FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AW/LRM/2020/0002 V:CVP**
Property	**:**	**18-20 Sloane Gardens, London SW1W 8DL**
Applicant	**:**	**18-20 Sloane Gardens RTM Company Limited**
Representative	**:**	**Simon Serota Wallace LLP**
1st Respondent	**:**	**18-20 Sloane Gardens Limited (Head lessee)**
Representative	**:**	**Justin Bates (counsel) Northover Limited**
2nd Respondent	**:**	**Cadogan Estate Limited (Freeholder)**
Representative	**:**	**Cripps Pemberton Greenish LLP**
Type of application	**:**	**Application in relation to the denial of the Right to Manage**
Tribunal member(s)	**:**	**Judge Sheftel Judge Bowers**
Date of decision	**:**	**30 June 2020**

DECISION

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was V:CVP. A face to face hearing was not held because it was not practicable and no request was made for a face-to-face hearing. The documents that the tribunal was referred to are in a bundle of 176 pages, the contents of which have been noted. The order made is described at the end of these reasons.

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The remote video hearing took place on 1 June 2020. The Applicant was represented by Mr Simon Serota (solicitor) and the First Respondent by Mr Justin Bates (counsel).

The tribunal records that one of the witnesses for the First Respondent, Mr Andrew Lyndon-Skeggs (who is also a director), was unable to access the video platform. This seems to have been linked to the fact that he is based outside of the UK and appears to be a limitation of the technology of which the tribunal was unaware. He was, however, able to dial in by telephone. While in other circumstances this could have affected the fair conduct of the hearing, as his evidence was unchallenged and he was not called to give evidence in any event, we consider that this was not the case. It was also the case that the First Respondent was represented by counsel and solicitor at the hearing, with whom he was able to communicate. Nevertheless, the tribunal notes and apologises for the frustration that this caused.

The application

1. This is an application to acquire the right to manage 18-20 Sloane Gardens, London SW1W 8DL ("the premises") under Part 2 of Chapter 1 of the Commonhold and Leasehold Reform Act 2002 (the "2002 Act").

2. The claim is opposed on the basis that it is denied that there was valid service of the Notice Inviting Participation and Claim Notice on all qualifying tenants, contrary to sections 78 and 79 of the 2002 Act.

3. The Applicant maintains that there was valid service in accordance with the provisions of section 111(5) of the 2002 Act. Alternatively, the Applicant submits that even if there has been a technical failure to effect valid service, it is nevertheless entitled to acquire the right to manage the premises.

Background

4. 18-20 Sloane Gardens is a residential building comprising 17 flats held by qualifying tenants. The freehold is held by Cadogan Estates Ltd, the Second Respondent. There is a head lease of the whole building (including a basement flat) held by 18-20 Sloane Gardens Ltd, the First Respondent. That company is itself owned by three of the leaseholders at the building.

5. 11 of the leaseholders are members of the Applicant RTM company. The tribunal is informed that none of the 11 are members of the First Respondent.

6. The Applicant relies on a Claim Notice served on 6 December 2019, following delivery of Notices Inviting Participation on 2 October 2019 and 21 November 2019. A previous claim notice dated 18 October 2019 was withdrawn following claims that not all qualifying tenants had been validly given Notice Inviting Participation.

7. In response to the claim notice now relied on by the Applicant, the Respondents have each served a counter-notice asserting that the Applicant RTM company was not on the relevant date entitled to acquire the right to manage for the reasons set out below.

The counter-notice

8. In their respective counter-notices, the Respondents each allege that by reason of sections 78 and 79 of the 2002 Act, the Applicant was not entitled to acquire the right to manage in respect of the premises. A statement of case and evidence in support of this assertion have been provided on behalf of the First Respondent. However, the Second Respondent has not filed its own separate statement or evidence or taken part in the proceedings.

9. Specifically, in its statement of case, the First Respondent denied that either the Notice Inviting Participation, or the Claim Notice were validly served on the leaseholders of flat 4 (Mr Andrew Lyndon-Skeggs), flat 9 (Ms Jaqueline Griffiths) or flat 18A (Lord and Lady Fellowes). By the time of the hearing, the allegation in relation to flat 18A was not actively pursued and no evidence was provided in support or to contradict the Applicant's evidence in relation to the giving of notice in respect of flat 18A as further set out below.

10. Although the Applicant's unchallenged evidence is that both the Notice Inviting Participation and copies of the Claim Notice were served at the respective flats, the First Respondent maintains that this was not sufficient to satisfy sections 78 and 79 of the 2002 Act. It is the First Respondent's case that none of the notices were received by the leaseholders of flats 4 or 9 as they do not live at the flats. Moreover, the First Respondent asserts that the Applicant was aware of this.

The evidence

11. At the hearing, neither side challenged the other side's evidence, with the result that there was effectively no dispute of fact. In summary, the parties' evidence was as follows.

The Applicant's evidence

12. According to the witness statement of Charlotte Kohler, a personal assistant employed by the Applicant's solicitors, on 21 November 2019 she attended the premises and hand delivered Notices Inviting Participation addressed to the qualifying tenants to each of flats 4, 9 and 18A. Further, she states that when she delivered the letter to flat 18A, she saw Lord Fellowes inside. Subsequently, on 6 December 2019, she again attended the premises and delivered copies of the Claim Notice to the qualifying tenants to each of flats 4, 9 and 18A. She also stated that on that occasion, she did not see Lord Fellowes, although had seen him the previous day when she had attended the premises to deliver letters to qualifying tenants advising that a previous claim notice had been withdrawn.

13. Ms Kohler's evidence was not challenged or disputed and so far as is necessary, the tribunal finds as a fact that the Notices Inviting Participation and the Claim Notices were delivered by hand to each of the relevant flats on 21 November 2019 and 6 December 2019 respectively.

The First Respondent's evidence

14. The tribunal received witness statements from Mr Andrew Lyndon-Skeggs (lessee of flat 4) and Mrs Jacqueline Ann Griffiths (lessee of flat 9), both of whom are also directors of the First Respondent. As noted above, at the start of the hearing, the Applicant confirmed that it did challenge their witness statements, which meant that, like Ms Kohler, neither was called to give oral evidence.

15. Mr Lyndon-Skeggs's evidence was that he has not lived at the premises since September 2010. He is ordinarily resident in France, but when he returns to the UK, he stays at a club in London or at an address in Alton. Indeed, the Alton address is the address listed on the Land Registry title for flat 4. In addition, Mr Lyndon-Skeggs maintained that the directors

and members of the RTM company were well aware that he did not live at flat 4. He noted that:

(1) he had given his card (showing his address in France) to several lessees of the premises over the years;

(2) Tideway Managing Agents (the managing agents of the premises) only ever communicate with him by email or at the addresses in France or Hampshire.

(3) he tried to organise a collective enfranchisement in 2017-2018, whereby communications were sent to every lessee, which made clear that he did not live at the premises. This includes several directors of the Applicant. In particular, he advised that those who wished to participate should send the reply form to his UK assistant at an address in West Sussex.

His evidence concludes by stating that he did not receive a copy of the Notice Inviting Participation dated 21 November 2019 or the Claim Notice dated 6 December 2019, and that the first he was aware of these was when the Applicant's sent a copy to the First Respondent's solicitors.

16. Turning to Ms Griffiths, her evidence was that she has not lived at flat 9 since 2002. She also stated that she has known a number of other lessees of the building from when she lived there (including directors of the Applicant) and all were aware that she lived elsewhere in London. She added that this was also apparent from a check at Companies House.

17. The tribunal accepts the evidence of both Mr Lyndon-Skeggs and Ms Griffiths in full and, so far as is necessary, finds as fact that Mr Lyndon-Skeggs and Mrs Griffiths did not live at their respective flats. The tribunal also accepts that members and directors of the Applicant were aware of this. As pointed out by counsel for the Respondent, the Applicant did not adduce evidence to rebut this assertion.

18. This gives rise to two factual conclusions, as submitted by the First Respondent, which, for the avoidance of doubt, the tribunal accepts:

(1) In relation to flats 4 and 9, the Notices Inviting Participation and Claim Notices were served at addresses (the addresses of the

respective flats), where the qualifying tenants are known by officers/ directors of the Applicant not to live.

(2) At least in the case of flat 4, officers/directors of the Applicant had been made aware of alternative correspondence addresses.

19. As to the implications for the validity of service of the Notices Inviting Participation and the Claim Notice, this is addressed further below.

The issue between the parties

Was notice validly given in respect of flats 4 and 9?

20. It is common ground that pursuant to section 78 of the 2002 Act, is a condition precedent to the service of a claim notice that the RTM company must "give" a Notice Inviting Participation to all qualifying tenants who are not already members of the RTM company (or who have not agreed to become members). Section 78(1) 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."

21. Similarly, section 79 of the 2002 Act provides as follows:

> "(1)A claim to acquire the right to manage any premises is made by giving notice of the claim (referred to in this Chapter as a "claim notice"); and in this Chapter the "relevant date", in relation to any claim to acquire the right to manage, means the date on which notice of the claim is given.
>
> (2)The claim notice may not be given unless each person required to be given a notice of invitation to participate has been given such a notice at least 14 days before.
>
> (3)The claim notice must be given by a RTM company which complies with subsection (4) or (5).
>
> (4)If on the relevant date there are only two qualifying tenants of flats contained in the premises, both must be members of the RTM company.
>
> (5)In any other case, the membership of the RTM company must on the relevant date include a number of qualifying tenants of flats contained in the premises which is not less than one-half of the total number of flats so contained.
>
> (6)The claim notice must be given to each person who on the relevant date is—
>
> (a)landlord under a lease of the whole or any part of the premises,
>
> (b)party to such a lease otherwise than as landlord or tenant, or

(c)a manager appointed under Part 2 of the Landlord and Tenant Act 1987 (c. 31) (referred to in this Part as "the 1987 Act") to act in relation to the premises, or any premises containing or contained in the premises.

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

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

(9) …".

22. The issue of *how* such notice may be given is the principal issue before the tribunal in this case.

23. The key provision is section 111(5) of the 2002 Act, which provides as follows:

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

24. In other words, on its face, section 111(5) provides that an RTM company is entitled to serve notice on a qualifying tenant at the address of that flat unless it has been notified by that qualifying tenant of a different address within England and Wales at which they wished to be given such notices.

25. For the avoidance of doubt, as there was no evidence put forward that the giving of notices in respect of flat 18A was not in accordance with the provisions of the 2002 Act and insofar as the evidence of Ms Kohler was unchallenged, the tribunal finds that notices have been validly given in respect of flat 18A.

26. As to the remaining two flats in dispute, the Applicant's case is relatively straightforward: it was entitled to services the notices on the qualifying tenants of flat 4 and flat 9 notwithstanding that they did not live at the respective flats, as neither had notified the RTM company of an alternative address in England and Wales at which they wished to be given such notice.

27. Before turning to whether such proposition is correct as a matter of fact, it is necessary to address the First Respondent's submission of law in this regard. As Mr Bates put it: can a RTM company rely on section 111(5) of the 2002 Act where it knows that the qualifying tenant does not live at the flat and it knows where to find him/her?

28. In particular, it was contended that section 111(5) must be read in light of what the (then) President, Lindblom J, held in *Avon Freeholds Ltd v Regent Court RTM Co Ltd* [2013] UKUT 213 (LC). At paragraph 42 he stated as follows:

> "… [The LVT] construed s.111(5) as permissive rather than imperative (*ibid.*). It was right to do so. Subsection (5) provides that the right to manage company 'may' give notice to a qualifying tenant at his flat in the premises if he has not notified the RTM company of another address at which he wishes to be given notice. But it does not say that this is how notice must be given, or that notice may not be given in some other way. As the LVT acknowledged (*ibid.*), the provision for the deemed giving of notice provides a RTM company with a means of achieving valid service on a non-participating tenant. This will be so even if the tenant is not living in his flat in the premises **and the RTM company does not know where he is**." (emphasis added)

29. On the First Respondent's case, the final, highlighted phrase is crucial. It was submitted that the provision in s.111(5) is there to assist an RTM company which does not know where a qualifying tenant might be found. It is not there to allow an RTM company deliberately to choose to serve at an address where it knows the qualifying tenant does not live. It was further suggested that such conclusion is consistent with the fact that the purpose of a Notice Inviting Participation is to ensure that all qualifying tenants are aware of the RTM process and are able to join the RTM company at a formative stage (*i.e.* before the claim notice is served). In the First Respondent's submission, interpreting s.111(5) as permitting an RTM company to serve notice in such a way as to exclude certain leaseholders from the RTM process is inconsistent with that purpose.

30. It was further suggested that a strict interpretation of section 111(5) could lead to surprising outcomes. Insofar as the purpose of a Notice Inviting Participation is to ensure that all qualifying tenants are aware of the RTM process, those qualifying tenants that are unaware would not know to contact an RTM company of whose existence they do not know. It could

perhaps be answered that this is the provision that Parliament has chosen. However, Mr Serota also submitted that the present case is not such an example. In his submission, the qualifying tenants of flats 4 and 9 would have been aware of what was happening by virtue of the fact that they were directors of the First Respondent due to the fact that on 18 November 2019, solicitors instructed on behalf of the First Respondent wrote to the Applicant's solicitors setting out why the claim to right to manage was denied.

31. More generally, Mr Serota submitted on behalf of the Applicant that the wording of section 111(5) is clear and unambiguous. In the Applicant's written statement of case, it is submitted that a "*RTM Company can give any Notice required by the Act to a qualifying tenant at the qualifying tenant's flat within the Premises. The only circumstances in which a RTM Company cannot give Notice to a qualifying tenant at his flat address is where the qualifying tenant has given to the RTM Company of a different address at which he wishes to be given a Notice under the provisions of Chapter I of Part 2 of the Act.*" In his submission, it was not appropriate to imply any limitation to this as argued for on behalf of the First Respondent.

32. Further, he submitted that the passage from *Avon Freeholds Ltd v Regent Court RTM Co Ltd* must be understood in the context of that case. On the facts, the RTM company had given notice at the address shown on the registered title for the flat. The tribunal had confirmed that this was not valid notice but went on to consider whether it had invalidated the process and held that it did not, a conclusion with which the Upper Tribunal agreed. However, on the issue of the giving of notice, the First Tier Tribunal (at para.33) had considered that the RTM company had:

> "…in fact made life more difficult for itself. The legislation has made service quite simple, in that the Applicant need only give notice at the flat (in the absence of notification of an alternative address). If the tenant fails to provide an alternative address, then that may cause difficulties for the tenant, but the Applicant would be able to rely on s.111".

In Mr Serota's submission, the Upper Tribunal endorsed the tribunal's approach. Immediately following the passage from paragraph 42 set out above, the Upper Tribunal stated:

> "The LVT accepted that service at the address given on the Proprietorship Register at the Land Registry does not constitute service at a different address notified to the RTM company by the tenant (paragraph 34). As it said, notification of an alternative address would have required "some direct form of communication" between the RTM company and the tenant, specific to the service of notices under the 2002 Act, and in this case that was not done (ibid.)."

In conclusion, Mr Serota submitted that had the Upper Tribunal determined that some limitation ought to be read into the statute as the First Respondent contends, it would be expected that this would have been clearly set out.

33. In the tribunal's view, the correct interpretation of section 111(5) does not go as far as the First Respondent contends: the wording provides that an RTM company may serve notices at the relevant flat unless it has been given an alternative address in England and Wales at which such notices should be given. The statute does not say that where no alternative address has been provided, the RTM company *cannot* serve at the flat even if it is aware that a qualifying tenant does not live there. In this regard, it is notable that the 2002 Act does not contain any requirement for an RTM company to investigate an alternative address where it is aware that a qualifying tenant does not live at the relevant flat. In the tribunal's view, therefore, it is not enough to say that the RTM company knows that a qualifying tenant does not reside at the relevant flat. Insofar the RTM company knew that the qualifying tenants of flat 4 and flat 9 did not live at their respective flats, this does not of itself invalidate service of the Notice Inviting Participation or the Claim Notice at those flats.

34. This, however, does not fully deal with Mr Bates's submission. What if the RTM company not only knows that a qualifying tenant does not live at the relevant flat, but does know of an alternative correspondence address?

35. In the tribunal's view, it is again necessary to return to the language of the legislation itself. Pursuant to the wording of section 111(5) of the 2002 Act, an RTM company is entitled to serve at that flat *unless* it has been given an alternative address within the jurisdiction for the giving of such notices. Notwithstanding Mr Bates's forceful submissions, the tribunal does not accept that any limitation should be read into the legislation when the drafting is clear and unambiguous. Nor does the tribunal understand the

highlighted passage of the judgment in *Avon Freeholds Ltd v Regent Court RTM Co Ltd* to be saying as much or to be adding a gloss or limitation to the statute.

36. In summary, section 111(5) of the 2002 Act allows for service at the flat of the qualifying tenant: "*…unless it has been notified by the qualifying tenant of a different address in England and Wales at which he wishes to be given any such notice*". There are three elements to this: (i) notification by the qualifying tenant; (ii) to the RTM company; (iii) of a different address within the jurisdiction at which the qualifying tenant wishes to be given notices under Chapter 1 of Part 2 of the 2002 Act.

37. This in turn gives rise to the following questions of fact:

    (1) What was notified and to whom; and
    (2) Were such notifications sufficient for the purposes of section 111(5) of the 2002 Act?

38. In the present case, there is no suggestion that the qualifying tenants of flat 4 and flat 9 positively notified the RTM company of an alternative address since its formation. Indeed, when the question was put by the tribunal during the hearing, both parties agreed that no specific notification was made to the RTM company. Rather, the evidence was as follows.

Flat 9

39. Ms Griffiths does not explicitly assert that directors of the Applicant knew her alternative address (as opposed to the fact that she did not live at the premises). Her evidence was that her alternative address would be apparent from a Companies House search.

40. In the tribunal's view, this is not sufficient. As set out above, section 111(5) does not require any investigation on the part of an RTM company where it knows that a qualifying tenant does not live at the flat, but has not been informed of an alternative address by that qualifying tenant. In the circumstances, the tribunal concludes that there has been no defect of service in relation to flat 9.

Flat 4

41. Turning to Mr Lyndon-Skeggs, his uncontested evidence made reference to a number of addresses: (i) the address in France listed on his card, albeit this is not an address in England and Wales as envisaged by section 111(5); (ii) the address in Aton; and (iii) the address of his UK assistant in West Sussex. Mr Lyndon-Skeggs's witness statement also makes reference to his club in London.

42. However, the tribunal nevertheless is faced with several questions.

43. First, were the notifications given to the RTM company? As noted above, section 111(5) provides that RTM company is entitled to serve notice at the address of that flat unless *it* has been notified by that qualifying tenant of a different address within England and Wales at which they wished to be given such notices. While it was not contested that directors/officers of the Applicant had prior knowledge of these alternative addresses, that is not the same as a specific notification being made to the RTM company as envisaged by section 111(5). Further, notwithstanding that directors/officers of the Applicant had been informed of different correspondence addresses, there is no suggestion that any were addresses "*at which* [the qualifying tenant] *wished to be given any* [notices under the 2002 Act]" – although this is unsurprising given that the incidents referred to by Mr Lyndon-Skeggs took place prior to the formation of the RTM company.

44. Secondly, more than one address is referred to in the evidence. While Mr Bates maintained that the giving of notice at the address of the flat was not valid, he could not, as counsel for the First Respondent as opposed to the individual qualifying tenants, confirm that service at any of the addresses above would necessarily have been valid for the purposes of the 2002 Act. While counsel is in no way criticised for this, it demonstrates the problem that would be faced by an RTM company in such situation, which could lead to considerable uncertainty. Directors may previously have been made aware of alternative addresses – in the present case prior to the formation of the RTM company. However, absent a clear notification in accordance with section 111(5), how does the RTM company know which,

or if any, would be appropriate for the giving of notice under the 2002 Act? It is for this reason, in the tribunal's view, that section 111(5) provides a clear and simple answer: the RTM company is entitled to serve at the address of the flat save where it has been notified by that qualifying tenant of a different address within England and Wales at which they wished to be given such notices. The fact that members/directors of an RTM company may previously have been made aware of alternative correspondence addresses is not sufficient.

45. In the tribunal's determination, no such notification has been provided *to the RTM company* in the present case. In the circumstances, and in light of the tribunal's earlier conclusion that no limitation should be read into the operation of section 111(5) of the 2002 Act, the Applicant has validly given notice of the Notice Inviting Participation and the Claim Notice in accordance of the provisions of the 2002 Act.

If flats 4 and 9 were not validly served, does that invalidate the process?

46. If the tribunal is wrong in its conclusion above, can it be said that the process is not invalidated notwithstanding the errors in relation to the giving of notice? On this issue, both parties referred the tribunal to the decision of the Court of Appeal in *Elim Court RTM Co Ltd v Avon Freeholds Ltd* [2017] EWCA Civ 89 in which the Court of Appeal confirmed that non-compliance with the notice provisions is not necessarily fatal to an RTM claim. As Mr Bates, submitted, the test is not one of prejudice but rather of parliamentary intent. As Lewison LJ stated at paragraph 52 of the decision:

> "The outcome in such cases does not depend on the particular circumstances of the actual parties, such as the state of mind or knowledge of the recipient or the actual prejudice caused by non-compliance on the particular facts of the case… 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… Where the notice or the information which is missing from it is of critical importance in the context of the scheme the non-compliance with the statute will generally result in the invalidity of the notice. Where, on the other hand the information missing from the statutory notice is of secondary importance or merely ancillary, the notice may be held to have been valid… One useful pointer is whether the information required is particularised in the statute as opposed to being required by general

provisions of the statute. In the latter case the information is also likely to be viewed as of secondary importance. Another is whether the information is required by the statute itself or by subordinate legislation. In the latter case the information is likely to be viewed as of secondary importance. In this connection it must not be forgotten that while the substantive provisions of a bill may be debated clause by clause, a draft statutory instrument is not subject to any detailed Parliamentary scrutiny. It is either accepted or rejected as a whole. A third is whether the server of the notice may immediately serve another one if the impugned notice is invalid. If he can, that is a pointer towards invalidity."

47. Mr Serota submitted that the process was not invalidated even if the tribunal concluded that notices had not been validly given. In particular, he relied on the fact the two witnesses on behalf of the First Respondent were both directors of that company, with the consequence that the original Notice Inviting Participation would have come to their attention in any event. As noted above, on 18 November 2019, solicitors instructed on behalf of the First Respondent wrote to the Applicant's solicitors setting out why the claim to right to manage was denied. In his submission, it was significant that the First Respondent itself had been served with a Notice Inviting Participation and the claim notice. Accordingly, this was not a case where lessees were only discovering the existence of the RTM company and the intention to acquire right to manage much later. He also referred to the fact that following the First Respondent's solicitors' assertion that the initial Notices Inviting Participation had not been validly served, by letter dated 19 November 2019, the Applicant's solicitors had sought an explanation as to why the First Respondent believed this was so. In other words, he submitted, the Applicant had had made efforts to ensure that service would be valid and had not simply ignored the process.

48. In contrast, Mr Bates contended that insofar as notice had not been validly given to flats 4 and 9, that was fatal to the claim to acquire right to manage. In particular, he asserted that the principle in *Elim Court* cannot apply where a party has chosen not to follow the statute – although the Applicant's response was that it did follow the statute by relying on section 111(5). Of perhaps greater weight, is Mr Bates's alternative submission that the requirement to give notice is a statutory requirement of central

importance and that therefore, failure to properly give notice was fatal to the claim to acquire the right to manage.

49. In response, Mr Serota noted that in *Elim Court*, failure to serve an intermediate landlord did not invalidate the claim. In that case, the Upper Tribunal had accepted the argument that "*an intermediate landlord is one of the class of person entitled to serve a counter-notice objecting to the exercise of the right to manage. Although the grounds upon which an objection can be sustained are very limited, a failure to serve an intermediate landlord deprives him of that statutory right*." However, the Court of Appeal (at paragraph 70) considered that:

> "…the UT misdescribed the nature of this aspect of the statutory scheme. Section 79 (7) applies where the effect of landlords being untraceable means that the claim notice is not required to be "given to anyone at all". It does not apply where a claim notice is given to some landlords but not others. Likewise section 85 applies only where the RTM company cannot find "any of the persons" to whom the claim notice should be given. We must take it, therefore, that the mere fact that a claim notice was not given to all those entitled to receive one would not invalidate the claim notice without more. I do not therefore agree with the UT that there is inconsistency between a claim succeeding where the claim notice has not been served on all those entitled to receive one and the provisions applicable where no one has been served. Parliament has specifically considered the case in which, at least in some circumstances, a claim notice has been given to some landlords but not all of them and has decided that that does not invalidate the claim. It cannot therefore be said that giving a claim notice to everyone entitled to receive it is necessarily an essential feature of the statutory scheme."

The Court of Appeal concluded that:

> "… a failure to serve a claim notice on the intermediate landlord of a single flat with no management responsibilities (as defined) does not invalidate the notice" (para.74).

50. Had the tribunal been required to decide this question, we would have considered that the requirement to give a Notice Inviting Participation to each qualifying tenant is fundamental to the statutory scheme and that the legislation does not allow derogation from that. However, the point is, in a sense, moot: the tribunal has already concluded that the statutory scheme provides a simple mechanism for giving such notice, i.e. allowing the giving of notice at the flat of the qualifying tenant unless it has been notified by the qualifying tenant of a different address in England and Wales at which the qualifying tenant wishes to be given any such notice.

For the reasons set out above, the tribunal considers that the Applicant was entitled to and did comply with this provision and that, accordingly, the notices have been validly given.

Conclusion and decision of the tribunal

51. Overall and for the reasons set out above, the Tribunal determines that the Applicant was on the relevant date entitled to acquire the right to manage the premises pursuant to section 84(5)(a) of the 2002 Act.

52. Therefore, in accordance with section 90(4), within three months after this determination becomes final the Applicant will acquire the right to manage these premises. According to section 84(7):

> "(7) A determination on an application under subsection (3) becomes final—
>
> (a) if not appealed against, at the end of the period for bringing an appeal, or
>
> (b) if appealed against, at the time when the appeal (or any further appeal) is disposed of."

Costs

53. Section 88(3) of the 2002 Act states:

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

54. In the light of the Tribunal's decision, there is no question of awarding any costs of the proceedings to the Respondent because the application for the right to acquire has not been dismissed.

Name: Judge Sheftel **Date:** 30 June 2020

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).