



569

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

Case Reference : **LON/00BE/LRM/2016/0023**

Property : **Assembly Apartments, 24 York
Grove London SE17 2NZ**

Applicant : **Assembly Apartments RTM
Company Limited**

Representative : **Foulds Solicitors Limited**

Respondent : **Bernard Construction Limited**

Representative : **Residential Block Management
Services Limited ("RBMS")**

Type of Application : **Application for (No fault) Right to
Manage under Section 84(3) of the
Commonhold and Leasehold
Reform Act 2002**

Tribunal Members : **Judge: N Haria
Professional member: S Mason BSc
FRICS FCI Arb**

Date of Decision : **02/02/2017**

DECISION

DECISION

1. The Tribunal determines that the Applicant was not on the relevant date (1 March 2017) 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 Assembly Apartments, 24 York Grove, London SE15 2NZ ("the premises"). There are a total of 41 flats. Flats 1-38 and Flat 41 are in one building and Flats 39 and 40 are in another building.
4. The Applicant is a private limited company which was incorporated on 13 May 2016 ("the RTM Company").
5. The Respondent is the proprietor of the Head lease of the premises.
6. By a claim notice dated 17 October 2016 ("the Claim Notice"), the applicant gave notice pursuant to section 80 of the Act that it intends to acquire the Right to Manage of the premises on 1 March 2017.
7. The Respondent served a counter-notice dated 21 November 2016 ("the Counter Notice") and disputed that the Applicant was entitled to acquire the Right to Manage ("the RTM") on the basis of the grounds set out in the Counter-Notice.
8. Directions dated 8/12/2016 were issued setting the matter down for a determination on the papers in the week commencing 23/01/2017.
9. The Applicant relied on:
 - a. The Application together with the enclosures
 - b. The Applicant's Supplementary Statement
10. The Respondent relied on:
 - a. The Counter Notice
 - b. The Respondents Supplementary Statement

ISSUES

11. The following matters remained in dispute:
 - a. Whether the Notice of Invitation to Participate ("NIP") was accompanied by a copy of the memorandum and articles of association of the RTM Company.
 - b. Whether the NIP included a statement about inspection and copying of the memorandum and articles of association of the RTM Company.
 - c. Whether the NIP was sent to all residents of the scheme.

- d. Whether the membership of the proposed RTM Company comprises less than half of the flats in the premises.

NOTICE OF INVITATION TO PARTICIPATE

12. 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.”

13. The issue is whether there has been compliance with the statutory provisions for inviting tenants to participate in a right to manage. 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), *“...the right approachis 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.”*
14. 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”*.
15. 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.”

16. 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 Jeyeanthan [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.”

Whether the Notice of Invitation to Participate (“NIP”) was accompanied by a copy of the memorandum and articles of association of the RTM Company and whether the NIP included a statement about inspection and copying of the memorandum and articles of association of the RTM Company.

17. The Applicant with it’s Supplementary Statement produced a copy of a sample NIP. The Tribunal finds that paragraph 2 of the NIP includes a statement about the inspection and copying of the RTM company’s memorandum and articles of association in compliance with section 78(4) and 78(5) of the Act and so it is not necessary for the NIP to be accompanied by a copy of the RTM company’s memorandum and articles of association.

18. The Tribunal finds that the NIP complies with the requirements of the Act in relation to the memorandum and articles of association of the RTM Company.

Whether the NIP was sent to all residents of the scheme.

19. Section 78(1) requires that a RTM company must give notice to each person who at the time when the notice is given is a qualifying tenant of a flat contained in the premises, but who has not agreed to be a member nor is not a member of the RTM Company.

20. The Applicant claims that a NIP was sent to every such person. The Applicant produced a certificate of service and a copy of the covering letter sent with each NIP. The Respondent submits that in relation to the following persons they had been notified of an alternative address for correspondence (“a correspondence address”) and as the NIP’s had been served by the Applicants by sending the NIP’s to these persons at their respective addresses at the premises as opposed to their correspondence address it is possible that they did not receive the NIP:

- a. Richard Michael Stout Flat 7,
- b. Russell Barnaby Bryan & James Catterall Flat 10,
- c. Nathaniel George Hook Flat 14,
- d. Carol Anne Sam Flat 20,
- e. Pamela Gupta Flat 24,
- f. Ian Charles L’Anson & Sandra Lesley L’Anson Flat 35

21. Section 111(5) of the Act makes provision for Notices as follows:

“(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.”

22. The Respondent does not claim that the persons named above had notified the RTM company of a different address for correspondence and so the Tribunal finds that the service of the NIP at the flat to be sufficient.
23. In relation to Flat 4, the Respondent submits that the NIP was sent to Mr Lane but he had sold the flat to Christy Riedlinger. The Applicant has confirmed that upon being contacted by Mr Lane on the 28/09/2016 to say he had sold his flat a NIP was sent to the new owner. The Applicant has produced a copy of the NIP served on the new owner of Flat 4, Christy Riedlinger together with a copy of the covering letter

dated 29/09/2016. The Tribunal on the evidence finds that a NIP was duly served on Christy Riedlinger the qualifying tenant of Flat 4.

24. The Respondent has pointed out that the NIP served on Christy Riedlinger at paragraph 4 of the NIP states the landlord is AMARJIT SINGH RUPRAI when in fact the landlord is Bernard Properties and this error could have caused considerable confusion given that she was a brand new leaseholder. The Applicant has produced a copy of the Official copy of the registered title which shows the landlord is in fact Bernard Construction Limited.

25. The Tribunal accepts that the NIP served on Christy Riedlinger incorrectly stated the landlord to be AMARJIT SINGH RUPRAI. The Tribunal finds that this inaccuracy does not invalidate the NIP as Section 78(7) of the Act provides that:

“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.”

26. The evidence shows that the NIP was sent to Christy Riedlinger with a covering letter from Foulds Solicitors Ltd. If Christy Riedlinger was at all confused by the NIP she could have contacted Foulds Solicitors. The Respondent has not produced a witness statement from Christy Riedlinger stating she was confused. The primary purpose of the NIP is to invite the recipient to become a member of the RTM Company. The Tribunal finds that despite the inaccuracy as to the landlord in the NIP served on Christy Riedlinger it nevertheless invited her to become a member of the RTM and so achieved its primary purpose.

27. The Respondent states that their records show that Flat 15 was sold on 6 May 2016 by Christopher Baker and Kathryn Scott to Mr J Davis and Mrs P Davis. The copy NIP produced by the Applicant shows that it was addressed to Christopher Baker and Kathryn Scott at Flat 15. The Tribunal accepts that it is unlikely that Mr and Mrs Davis would have opened post addressed to the previous owners of the flat. The Respondent has produced a copy of a print out from their computer system to show that as of 06/05/2016 the leaseholder of Flat 15 is Mr and Mrs Davis. A copy of their registered title would have provided conclusive evidence of the change of ownership including the date of assignment of the leasehold interest. On the evidence the Tribunal accepts that on a balance of probabilities the NIP was not served on the new leaseholders of Flat 15. Accordingly, the Tribunal finds that the NIP was not served on all the residents of the premises.

Whether the membership of the proposed RTM Company comprises less than half of the flats in the premises.

28. The Respondent in their Counter Notice alleged that membership of the RTM Company comprises less than half of the flats in the premises.

29. There are 41 flats in the premises. Flat 12 is still part of the Headlease with no sublease granted. At the time of issue/service of the Claim Notice as is evidenced by the copy produced there were 21 members of the RTM Company and so not less than half of the total number of flats in the premises as required by Section 79(5) of the Act.
30. In the Respondent's Supplemental Statement they raise a further objection on the basis that Flats 39 & 40 (which are the Caretakers Lodge) are in a completely separate building therefore this RTM Company cannot manage this property. The Respondent relies on the Court of Appeal case of **Ninety Broomfield Road RTM Co Ltd v Triplerose Ltd [2015] EWCA Civ 282**.
31. This is a new ground and not one which was previously raised in the Counter Notice. It is a matter for the Tribunal to determine whether or not the Applicant acquires the right to manage the premises.
32. Lady Justice Gloster who gave the leading judgement in **Ninety Broomfield Road RTM Co Ltd** held that:
- "Accordingly in my judgment the relevant provisions of the Act, construed as a whole, in context, necessarily point to the conclusion that the words "the premises" have the same meaning wherever they are used (save where otherwise expressly provided). That means that the references in section 72 to "premises" are to a single self-contained building or part of the building, and that likewise references to "the premises" or "premises" or "any premises" in sections 73, 74, 78 79 and other provisions of the Act are likewise references to a single self-contained building or part of the building. That interpretation is consistent with the provisions for model articles contained in the Regulations and is the only basis upon which the machinery for acquisition of the right to manage can operate. Accordingly in my view it is not open to an RTM company to acquire the right to manage more than one self-contained building or part of a building....."*
33. The Respondent correctly points out using a plan that the Flat 39 and 40 are in a completely separate building. The Court of Appeal has determined that the RTM company, which exercises the right to manage, can only manage one self-contained building and not more.
34. The Tribunal finds that one RTM Company cannot acquire the right to manage Flats 1-41 as Flats 39 & 40 are in a separate building and so the flats are in more than one self contained building.
35. In addition the Tribunal finds that the leaseholders of both Flats 39 & 40 were included in the 21 members of the RTM Company but as their flats are in a separate self contained building it cannot be regarded as part of the premises in respect of which the RTM Company can acquire the Right to Manage and the leaseholders of those flats cannot be included when determining whether the membership of the proposed RTM Company comprises less than half of the flats in the premises

Decision

36. In the light of the findings set out above, the Tribunal determines that the Applicant was not on the relevant date (1 March 2017) entitled to acquire the right to manage the premises.

Name: Judge N Haria

Date: 02/02/2017

Annex 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-notices 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-notices 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.

ANNEX B
RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.