTM Company. However the qualifying tenants have since written letters confirming that they had made errors on the completion of the application forms and that they did wish to become members and are members of the RTM Company. In addition the Applicant has produced a copy of the Order of Mr Deputy Registrar Briggs sitting in the High Court dated 17 April 2014 whereby the Register of Members of the RTM Company is rectified. On the basis of these documents the tribunal finds that on the relevant date (i.e the date on which the notice of claim was given) the membership of the RTM company included sufficient qualifying tenants of flats in the Front and Rear block of the premises (being not less than one half of the total number of flats).



## ESTOPPEL

32. The issue is whether the Respondent is estopped under the principle of Res Judicata from challenging the Claim Notices - on the basis that one RTM company cannot manage the premises because it comprises two separate buildings - as this point was the subject of a determination by a prior tribunal under Case Number LON/00AY/LRM/2013/00013.

33. The parties relied on the submissions made at the hearing and their respective Skeleton arguments.

34. In relation to the issue of estoppel under the principle of Res Judicata, Mr Carr referred the tribunal to paragraph 9 of the Court of Appeal judgement in Foster v Bon Groundwork Ltd [2012]EWCA Civ 252 in which Elias LJ summarised the relevant legal principles and stated:

“The central question for the court is, therefore whether the later proceedings involves the unjust harassment of a party; but that condition is not merely satisfied because a claim could have been brought on the earlier proceedings but was not.”

35. Mr Carr argued that the previous tribunal decision related to the claim notices served at that time and not the Claim Notices before this tribunal. He stated that it is the Claim Notices that are central to the dispute. The tribunal at the previous hearing dismissed the application and his client (the Respondent) was successful on the substantive point so it did not need to appeal the decision. He argued that it would be wrong and unjust on his client to debar it from running a point in these proceedings where there is a live appeal on this very point in the Upper Tribunal in Ninety Broomfield Road RTM Company Ltd v Triplerose Ltd &Ors [2013] UKUT 606 (LC).

36. Ms Madjirska-Mossop disagreed with Mr Carr and stated that his reference to paragraph 9 of the judgement in the Foster v Bon Groundwork Ltd [2012] EWCA Civ 252, case was misleading as that paragraph relates to an abuse of process point and not to the principle of Res Judicata. Ms Madjirska-Mossop was very indignant as she stated that both she and Mr Carr have a duty to the tribunal not to mislead.

37. Ms Madjirska-Mossop referred the tribunal to paragraphs 1, 4 and 5 of the judgement. It is helpful to set out those paragraphs in full:

“ 1. This is an appeal against the judgement of the Employment appeal Tribunal, Silber J sitting alone, in which he allowed an appeal against the judgement of Employment Judge Seymour, who had struck out certain other claims of Mr Foster, the respondent to this appeal. The claims were struck out on two bases. With respect to some of the claims she considered that they were res judicata, having been effectively determined by Employment Judge Salter in an earlier application. As to certain other claims she considered that they amounted to an abuse of process within the principle enunciated in Henderson V Henderson (1843) 3 Hare 100.....

## **The relevant legal principles**

4. Since the relevant legal principles are not in dispute I will set them out briefly. The principle of res judicata can be summarised as follows: where an issue has been litigated before a judicial body and determined as between the parties it cannot be reopened. It is binding as between them, and the parties are estopped from reopening it. The issue may be one of fact or of law. However, the parties are only bound by an issue which it was necessary for the court to determine in the earlier claim. In Arnold v National Westminster Bank plc [1991] 2 Ac 93, Lord Keith of Kinkel observed that the principle applies where

“a necessary ingredient in a cause of action has been litigated and decided and in subsequent proceedings between the same parties involving a different cause of action to which the same issue is relevant one of the parties seeks to reopen that issue.”

5 It follows therefore, that a finding of fact by an earlier court which is not a “necessary ingredient” in the earlier cause of action will not give rise to a “fact estoppel” Moreover , a finding cannot be a necessary ingredient of a cause of action if the earlier court or tribunal did not have jurisdiction to decide the matter at all: see the observations of Sir Nicholas Browne – Wilkinson in O’ Laoire v Jackel International Ltd (No2) [1991] ICR 718,729 when he said “it is well established that there can be no estoppel arising out of an order or judgment given in excess of jurisdiction.”

38. Ms Madjirska-Mossop stated that the tribunal should weigh up any prejudice to the Respondent against prejudice to her client. She also pointed out that there is public interest in certainty in proceedings and parties are entitled to be able to get on with their lives.
39. The issue of whether one RTM Company can acquire the right to manage over more than one building was a “necessary ingredient” in the determination of the application before the prior tribunal between the same parties and further more in relation to the same premises. The issue was fully considered and the prior tribunal having determined that the premises are made up of two buildings, proceeded to determine that “ ..... one RTM Company may be set up and serve a valid claim notice in respect of the two buildings”. Following the principle of Res judicata as very clearly summarised by Elias LJ in the Foster case, the issue has been determined and cannot be reopened.
40. The tribunal does not accept that simply because the Respondent was successful on the substantive issue under Case Number LON/00AY/LRM/2013/00013, that the Respondent was barred from appealing the determination on the issue that it seeks to have reopened. The Respondent had the benefit of legal advice and if it considered there had been an error of law in any part of the determination of the previous tribunal, it had the right to appeal to the Upper Tribunal. The

fact that it had succeeded on the substantive issue should not have prevented it from submitting an appeal.

41. The tribunal finds the public interest argument put forward by Ms Madjirska-Mossop compelling. The tribunal is of the view that it is in the interests of justice and in the interests of the parties for there to be finality in legal proceedings which extends also to efficiency and economy in litigation. It cannot be right or just that a party is continually exposed to defending proceedings on a point that has already been determined simply in order to keep alive the right of appeal for the benefit of the opposing party, even where there are proceedings pending in the Upper Tribunal on the very point that is the subject of the determination.
42. For the reasons given the tribunal finds that the issue is Res judicata and so makes no determination on the issue.

### **RIGHT TO MANAGE**

43. In the light of the findings set out above, the Tribunal determines that the Applicant was on the relevant date (9 June 2014) entitled to acquire the right to manage the premises.

### **COSTS**

44. The parties indicated at the hearing that they might consider making a separate application for costs once they had received this decision.

Signed: N Haria

Date: 29<sup>th</sup> September 2014

## **Appendix A**

### **Relevant legislation**

#### **Commonhold and Leasehold Reform Act 2002**

##### **Part 2**

##### **Chapter 1**

##### **Right To Manage**

#### **72 Premises to which Chapter applies**

- (1) This Chapter applies to premises if—
- (a) they consist of a self-contained building or part of a building, with or without appurtenant property,
  - (b) they contain two or more flats held by qualifying tenants, and
  - (c) the total number of flats held by such tenants is not less than two-thirds of the total number of flats contained in the premises.
- (2) A building is a self-contained building if it is structurally detached.
- (3) A part of a building is a self-contained part of the building if—
- (a) it constitutes a vertical division of the building,
  - (b) the structure of the building is such that it could be redeveloped independently of the rest of the building, and
  - (c) subsection (4) applies in relation to it.
- (4) This subsection applies in relation to a part of a building if the relevant services provided for occupiers of it—
- (a) are provided independently of the relevant services provided for occupiers of the rest of the building, or
  - (b) could be so provided without involving the carrying out of works likely to result in a significant interruption in the provision of any relevant services for occupiers of the rest of the building.
- (5) Relevant services are services provided by means of pipes, cables or other fixed installations.
- (6) Schedule 6 (premises excepted from this Chapter) has effect.

#### **73 RTM companies**

- (1) This section specifies what is a RTM company.
- (2) A company is a RTM company in relation to premises if—
- (a) it is a private company limited by guarantee, and

(b)its memorandum of association states that its object, or one of its objects, is the acquisition and exercise of the right to manage the premises.

(3)But a company is not a RTM company if it is a commonhold association (within the meaning of Part 1).

(4)And a company is not a RTM company in relation to premises if another company is already a RTM company in relation to the premises or to any premises containing or contained in the premises.

(5)If the freehold of any premises is conveyed or transferred to a company which is a RTM company in relation to the premises, or any premises containing or contained in the premises, it ceases to be a RTM company when the conveyance or transfer is executed.

#### **74 RTM companies: membership and regulations**

(1)The persons who are entitled to be members of a company which is a RTM company in relation to premises are—

- (a)qualifying tenants of flats contained in the premises, and
- (b)from the date on which it acquires the right to manage (referred to in this Chapter as the “acquisition date”), landlords under leases of the whole or any part of the premises.

(2)The appropriate national authority shall make regulations about the content and form of the memorandum of association and articles of association of RTM companies.

(3)A RTM company may adopt provisions of the regulations for its memorandum or articles.

(4)The regulations may include provision which is to have effect for a RTM company whether or not it is adopted by the company.

(5)A provision of the memorandum or articles of a RTM company has no effect to the extent that it is inconsistent with the regulations.

(6)The regulations have effect in relation to a memorandum or articles—

- (a)irrespective of the date of the memorandum or articles, but
- (b)subject to any transitional provisions of the regulations.

(7)The following provisions of the Companies Act 1985 (c. 6) do not apply to a RTM company—

- (a)sections 2(7) and 3 (memorandum), and
- (b)section 8 (articles).

#### **75 Qualifying tenants**

- (1) This section specifies whether there is a qualifying tenant of a flat for the purposes of this Chapter and, if so, who it is.
- (2) Subject as follows, a person is the qualifying tenant of a flat if he is tenant of the flat under a long lease.
- (3) Subsection (2) does not apply where the lease is a tenancy to which Part 2 of the Landlord and Tenant Act 1954 (c. 56) (business tenancies) applies.
- (4) Subsection (2) does not apply where—
- (a) the lease was granted by sub-demise out of a superior lease other than a long lease,
  - (b) the grant was made in breach of the terms of the superior lease, and
  - (c) there has been no waiver of the breach by the superior landlord.
- (5) No flat has more than one qualifying tenant at any one time; and subsections (6) and (7) apply accordingly.
- (6) Where a flat is being let under two or more long leases, a tenant under any of those leases which is superior to that held by another is not the qualifying tenant of the flat.
- (7) Where a flat is being let to joint tenants under a long lease, the joint tenants shall (subject to subsection (6)) be regarded as jointly being the qualifying tenant of the flat.

## **76 Long leases**

- (1) This section and section 77 specify what is a long lease for the purposes of this Chapter.
- (2) Subject to section 77, a lease is a long lease if—
- (a) it is granted for a term of years certain exceeding 21 years, whether or not it is (or may become) terminable before the end of that term by notice given by or to the tenant, by re-entry or forfeiture or otherwise,
  - (b) it is for a term fixed by law under a grant with a covenant or obligation for perpetual renewal (but is not a lease by sub-demise from one which is not a long lease),
  - (c) it takes effect under section 149(6) of the Law of Property Act 1925 (c. 20) (leases terminable after a death or marriage),
  - (d) it was granted in pursuance of the right to buy conferred by Part 5 of the Housing Act 1985 (c. 68) or in pursuance of the right to acquire on rent to mortgage terms conferred by that Part of that Act,
  - (e) it is a shared ownership lease, whether granted in pursuance of that Part of that Act or otherwise, where the tenant's total share is 100 per cent., or
  - (f) it was granted in pursuance of that Part of that Act as it has effect by virtue of section 17 of the Housing Act 1996 (c. 52) (the right to acquire).

(3) "Shared ownership lease" means a lease—

(a) granted on payment of a premium calculated by reference to a percentage of the value of the demised premises or the cost of providing them, or

(b) under which the tenant (or his personal representatives) will or may be entitled to a sum calculated by reference, directly or indirectly, to the value of those premises.

(4) "Total share", in relation to the interest of a tenant under a shared ownership lease, means his initial share plus any additional share or shares in the demised premises which he has acquired.

## **77 Long leases: further provisions**

(1) A lease terminable by notice after a death or marriage is not a long lease if—

(a) the notice is capable of being given at any time after the death or marriage of the tenant,

(b) the length of the notice is not more than three months, and

(c) the terms of the lease preclude both its assignment otherwise than by virtue of section 92 of the Housing Act 1985 (assignments by way of exchange) and the sub-letting of the whole of the demised premises.

(2) Where the tenant of any property under a long lease, on the coming to an end of the lease, becomes or has become tenant of the property or part of it under any subsequent tenancy (whether by express grant or by implication of law), that tenancy is a long lease irrespective of its terms.

(3) A lease—

(a) granted for a term of years certain not exceeding 21 years, but with a covenant or obligation for renewal without payment of a premium (but not for perpetual renewal), and

(b) renewed on one or more occasions so as to bring to more than 21 years the total of the terms granted (including any interval between the end of a lease and the grant of a renewal),

is to be treated as if the term originally granted had been one exceeding 21 years.

(4) Where a long lease—

(a) is or was continued for any period under Part 1 of the Landlord and Tenant Act 1954 (c. 56) or under Schedule 10 to the Local Government and Housing Act 1989 (c. 42), or

(b) was continued for any period under the Leasehold Property (Temporary Provisions) Act 1951 (c. 38),  
it remains a long lease during that period.

(5) Where in the case of a flat there are at any time two or more separate leases, with the same landlord and the same tenant, and—

(a) the property comprised in one of those leases consists of either the flat or a part of it (in either case with or without appurtenant property),  
and

(b)the property comprised in every other lease consists of either a part of the flat (with or without appurtenant property) or appurtenant property only,  
there shall be taken to be a single long lease of the property comprised in such of those leases as are long leases.

### **Claim to acquire right 78 Notice inviting participation**

(1)Before making a claim to acquire the right to manage any premises, a RTM company must give notice to each person who at the time when the notice is given—

- (a)is the qualifying tenant of a flat contained in the premises, but
- (b)neither is nor has agreed to become a member of the RTM company.

(2)A notice given under this section (referred to in this Chapter as a “notice of invitation to participate”) must—

- (a)state that the RTM company intends to acquire the right to manage the premises,
- (b)state the names of the members of the RTM company,
- (c)invite the recipients of the notice to become members of the company, and
- (d)contain such other particulars (if any) as may be required to be contained in notices of invitation to participate by regulations made by the appropriate national authority.

(3)A notice of invitation to participate must also comply with such requirements (if any) about the form of notices of invitation to participate as may be prescribed by regulations so made.

(4)A notice of invitation to participate must either—

- (a)be accompanied by a copy of the memorandum of association and articles of association of the RTM company, or
- (b)include a statement about inspection and copying of the memorandum of association and articles of association of the RTM company.

(5)A statement under subsection (4)(b) must—

- (a)specify a place (in England or Wales) at which the memorandum of association and articles of association may be inspected,
- (b)specify as the times at which they may be inspected periods of at least two hours on each of at least three days (including a Saturday or Sunday or both) within the seven days beginning with the day following that on which the notice is given,
- (c)specify a place (in England or Wales) at which, at any time within those seven days, a copy of the memorandum of association and articles of association may be ordered, and
- (d)specify a fee for the provision of an ordered copy, not exceeding the reasonable cost of providing it.



(6) Where a notice given to a person includes a statement under subsection (4)(b), the notice is to be treated as not having been given to him if he is not allowed to undertake an inspection, or is not provided with a copy, in accordance with the statement.

(7) A notice of invitation to participate is not invalidated by any inaccuracy in any of the particulars required by or by virtue of this section.

### **79 Notice of claim to acquire right**

(1) A claim to acquire the right to manage any premises is made by giving notice of the claim (referred to in this Chapter as a "claim notice"); and in this Chapter the "relevant date", in relation to any claim to acquire the right to manage, means the date on which notice of the claim is given.

(2) The claim notice may not be given unless each person required to be given a notice of invitation to participate has been given such a notice at least 14 days before.

(3) The claim notice must be given by a RTM company which complies with subsection (4) or (5).

(4) If on the relevant date there are only two qualifying tenants of flats contained in the premises, both must be members of the RTM company.

(5) In any other case, the membership of the RTM company must on the relevant date include a number of qualifying tenants of flats contained in the premises which is not less than one-half of the total number of flats so contained.

(6) The claim notice must be given to each person who on the relevant date 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 Landlord and Tenant Act 1987 (c. 31) (referred to in this Part as "the 1987 Act") to act in relation to the premises, or any premises containing or contained in the premises.

(7) Subsection (6) does not require the claim notice to be given to a person who cannot be found or whose identity cannot be ascertained; but if this subsection means that the claim notice is not required to be given to anyone at all, section 85 applies.

(8) A copy of the claim notice must be given to each person who on the relevant date is the qualifying tenant of a flat contained in the premises.

(9) Where a manager has been appointed under Part 2 of the 1987 Act to act in relation to the premises, or any premises containing or contained in the premises, a copy of the claim notice must also be given to the leasehold valuation tribunal or court by which he was appointed.

## **80 Contents of claim notice**

(1) The claim notice must comply with the following requirements.

(2) It must specify the premises and contain a statement of the grounds on which it is claimed that they are premises to which this Chapter applies.

(3) It must state the full name of each person who is both—  
(a) the qualifying tenant of a flat contained in the premises, and  
(b) a member of the RTM company,  
and the address of his flat.

(4) And it must contain, in relation to each such person, such particulars of his lease as are sufficient to identify it, including—  
(a) the date on which it was entered into,  
(b) the term for which it was granted, and  
(c) the date of the commencement of the term.

(5) It must state the name and registered office of the RTM company.

(6) It must specify a date, not earlier than one month after the relevant date, by which each person who was given the notice under section 79(6) may respond to it by giving a counter-notice under section 84.

(7) It must specify a date, at least three months after that specified under subsection

(6), on which the RTM company intends to acquire the right to manage the premises.

(8) It must also contain such other particulars (if any) as may be required to be contained in claim notices by regulations made by the appropriate national authority.

(9) And it must comply with such requirements (if any) about the form of claim notices as may be prescribed by regulations so made.

## **81 Claim notice: supplementary**

(1) A claim notice is not invalidated by any inaccuracy in any of the particulars required by or by virtue of section 80.

(2) Where any of the members of the RTM company whose names are stated in the claim notice was not the qualifying tenant of a flat contained in the

premises on the relevant date, the claim notice is not invalidated on that account, so long as a sufficient number of qualifying tenants of flats contained in the premises were members of the company on that date; and for this purpose a "sufficient number" is a number (greater than one) which is not less than one-half of the total number of flats contained in the premises on that date.

(3) Where any premises have been specified in a claim notice, no subsequent claim notice which specifies—

- (a) the premises, or
  - (b) any premises containing or contained in the premises,
- may be given so long as the earlier claim notice continues in force.

(4) Where a claim notice is given by a RTM company it continues in force from the relevant date until the right to manage is acquired by the company unless it has previously—

- (a) been withdrawn or deemed to be withdrawn by virtue of any provision of this Chapter, or
- (b) ceased to have effect by reason of any other provision of this Chapter.

#### **84 Counter-notices**

(1) A person who is given a claim notice by a RTM company under section 79(6) may give a notice (referred to in this Chapter as a "counter-notice") to the company no later than the date specified in the claim notice under section 80(6).

(2) A counter-notice is a notice containing a statement either—

- (a) admitting that the RTM company was on the relevant date entitled to acquire the right to manage the premises specified in the claim notice, or
  - (b) alleging that, by reason of a specified provision of this Chapter, the RTM company was on that date not so entitled,
- and containing such other particulars (if any) as may be required to be contained in counter-notices, and complying with such requirements (if any) about the form of counter-notices, as may be prescribed by regulations made by the appropriate national authority.

(3) Where the RTM company has been given one or more counter-notices containing a statement such as is mentioned in subsection (2)(b), the company may apply to a leasehold valuation tribunal for a determination that it was on the relevant date entitled to acquire the right to manage the premises.

(4) An application under subsection (3) must be made not later than the end of the period of two months beginning with the day on which the counter-notice (or, where more than one, the last of the counter-notices) was given.

(5) Where the RTM company has been given one or more counter-notice containing a statement such as is mentioned in subsection (2)(b), the RTM company does not acquire the right to manage the premises unless—

- (a) on an application under subsection (3) it is finally determined that the company was on the relevant date entitled to acquire the right to manage the premises, or
- (b) the person by whom the counter-notice was given agrees, or the persons by whom the counter-notice were given agree, in writing that the company was so entitled.

(6) If on an application under subsection (3) it is finally determined that the company was not on the relevant date entitled to acquire the right to manage the premises, the claim notice ceases to have effect.

(7) A determination on an application under subsection (3) becomes final—

- (a) if not appealed against, at the end of the period for bringing an appeal, or
- (b) if appealed against, at the time when the appeal (or any further appeal) is disposed of.

(8) An appeal is disposed of—

- (a) if it is determined and the period for bringing any further appeal has ended, or
- (b) if it is abandoned or otherwise ceases to have effect

## **88 Costs: general**

(1) A RTM company is liable for reasonable costs incurred by a person who is—

- (a) landlord under a lease of the whole or any part of any 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,

in consequence of a claim notice given by the company in relation to the premises.

(2) Any costs incurred by such a person in respect of professional services rendered to him by another are to be regarded as reasonable only if and to the extent that costs in respect of such services might reasonably be expected to have been incurred by him if the circumstances had been such that he was personally liable for all such costs.

(3) A RTM company is liable for any costs which such a person incurs as party to any proceedings under this Chapter before a leasehold valuation tribunal only if the tribunal dismisses an application by the company for a determination that it is entitled to acquire the right to manage the premises.

(4) Any question arising in relation to the amount of any costs payable by a RTM company shall, in default of agreement, be determined by a leasehold valuation tribunal

### **89 Costs where claim ceases**

(1) This section applies where a claim notice given by a RTM company—  
(a) is at any time withdrawn or deemed to be withdrawn by virtue of any provision of this Chapter, or  
(b) at any time ceases to have effect by reason of any other provision of this Chapter.

(2) The liability of the RTM company under section 88 for costs incurred by any person is a liability for costs incurred by him down to that time.

(3) Each person who is or has been a member of the RTM company is also liable for those costs (jointly and severally with the RTM company and each other person who is so liable).

(4) But subsection (3) does not make a person liable if—  
(a) the lease by virtue of which he was a qualifying tenant has been assigned to another person, and  
(b) that other person has become a member of the RTM company.

(5) The reference in subsection (4) to an assignment includes—  
(a) an assent by personal representatives, and  
(b) assignment by operation of law where the assignment is to a trustee in bankruptcy or to a mortgagee under section 89(2) of the Law of Property Act 1925 (c. 20) (foreclosure of leasehold mortgage)

### **111 Notices**

(1) Any notice under this Chapter—  
(a) must be in writing, and  
(b) may be sent by post.

(2) A company which is a RTM company in relation to premises may give a notice under this Chapter to a person who is landlord under a lease of the whole or any part of the premises at the address specified in subsection (3) (but subject to subsection (4)).

(3) That address is—  
(a) the address last furnished to a member of the RTM company as the landlord's address for service in accordance with section 48 of the 1987 Act (notification of address for service of notices on landlord), or  
(b) if no such address has been so furnished, the address last furnished to such a member as the landlord's address in accordance with section

47 of the 1987 Act (landlord's name and address to be contained in demands for rent).

(4) But the RTM company may not give a notice under this Chapter to a person at the address specified in subsection (3) if it has been notified by him of a different address in England and Wales at which he wishes to be given any such notice.

(5) A company which is a RTM company in relation to premises may give a notice under this Chapter to a person who is the qualifying tenant of a flat contained in the premises at the flat unless it has been notified by the qualifying tenant of a different address in England and Wales at which he wishes to be given any such notice.

## **Appendix B**

### **Persons also in attendance**

#### **Day one**

Paul Harland  
Douglas Perberdy  
Winston Richards  
Peter Beaumont  
Massimo Bonini  
Angela Saul  
Richard Kembery  
Kim Lomax  
Jonathan Babington- Smith  
Jonathan Brown  
Anthony Lebot  
Masini Brusadin  
Andrew Tracey  
Laurence Carter Senior  
Colin Thomson  
Dorothy Leiper  
Peter Dixon  
John Torpey  
Clive Gut  
Jonathan Moore  
Kelly Thddiett  
Mr H Moore  
Mrs V Brown

#### **Day two**

Paul Harland  
Angela Saul  
Andrew Tracey  
Colin Thomson  
Peter Dixon