FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case references	:	**(1) LON/00AC/LRM/2017/0014 – 19 inclusive** **(2) LON/00AC/LRM/2017/0020-22 inclusive**
Properties	:	**(1) Blocks 1-20; 21-50; 51-62; 63-83; 84-119 and 120-139 Britten Close, London NW11 7HW** **(2) Blocks 1-48; 49-64 and 65-80 Chandos Way, London, NW11 7HF**
Applicants	:	**(1) 1-20 Britten Close RTM Company Limited; 21-50 Britten Close RTM Company Limited 51-62 Britten Close RTM Company Limited; 63-83 Britten Close RTM Company Limited; 84-119 Britten Close RTM Company Limited and 120-139 Britten Close RTM Company Limited** **(2) 1-48 Chandos Way RTM Company Limited; 49-64 Chandos Way RTM Company Limited and 65-80 Chandos Way RTM Company Limited**
Representative	:	**CG Naylor LLP, solicitors**
Respondent	:	**Trust Property Management Limited**
Representative	:	**Wallace LLP, solicitors**
Type of applications	:	**Applications in relation to the denial of the Right to Manage**

Tribunal members	:	**(1) Judge Amran Vance** **(2) Mr M Taylor, FRICS**
Date of determination and venue	:	**24 August 2017 at 10 Alfred Place, London WC1E 7LR**
Date of decision	:	**7 September 2017**

DECISION

Summary of the tribunal's decisions

1. We determine that on the relevant date, being the date on which notice of their claim was given, the applicant RTM companies were entitled to acquire the Right to Manage the blocks identified in the title to this decision.

Background

2. In these applications, the relevant RTM companies seek determinations under section 84(3) of the Commonhold and Leasehold Reform Act 2002 ("the Act") that they were, on the relevant date, entitled to acquire the right to manage the blocks set out in the heading above ("the Blocks").

3. The freehold owner of the Blocks is London Underground Limited. The head landlord is Saffron Developments Limited. The intermediate landlord is Management Nominees Limited. The respondent management company is a party to the underleases of the flats in the Blocks.

4. The applicants gave notice that they intended to acquire the right to manage the Blocks by serving Claim Notices on 22 February 2017, in respect of 49-64 and 65-80 Chandos Way, and on 23 February 2017, in respect of the remaining blocks.

5. The claim notices were sent to several recipients, including those identified in the third paragraph to the decision. The only recipient who served Counter Notices was the respondent, who did so on 28 March 2017.

6. The tribunal issued its standard directions on 1 June 2017, and the matter proceeded to a hearing on 24 August 2017 at which the applicants were represented by Mr Justin Bates of counsel. Mr Simon Serota represented the respondent. Also present were Mr Masters, solicitor for the applicants, Mr Finegold, a director of the respondent company and several

leaseholders of flats in Britten Close, namely Ms Adaba (Flat 10), Mr Merkel (Flat 47), Mr Horning (Flat 52) and Mr Fulene (Flat 41).

Statutory provisions

7. Part 2, Chapter 1, of the Act makes provision for the acquisition of the right to manage. The statutory provisions, so far as is relevant to these applications, are as follows.

8. Section 71 provides:

"71 The right to manage

(1) This Chapter makes provision for the acquisition and exercise of rights in relation to the management of premises to which this Chapter applies by a company which, in accordance with this Chapter, may acquire and exercise those rights (referred to in this Chapter as a RTM company).

(2) .....

9. The right to acquire management rights applies to "premises" within the meaning of section 72, namely "a self-contained building or part of a building, with or without appurtenant property." Section 72, so far as relevant, provides as follows:

"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) .....

10. Section 73 specifies what constitutes an RTM company and provides as follows:

"

(2) A company is a RTM company in relation to premises if—

(a) it is a private company limited by guarantee, and

(b) its articles of association state 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".

11. Section 74 (1) provides that "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.

12. Section 75 contains provisions for determining who is a "qualifying tenant" for the purposes of Chapter 1. In general terms, a tenant of a residential flat held under a long lease, as defined in sections 76-77, is a qualifying tenant. Subsections 5 – 7 provide as follows:

"75 (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.

13. Section 78, so far as is relevant to these applications, provides as follows:

"(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) - (6) .....

(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.

14. As anticipated by section 78(2)(d), regulations have been made which provide for additional particulars that need to be contained in a NIP and also prescribe a form for that purpose. These are the Right to Manage (Prescribed Particulars and Forms) (England) Regulations 2010 ("the 2010 Regulations"). Regulation 8(1) states that a NIP "shall be in the form set out in Schedule 1". Paragraph 3 of the prescribed form reads as follows:

"3 The names of—

(a) the members of the company;
(b) the company's directors; and
(c) if the company has a secretary, the name of that person

are set out in the Schedule below".

15. The prescribed form ends as follows:

"SCHEDULE

The names of the members of the company are: [s*tate names of company members*]

The names of the company's directors are: [*state directors' names*]

[If applicable] The name of the company's secretary is: [state company secretary's name]

[*If applicable; see the second alternative in paragraph 9 above*] The following member[s] of the company [has][have] qualifications or experience in relation to the management of residential property: [*give details*]

Signed by authority of the company,

[Signature of authorised member or officer]

[Insert date]"

16. At least 14 days after the giving of the notice inviting participation, and once the membership of the RTM company comprises at least half the qualifying tenants of the flats in the premises, the RTM company may serve a "notice of claim to acquire right" (in prescribed form) on the landlord and any other manager. Section 79 provides:

"79

(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... to act in relation to the premises, or any premises containing or contained in the premises....".

17. Section 80 provides as follows in respect of the contents of a 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) – (7).....

(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) ..... "

18. The 2010 Regulations prescribe a form for a claim notice. Regulation 8(2) states that claim notices "shall be in the form set out in Schedule 2. Paragraph 3 reads as follows:

"3 The full names of each person who is both—

(a) the qualifying tenant of a flat contained in the premises, and

(b) a member of the company,

and the address of that person's flat are set out in Part 1 of the Schedule below."

19. The prescribed form ends as follows:
"SCHEDULE

PART 1

FULL NAMES AND ADDRESSES OF PERSONS WHO ARE BOTH QUALIFYING TENANTS AND MEMBERS OF THE COMPANY

[set out here the particulars required by paragraph 3 above]

PART 2

PARTICULARS OF LEASES OF PERSONS NAMED IN PART 1

[set out here the particulars required by paragraph 4 above]

Signed by authority of the company,

[Signature of authorised member or officer]

[Insert date]"

20. Section 81 specifies that a claim notice is not invalidated by any inaccuracy in any of the particulars required by or by virtue of section 80.

21. Section 84 (1) provides that any person who has been given a claim notice may serve a counter-notice, in prescribed form, either admitting or denying that the RTM company is entitled to acquire the right to manage

22. By section 84(3), where an RTM company has been given a counter-notice, it may apply to this tribunal for a determination that it is entitled to acquire the right to manage the premises.

The Respondent's Case

23. Mr Serota first emphasised what he described as the potentially serious consequences that might result if a right to manage claim that should not have been admitted was, in fact, successful. This, in his submission, was not a fanciful scenario. He referred to the decision in *Triplerose Ltd v Ninety Broomfield Road* [2015] EWCA Civ 282, where the Court of Appeal held that an RTM company can only acquire the right to manage one self-contained block or building. He suggested that this judgment had potential widespread implications given that hundreds of RTM Companies had been set up to manage multiple buildings. Given this background, a landlord was, he said, entitled to oppose a RTM application even if its challenge was technical in nature.

24. Mr Serota disputed the applicant's entitlement to acquire the right to manage the Blocks on the following grounds:

    (a) membership of the RTM Company was not in accordance with the provisions of the Act and/or membership of the RTM Company did not include at least half the qualifying tenants of the flats in the relevant premises ("the Membership Point");

    (b) either the NIPs or the Claim Notices were invalid; and (The Validity of Notices point").

    (c) in respect of the claims over 1-48 Chandos Way and 49-64 Chandos Way, that the Claim Notices did not comply with the requirement of Section 80(2) of the Act to contain a statement of the grounds on which it is claimed that they are premises to which the Act applies ("the Chandos Way Point").

The Membership Point

25. Mr Serota referred to the register of members of the RTM Companies and submitted that it was clear that joint tenants had been registered individually rather than jointly with his or her co-owner. This was because the names of joint tenants appeared underneath each other in the register rather than alongside each other.

26. He submitted that Section 127 of the 2006 Act established that the register of members was prima facie evidence of its contents and that in light of the provision at section 75(7) of the Act that joint tenants of a flat are regarded as jointly being the qualifying tenant of their flat this meant that:

    (a) membership of the Companies was not limited to the qualifying tenants of the flats of the blocks as required by Section 74 (1) of the Act; and

    (b) those joint tenants shown as being individual and not joint members should not be regarded as members of the relevant RTM Company with the result that in eight out of the nine claims membership of the Companies did not meet the requirement in Section 75(5) of the Act for the number of qualifying tenants to be not less than one-half of the total number of flats in the respective blocks.

The Validity of Notices Point

27. Mr Serota referred to the requirement in Section 78(2)(b) of the Act that a NIP must state the names of the members of the RTM company. He submitted that the NIPs, which identified joint tenants of a flat on separate lines, one underneath the other, thereby identified each joint tenant as being a member of the relevant Company in his or her own right. This he said, accorded with the register of members.

28. According to Mr Serota, the Claim Notices, which listed all joint tenants on one line, thereby showed joint tenants as being joint members of the Company. In his submission, both notices could not be right. One had to be invalid.

The Chandos Way Point

29. Blocks 1-48 Chandos Way and 49-64 Chandos Way differ from the other seven blocks forming the subject matter of these applications in that they are connected by a concrete walkway and are therefore not structurally detached. It was not, however, in dispute that they each formed a self-contained part of a building.

30. In Mr Serota's submission, the Claim Notices for these two blocks did not meet the requirement in Section 80(2) of the Act to contain a statement of the grounds on which it was claimed that they were premises to which the Act applied. This, he said, was because of an error in the description of the premises.

31. In both cases, paragraph 2 of the Claim Notices read as follows:

> *"2. The company claims that the premises are ones to which Chapter 1 of Part 2 of the 2002 Act applies on the grounds that*
>
> *(a) They consist of part of a self-contained building together with 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".*

32. The error in both notices was that rather than describing the relevant block as a self-contained part of a building, as per the definition in Section 72(1) of the Act, it was described as part of a self-contained building. Mr Serota submitted that this meant that the requirement in Section 80(2) was not met and that the Claim Notices were therefore invalid. In his view, it was essential that the Claim Notices set out the correct grounds on which it was claimed that the blocks were premises to which the RTM process set out in the Act applied.

33. Mr Serota relied upon the Court of Appeal decision in *Natt v Osman* [2014] EWCA 1520 Civ where the Court held that in cases where a statute confers a property or similar right on a private person and the issue is whether non-compliance with the statutory requirement precludes that person from acquiring the right in question, a notice should be construed to see whether it complies with the strict requirements of the statute. These two Claim Notices, in his view, did not.

The Applicants' Case

34. As to the policy background referred to by Mr Serota, Mr Bates agreed that landlords are entitled to certainty where an RTM Company acquires the right to manage given the possibility that the validity of that acquisition might be challenged many years down the line. However, he suggested that as stated in paragraph 59 of the decision of the Court of Appeal in *Elim Court RTM Company Ltd v Avon Freeholds Ltd* [2017] EWCA Civ 89, this is an argument that "cannot be carried too far". In his submission, a landlord had several options to seek to protect itself from uncertainty. One way was through a decision made by this tribunal which is a binding determination between the parties. Another was to join the RTM Company.

The Membership Point

35. Mr Bates rejected the suggestion that membership of the RTM Companies was not in accordance with the provisions of the Act and that the Companies had therefore failed to constitute themselves as RTM Companies. In his submission, the provisions of Section 73 of the Act were conclusive as to whether an RTM Company had been validly constituted.

36. His starting point was that the format of the register of members of the applicant RTM Companies was perfectly acceptable. There was no doubt that the requirements of Section 73(2) were met and the only basis on which a Company would fail to be an RTM Company would be if it fell within the exceptions identified at subsections 73(3) to (5) inclusive, none of which applied here.

37. Authority for that proposition was, he said, the Upper Tribunal decision in *Fairhold Mercury Ltd v HQ (Block 1) Action Management Company Ltd* [2013] UKUT 487 (LC) where, at paragraph 19, the Deputy President stated that *"whatever must be in its articles of association, a company will be an RTM company if it satisfies the requirements of s.73(2) and is not excluded by any of the provisions of s.73(3)-(5)"*. At paragraph 20, the Deputy President said that *"...to the extent that the adopted articles of an RTM company are inconsistent with the prescribed articles, the adopted articles have no effect"*.

38. Mr Bates also contended that nowhere in the Act, the Companies Act 2006, or the 2010 Regulations is it specified that the names of joint tenants need to be specified alongside each other.

39. He also argued that when construing the Articles of Association, the NIPs and the Claim Notices, that a purposive approach should be adopted, namely the evident purpose of these documents. This he said was the approach adopted by the Upper Tribunal in *Avon Ground Rents Ltd v 51 Earls Court Square RTM Company Ltd* [2016] UKUT 1221 (LC) where, at paragraph 27, the Deputy President stated that:

> *"Where a document, including a company's articles of association, is ambiguous or reasonably capable of bearing more than one meaning, the court or tribunal required to interpret that document will give it the meaning which is*

more consistent with the parties' presumed intention. If a document contains an obvious mistake, and it is clear what the parties must have intended, the document will be interpreted in accordance with that intention".

40. Mr Bates also referred us to paragraph 30 of that decision where the Deputy President said that *"any company which adopts the model articles of association prescribed by the 2009 Regulations, intends to do exactly that".*

41. In his submission, the intention and purpose of the Articles of Association and the notices was clear and that if the wording of any of those documents was capable of two interpretations, we were required to interpret them in accordance with their evident purpose.

42. Mr Bates also advanced an alternative, fallback, argument relying on the approach adopted by the Court of Appeal in the *Elim Court* decision where it was held that the failure of the RTM Company to comply precisely with the requirements for a notice of intention did not automatically invalidate all subsequent steps.

43. According to Mr Bates, even if an error had been made in the listing of the joint tenants in the register of members of the RTM Companies, or in the drafting of the notices, these were not errors of sufficient seriousness that they should result in total failure of the RTM process. Nobody, he said, had been adversely affected by any errors in the Articles or notices in these applications.

The Chandos Way Point

44. The error as to description was not, in Mr Bates submission, sufficient to invalidate the whole RTM process. He relied on the decision in *Avon Ground Rents* and submitted that when construing the document regard should be had to the evident purpose of the Claim Notices.

45. If we were against him on that point he relied on the decision in *Elim Court* and contended that Parliament could not have intended that a failure of this nature should invalidate the whole RTM process.

46. This challenge was, in his view, of the type commented on by the Deputy President of the Upper Tribunal in paragraphs 66 of his decision in the case of *Pineview Ltd v 83 Crampton Street RTM Co Ltd* [2013] UKUT 598 (LC)where he remarked that:

"some recipients of a claim notice will take every possible point available to them in challenging an RTM company's assertion of entitlement. Such points are often ingenious and sometimes they are successful, but when examined very many lack both substance and merit. A landlord is not to be criticised for adopting that tactic; it is entitled to put a claimant to proof that it has complied fully with the relevant

statutory procedures, and if it is takes the view that a claim is vulnerable to a technical challenge it is entitled to have regard to its own interests and to make that challenge."

47. What was important, suggested Mr Bates, was whether the recipient of the notices was informed of the substance of the case that the giver of the notice intended to put forward. In his submission, any reasonable reader of the Claim Notice in question would realise that the Companies were seeking to proceed under Section 72(3) on the basis that the blocks constituted self-contained part of the buildings.

The tribunal's determination and reasons

The Membership Point

48. In our view, the fact that names of joint tenants of individual flats were recorded on separate lines on the register of members of the Companies, as opposed to alongside each other, does not establish that those tenants had been registered individually rather than jointly. The definition in section 74(1) of the Act as to who is entitled to be a member of an RTM company refers to qualifying tenants of flats contained in the relevant premises. Whilst it is clear, from section 75(7) of the Act, that those joint tenants who were registered as members of the respective RTM companies are to be regarded as jointly being the qualifying tenant of their flats, we were not taken to any provision in the Act, the Companies Act 2006 or the 2010 Regulations that suggests that the entries in the register need to be in a particular format.

49. Mr Serota suggested that Article 26 which sets out how a person becomes a member and Article 33(4)4 in the Articles of Association of the Companies supported his submission that it was impermissible to list each joint tenant individually. Article 26 sets out the procedure for becoming a member of the Company and Article 33(4) provides that the order in which joint tenants names appear in the register of members determines who amongst them is to have seniority in terms of voting rights. Neither of these Articles suggest that names of joint tenants must be listed alongside each other and we accept Mr Bates submission that that no such requirement exists. We therefore reject Mr Serota's submission that membership of the Companies was not limited to the qualifying tenants of the flats of the blocks.

50. In reply to Mr Bates' submissions, Mr Serota explained that he was not contending that the RTM Companies had been improperly constituted. Rather, he was arguing that membership of the RTM companies did not include at least half the qualifying tenants of the flats. Given the conclusion we reach in the previous paragraph this submission must fail, as it is founded on disregarding those joint tenants who had been listed in the register of members on separate lines.

51. We agree with Mr Bates' submission that the decision in *Fairhold* establishes that a company will be an RTM company if it satisfies the

requirements of s.73(2) and is not excluded by any of the provisions of s.73(3) - (5). We also agree that that as the requirements of s.73(2) of the Act were met and because none of the statutory exclusions apply, the RTM companies in these applications were properly constituted.

52. As to Mr Bates' submissions concerning the Upper Tribunal decision in *Avon Ground Rents Ltd* we do not consider the listing of joint tenants on separate lines gives rise to any ambiguity as to the intention and purpose of the register of members and the Articles of Association of the Companies, or the NIPs. However, if the wording of any of those documents was capable of two interpretations, we agree with Mr Bates that a purposive approach to construction is appropriate, that the documents should be interpreted in accordance with their evident purpose.

The Validity of Notices Point

53. In our view, the NIPs correctly stated the names of the members of the RTM company and it is irrelevant that their names were recorded on separate lines. Section 78(2)(b) of the Act requires a NIP to state the names of the members of the RTM company. It does not specify any particular format in which this information must be recorded. Mr Serota argued that either the NIPs or the Claim notices must be invalid and that both cannot be correct. We disagree. Whether the names of qualifying joint tenants were recorded on separate lines, or on one line, makes no difference to validity and both notices were valid.

The Chandos Way Point

54. Section 80(2) of the Act required the applicant RTM Companies for the two Chandos Way blocks to specify in the Claim Notices: (a) the premises over which the right to manage was being sought; and (b) the grounds on which it was claimed that they were premises to which the Act applied.

55. Mr Serota did not suggest that the description of the premises in any of the Claim Notices was incorrect. His argument was that the statement as to the grounds on which it was claimed that the premises were ones to which the Act applied contained a material error that invalidated both Claim Notices.

56. We agree that the statement as to grounds in both Claim Notices contained an error. Rather than describing each building as consisting of a *self-contained part of a building* they described each as consisting of *part of a self contained building*.

57. We acknowledge that the decision in *Osman* requires us to construe the Claim Notices to see if they complied with the strict requirements of the Act. However, as Lewison LJ stated, at paragraph 56 of his judgment in *Elim Court*, not every defect in a notice or in procedure, however, trivial, will invalidate a notice and when considering compliance, a court must decide, as a matter of statutory construction, whether a notice is "wholly valid or wholly invalid".

58. At paragraphs 33 and 34 of the judgment of in the *Osman* decision Ethereton C, as he then was, stated as follows :

"[33] In cases such as the present, that is to say the acquisition of property rights by private persons pursuant to statute, the intention of the legislature as to the consequences of non-compliance with the statutory procedures (where not expressly stated in the statute) is to be ascertained in the light of the statutory scheme as a whole. In some cases, for example, the court has held in favour of invalidity where the notice or the information which is missing from it is of critical importance in the context of the scheme: see, for example, Burman (the landlord's counter-notice under the 1993 Act was described as "integral to the proper working of the statutory scheme"); Speedwell (the omissions in tenant's notices under the LRA 1967 to supply information required by para 6(1) of Sch 3 were said by Rimer J (with whom the other judges agreed) not to be "mere inaccuracies in the particulars as a whole"); and Cadogan v Morris (failure of tenant to state in a notice under s 42 of the 1993 Act the premium which he actually intended to pay as opposed to the one which was stated but was unrealistically low and he did not in reality intend to pay).

[34] By contrast, the court has held in favour of validity where the information missing from the statutory notice is of secondary importance or merely ancillary. In both Newbold and Seven Strathray Gardens Ltd v Pointstar Shipping & Finance Ltd [2004] EWCA Civ 1669, [2005] HLR 20 295, for example, the missing particulars in the notice were not prescribed by the statute itself but by regulations made under it and were not of a kind which Parliament could have intended should result in the invalidity of the notice. A broadly comparable situation was that in Tudor, where the omitted particulars (the addresses of the tenants signing the notice) were not specified in the relevant statutory provision in the Landlord and Tenant Act 1987 authorising the service of the notice but in the general provision in s 54(2) of that Act which required any notice served under any provision of Pt I or Pt III by the requisite majority to specify the names of all the persons by whom it is served and the addresses of their flats. Carnwarth LJ, who gave the only reasoned judgment, said (at para 33) that "section 54 is not a substantive provision, but is ancillary to the various notice provisions" and (at para [34]) that the requirement to state addresses in the notice was "merely supportive"."

59. Given that Section 81 specifies that a claim notice is not invalidated by any inaccuracy in any of the particulars required by or by virtue of section 80, we consider the issue for us to determine is whether the error in the grounds relied upon was of such critical importance, in the context of the RTM procedure, that the Claim Notices should be considered wholly invalid or wholly valid.

60. We agree with Mr Bates that that Parliament could not have intended that an error this nature should invalidate the whole RTM process. As highlighted by Lewison LJ in *Elim Court* [58] it is important to recall that the only persons who are entitled to object to the exercise of the right to manage upon receipt of a Claim Form is the landlord (or landlords), a party to a lease who is neither landlord nor tenant, or a court appointed manager.

61. The two Chandos Way Claim Notices in question were sent to six recipients including the freehold owner of the Blocks, the head landlord, the intermediate landlord and the respondent management company.

62. The purpose of a Claim Notice is to notify a recipient of a claim for the right to manage in order for the recipient to assess whether that right is made out. In our view, the recipients of these two Claim Notices would have been able to assess whether the right to manage applied in respect of the two blocks irrespective of the error in the drafting of the grounds. It seems to us highly probable that each of the recipients, because of their interest in the Blocks, would have been aware, as a matter of fact, that the two Chandos Way blocks constituted a self-contained part of a building rather, than being part of a self-contained building. Even if that was not the case, any recipient was entitled to serve a Counter Notice challenging the grounds relied upon on the basis that the description of the premises did not fall within the definition at s.72(1) and, therefore, the right to acquire management rights under the Act did not apply.

63. In the event, the only recipient who served a Counter Notice was the respondent who was obviously able to assess whether the right to manage applied despite the misdescription of the premises in the Claim Notices.

64. We cannot see that any recipient has been misled by the misdescription in these two Notices and we conclude that the error was not of such a critical importance in the context of the RTM procedure as a whole that the Claim Notices should be considered invalid. Mr Serota suggested that listing the names of joint tenants on separate lines in an NIP effectively doubled the number of members shown and may have influenced the decision of recipients to join the Company. However, there is no evidence to suggest that a recipient would be influenced in that way and we consider the suggestion implausible. We conclude that all the Claim Notices were valid.

Name: Amran Vance **Date:** 7 September 2017

Appendix - 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.