FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	CHI/00ML/LRM/2021/0013
Property	**:**	Wick Hall, Furze Hill, Hove, East Sussex. BN3 1NJ
Applicant	**:**	Wick Hall (Hove) RTM Company Limited
Representative	**:**	Dudley Joiner RTMF Services Limited (RTMF)
Respondent	**:**	Dorrington Housing Limited (1) and Baron Estate Management Limited (2)
Representative	**:**	Ms Claire Whiteman, Dean Wilson LLP
Type of Application	**:**	No fault Right to Manage Chapter 1 of The Commonhold and Leasehold Reform Act 2002 (the Act)
Tribunal Members	**:**	Judge C A Rai (Chairman) Mr M C Woodrow MRICS
Date type and venue of Hearing	**:**	13 June 2022 CVP hearing held remotely
Date of Decision	**:**	10 August 2022

DECISION

Background

1. A group of leaseholders at Wick Hall Furze Hill, Hove, East Sussex, BN3 1NJ (the Property) instructed RTMF Services Limited (RTMF) to form a Right to Manage company on the 11 August 2021. The new company Wick Hall (Hove) RTM Company Limited (the Applicant) was incorporated on 3 September 2021.

2. Notices of invitation to participate (NIPs) were given to those leaseholders who were "qualifying tenants" within the definition contained in the Act (not yet members of the Applicant and who had not yet applied to become members on 9 September 2021). The NIPs dated 8 September 2021 were given on 9 September 2021.

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3. On 28 September 2021 the Applicant sent the claim notice to the First Respondent, as immediate landlord of the qualifying tenants, claiming to acquire the right to manage the Property. The claim notice was also addressed (and sent) to CH Chesterford Limited (the freeholder) and Al Rayan Bank plc.

4. On 2 November 2021 the First Respondent granted an underlease out of its leasehold interest in the Property to the Second Respondent for a term of 999 years less 10 days from 29 September 1935. That lease was not registered at the land registry immediately, although the official copies of the Second Respondent's title show that Baron Estate Management Limited (Baron) was registered as proprietor of that leasehold interest on 3 November 2021 [531]. The Respondent's representative told the Tribunal that the 3 November 2021 was the priority date in the Land Registry search, made by the Second Respondent's conveyancer, protecting the application for registration of its interest.

5. On 3 November 2021 the First Respondent's solicitor, by then Dean Wilson LLP (DW), sent a letter and a counter notice to RTMF [76] disputing the claim. The counter notice listed twelve alleged defects in the claim notice.

6. The Tribunal were told that RTMF and Irwin Mitchell (solicitors representing the Respondent prior to DW) had exchanged correspondence by email before the counter notice was served. Further correspondence was exchanged between RTMF and DW in December 2021, following the service of the counter notice which included a letter dated 16 December 2021 sent by DW to RTMF [31].

7. On 17 December 2021 the Applicant applied to the Tribunal for a determination under section 84(3) of the Act that, on the relevant date, the Applicant RTM company was entitled to acquire the Right to Manage the Property.

8. Directions were issued by the Tribunal on 15 February 2022, 15 March 2022 and 19 May 2022 [81 -90].

9. The Applicant's Statement of Case is dated 7 March 2022 [88]. The First Respondent's Statement of Case is dated 24 March 2022 [94]. The Applicant sent a Reply to that Statement dated 1 April 2021 [210].

10. The Tribunal received a bundle of 522 Pages from the Applicant in the week before to the Hearing and an amended bundle of 608 pages on 10 June 2021 which included the Respondent's reply to the Applicant's last statement [522], some additional correspondence and authorities.

11. The First Respondent sent a Skeleton Argument dated 10 June 2022 to the Tribunal.

12. On 13 June 2022, before the scheduled start of the Hearing at 10 a.m., the Applicant sent two further emails to the Tribunal which included the Applicant's Skeleton argument and four other documents (attached to the first email) and eighteen further documents (attached to the second email).

13. The start of the Hearing was delayed until 10:30 a.m., both to facilitate the parties' connection to the hearing and enable the Tribunal and the Respondent to look at the two emails referred to in paragraph 12 above.

14. References in square brackets in this decision are to the page numbers in the second bundle, unless otherwise stated. All references to documentation produced and statements provided by the Respondent refer to the First Respondent. Although the Second Respondent was joined as a party to the proceedings, it has not made any separate submissions to the Tribunal.

The Hearing

15. The Hearing was attended remotely by Dudley Joiner and Nick Bignell of RTMF representing the Applicant and Claire Whiteman of Dean Wilson LLP (DW) representing both Respondents. Some leaseholders also logged into the Hearing.

16. In response to the request contained in the Respondent's further statement, the Tribunal joined Baron as an additional Respondent before the commencement of the Hearing.

17. Ms Whiteman explained that she had not been able to look at the information contained in the latest emails sent by the Applicant to the Tribunal that day as she was working with a single screen and a paper bundle. Mr Joiner told the Tribunal that the attachments to those emails were factual, comprising office copies, copies of emails sent to Irwin Mitchell and copies of some RTM "consent to membership forms" and special delivery receipts.

18. Ms Whiteman told the Tribunal that she had invited Mr Joiner to exchange skeleton arguments during the preceding week but he had declined that invitation and instead had chosen to submit what she described as being "a response to her skeleton" on the day of the Hearing. Mr Joiner suggested that the way in which the Respondent had hinted at defects in the Notice in its correspondence with RTMF rather than clarifying its objections to the validity of the claim notice had made it difficult for the Applicant to respond. Ms Whiteman disagreed, referring to the letter dated 16 December 2021 DW had sent to the Applicant.

19. Having concluded prior to the Hearing from the content of the Bundle that some issues between the parties had been resolved, the Tribunal invited the Respondent to identify its objections to the validity of the Claim Notice. It acknowledged that it would have been normal to ask that the Applicant present its case first but it was accepted by both parties that it would be beneficial to narrow the issues which remained in dispute.

20. Ms Whiteman confirmed that there were five remaining issues requiring determination which she identified as being:-
    a. Whether or not the Articles of Association of the Applicant were enclosed with the notices of invitation to participate (NIPs) – **the Articles issue.**
    b. A failure to serve some of the qualifying tenants with NIPs – **the missing NIPs issue.**
    c. A subsidiary issue to b, which arose in relation to the NIP served on only one of two qualifying tenants who were joint tenants of the relevant flat – **the joint tenants NIP issue.**
    d. The Respondent's contention that the schedule on the NIPs omitted ten members – **the omission of members' issue.**
    e. The failure of the Applicant to satisfy the Respondent that Nick Bignell was authorised to sign the NIPs and the claim notice – **the signatory issue.**

21. Ms Whiteman said that in its skeleton argument the Applicant had alleged, for the first time, that the counter notice may be invalid. She told the Tribunal that she had had no opportunity to take instructions from her client with regard to that allegation.

22. In response Mr Joiner confirmed that he accepted that the issues identified by Ms Whiteman are the only remaining issues. He said that he did not wish to pursue at this late stage, not having previously raised it, submissions regarding the invalidity of the First Respondent's counter notice. He said he had included this challenge in his Skeleton Argument to emphasise the importance of information being provided in a clear manner and to deflect the criticism of the Respondent.

23. It was agreed that Ms Whiteman would set out each of her objections to the claim and the reasons she considered these were fatal to its validity and Mr Joiner would respond to each in turn. Following that process the parties could sum up their clients' respective cases.

24. The Tribunal told the parties that since it accepted that the Respondent had not had any opportunity to consider the attachments to the Applicant's two late emails before the Hearing, it would initially issue the decision in draft and offer the Respondent an opportunity to make further written submissions, if it wished with regard <u>only to those documents submitted on the day of the Hearing</u>. The Applicant would thereafter be offered an opportunity to respond only to those submissions. The Tribunal would not issue its final decision without taking account of any further submissions.

The Law

25. The parties both referred the Tribunal to Chapter 1 of the Act and provided copies of sections 78 and 79. Reference was also made to section 27(1) of the Land Registration Act 2002 and to a number of cases. Case references and extracts of those parts of the legislation referred to in the parties' submissions, during the Hearing or within this decision are set out in the Schedule.

26. Chapter 1 of Act contains the statutory provisions which enable leaseholders to acquire and exercise rights referred to as the "right to manage" through the vehicle of a RTM Company of which they are members, in relation to the premises which contain their flats and in place of either the landlord or any other person who has management rights under the terms of the leases of their flats. The procedure does not require the Applicant to establish fault on the part of the Respondent.

27. Section 74 defines the premises to which Chapter 1 applies. Section 75 specifies whether there is a qualifying tenant of a flat for the purposes of Chapter 1. Section 78 defines the notice inviting participation. Section 79 defines notice of claim to acquire right (to manage). Section 80 sets out the contents of the claim notice. The Application to the Tribunal was made under section 84(3) of the Act. Section 84 is headed "Counter-notices" and subsection (3) provides for an RTM company to apply to the Tribunal where it has received one or more counter-notices stating that by reasons of a specified provision in Chapter 1 of the Act it was not entitled to acquire the right to manage. The Right to Manage (Prescribed Particulars and Forms) Regulations (the Regulations) contain further requirements and the prescribed forms.

28. The Tribunal has referred to those cases which the parties quoted in support of their submissions on the issues outstanding at the date of the hearing but is grateful to both parties for the other case references supplied, relating to issues which were no longer disputed by the date of the Hearing.

Submissions

The Articles issue – the Respondent's submissions

29. Ms Whiteman submitted that the Applicant failed to provide any evidence that the Articles of Association of the Applicant were enclosed with the NIPs. She referred the Tribunal to a copy of a NIP [407 - 412] and in particular to paragraph 2 [407]. The NIP is in the standard form prescribed by the Regulations. She referred to the last sentence of that paragraph, preceded by an asterisk which states "*Delete one of these statements, as the circumstances require". Paragraph 2 begins with the sentence "The company's articles of association accompany this notice. The next sentence, preceded by an asterisk, has been deleted. The following sentence states "(**See Note 2 below)**". The third sentence states "At any time within the period of seven days beginning with the day after this notice is given, a copy of the articles of association may be ordered from RTMF Services Limited, Unit 1 Parsonage Business Centre, Church Street, Ticehurst, TN5 7DL on payment of a fee of £5 (**See Note 3 below**)".

30. Ms Whiteman said that the intention of the Act is to require that the Applicant provide the qualifying tenant with **either** a copy of the Articles with the NIP **or** make a copy available for inspection at a specified place for 7 days and provide the qualifying tenant with an opportunity to order a copy. Note 2 refers to the specified times during which articles must be available for inspection and Note 3 refers to the

ordering facility being available for seven days and states that the fee must not exceed the reasonable cost of supplying the ordered copy.

31. Ms Whiteman suggested that the Applicant should have deleted the whole of the second statement, and not just part of it and that the position of the asterisks on the form of notice made that clear. Note 2 referred to the deleted part of the statement but Note 3 referred to the third sentence (which the Applicant has not deleted).

32. Ms Whiteman referred the Tribunal to section 78 of the Act and in particular to subsection (6). She said that where a notice includes a statement under subsection (4)(b) the notice is to be treated as not having been given if the person to whom it was given is not allowed to undertake an inspection or is not provided with a copy of the Articles in accordance with the statement. Since the Respondent has received no evidence that a copy of the Articles was enclosed with the NIPs she submitted, in reliance on 78(6), that the NIPs should be treated as not having been given.

33. Ms Whiteman referred to paragraph 65 of the judgement in **Elim Court** [238] "...the UT attached some importance to section 78(6) which treats the notice inviting participation as not having been given in certain circumstances. However, that consequence only arises where the tenant has not been allowed to inspect or given a copy of the articles of association "in accordance with the statement" (i.e. in accordance with the statement in the notice inviting participation). In other words, the consequence only applies where the RTM company fails to do what it has said it will do. I would not place reliance on that sub-section in deciding what consequences follow from a failure to comply fully with the requirements of section 78(4)(b)". (Section 78(4)(b) refers to the notice including a statement about inspection and copying the [articles of association] of the RTM company).

34. Ms Whiteman appeared to draw the inference, from what she considered to be a failure on the part of the Applicant to demonstrate to the entire satisfaction of the Respondent that a copy of the Articles was enclosed with the NIPs, that the Articles were not enclosed.

35. Ms Whiteman said that copies of the NIPs sent to her firm by the Applicant had not included a copy of the Articles and that the Applicant had also omitted to supply copies of any covering letters which might have accompanied the NIPs. Furthermore, the deletion of part of the second alternative to paragraph 2 had confused the Applicant's intentions even more, because it stated that the tenant could order a copy of the Articles, which would have been unnecessary if a copy had been enclosed with the NIPs. That was why she had concluded that, based on the actual wording of paragraph 2 in the NIPs, the Applicant must have been relying on the ability of the qualifying tenant to inspect a copy of the Articles and that the Articles were not enclosed with the NIPs.

36. Ms Whiteman also said it was of paramount importance that the leaseholders could inspect a copy of the Articles without having to pay for a copy. For all of these reasons she has concluded that the NIPs do not comply with the Act. She said that the Applicant has not, and cannot, prove that a compliant notice was served on the leaseholders entitled to receive a NIP.

37. Ms Whiteman said that the prescribed form of notice is a mandatory requirement and the **Triplerose** case (to which the Applicant referred) cannot assist it. She said that case applied a secondary test of assessing the significance of the individual pieces of information contained in the NIPs. If, as is the case, the Regulations specify a prescribed form of notice, that is what should be provided and a failure to provide a copy of the Articles will invalidate the notice. She also submitted that the Applicant cannot rely upon section 78(7) of the Act, which is the section that provides that a notice is not invalidated by any inaccuracy in any of the particulars required by or by virtue of section 78.

38. Ms Whiteman denied that she had suggested to the Applicant that she had not seen copies of the correspondence which Mr Joiner sent to Irvin Mitchell. She said that she had insisted that proof of strict compliance as to factual matters entitled the Respondent to receive <u>actual</u> evidence of what the Applicant had done.

The Articles issue - the Applicant's submissions

39. Mr Joiner said that the Respondent has not provided any evidence that the Articles were not sent with the NIPs. The Applicant submits that copies of the Articles were included with each NIP. In support of that submission, he referred the Tribunal to paragraph 8 of the Applicant's Reply to the First Respondent's Statement of Case [215]. He submitted that the statement of truth signed by Mr Nick Bignell on 1 April 2022 is sufficient proof.

40. Mr Joiner said that whether or not the all the alternative words in paragraph 2 of the NIPs had been deleted was irrelevant in relation to the validity of the NIPs. The Respondent's conclusion that this was evidence that the Articles had not been included is simply wrong. The Articles are not an integral part of the NIP but are a separate document.

41. Mr Joiner also suggested that all the other points made by Ms Whiteman were misleading. That part of the judgement in **Elim Court** which Ms Whiteman had both referred to and quoted is irrelevant if, as the Applicant has submitted, the Articles were enclosed with the notices.

42. In response to a question from the Tribunal both parties agreed that in respect of the flats where notices had been served on the Respondent (as the qualifying tenant) notices were sent to the flats. It was therefore accepted that the Respondent had never seen or examined an original notice, notwithstanding some were addressed to Dorrington Housing Limited (Dorrington).

43. Mr Joiner confirmed that copies of the NIPs were sent to Irvin Mitchell but he had not sent copies of the Articles with any of the NIPs. Some of attachments to the emails sent to the Tribunal on the day of the Hearing are copies of emails from RTMF to Irvin Mitchell.

44. Mr Joiner stated that he did not accept the Respondent's submissions that it is entitled to put the Applicant strictly to proof as to its claim. He referred to **Assethold v 14 Stansfield Road**. In particular, he referred to one of the six points in reliance on which Assethold had appealed against the first instance decision. Assethold had questioned whether a copy of the claim notice had been given to each person who was a qualifying tenant on the relevant date. The Leasehold Valuation Tribunal (LVT) recorded its submissions thus:- "The Respondent puts the Applicant to strict proof of its compliance with s 79(8) of the Act". Assethold said that it was necessary not just to show the email was sent but that there should be proof it was received or had come to the attention of the recipient [586]. The LVT accepted that proof that the claim notice was served on all three members by email was sufficient proof of compliance. Assethold's appeal on this ground failed. Mr Joiner said that the Respondent's demands putting the Applicant on strict proof of its actions are akin to a "fishing expedition".

The Articles issue – the Tribunal's decision

45. The Applicant has provided the Respondent and the Tribunal with a copy of the signed statement of truth made by Mr Bignell which stated that the Articles were included with the NIPs. In reliance on various statements in the cases to which it has been referred the Tribunal is minded to accept that statement as sufficient evidence that the NIPs are valid.

46. Whilst it is the Applicant that has to prove that it has made its claim for the right to manage in compliance with the Act, the Tribunal, in reliance on **Assethold,** has concluded that it is unnecessary to put the Applicant "strictly to proof". George Bartlett QC President of the Upper Tribunal said that saying a company is put to strict proof does not create a presumption of non-compliance, and the LVT will be as much concerned to understand why the landlord says a particular requirement has not been met as to see why the RTM company claims it has been satisfied.

47. The Tribunal accepts that the alternatives in paragraph 2 of the NIPs were not deleted by the Applicant in accordance with the notation on the prescribed form. That failure is not in itself one which affects the validity of the NIPs. Ms Whiteman relied upon the retention (in the form) of an offer to supply the Articles as a clear indication that the Articles were not included. Mr Joiner disagreed.

48. If the Tribunal accepts that the Articles were included with the NIPs the Applicant's failure to delete all of the words relating to the second alternative in clause 2 of the Claim Form makes no difference to the validity of the NIPs. This is a similar point to that considered by the Court of Appeal in paragraph 65 of **Elim Court**. If the RTM company enclosed the Articles with the NIPs there was no need to make provisions for the qualifying tenants to obtain copies; the failure to delete all the

words which should have been deleted did not prejudice those qualifying tenants nor did the superfluous offer to supply them with a copy of the articles in return for a payment.

49. In these proceedings the only material difference between the parties seems to be whether the Applicant has to prove to the Respondent (albeit that it has not explained what proof it would accept) that the Articles were included with the NIPs or whether the Applicant can rely on a statement of truth made on its behalf by an authorised signatory that the Articles were included.

50. Having accepted the Applicant's evidence that a copy of the Articles was supplied with the NIPs and for the reasons set out above, the Tribunal has decided this issue in favour of the Applicant.

The missing NIPs issue and the joint tenants NIPs issue - the Respondent's submissions

51. Ms Whiteman submitted that three qualifying tenants, identified as leaseholders of **Flats 30, 121 and 154** were not given NIPs on 9 September 2021. Furthermore, as a connected but also separate point, Flat 121 is owned by two persons who are "joint tenants" both of whom are together the qualifying tenant. The notice was only given to one of them which does not comply with the legislation. Therefore, as a result of that failure, no valid notice has been given to the qualifying tenant.

52. Ms Whiteman, in her skeleton argument, said that the Applicant should have provided the Respondent with proof of the evidence it had relied on when determining the ownership of those flats. That should have been done by disclosure to the Respondent of the official copy of the land registry title entries relied upon by it to determine ownership and dated just prior to the date of service of the notices. She criticised RTMF for supplying DW with what she termed "selective information". She said she would have expected to have been supplied with copies of land registry titles for all the relevant flats dated on, or around, the beginning of September 2021. In the absence of disclosure of copies of the actual notices, the disclosure of proof of posting does not factually demonstrate that the actual notices were correctly addressed (or indeed complete) [Para 6 Respondent's skeleton].

53. **Flat 30** – Ms Whiteman stated that flat 30 is owned jointly by Cornelia Edeltraud Spiegel and Bita Zussman. Ms Whiteman said that the Applicant had not provided the Respondent with a copy of the Land Registry title to that flat obtained before the NIPs were issued.

54. **Flat 121** - is owned by Ian Christopher Richards and Carolyn Susan Brooks. The official copies show the entries on the register on 31 March 2022. The registered proprietor is shown as being both Mr Richards and Ms Brooks and the entry is dated 20.03.2000 [page 366].

55. Ms Whiteman referred the Tribunal to section 75(7) of the Act which requires the notice be served on both joint tenants as they shall be regarded as jointly being the qualifying tenant of the flat. She said she

also relied on the decision in **Triplerose**. In her Skeleton Argument she cited that case as having considered the appropriate approach to be taken by a Tribunal in considering the consequences of any departure from the statutory procedure.

56. **Flat 154** – Ms Whiteman referred to the official copies of the title of flat 154 [392] which show that, Jodi Michelene Bunnag was registered as proprietor on 23.04.2021. The edition date on those official copies is also 23.04.2021. The official copies were issued on 31 March 2022, so after the NIPs were given, and refer to a sale price relating to a transaction which took place on 17 March 2021.

57. Ms Whiteman said that the bundle also included official copies for the same flat dated 23 April 2021 [387] showing David Allchild and Elizabeth Sophia Allchild as registered proprietors at that date. She stated this suggested that the Applicant had not obtained up to date title entries prior to sending the NIPs. The certificates of posting refer to the notice for Flat 154 being sent to David and Elizabeth Sophia Allchild [Page 183].

58. Ms Whiteman stated that the Applicant suggested that the NIPs had been prepared on 8 September 2021 and sent out the following day. Therefore, the Applicant should have obtained and relied upon official copies obtained early in September 2021 and not official copies obtained in March 2021.

The missing NIPs issue and the joint tenants issue - the Applicant's submissions

59. **Flat 121** - Mr Joiner accepted that the Applicant had omitted to serve a NIP on Carolyn Susan Brooks. He said the omission was a simple mistake. The names of the registered proprietor spanned two pages of the official copies of that title and inadvertently only one name was recorded so Carolyn Susan Brooks was not given a NIP either jointly with Mr Richards or separately. The NIP was sent solely to Ian Christopher Richards. He did not know if Carolyn Susan Brooks had seen that copy or whether she was aware of the RTM Company's claim.

60. **Flats 30 and 154**- Mr Joiner referred the Tribunal to the official copies for Dorrington Housing Limited (Dorrington) in the bundle but said he had sent a clearer version of the same copies by email that day. He referred the Tribunal to the schedule of leases in the charges register for title number SX122564 (the long leasehold title of Dorrington) and said that copy, edition dated 19.06.2020, issued on 02.09.2021 does not reveal an entry in the schedule of notices of leases in the Charges Register for a lease of Flat 30. The official copies of the register for Flat 30 refer to an edition date of 09.09.21. The title to Flat 30 (ESX414193) was created on 9 September 2021. The official copies contain a note that the date at the beginning of an entry is the date on which the entry was made in the register.

61. RTMF had checked the register shown in the official copies and relied on it as being accurate. The Respondent's earlier submissions acknowledged that a check of the register made on 9 September 2021 might not have revealed that Cornelia Edeltraud Spiegel and Bita Zussman were proprietors since the entry on the register was only made on that day. A copy of the claim notice was given to Cornelia Edeltraud Spiegel and Bita Zussman at the flat on 31 March 2022. The official copies of the title to that flat in the bundle [331] show those leaseholders were registered as proprietors on 9 September 2021. The edition date of the office copies is 9 September 2021 but the copies record that these were issued by the Land Registry on 31 March 2022.

62. Mr Joiner said that a RTM company will only have a few days, which he referred to as "a window of opportunity", to obtain and accumulate information. It is impractical for it to keep repeating the same exercise of updating the official copies and checking the title registers. There are 168 flats within the building and it is inevitable that some will change hands between the date of the title investigation and the service of NIPs and the claim notice. He said that new owners of flats who had moved into those flats are not entitled to become members of the RTM company until their titles are registered and there can be significant delays in the registration. Both parties referred to section 27(1) of the Land Registration Act 2002 in their statements.

63. Mr Joiner said that when RTMF checked the title registers Jodi Micheline Bunnag was not the registered proprietor of flat 154. Therefore, the Applicant gave a NIP to the Allchilds (at Flat 154). Later, on 31 March 2022, it gave Jodi a copy of the claim notice (at Flat 154) [219] so she is now aware of the claim [page 523].

Further submissions received following the issue of its draft decision.

64. Ms Whiteman said that the Respondent has been prejudiced by the failure of the Applicant to provide it with copies of the documents it had relied upon to establish ownership of the leasehold flats within the Property in response to the Counter notice. She stated that the Respondent's overriding submission is that the Applicant could and should have provided it (and the Tribunal) with all the evidence in relation to every land registry title on which it relied, to establish ownership of the flats, especially where ownership is "in dispute". She said that evidence would have consisted of the official copies of the land registry entries for those flats which were challenged, dated between 3 – 7 September 2021. She said if that had happened the Respondent could have checked the validity of the NIPs with those title entries. She also said that the date of the issue of the official copy of the land registry entries is the key date for determining the validity of the information on which the Tribunal will rely when making its determination.

65. Ms Whiteman said that the Respondent had rightly challenged the Applicant's claim by putting it to proof of the documents it was relying on prior to the preparation of the NIP's and all the information should and could have been produced in response to the Counter Notice and before the Hearing.

66. Ms Whiteman suggested that the Applicant had seemingly withheld evidence from the Tribunal. She stated that the Tribunal has given insufficient weight in its draft decision as to the absence of evidence on the part of the Applicant and any "doubt on the issue should be resolved in the Respondents' favour in the absence of credible evidence to the contrary".

67. The Applicant submitted that it is the Respondent's overriding submission that it failed to produce evidence of the ownership of various flats as justification for its challenge and demand for proof. It referred to paragraph 46 of this decision in which the Tribunal has referred to and quoted from **Assethold** as the rebuttal for this submission.

68. The Applicant submitted that the Respondent has misunderstood (and continues to misunderstand) the process and the responsibilities of the landlord when responding to a Claim Notice and giving a Counter Notice.

69. Mr Joiner submits that the only party with actual knowledge about the ownership of the leasehold flats is the Respondent. He says that the Respondent will have a schedule of the flat owners to enable it to demand and collect service charges. Furthermore, he referred the Tribunal to clause 13.1.3 of the lease, page 318 of the amended bundle [315]. He said that the first thing that the Respondent's representative should have done following receipt of the Claim Notice and instructions from its client was to obtain all the information held by the Respondent and use this as the basis for her enquiries and cross checking with the membership register. He said that is the purpose of the statutory provision enabling a landlord to recover reasonable costs incurred as a consequence of a claim referring to section 88(1) of the Act.

70. Mr Joiner also denied that the Applicant had withheld any evidence. He said that it had sent detailed information to the Respondent's previous solicitor and should not be held responsible for any failure on their part to pass on the information to the Respondent's current representative. He said the further submissions do not address any issues relating to the qualification criteria or the right of the Applicant to exercise the right to manage.

The missing NIP's issue and the joint tenants issue
The Tribunal's decision

71. The Respondent has submitted that the Applicant's claim must fail because the Applicant has not served the qualifying tenants of three flats (30, 121 and 154) with NIPs.

72. The Applicant accepted that it did not serve a NIP on one of the two joint tenants of flat 121. It told the Tribunal and the Respondent this was a simple error whereby one name was omitted from its records perhaps because it appeared on a separate page of the Official Copy of the title to that flat.

73. Flats 30 and 154 have both changed hands during 2021 and the official copies of the titles to which the Tribunal was referred show that the new leasehold title for flat 30 was only entered on the register on 9 September 2021. The Property Register refers to a lease dated 9 September 2021 [164].

74. At the beginning of the hearing Ms Whiteman told the Tribunal that:-
    a. the title of the Second Respondent which shows the date of its lease as 2 November 2021 was not issued until much later; and
    b. the references to the date at the beginning of an entry is to the priority date in the land registry search.

75. The Tribunal, relying on the note made by the land registry on all the official copies produced to it, has concluded that the date at the beginning of an entry, is the date on which the entry was made in the register. The land registry maintains the computerised land registers which it updates as it completes applications. The applications are prioritised, not necessarily by the order in which they are received, but by reference to priority dates in the official searches issued to applicants to protect the entry of new proprietors, proprietors of charges and other interests in the property.

76. For those reasons, the Tribunal accepts that it would have been virtually impossible for the Applicant to have given a NIP to the new owners/registered proprietors of Flat 30 on 9 September 2021. That was the earliest date on which it was possible to identify them as registered proprietors. Practically, if it accepts the Respondent's evidence regarding registration, their registration as proprietors may have been recorded on the land registry registers at a later date. The Tribunal is therefore satisfied that by serving the NIP for Flat 30 on Dorrington, the Applicant has complied with the statutory requirement to serve the notice on the qualifying tenant of that flat on 9 September 2021. Furthermore, it also accepts that the current owners were subsequently given a copy of the claim notice in March 2022, and so are aware of the claim.

77. When Mr Joiner explained why he had examined the schedule of notices of leases on the Dorrington title registered under title number ESX122564, Ms Whiteman said that he could not rely on that information to obtain the title numbers for individual flats. She did not suggest what other evidence he should have obtained.

78. Section 82 of the Act headed "Right to obtain information", enables a RTM company to give notice to any person requiring it to provide the company with information within its possession or control and which the company reasonably requires to ascertain the particulars required by, or by virtue of, section 80 to be included in a claim notice.

79. During the Hearing, the Tribunal asked the parties to confirm the number of flats within the building, as this had been disputed by the Respondent. Mr Joiner suggested that there are 168 flats within the development. Ms Whiteman declined to confirm the number. She said not all the references to leases in the schedule of leases in the charges register of Dorrington's title listed flat numbers. When responding to a question from the Tribunal as to why her clients would not know the exact number of flats, she suggested that there is no flat numbered 13.

80. From examining the official copies of the titles in the bundle the Tribunal has identified that entry 88 of the schedule of leases in the charges register of title number ESX122564 (the Dorrington leasehold title) refers to flat 12a (registered under title number EXS336192). Entry 139 of the same schedule refers to flat 12 (registered under title number ESX376799). Entries 36 and 39 refers to fifth (SX230485) [116 Wick Hall] and sixth floor (SX255250) [166 Wick Hall] flats without any reference to flat numbers.

81. The Tribunal has concluded that it would have been possible for the Applicant to make an index map search at the Land Registry and identify the title numbers and flat numbers for all the registered properties within Wick Hall. However, an index map search would not reveal title numbers or addresses of flats remaining within the Dorrington title where separate leasehold interests have not yet been created.

82. The date preceding the entry showing Jodi Michelene Bunnag as registered proprietor in the Proprietorship Register is 23.04.21. Those official copies were issued on 31 March 2022 [392]. The official copies produced by the Applicant, which refer to David and Elizabeth Allchild as the registered proprietors in the same register, were issued on 7 September 2021 (one day before the NIPs were prepared and two days before they were given) [387].

83. The Tribunal accepts the Applicant's explanation as to why the Applicant served the NIP relating to flat 154 on the Allchilds instead of Ms Bunnag.

84. The Applicant submitted, which was not challenged by the Respondent, that Ms Bunnag has received a copy of the claim and therefore is aware of it. Ms Bunnag is not named as a member of the RTM or as a qualifying tenant on the claim notice.

85. Both parties have referred the Tribunal to a number of case authorities all of which it has considered.

86. Ms Whiteman said that she relied on **Triplerose.** That was an appeal to the Upper Tribunal (UT) determined by Martin Rodger QC the Deputy President. The appeal was against a First-tier Tribunal (FTT) decision which had confirmed the RTM company's claim, despite two defects being the omission of all the notes and a change of address on the claim notice.

87. Martin Rodger found that the omission of the notes invalidated the claim. He said that he would not have found that the use of a different address affected its validity but he had already allowed the appeal so he made those comments *obiter dicta*.

88. Martin Rodger referred to the Upper Tribunal decision in **Avon Ground Rents Limited** in which it was stated that the right to manage process affected not only the members of the RTM company but also the qualifying tenants who are not members, as well as immediate and superior landlords and any managing agents and contractors. Interested parties are exposed to losing the benefit of their contractual rights without compensation if not informed of, or where entitled, joined as a party to the RTM company's claim. Any doubt or uncertainty about the procedural integrity of the claim could lead to future significant management problems (paragraph 12)[107].

89. Martin Rodger said that two of the issues in that appeal raised again consideration of the proper approach which should be taken by tribunals with regard to any departure for the statutory procedure for the acquisition of the right to manage. He said small and apparently insignificant defects in notices or failures of strict compliance are relied on again and again by landlords seeking to stave off claims to acquire the right to manage and to avoid the resulting losses of control and other benefits. Whilst he acknowledged that First-tier tribunals are often naturally sympathetic to RTM companies whose claims are met by highly technical points of no practical significance, he said for the reasons he had already identified (paragraph 12 of the decision) tribunals should be slow to relax the need for compliance. "The statutory procedures are not difficult to comply with and can easily be repeated if not properly implemented. It is preferable for tribunals to reject defective claims at an early stage rather than to see them rejected on appeal ……" (paragraph 25) [110].

90. In that part of the decision preceded by the heading, "<u>The proper approach to non-compliance with the statutory procedures for the acquisition of the right to manage</u>" Martin Rodger considered several earlier decisions, referring to two Court of Appeal decisions in **Newbold** and **Mannai** as identifying the proper approach. Neither decision concerned the Act. **Newbold** concerned the validity of a preliminary notice and **Mannai** related to the validity of a break notice in a lease. A difference was noted between construction of a statutory or contractual notice, which required "strict compliance" as a condition of validity, and one which, on its true construction, might be satisfied by what was referred to as "adequate compliance". Martin Rodger also considered if non-compliance would always be fatal.

91. Martin Rodger also considered the Court of Appeal decision in **Natt v Osman.** That concerned a notice given under section 13 of Leasehold Reform and Urban Development Act 1993 (LRHUDA) purporting to exercise the right of collective enfranchisement. It was said that the approach taken in that 2014 case by the Chancellor Sir Terrence Etherton, in which he distinguished between mandatory requirements and directory statutory requirements, is now considered unsatisfactory

and that the modern approach is to determine the consequences of non-compliance as an ordinary issue of statutory interpretation and by applying all the usual principles. Thus, an assessment of the purpose and importance of the requirements in the context of the statutory scheme as a whole should be made. Whilst in some schemes certain defects may not have consequences and may be of secondary importance, in other schemes omissions might be of critical importance to the integrity of the entire scheme with the result that the statutory procedure will not be validly invoked because of a procedural failure.

92. In **Triplerose** Martin Rodger decided that the acquisition of the right to manage under the Act falls into the category of procedures considered in **Natt v Osman** as requiring compliance with the strict requirements of the statute. Substantial compliance would not be good enough.

93. However, **Triplerose** was decided before the Court of Appeal reversed the UT decision in **Elim Court**. Although the Court of Appeal agreed with, and quoted part of Martin Rodger's decision in **Triplerose**, it said it does not follow that every defect in a notice or in a procedure which should be strictly followed will necessarily be sufficient to invalidate a claim. Counsel representing the Appellant had argued in favour of a landlord's need for certainty, but Lewison LJ, who gave the Court of Appeal judgement stated that whilst it accepted the force of that argument it could not be taken too far. It may be possible to distinguish between a failure to satisfy jurisdictional or eligibility requirements on the one hand and purely procedural requirements on the other.

94. It is possible however to argue that the Court of Appeal were applying a very practical approach to the circumstances which occurred in **Elim**. Copies of the Articles were not enclosed with the NIPs in **Elim Court**; the notices provided details of where these could be inspected but omitted to provide for a recipient to inspect on a weekend and so failed therefore to comply with the strict requirements laid down by the regulations and referred to in the notes on the prescribed form of notice.

95. The Court of Appeal, disagreeing with the Upper Tribunal, stated that a failure by the RTM co to comply **precisely with the requirements** (Tribunal's emphasis) for a NIP does not automatically invalidate all subsequent steps and the particular failure would not have done in that case [and [239] (paragraph 67). It is significant and must be taken into account that the Court of Appeal noted that it had been told that the case was the culmination of the third attempt by **Elim Court RTM company** to manage the property [241].

96. It is a statutory requirement for the RTM company to invite all leaseholders who are qualifying tenants to participate in the Claim (Section 78). At the time the notice is given, in this case on 9 September 2021, a qualifying tenant is entitled to receive it unless he or she is or has already agreed to become a member of the RTM company.

97. The Tribunal accepts that the qualifying tenants of both flats 30 and 154 were on the requisite date entitled to receive NIP's but did not but this was because at or just prior to the 9 September 2021 when the NIPs were

given the Applicant did not know, and could not have known, that the information obtained from the Land Registry and on which it relied had just been updated.

98. What the Tribunal has to decide is whether or not the omission of service of NIPs on these two qualifying tenants is serious enough, in the context of the Applicant's entire claim, to invalidate it. Put differently have the omissions caused difficulty and are the omissions likely to have serious consequences? Could the omission be treated as trivial enough for the notices to be saved? Could the invalidity easily be rectified and can the whole process be undertaken again?

99. The Tribunal has taken account of the Respondent's submissions regarding the number of flats in Wick Hall. Although Ms Whiteman seemed reluctant to confirm this, it is satisfied that there are 168 flats. Ms Whiteman never submitted that the claim notice was defective because the numerical thresholds had not been met.

100. A copy of the Lease of Flat 4 has been disclosed. That lease reserved an escalating ground rent. It would appear however, from the information contained in the landlord's title entries, that other flat leases have been extended in reliance on the statutory entitlement of the tenants; these extension leases will reserve peppercorn ground rents. Notwithstanding that fact it seems likely that the landlord is entitled to collect a significant amount of ground rent from leaseholders in Wick Hall. Therefore, it follows that it will know the amounts it is entitled to collect and be able to identify the leaseholder who own the flats demised by leases which reserve those rents. It therefore seems inconceivable to the Tribunal that the Respondent does not know the number of flats within Wick Hall and cannot list the current leases and identify to which flats those leases relate.

101. The Respondent's Further Statement in Response [522] stated that the Respondent's interest in the subject premises has now been sold and is owned by Baron. That statement was not entirely accurate as the official copies of the title [531] show Baron as the registered proprietor of a new leasehold title, an underlease granted by Dorrington out of its existing lease. The lease between Dorrington and Baron is dated 2 November 2021 (the day before the Counter Notice was sent to the Applicant) for a term of 999 years less the last 10 days from 29 September 1935. Dorrington therefore remains a leaseholder, albeit the superior lessor to Baron.

102. The Tribunal has therefore concluded that it is unlikely to be simple for the Applicant to repeat the claim process. Identifying the landlords of the flats has been further complicated by property transactions which have taken place since the date on which Baron acquired its leasehold interest. This is revealed by the official copies of Baron's title dated 17 November 2021. Entries 168 to 178 of the schedule of leases in the charges register of the title show that eleven new leases have been granted of flats 4, 9, 15, 20, 43, 46, 52, 84, 102, 104 and 135 eight of which are dated 16 November 2021, and are for terms of 999 year less 10 days from 29 September 1935 [547-549]. The entries do not reveal the identity of the lessees although it is possible for the Applicant to obtain this information from the Land Registry.

103. Furthermore, compliance with the statutory procedures has not been simple in the case of the Property because there are 168 flats and because flats will have inevitably been transferred to different owners whilst the Applicant progressed the claim. **Triplerose** related to an application by the Mill House RTM Company Limited in respect of six flats within Mill House Newcastle. The complexities of this application are not comparable with the facts in that case.

104. In the case of flat 30, the Tribunal accepts that the Applicant did not know, and could not have known, at the date of the claim, that Cornelia Edeltraud Spiegel and Bita Zussman were registered as proprietors of a new leasehold interest on 9 September 2021. [384].

105. The leaseholders of flats 121 and 154 are not listed as members of the RTM company on the claim notice. In the case of flat 154 the official copies issued on 7 September 2021 (two days before the NIP's were given) showed the Allchilds as the registered proprietors.

106. Having considered the guidance contained in the authorities to which it was referred, and relying on the Court of Appeal decision in **Elim Court**, the Tribunal has concluded that the Applicant's failure to give NIPs to Jodi Michelene Bunnag, Cornelia Edeltraud Spiegel and Bita Zussman should not invalidate the Applicant's claim. It has seen no evidence showing that those leaseholders were disadvantaged. It understands, from the Applicant's evidence that both have subsequently been given a copy of the claim. The purpose of the legislation being to ensure that the qualifying tenants are informed about the claim is not disputed. The Applicant has satisfied the Tribunal that it did not know that those proprietors were qualifying tenants when it gave the NIPs.

107. The circumstances relating to flat 121 are different because the Applicant has acknowledged that it omitted to give a NIP to one of the two joint tenants. What the Tribunal must decide is whether the omission is, of itself, sufficient to invalidate the Applicant's claim.

108. In the context of the overall claim, taking account of the activity on the Respondents' titles since the claim notice was issued, the Tribunal has also concluded that it is unlikely to be easy for the Applicant to start the process again.

109. This has influenced the Tribunal in deciding that it should not treat the failure of the Applicant to serve a NIP on Carolyn Susan Richards as a fatal defect. Taking account of the fact that there is no evidence which suggests that this failure has resulted in prejudice which has disadvantaged the qualifying tenant of flat 121, the Tribunal has decided not to treat this omission as one which will undermine the Applicant's claim.

110. The Tribunal has therefore decided that the claim does not fail on the grounds of the omissions identified by the Respondent with regard to the service of NIPs on the qualifying tenants of flats 30, 121, and 154.

111. The Tribunal reviewed this decision following receipt of the further submissions from both parties.

112. The Respondent has submitted that the Applicant omitted to supply it with copies of the information it relied upon to populate the claim documentation. It has consistently stated that it was entitled to put the Applicant to strict proof and this is reflected in the content of the Counter Notice. It has criticised the Tribunal for giving insufficient weight to the omission of this evidence from the hearing bundle and for the Applicant not supplying it with the evidence in immediate response to the counter notice.

113. The Applicant suggested that it gave all the relevant evidence to the Respondents' previous solicitor but in any case, it is inappropriate for it to be put to strict proof of ownership when the only party who actually knows about the ownership, and potential sales or transfers of the leasehold flats, is the Respondent, not least because the leaseholders are obliged to obtain the landlords consent before transferring the flats (paragraph 13.1.3 of the Fourth Schedule to the lease).

114. Having considered both parties further submissions with regard to their respective responsibilities in relation to enabling each other to establish the legal ownership of the flats prior to the issue of the claim, the Tribunal has concluded that the further submissions make no difference to its decision. Firstly it is not satisfied on the basis of the submissions received that the Respondent is correct in stating that it had not previously received the relevant information from the Applicant. Secondly it does not accept Ms Whiteman's suggestion that it should resolve any doubt with regard to the failure of the Applicant to supply the Respondent with evidence in the Respondent's favour. An

application for the right to manage should not in its view be treated as an adversarial process.

115. The Tribunal is satisfied that none of the Respondent's further submissions have persuaded it that the Applicant's claim should fail.

The omission of members' issue -The Respondent's submissions

116. Ms Whiteman told the Tribunal that ten members of the RTM company are not listed on the claim form. That form lists 112 members. Paragraph 14(i) of the Respondents statement of case [98] refers to the omission of 4 named members according to the RTM register of members named as Marius Jankowski, James Dawes, Hogley Investments Limited and Moya Carrington. Thereafter a note in brackets states "check Barhar Eskici, Hazel Coppins, Andrea Bulcock, Faye Stewart, Paul Scott Bridges, Jennifer Bridges". The Tribunal has assumed that the note was an "aide memoire" to the author of the statement who failed to remove it before submitting the statement to the Applicant.

117. From crosschecking those names with the leaseholders of the flats listed on the Claim Form, it seems to the Tribunal that ownership of some flats might have changed since the claim was made. The register of members shows Marius Janowski as leaseholder of flats 2 and 144. James Dawes is shown as the leaseholder of Flat 4. Hogley Investments Ltd (Hogley) is shown as leaseholder of Flat 7. Moya Carrington is shown as the leaseholder of flat 87. Bahar Eskici is shown as the leaseholder of Flat 12. Hazel Coppins is shown as leaseholder of flat 76. Andrea Bulcock is shown as the leaseholder of flat 77. Faye Stewart is shown as the leaseholder of flat 102 and Paul Scott Bridges and Jennifer Bridges are shown as leaseholders of flat 139.

118. The leaseholder of flat 2 is not shown in Part 1 of the schedule to the claim notice but Marius Jankowski is shown as the leaseholder of flat 144 [69]. The leaseholders of flats 12, 76, 77, 102, 139 and 144 are listed; the leaseholders of flats 4, 7 and 87 are not.

119. The Respondent's complaint is that the claim notice fails to accurately state the full names of each person who was both a qualifying tenant and a member of the company at the date of the notice. Whilst the Respondent accepted that the **inaccuracy** of any particulars given may not be fatal to the claim it has submitted that the **omission** of a particular would be fatal. Ms Whiteman said that this was a discrete submission.

120. Ms Whiteman referred the Tribunal to the case of **Marina Court** in which case the names of seven of the nine qualifying tenants were omitted from the claim notice. The LVT decided that the claim failed and the omission of those qualifying tenants was fundamental as without a sufficient number of names that claim notice did not demonstrate that the RTM company could comply with section 79(5) (which provides that on the relevant date the membership must include not less than one-half of the total number of qualifying tenants contained in the premises).

121. Ms Whiteman referred to paragraph 7 of the Applicant's Reply to the Respondent's statement [213]. The Applicant has stated that the NIPs accurately gave the names of the qualifying tenants who were members of the company on the date when the NIPs were given. Her point was that this simply was not true, and therefore the inaccuracy was fatal.

122. Ms Whiteman said that the Respondent is entitled to rely on the list of members stated in the claim notice to be accurate. Referring back to section 81(2) listing a member who is not a qualifying tenant on the claim form won't invalidate the claim because of section 81(2) unless the numbers of valid numbers are insufficient. She stressed, without offering any reason why it was important, that the Respondent should be able to rely upon the number of members in the register.

The omission of members' issue - Applicant's response

123. Mr Joiner said, in his skeleton argument, that he relied on section 81(1). He averred that the claim notice accurately stated the names of the members of the company on 9 September 2021. He stated that on 8 September 2021 there were only 95 members of the RTM company but by 9 September 2021 there were 105 members.

124. He said that the members are entered on the register following receipt of the consent forms, and he has supplied copies of some forms to the Tribunal with one of his emails sent to the Tribunal on the date of the Hearing. Later the register of members would be checked and any incorrect names then removed following validation that the named parties are entitled to be members. That happens particularly in the period between completion of the transfer of a flat and the registration of the new proprietor.

125. Mr Joiner said that Mr Dawes was not registered as the proprietor of Flat 2 until 6 January 2022. The lease between Dorrington and James Dawes is dated 30 June 2021, so the completion of the registration of his title to the flat has taken more than six months. Notwithstanding that James Dawes was effectively the leaseholder for the entire period and also in physical occupation of his flat he did not fall within the definition of a qualifying tenant until 6 January 2022 [299]. He could not be entered on the register of members "pending completion of his registration as proprietor at the land registry". Mr Joiner submitted that the claim form was accurate as at the date on which it was sent.

126. Mr Joiner suggested that the saving provision in section 81(2) saves invalidation of a claim where the members of the RTM company were not qualifying tenants on the date of the claim, "so long as a sufficient number of qualifying tenants of the flats contained in the premises were members of the company on that date; and for this purpose, a "sufficient number " is a number ....not less than one-half of the total number of flats contained in the premises on that date". For this claim to succeed the register needed to contain 85 members (Section 79(5)).

The omission of members' issue
The Tribunal's decision

127. Part one of the schedule to the claim notice lists 112 persons as both members of the RTM company and qualifying tenants. The NIPs listed 85 members. The register of members lists 85 members and was relied upon to complete the NIPs. 85 members is sufficient to satisfy the numerical hurdle in section 79(5) of the Act.

128. The Applicant has suggested that it removed any member from the register of members if it was in any doubt as to whether that member was a qualifying tenant. The Respondent has suggested that such an approach was unnecessary because of the saving provision in section 81(2). Furthermore, the Respondent is entitled to rely upon that list so it should be accurate and Ms Whiteman maintained that it was not.

129. Four leaseholders are named in Ms Whiteman's statement, Jankowski Dawes, Hogley and Carrington are listed as leaseholders of flats 2, 4, 7, and 87. Marius Jankowski is listed as a member of the RTM company on the NIP. He is leaseholder of Flats 2 and 144. Evidence was produced to the Tribunal, referred to earlier in this decision, which showed that James Dawes was not registered as proprietor of Flat 4 until after the claim notice was served. Hogley and Moya Carrington (Flats 7 and 87) do not appear on the NIPs or the claim notice and neither party has provided any further information regarding these leaseholders.

130. There is no disqualification from the right to manage of a qualifying tenant who owns more than one flat. When checking the names of the members it is predictable that the Applicant would remove duplicated names since it was essential to check that it had enough members to meet the numerical hurdle in section 79(5) of the Act.

131. On the basis of the Respondent's submissions, the Tribunal has concluded that the Respondent would probably have objected had the Applicant named the same leaseholder twice. Clause 80 sets out the contents of claim notice and states it must include both the full name of the qualifying tenant of a flat contained in the premises and the address of the flat. Therefore, to comply, the Tribunal would expect the claim notice to refer to all the flats owned by a qualifying tenant. The Respondent made no submissions about this particular issue.

132. In order to comply with section 72(1)(c) of the Act the total number of flats held by qualifying tenants must be not less than two-thirds of the total number of flats contained in the premises. In this case it is agreed that there are 168 flats so qualifying tenants need to hold "no less than" 112 flats. (2/3 of 168). In addition, section 79(5) provides that the membership of the RTM company must on the relevant date (the date of the notice of claim) (s. 79(1)) include a number of tenants which is "not less than one-half" of the total number of flats so contained (168/2). The Applicant therefore needed 84 members of the RTM Company and no less than 112 flats must be owned by qualifying tenants. The claim notice lists 112 flats owned by qualifying tenants and 85 members of the RTM company at the relevant date.

133. What the Tribunal must decide is whether the notice should fail because the Applicant did not include all its members, and so treat such omission

as fatal. Was the Applicant overly cautious in removing potential members in case they were not entitled to be members, perhaps (albeit that may not have been the only reason) because the occupiers of the flats were still not registered as proprietors of the property at the land registry notwithstanding that the grant or transfer of their leasehold interests may have been completed long before the date of the claim notice?

134. Ms Whiteman said that the register of members needed to be accurate and that the omission of information which should be included in the claim form cannot be saved by section 81(2). She implied that it would be appropriate to include names of members even in circumstances where the RTM company is uncertain whether that member is entitled to be a member and is a qualifying tenant at the date of the notice because, if those names are incorrect section 81(2) could save the claimant. The Respondent has not suggested that the claim fails because there is an insufficient number of members of the RTM company.

135. The Tribunal has concluded that it is possible to distinguish the facts in **Marina** from the facts in these proceedings. In **Marina** NIPs were sent to nine qualifying tenants (and leaseholders) eight of whom wished to participate in the RTM claim. Although the RTM company was aware that there were nine qualifying tenants, only two leaseholders, who were both qualifying tenants and members of the company, were named on the claim notice, albeit the application correctly referred to the nine qualifying tenants. That notice was simply wrong. Furthermore, there is no requirement for this Tribunal to follow that case. The determination of the LVT is only persuasive and not binding on this Tribunal.

136. In this case the Tribunal accepts that the RTM company was unsure if all the names recorded in the register of members were qualifying tenants at the relevant date. The Applicant said that it had adopted a cautious approach to ensure that it could comply with section 79(5). The Tribunal does not accept the Respondent's submissions that any failure to record other tenants who might have been members, is fatal to its claim in circumstances where those members were omitted because as at the date of the claim there was genuine uncertainty as to whether they were qualifying tenants. In any case it is unsure, having noted and referred to inconsistencies in its Skeleton Argument, that the Respondent's submissions are entirely accurate.

137. For the reasons set out above, and also because as previously explained this Tribunal finds it impossible to assume, as the LVT was able to in **Marina,** that the Applicant can easily issue another claim, to exercise the right to manage Wick Hall, "which would be irresistible".

138. The Tribunal finds that the omission of the names of some persons previously listed on the register of members from the schedules to the claim form is not a fatal omission which would invalidate the Applicant's claim. It has not been demonstrated by the Respondent that any of the omissions were incorrect. The Tribunal would probably have reached the same conclusion if it had been provided with irrefutable evidence that names which should have been included, were accidentally excluded.

The signatory issue - The Respondent's submissions

139. The Respondent has consistently claimed that the Applicant must provide evidence that the signatory to the claim notice, Nick Bignell, was entitled and authorised to sign the Claim Form. It has complained more than once to the Applicant that it had not provided it with satisfactory evidence of the signatory's authority.

140. Ms Whiteman submitted that without seeing evidence of the signatory's authority to sign the Claim Notice the Respondent is unable to assess the validity of the Applicant's claim.

The signatory issue- The Applicant's submissions

141. In response Mr Joiner stated that firstly, the evidence of authority was sent to Irvin Mitchell. Secondly, the point is insignificant as a challenge to the validity of a claim because there is no requirement for signature in the Act itself.

142. Paragraph 15 the Applicant's Reply to the Respondent's Statement confirms the authority of the signatory which was Nick Bignell of RTMF. That Reply contains a statement that it is true and was also signed by Nick Bignell [217].

The signatory issue
The Tribunal's decision

143. The email dated 1 November 2021, sent to Irwin Mitchell, disclosed on the date of hearing, "forwarded" an email dated 29 October 2021 from Christian Edward Richards of 72 Wick Hall described as a founding director of the RTM company authorising RTMF and its staff to act on behalf of the company and sign notices and all other correspondence. During the hearing Ms Whiteman said to Mr Joiner that she was not suggesting to him that the emails which he had sent to Irwin Mitchell prior to the appointment of her firm had not been sent on to DW.

144. The Tribunal finds no merit in the Respondent's submissions that the Applicant should have done more, and provided sooner and better evidence, that the claim form was signed by a person with authority to sign it on behalf of the Applicant.

145. It accepts that evidence was sent to the Respondent's previous solicitor soon after submission of the claim. It therefore finds, insofar as this was necessary at all, the Applicant has provided sufficient evidence of the authority of Nick Bignell to sign documents for and on behalf of the Applicant.

146. The Respondent's current solicitors' letter which accompanied the counter notice identified twelve defects in the claim notice. Only five of those defects remained in dispute by the date of the hearing. These related to four of the twelve defects originally identified. Other issues were "batted between the parties" in the course of preparation of the hearing bundle and resolved.

147. The Tribunal has concluded that the approach taken by the Respondent's solicitor of putting the Applicant's on "strict proof" of factual matters, combined with the "scatter-gun approach" of initially identifying defects later not pursued has resulted in the Tribunal receiving far more documents than were strictly necessary for it to deal with this application and caused confusion between the parties both of which were regrettable outcomes.

148. The Tribunal confirms the Applicant's claim that it is entitled to the right to manage the Property.

Judge C A Rai
Chairman

Appeals

1. A person wishing to appeal this decision to the Upper Chamber must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision. Where possible you should send your further application for permission to appeal by email to **rpsouthern@justice.gov.uk** as this will enable the First-tier Tribunal to deal with it more efficiently.

3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

SCHEDULE

Case References

Triplerose Limited v Mill House RTM Company Limited [2016] UKUT 80 LC

Assethold Limited v 13-24 Romside Place RTM Company Limited [2013] UKUT 0603 (LC)

Carlton House Southsea RTM Company Limited v Sinclair Gardens Investments (Kensington) Ltd CHI/00MR/LRM/2016/0014

Marina Court (Paignton) RTM Company Limited v Reginald Harold Gibbs CHI/00HN/LRM/2005/003

Springquote Limited v Brixton Hill Court RTM Company Limited LON/00AY/LRM/2013/0015

Elim Court RTM Company Ltd v Avon Freeholds Ltd [2017] EWCA Civ 89

Eastern Pyramid Group Corporation SA v Spire House RTM Company Limited [2021] EWCA Civ 1658

Assethold Limited v 110 Boulevard RTM Company Limited [2017] UKUT 0316 (LC)

Rope Quays (Harlequin Court) RTM Company Limited v Holding & Management Solitaire (No 2) Limited CHI/24UF/LRM/2015/0011

Alleyn Court RTM Company Limited v Michae'Al Abou-Hamdan [2012] UKUT 74 (LC)

Raymere Ltd v Belle Vue Gardens Ltd [2003] EWCA Civ 996

Assethold v 14 Stansfield Road RTM Company Limited [2012] UKUT 262 (LC)

Daejan Investments Ltd v Benson and Others [2011] EWCA Civ 38

Legislation

Commonhold and Leasehold Reform Act 2002 (The Act)

72(1)(a)

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.

75(2) and (5)

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.

78(1) and (4)(a) and (b)

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 [articles of association]1 of the RTM company, or
(b) include a statement about inspection and copying of the [articles of association]1 of the RTM company.

79(5)

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.

80(3)

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.

80(2) and (3)
(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 [the appropriate tribunal]1 for a determination that it was on the relevant date entitled to acquire the right to manage the premises.

Land Registration Act 2002

27 Dispositions required to be registered
(1) If a disposition of a registered estate or registered charge is required to be completed by registration, it does not operate at law until the relevant registration requirements are met.

The Right to Manage (Prescribed Particulars and Forms)(England) Regulations 2010 No 825