FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	CHI/21UD/LRM/2020/0005-8
Property	**:**	Southview Court (Blocks 1, 3, 4 and 5), Old London Road, Hastings, East Sussex, TN35 5BN 6UG
Applicants	**:**	Southview Court (One) RTM company Southview Court (Three) RTM company Southview Court (Four) RTM company Southview Court (Five) RTM company
Representative	**:**	Mr George Okines (ARKO Property Management Ltd)
Respondent	**:**	SE Estates and Agency Management Ltd
Representative	**:**	Mr Richard Granby of counsel, instructed by Bonallack & Bishop solicitors.
Type of Application	**:**	Commonhold and Leasehold Reform Act 2002 (Right to Manage)
Tribunal Members	**:**	Judge Mark Loveday
Date and venue of hearing	**:**	24 February 2023, remote video hearing
Date of Decision	**:**	27 March 2023

DETERMINATION

Introduction

1. This is another application arising out of what the Court of Appeal called the "melancholy fact that whenever Parliament lays down a detailed procedure for exercising a statutory right, people get the procedure wrong" (*Elim Court RTM company Ltd v Avon Freeholds Ltd* [2017] EWCA Civ 89, per Lewison L.J. at [1].

2. In this instance, the application is made by RTM companies formed to acquire the right to manage four blocks of flats in Hastings under the Commonhold and Leasehold Reform Act 2002 ("the Act"). Unfortunately for them, and for the leaseholders who are their members, the Tribunal finds that two of the four RTM companies have not succeeded in that objective.

Background

3. Southview Court is located on the outskirts of Hastings at the junction of Rye Road and the Old London Road. According to a plan in the hearing bundle, it originally comprised three purpose-built blocks of flats set in landscaped gardens, with garages to the rear. Parts of the estate appear to have been redeveloped separately into houses at some stage, leaving the three blocks already mentioned. The application for the right to manage relates to the southernmost and northernmost blocks, which are both conveniently divided into two sets of premises known as Blocks 1, 3, 4 and 5 respectively:
   a. Block 1 includes 7 flats (nos.528A-D and 530B-D Old London Road);
   b. Block 3 includes 8 flats (520A-D and 522A-D);
   c. Block 4 includes 8 flats (516A-D and 518A-D); and
   d. Block 5 includes 8 flats (512A-D and 514A-D).

   The estate now includes shared roads, communal gardens or green spaces, the garages and the houses. Each set of premises has a separate street door and internal staircase. There is no dispute that the flats are let on long leases within the meaning of s.76 of the Act, and no dispute that each has a qualifying tenant within the meaning of s.75 of the Act.

4. The Respondent is the registered freehold proprietor of the four blocks and the landscaped areas and access paths etc. contiguous to the bocks themselves. It employs Brockhurst Property Management as managing agents.

5. The Applicant RTM companies were incorporated on 11 June 2020. There is also no issue that the Applicants each met the requirements of s.73-74 of the Act. Copies of the memorandum of association for each company were included in the hearing bundle, and the Tribunal mentions in passing that each company was formed with only one original lessee subscriber.

6. The Tribunal was told this is the third attempt to exercise the right to manage. But for present purposes it need only be said that s.78(1) Notices Inviting Participation were given in June 2020 (which the Tribunal returns to below).

7. Four s.79 notices of claim dated 1 September 2020 were included in the bundle, and there is no dispute these were given to the appropriate landlords on 2 September 2022. On 30 September 2022, the Respondent gave counter-notices under s.84 of the Act alleging that the Applicants were not entitled to exercise the right to manage. These counter-notices can fairly be described as "omnibus" documents, specifying numerous grounds of opposition running to some 37 paragraphs.

8. By applications dated 26 October 2020, the Applicants sought declarations under s.84(3) of the Act that they were entitled to acquire the right to manage. Regrettably the applications were much delayed. Directions were given on 17 November and 9 December 2020, when they were stayed pending the outcome of the appeal to the Supreme Court in *FirstPort Property Services Ltd v Settlers Court RTM Co* [2022] UKSC 1.

9. As far as witnesses are concerned, the Tribunal's directions were clear enough. By para 12 of the directions of 17 November 2020, it directed that:

> "12. If either party intends to rely on the evidence of any person (other than a person who has signed the statements of case referred to above), a witness statement setting out what that person says must be prepared… If there is an oral hearing, witnesses are expected to attend the hearing to be cross examined as to their evidence, unless their statement has been agreed by the other party."

The hearing bundle includes a witness statement from Mr Mark Brockhurst of the managing agents dated 25 February 2021, and a statement from Mr Samuel Croxton (Flat 514A) dated 22 February 2021. There is also a statement from Mr William Copp (Flat 522A) dated 9 January 2021.

10. The decision in *Settlers Court* was eventually published in January 2022. Further directions were given on 1 April 2022 and 10 November 2022 and the matter was listed for a remote hearing on 24 February 2023. It is a matter of some regret that this decision is therefore given over two and half years after the notices of claim were first prepared.

11. Before turning to the substantive issues, it should be mentioned that shortly before the hearing two procedural applications were referred to the Tribunal Judge for determination. First, the Respondent applied to strike out the Applicants' case under r.9 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the Procedure Rules"). The Applicants had been directed to pay a hearing fee by 13 February 2023, and the Respondent contended that no fee had been paid in time. Secondly, the Applicants sought specific disclosure of various documents. The Tribunal Judge refused both applications, but gave permission to both parties to renew their applications at the hearing. As it turned out, neither application was renewed at the hearing.

12. At the hearing itself, the Applicants were represented by Mr George Okines of ARKO Property Management, which has assisted the Applicants throughout. The Respondent was represented by Mr Richard Granby of counsel. Both produced helpful skeleton arguments, and the Tribunal is grateful to both for

narrowing the issues and for their careful submissions. In particular, by the date of the hearing the outstanding issues had been reduced to just four, which the Tribunal will consider each in turn.

Issue 1: The application form

13. The facts giving rise to the first issue were not in dispute. The applications sent to the Tribunal in October 2020 were submitted on Form RTM, which is published on the Tribunal's website. Although Form RTM is not a prescribed form, it includes a checklist at Box 8 which requires applicants to confirm they have provided "A copy of the RTM company Certificate of Incorporation and copy Articles of Association". There is then an italicised note to the effect that after 1 October 2020 the articles "*… must comply with the provisions of the RTM companies (Model Articles) (England) Regulations 2009 …*". In this particular case, the Applicants' RTM Forms exhibited various documents. But they failed to attach a copy of the articles of association in accordance with the checklist in Box 8. Instead, the Applicants attached Certificates of Incorporation and the original subscriber pages for each company.

The case for each party

14. Mr Granby submitted that a failure to file the memorandum and articles for each Applicant company was a clear breach of Rule 26(2)(n) of the Procedure Rules and paragraph 6 and Schedule 6 of the *Practice Direction: Residential Property Cases* made by the Senior President of Tribunals on 9 September 2013. Para 6 of the latter stated that:

> "6. Where an application is made to start proceedings under section 84 … of the Commonhold and Leasehold Reform Act 2002 … it must be accompanied by the documents and any additional details set out in schedule 6 to this practice direction".
> The material documents specified in para 4 of schedule 6 included:
> "(3) A copy of the memorandum and articles of association of the RTM company".

15. Counsel submitted that the omission could only be cured by way of the Tribunal exercising its power to waive the requirement under Rule 8(2)(a) of the Procedure Rules. This exercise involved relief from sanctions and the application of the familiar 'Mitchell/Denton principles': *Haziri and Kela v London Borough of Havering* [2019] UKUT 330 (LC). The Respondent suggested that the Applicants had been less than candid, variously seeking to imply that the memorandum of association had been supplied and then blaming an 'administrative error' for the omission. The latest explanation was that the Applicants' representative had asked the Tribunal whether the documents had been supplied. The seriousness of the breach of the Practice Directions could also be seen in light of the repeated failures of the Applicants to comply with directions including *inter alia* the late service of statements of case, late preparation of bundles and non-payment of the correct fee.

16. During submissions, the Tribunal referred both parties to the decision of the Upper Tribunal (Lands Chamber) in *Lough's Property Management Ltd v*

Robert Court RTM Co Ltd [2019] UKUT 0105 (LC), and in particular to the observation of the Deputy President at [40] about the omission of documents required by para 4 of schedule 6 to the Practice Direction. During the short adjournment, Mr Granby obtained a copy of the authority and provided it to Mr Okines. In his closing submissions, Mr Okines for the Applicants submitted that failure to attach a copy of the articles to the Form RTM was an "irregularity" which "does not of itself render void the proceedings or any step taken in the proceedings". The proceedings were therefore valid unless and until an application was made to strike them out. Rule 8(2) was not engaged at all. But if rule 8(2) applied, it would be reasonable and just in the circumstances to allow the application. Mr Okines stated that the full articles had been filed with the Tribunal shortly after the application was made.

Discussion

17. Before dealing with this, it is worth reminding ourselves about the primary jurisdiction of the Tribunal in relation to the right to manage. Although the Tribunal has jurisdiction under six separate provisions of the legislation, the main jurisdiction is at sections 84(3) and (4) of the Act:

> "(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 for a determination that it was on the relevant date entitled to acquire the right to manage the premises."
> (4) An application under subsection (3) must be made not later than the end of the period of two months beginning with the day on which the counter-notice (or, where more than one, the last of the counter-notices) was given."

18. In ***Lough's Property***, an RTM company applied to the Tribunal using the same Form RTM used in this case. However, it failed to tick any of the six boxes in Annex 1 to Form RTM which identified the kind of appli9cation being made. The Upper Tribunal found the RTM company had not made an "application" under s.84(3) within the time period allowed by s.84(4). Its conclusions on this point were:

> "37. The application received by the FTT on 1 June did not ask the tribunal to determine anything. Because none of the menu of options in Annex 1 had been selected it was impossible to tell what sort of application was contemplated. It was obvious that the respondent wanted to apply for something, and for that reason it might be possible to accept that the document was an application, but I do not believe it could be described as an application for anything; in particular, it was not an application for a determination that the respondent was entitled to acquire the right to manage the premises."

During the course of argument, the Upper Tribunal considered an argument that the defect could be "cured" by r.8(1) of the Procedure Rules:

> "39. I nevertheless agree with Ms Madjirska-Mossop's submission that rule 8 cannot be used to cure a defect in compliance with the minimum requirements of section 84(3). Those requirements are substantive and they had either been satisfied by 9 June by the making of an application for the relevant determination or they had not. If they had not been satisfied by that date, because no request had yet been made for a determination of entitlement, the consequence of deemed withdrawal provided for by section 87(1)(a) would befall the claim notice. That consequence is specified in the statute and cannot not be avoided by reliance on rule 8 or any other procedural tool.
>
> 40. Rule 8 could of course be relied on to preserve an application under section 84(3) from any adverse consequences of a failure to supply the documents required by the FTT's own practice direction (the claim notice and counter-notice). Compliance with the practice direction is a requirement of the Rules, and the consequence of non-compliance can therefore be provided for by the Rules. But the Rules cannot modify the requirements of the 2002 Act itself."

19. The Respondent's argument proceeds on the basis that "s.84(4) of the 2002 Act provides that an application to the FTT must be made within 2 months" and that "the Applications are defective and in turn the Claims cannot succeed": see para 9 of the Respondent's Statement of Case dated 26 February 2021. The contention is therefore that the application is invalid under the statute, not simply that the Applicants have breached a procedural requirement. Validity is dealt with under r.8(1) of the Procedure Rules, and the rules quite unambiguously state that "a failure to comply with any provision" of Sch.6 to the Practice Direction "does not of itself render void" the s.84(3) "proceedings". Although possibly *obiter*, the reasoning in *Lough's Property* at [40] is impeccable, and the Tribunal agrees with it. In short, the effect of r.8(1) is that a failure to attach a copy of the articles of association to the Form RTM does not invalidate an application to determine whether on the relevant date an RTM company has acquired the right to manage.

20. Moreover, the issue of relief against sanctions simply does not apply. There is no application to strike out under rule 9(3)(a). Neither is any sanction imposed under the procedure rules or the Practice Direction for failure to attach the articles of association to the s.84(3) application.

21. If the Tribunal is wrong about this, it would have no hesitation in exercising its discretion under rule 6(3)(a) to extend time for filing the memoranda of association until the date the Applicants eventually filed them. Applying the *Denton/Mitchell* criteria:
    (a) Non-compliance with Sch.6 to the Practice Direction in this case cannot be considered serious or significant. The Applicants say the omission was remedied within a very short time. Late provision of the articles did not in fact therefore imperil any hearing dates, nor was there any suggestion that it disrupt the conduct of the litigation by causing any inconvenience to the Respondent or the Tribunal. In any event, an RTM company's articles must necessarily follow a mandatory prescribed form, and their contents are unlikely to be in any real doubt. In this particular case, the

counter-notices did not raise any issue with compliance with s.73 of the Act, so it seems the Respondent did not consider the articles of any particular importance.

(b) Given that finding, it is probably unnecessary to place much weight on the other two *Denton/Mitchell* criteria. The Tribunal accepts that merely overlooking a deadline is not a 'good' reason. But that has to be balanced against the circumstances of the case generally. There does not seem to be any significant history of default by the Applicants. And any sanction would be disproportionate to the breach, which consists of a short period when the articles were not provided by the Applicants. In particular, assuming the Tribunal is wrong about rule 8(1), and the effect of not extending time would be to invalidate the application, that would be a wholly disproportionate sanction to impose.

22. It follows the Respondent's first objection fails.

Issue 2: The s.78 notices inviting participation

23. The second issue relates to service of s.78 notices inviting participation on various qualifying tenants. Section 78 contains the following requirement:

> **"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."

It is also relevant to consider Art.26(1) of the articles of each Applicant company which followed the prescribed model articles as follows:

> "26.—(1) Every person who is entitled to be, and who wishes to become, a member of the company shall deliver to the company an application for membership executed by him in the following form (or in a form as near to the following form as circumstances allow or in any other form which is usual or which the directors may approve):
>
> To the Board of [name of company]
> I, [name] of [address] am a qualifying tenant of [address of flat] and wish to become a member of [name of company] subject to the provisions of the Articles of Association of the company and to any rules made under those Articles. I agree to pay the company an amount of up to £1 if the company is wound up while I am a member or for up to 12 months after I have ceased to become a member.
> Signed Dated"

24. The issue with the s.78 notices concerned the qualifying tenants of four flats, namely Mr Sam Croxton and Mrs Michelle Rendle of 514A Southview Court (Block 5); Mrs Margaret Webb of 514D Southview Court (Block 5); Mrs Joan Hiscock of 530B Southview Court (Block 1) and Mr Dennis Haden of 520D Southview Court (Block 3). The Applicants admitted in their Reply that none

of these qualifying tenants were given notices inviting participation. But it contended that they were (or had agreed to be) members of the relevant RTM company when the notices inviting participation were given. The main issue was therefore whether any of these qualifying tenants fell with the exception in s.78(1)(b) of the Act. This is essentially a question of fact, although in reaching its decision on the point, the Tribunal will need to refer to a statutory presumption.

The evidence

25. It was common ground that the basic procedure adopted by the Applicants for 'signing up' members was as follows. On 1 February 2020, just before restrictions were imposed for the duration of the Covid-19 pandemic, the Applicants held a residents' meeting which decided to pursue the right to manage. During the pandemic, several emails were sent out asking whether residents wished to join the relevant RTM company. As soon as the Covid-19 restrictions were lifted in June 2021, and before the notices inviting participation were given, ARKO prepared a *pro forma* letter (pre-dated 15 June 2020) for each qualifying tenant which adopted the words of Art.26(1) ("the membership letter"). Several completed and uncompleted copies of the membership letter were included in the hearing bundle. Mr Copp then hand delivered the membership letters to each flat and in some cases he returned to collect them.

26. In opening, Mr Okines' primary case was simplicity itself. He referred to copies of the notices inviting participation dated 18 June 2020 and extracts from the membership registers for each of the four Applicant companies. The registers showed the qualifying tenants of each of the four flats were registered as members on 15 June 2020, and they were therefore members (or had agreed to be members) when the notices inviting participation were given.

27. The Respondent's case for the four flats relied on a wider range of evidence:
    a. Mr Croxton had not agreed "to be a member of the [Fourth Applicant] Company at any time, nor did Ms Rendle". They had not agreed to take part in the right to manage. This evidence appears in Mr Croxton's witness statement.
    b. In its statement of case (at para 52), the Respondent suggested Mrs Webb had told Mr Peter Etherington (one of the Respondent's Directors) that "she had never and would never sign up to RTM". The statement of case was supported by a statement of truth signed by Mr Etherington, but there was no witness statement to support the alleged conversation.
    c. In a letter dated 18 September 2020 on Brockhurst letterhead, Mrs Hiscock stated that "I am not, nor have I ever have been a member of [the First Applicant]". She had "not ever granted anyone permission or nor have I signed any paperwork for anyone to include me in their company or activities". A copy of the letter was exhibited to Mr Brockhurst's witness statement.
    d. Mr Haden signed a pre-dated membership letter, a copy of which was in the bundle. But in an email dated 4 September 2020, Mr Haden states that "I can confirm I have NOT signed any paperwork to become a member of the RTM group. Southview Court (three) RTM company Ltd. REGD.No 12663263." This was given in response to an email of 4

September 2020 from Mr Brockhurst. Mr Brockhurst's witness statement (at paras 9-12) refers to a telephone conversation he had with Mr Haden on 12 February 2021. Mr Haden is alleged to have said "he did not agree to be a member of the Company" until he was visited by one of the lessees of 522A, Ms Alison Copp, in either August or September 2020, when he signed a pre-dated membership letter.

28. In response to this, the Applicants deployed various arguments:
    a. They did not accept Mr Croxton's evidence. The Applicants exhibited an email from Ms Copp to "Sam and Michelle" dated 7 May 2020 under the subject heading "Leeds Southview RTM company". Ms Copp states "it would be great if you would like to join the Right to Manage Company", to which the response is:
        "Hi Alison
        As requested, please add us to the RTM.
        Samuel (Sam) Croxton
        Michelle Rendle
        Kind regards
        Sam & Michelle"
    b. In relation to 514D Southview Court, the Applicants accepted there was no copy of a membership letter signed by Mrs Webb. Their Reply stated they were:
        "… unable to explain why Mrs Webb's signed letter is missing. Either it was lost or overlooked and never signed. Although the Applicants have no doubt that she did agree to be a member of the RTM. The absence of documentary proof cannot be explained".
        They described the alleged conversation between the Respondent and Mr Etherton as an "elaborate and fanciful story" and a "bizarre fabrication". Mrs Webb had agreed to be a member but was continuing to isolate due to her vulnerability.
    c. Mrs Hiscock sadly died between the date of the Applicants' Reply (11 March 2021) and the date of the hearing. The Reply (at paras 20-23) explained she was 92 years old, registered blind and in ill health. Mrs Hiscock "had always supported the RTM and "agreed to be a member". She was continuing to isolate due to her vulnerability, and in the circumstances, the Applicants "considered it would not be right to pursue the procurement of the signed letter". In the Reply, the Applicants pulled no punches about the letter on the agent's letterhead purportedly signed by Mrs Hiscock. They contended "Mrs Hiscock could not have provided the letter on Brockhurst's headed notepaper and she certainly could not have typed the letter". They suggested that at that stage "Mrs Hiscock is extremely upset that her name has been used in this regard", and that the letter "has been obtained deviously by deceit". There was evidently a contentious background involving complaints by the Respondent to the police about ARKO's work in promoting the right to manage at Southview Court.
    d. Mr Haden was hesitant to sign a membership letter because he had applied for an equity release on his property, and the landlord was refusing to cooperate with anyone who was a member of the RTM company. But Mr Haden had always supported the RTM company from the start of process.

It was admitted that sometime after the 15 June 2020, he agreed to sign the pre-dated membership letter which he still had in his possession. Mr Haden was correctly registered as a member of the company. The second-hand account of a supposed conversation between Mr Brockhurst and Mr Haden was entirely inadmissible as evidence.

29. The difficulty with all these arguments is that virtually none of them (on either side) are supported by proper evidence produced in accordance with the Tribunal's directions. There is limited primary documentary evidence, namely the membership registers, the email from Mr Croxton and Mr Hamer's membership letter. But apart from that, the evidence entirely consists almost entirely of hearsay and 'second hand' hearsay accounts of events. On the Respondent's side, this evidence is set out in various statements of fact in emails, letters and witness statements made by persons who were not called to give evidence at the hearing. On the Applicants' side, the responses were set out in their Reply. But their only witness, Mr Copp, did not did not deal at all with membership of the RTM companies in his witness statement.

30. When this difficulty was pointed out in opening, Mr Okines offered to call Mr Copp to expand on his witness statement. The Tribunal initially refused permission but indicated it would reconsider interposing the witness at a later stage. During the hearing, the artificiality of the situation became increasingly obvious – namely that there was a witness available who potentially had first-hand knowledge of the membership issues. The Tribunal therefore eventually permitted Mr Copp to give evidence about the qualifying tenants of the four flats, and he was cross-examined by Mr Granby. It should be said that counsel objected to Mr Copp being allowed to stray beyond his original statement, although as it turned out, Mr Copp's evidence was probably of more help to the Respondent than to the Applicants.

31. Mr Copp's oral evidence can be summarised as follows:

a. Mr Coxton was disappointed he could not attend the first residents' meeting in February 2020 to discuss the right to manage. Basically, he was pretty positive. In cross-examination, Mr Copp said the suggestion Mr Croxton didn't agree with the right to manage was a "surprise to all of us", after he had already agreed to be put down as a member on 7 May 2020.

b. Mrs Webb was by all accounts a fairly elderly lady. But she attended the first residents meeting on 1 February 2020 and Mr Copp suggested she had been extremely active throughout. At the meeting, Ms Webb voted (on a show of hands) in favour of a motion to support it. But 2-3 weeks after the meeting she began self-isolating. Mr Copp called on Mrs Webb on 13 June 2020 and he dropped off a copy of the membership letter. When he called back on 13 June, Mrs Webb was too frightened to open the door. Mr Copp said from that point onwards "I took her as being a member". In cross-examination, counsel asked about the date when Mrs Webb agreed to become a member of the RTM company, and Mr Copp replied that he considered she agreed to membership in February 2020.

c. Mr Copp had the details of Mrs Hiscock's carer, a neighbour called Kelly. Kelly asked him to bring a copy of the membership letter. Mr Copp couldn't go in, so he just left the letter. He was trying to give Mrs Hiscock the opportunity to participate. Mr Copp couldn't believe Mrs Hiscock signed the letter of 18 September 2020. In cross-examination, counsel asked when Mrs Hiscock agreed to become a member of the RTM company, and Mr Copp replied: "I didn't say she agreed; I asked her to join". He was then taken to the statement in the Applicants' Reply that Mrs Hiscock had "agreed to be a member". Mr Copp said Mrs Hiscock did not sign the membership letter because she could not see the document to sign it. Counsel asked whether Mrs Hiscock made a verbal request to join the RTM company, and Mr Copp said "no". Mr Copp was not clear who actually approved Mrs Hiscock's membership.

d. Mr Haden initially held back his signature because of difficulties with the headlessee. Mr Copp said it was important to understand "these people are often 70-80 years old". But Mr Haden then called Mr Copp in early August 2020 and agreed to sign the membership letter. Mr Haden therefore signed the same document everyone else signed, but at the beginning of August. When questioned by counsel, Mr Copp said that although Mr Haden was originally concerned "certain things were not going to happen" if he signed up for the right to manage. But he eventually had enough and said, "I'll sign the RTM". Mr Copp was taken to Mr Haden's email of 4 September 2020, and it was put to him that Mr Haden could not have signed the membership letter until after that date. But Mr Haden was adamant the letter was signed in early August.

32. The Tribunal found Mr Copp to be a truthful and realistic witness, who was prepared to admit points put to him that were obviously adverse to the Applicants' case. He was evidently an enthusiastic advocate of the right to manage, with a understandable frustration with a process that had apparently failed three times before. On more than one occasion, he mentioned his concern for the wellbeing of the often elderly and frail qualifying tenants in the premises during the fearful early days of the pandemic and self-isolation. But the Tribunal concludes these motives and frustrations occasionally led the Applicants to take short cuts with the membership process.

33. The Tribunal's findings of fact in each instance are as follows:

a. 514A Southview Court (Block 5). The Tribunal accepts that on 7 May 2020 the qualifying tenants emailed the Fourth Applicant agreeing to be added to the RTM. Although Mr Croxton's witness statement denies this, he has not attended to give evidence in accordance with the Tribunal's directions, and the Tribunal therefore disregards the statement. In any event, the denial is impossible to reconcile with the earlier email, and the Tribunal prefers the specific evidence of the email to the more general recollection of Mr Croxton made in his witness statement over 9 months later. Mr Croxton and Ms Rendle appear on the Fourth Applicant's register on 15 June 2020. There is no copy of any membership letter in the bundle. Given the Applicants' careful and comprehensive record keeping, and the lack of any explanation for the absence of a membership letter for the flat, the Tribunal finds Mr Croxton and Ms Rendle never completed one. Absent any evidence of a board resolution, the Tribunal

finds their names were entered onto the register on the basis of a general understanding that the qualifying tenants broadly supported the right to manage. But there was no application in accordance with Art.26(1) of the articles of association.

b. 514D Southview Court (Block 5). The Tribunal accepts Mr Copp's evidence on this. Mrs Webb attended the February 2020 meeting and voted in favour of the RTM in a show of hands. After that, she received a membership letter, but did not sign it or communicate her agreement to become a member of the Fourth Applicant company. Mrs Webb appeared on the Fourth Applicant's register of members on 15 June 2020. But for the same reasons given above, the Tribunal finds Mrs Webb did not complete a membership letter and that her name was entered onto the register on the basis of a generalised understanding that she broadly supported the right to manage. The Tribunal finds the evidence of Mr Copp that after the February meeting, he simply "took [Mrs Webb] as being a member" to be decisive on these points.

c. 530B Southview Court (Block 1). The Tribunal attaches no weight to the letter from Mrs Hiscock dated 18 September 2020, which was apparently signed whilst she was blind and sick, and shortly before she passed away. In any event, there is no other evidence at all about the circumstances in which this letter came into existence. Mr Copp's evidence is that he left a copy of the membership letter, and there is a draft (unsigned) copy of this letter in the hearing bundle. But Mr Copp's evidence is emphatically that Mrs Hiscock did not sign the membership letter. Mrs Hiscock was again therefore entered on the First Applicant's register of members on 15 June 2020 on the basis of a general understanding that she broadly supported the right to manage.

d. 520D Southview Court (Block 3). The Tribunal finds that Mr Haden completed a membership letter which was pre-dated 15 June 2020, and that letter is in the bundle. There is no dispute the letter was signed after 15 June 2020, but there is an issue about the date it was signed. The only direct evidence is that of Mr Copp, who says it was signed in early August, and the Tribunal has already indicated that it found Mr Copp to be a reliable witness. Against this is the denial in the 4 September 2020 email from Mr Haden exhibited to Mr Brockhurst's statement. Since neither Mr Brockhurst nor Mr Haden attended the hearing to give evidence, the Tribunal has no hesitation in finding the letter was signed in early August 2020.

Legal submissions

34. Mr Granby submitted the Tribunal was bound by the decision in *Avon Ground Rents Ltd v Canary Gateway (Block A) RTM Co Ltd* [2020] UKUT 358 (LC), where the Upper Tribunal (Lands Chamber) found that failure to serve a s.78 notice on a social housing landlord, which was deemed to be the tenant of various flats in a block, was fatal to the right to manage that block.[1] The

[1] Note the decision on this point in *Canary Gateway* has been followed in the very recent case of *Baron Estate Management Ltd v Wick Hall (Hove) RTM Co Ltd* [2023] UKUT 62 (LC). The correctness of both decisions on the point is subject to an outstanding appeal to the Court of Appeal in *Avon Ground Rents Ltd v Canary Gateway (Block A) RTM Co Ltd (No.2)*, which is listed for hearing in June 2023. But for present purposes, this Tribunal is bound by the Upper Tribunal's two decisions.

decision in *Canary Gateway* in turn rests on the *Natt v Osman* principles, which are dealt with below[2]. In opening, Mr Okines accepted these decisions currently bound the Tribunal.

35. As far as s.78(1)(b) of the Act is concerned, Mr Granby characterised it as giving two options. The first was for qualifying tenants to "agree … to become a member". Although there was nothing in the 2002 Act which required an agreement in writing, it was not enough for them to express general support for the right to manage process. The second option was for a qualifying tenant to "become a member" in accordance with the company articles. If there was evidence a qualifying tenant had not properly been made a member, that displaced the statutory presumption in s.127 of the Companies Act 2006:

> "127. The register of members is *prima facie* evidence of any matters which are by this Act directed or authorised to be inserted in it."

In essence, Mr Granby submitted there was no evidence the qualifying tenants of the four flats had agreed to become members or they had not completed the forms of application required by Art.26(1) of the Applicants' articles (or a form as near to that form as circumstances allowed). Moreover, there was no evidence the Directors had exercised their power under Art.26(1) to approve a different form of application.

36. Mr Okines did not disagree with the legal analysis. He submitted there was sufficient evidence either of agreement or membership for the purposes of s.78(1)(b) in all four cases.

Discussion

37. The Tribunal accepts it is bound by the decision in *Canary Gateway* as to the effect of any failure to serve a single qualifying tenant with a Notice Inviting Participation. It also broadly agrees with the analysis of the two elements of s.78(1)(b). In particular, the first option in the subsection does not require any agreement in writing or any particular form of words. Provided the words unambiguously signify an agreement by the qualifying tenant to become a member of the RTM company, that is enough. Moreover, the statutory presumption in s.127 of the 2006 Act proovide a statutory (but rebuttable) presumption of membership.

38. As to Block 5, the Tribunal is satisfied that the email from Mr Coxton of 7 May 2020 meets the test for an agreement to become a member of the Fourth Applicant under s.78(1)(b) of the Act. The words "add us to the RTM" are to be read in the context of the preceding email asking whether "you would like to join the Right to Manage Company". There is simply no ambiguity here. It is therefore irrelevant whether the qualifying tenants of 514A Southview Court actual became members of the RTM company.

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[2] Again, it is understood the *Natt v Osman* principles may shortly be the subject of reconsideration by the Supreme Court in the 'leapfrog' appeal from the Upper Tribunal in *A1 Properties (Sunderland) Ltd v Tudor Studios RTM Co Ltd* [2023] UKUT 27 (LC). But for present purposes, this Tribunal is bound by the Court of Appeal decisions.

39. However, the qualifying tenant of 514D Southview Court is in a very different category. The Tribunal does not consider that voting in favour of a motion by a show of hands at a residents meeting is ever likely to amount to an agreement to become a member under s.78(1)(b) of the Act. In this case, there is in any event no evidence of the motion before the meeting, but the motion appears to have been a general expression of support for the right to manage, rather than an agreement "to become a member" of one of the RTM companies. The evidence of Mr Copp is unambiguously that no further agreement was made. There is so suggestion any form of application for membership in accordance with Art.26(1) of the articles was ever completed. It follows that the Respondent has also successfully rebutted the presumption in s.127 of the 2006 Act that Mrs Webb properly became a member. In short, the Fourth Applicant cannot rely on s.78(1)(b) and it ought to have given Mrs Webb a copy of the Notice Inviting Participation. Applying *Canary Gateway*, that omission was fatal to the right to manage Block 5.

40. As to Block 1, the evidence of Mr Copp is again unambiguous. Mrs Hiscock did not agree to become a member of the First Applicant. Mrs Hiscock was not properly a member of the First Applicant, for much the same reasons as Mrs Webb. Applying *Canary Gateway*, the omission to give the qualifying tenant of 530B Southview Court a Notice Inviting Participation was fatal to the right to manage Block 1.

41. Block 3 involves a slightly different issue. The qualifying tenant of 520D Southview Court did agree to become a member, using a membership letter which complied with Art 26(1) of the Second Applicant's articles. His membership was entered into the register of members. Mr Haden therefore complied with both limbs of s.78(1)(b). But the question is one of timing. The Tribunal notes the Notices Inviting Participation were dated 18 June 2020 and the Notices of Claim dated 1 September 2020. In closing, Mr Granby submitted that if Mr Haden signed after 4 September 2020, that was after the date of the relevant Notice of Claim. It was too late for the Second Applicant to take advantage of s.78(1)(b), and that was the end of the Block 3 claim. The Tribunal agrees with this legal analysis - but the Tribunal has found the agreement and Art.26(1) application for membership were made in early August 2020. On those facts, the membership letter was signed about 4 weeks before the Block 3 Claim Notice was given. Under s.79(2) of the Act, an RTM company is required to give notices inviting participation at least 14 days before the Claim Notice. In this case, Mr Haden had agreed to become a member before that cut-off date, and there was no requirement to give him a Notice Inviting Participation before the Claim Notice was served. It follows there was no deficiency in respect of Block 3.

Conclusion

42. The Tribunal concludes that the First and Fourth Applicants have each failed to give a Notice Inviting Participation to a single qualifying tenant of Block 1 and Block 5. The Tribunal is bound by the authorities on the point, namely *Canary Gateway* and *Wick Hall* (supra). These deficiencies are fatal to the right to manage.

Issue 3: Service of copies of the Claim Notice

43. The third issue relates to service of copies of the s.79 Claim Notices on various qualifying tenants. Section 79(8) contains the following requirement:

> "(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".

44. The factual basis is not disputed and is set out in Mr Copp's witness statement dated 9 January 2021. Mr Copp suggests that on 1 September 2020, he collected copies of the Claim Notices from ARKO's offices and that he was well aware he needed to deliver copies to "all Resident Members". Mr Copp hand delivered the envelopes the next day. He confirmed in oral evidence that this meant only those qualifying tenants who were already members.

45. Mr Okines referred to certificates of posting in the bundle dated 28 November 2020 which showed that copies of the Claim Notices were later also posted to all the qualifying tenants.

The case for each party

46. Mr Granby contended that a failure to comply with s.79(8) engaged the principles for ascertaining the consequences of non-compliance in *Natt v Osman* [2014] EWCA Civ 1520; [2015] 1 W.L.R. 1536 and *Elim Court* (supra). Although not referred to by the advocates in this case, the principles in these two cases were recently summarised and affirmed by the Court of Appeal in *Eastern Pyramid Group Corporation SA v Spire House RTM eCompany Ltd* [2021] EWCA Civ 1658; [2021] W.L.R. 503 at [36] to [40]:

> "36. Accordingly, the right way to analyse this case is by reference to the principles concerning failures to comply with statutory requirements, following *Osman v Natt* [2015] 1 W.L.R. 1536 and *Elim Court v Avon* [2018] QB 571.
> 37. The key passages in those cases are paras 24–34 of the judgment of Sir Terence Etherton C in *Osman v Natt* and paras 49–63 of the judgment of Lewison LJ in *Elim Court*. They establish the following: First, the old idea of distinguishing between directory and mandatory requirements is no longer the law (*Elim Court*, para 49 citing *Osman v Natt*, para 25). Second, there are two categories of case, one category concerning public bodies and public law in which substantial compliance could be sufficient, and another category concerning the acquisition of private rights, where there is no such concept (*Elim Court*, paras 50 and 51 citing *Osman v Natt* , paras 28 and 31). Third, in the private rights category the question is whether a step, such as a notice, is wholly valid or wholly invalid. The right approach in answering that question is one of statutory construction, determining the legislative intention as to the consequences of non-compliance in the light of the statutory scheme as a whole (*Elim Court*, para 52 citing *Osman v Natt*, para 33). Fourth, the category into which the scheme for the acquisition of the right to manage under the 2002 Act falls is the second, private rights, category (*Elim Court*, paras 53 and 54, approving Upper Tribunal Judge Rodger QC in *Triplerose v Mill House)*. **Fifth, however it does not follow that if a case falls into the second category then every defect,**

however trivial, invalidates the step in question. The court still has to decide the issue of statutory construction whether the step is wholly valid or wholly invalid. While prejudice on the particular facts is irrelevant, prejudice in a generic sense is capable of being relevant (*Elim Court* para 55).

38. In summarising the principles above I have referred to the validity or invalidity of a "step" in general terms rather than focusing on the particular step in issue in *Elim Court*, which was about a notice to invite participation. I believe Lewison LJ was speaking generally (see e g the reference to a step or procedure in para 59) but in any case, I would hold that the principles are applicable to any step in the statutory scheme.

39. In terms of guidance on the application of these principles to particular cases, I extract the following from paras 52 and 59 of *Elim Court*:

> (i) The fundamental question is the role and importance of the relevant step in the context of the procedure as a whole. Thus, if the scheme requires information, there is a difference between missing information of critical importance, and missing ancillary information. It also explains why, as Lewison LJ held in para 59, there may be a distinction between jurisdictional requirements on the one hand and purely procedural requirements on the other.
>
> (ii) Useful pointers are: (a) whether the step is provided for in particular terms in the statute or only in general terms; (b) whether the requirement is in the primary legislation or in subordinate legislation; and (c) whether the person taking the step can immediately do it again if the impugned attempt is invalid.
>
> (iii) While there is force in the point that landlords need certainty, this cannot be carried too far because that would mean any deviation from what was prescribed would invalidate the whole procedure, and that is not the law.

40. To these principles I would add only two further points. First, the legislator can be taken to have assumed that the courts would take a realistic and pragmatic approach in determining the significance of different steps in a procedural scheme laid down by statute. A result which is impractical or unrealistic is unlikely to be what was intended. In fact, this principle too can be found in *Elim Court*, para 63 when one of the landlord's submissions was rejected as unrealistic. Second, the pointers referred to are just that, and cannot be put too high. Taken to the extreme the first and second pointers could be taken to imply that if the relevant provision is clearly and specifically set out in the primary legislation then breach of it must lead to invalidity. However, that is not right, as the result of *Elim Court* shows. The landlord's reliance on these two pointers in this case is a fair point to make, but in the end, it is not determinative."

47. Mr Granby drew the Tribunal's attention of the Tribunal the authority of *Assethold Ltd v 110 Boulevard RTM Co Ltd* [2017] UKUT 316 (LC) [2017] 4 W.L.R. 181, which considered these principles. In that instance, the Upper Tribunal found that service of copies of Claim Notices on qualifying tenants by email was an effective means of service. But it went on to consider an

alternative argument that that even if service was invalid, that any such failure would not be fatal under *Natt v Osman* principles. It stated at [25] that:

> "In my view that approach leads to the same result in this case. If (contrary to my view) service of the copy notice by e-mail is not a valid method of service, then service by e-mail on the qualifying tenants would not automatically invalidate all subsequent steps and would not have done so in this case. The requirement to serve copies of the claim notice is in my view ancillary and of secondary importance. All of the qualifying tenants were members of the RTM company and were participating in the application to manage. Section 79(8) is for the protection of the qualifying tenants and Parliament cannot in my view have intended that the landlord could successfully contend that a breach of section 79(8) invalidated all subsequent steps by the RTM company."

Counsel suggested this was distinguishable on the facts, since in that case all the qualifying tenants were already participating in the right to manage. In this instance, not all the leaseholders were participating.

48. The Respondent submitted that copies must be given to the qualifying tenants at or around the same time as the Notice of Claim. But if the copies were given "late or never", then the Applicants had failed to comply with s.79(6). In none of these four claims did the Applicants give copies of the Claim Notices to all the qualifying tenants of the relevant block at or around the time of the Notice itself. They did so only in November 2020, which was after the application to this Tribunal, and which was far too late.

49. Mr Okines stressed he was not legally qualified. But if it was deemed that there was a failure in the procedure in this regard, it should not void the entire process. The qualifying tenants were not prejudiced. There would be no adverse consequences, even if the qualifying tenants were not given a copy at all, which is not the case in this instance. The copy is for information only. The qualifying tenants cannot serve counter notices or intervene in the process and are not required to respond to the copy notice within any time limit or at all. Neither do the QT's have any management responsibilities. He relied on *Elim Court* in that respect.

Discussion

50. The fundamental question is the role and importance of service of copies of the Claim Form in the context of the procedure as a whole. In this the Upper Tribunal's conclusion in the final sentence of the passage quoted from *110 Boulevard RTM* above is of considerable assistance. Section 79(8) is for the protection of the qualifying tenants, and in that case the Upper Tribunal considered that Parliament cannot have intended that the landlord could successfully contend that a breach of section 79(8) invalidated all subsequent steps by the RTM company. In the Tribunal's view, this is supported by several considerations which tend to suggest the role of s.79(8) is not a particularly important one. First, service of copies of the Claim Notice comes at a comparatively late stage of the right to manage, by which time the qualifying tenants will have already become members, agreed to become members or

been served with notices inviting participation. They should therefore already be fully aware of their right to participate in the claim. Secondly, and by contrast to s.78, the Act does not require the copies of the Claim Notice to be accompanied by any further information for the qualifying tenants. The qualifying tenants are not reminded of their right to join. Third, service does not trigger any rights on the part of the qualifying tenants (or indeed the landlord); Their status does not change. Service does not give new rights to object to the right to manage claim or to serve any counter-notices. As Mr Okines suggested, the requirement to serve copies of the Claim Notice appears to be very much a "for information only" procedural requirement, rather than a jurisdictional one. Fourthly, as to the three "pointers" in *Elim Court*, it is accepted that service is provided for in particular terms in the statute and that it is in the primary legislation. The RTM company cannot immediately give further copies if service is invalid. Fifthly, the statute does not provide any immediate consequence of non-service on the qualifying tenants: contrast s.79(2) of the Act. Finally, prejudice in a generic sense is capable of being relevant: see *Elim Court* at [55]. Qualifying tenants who are not served a copy of the Claim Notice are not prejudiced in any sense. They may still participate in the right to manage at any time: see s.74 of the Act and Art.26 of the articles. Equally, they may cease to be members at any time: Art.27 of the articles.

51. The Tribunal therefore reaches the same conclusion as in *110 Boulevard RTM*. It considers itself bound by that decision, it is not obviously wrong, and the Tribunal does not consider the decision is distinguishable. But it would reach the same conclusion even if were not bound by *110 Boulevard RTM*, for the reasons given above.

Issue 4: Appurtenant Property

52. This was the issue which led the parties to agree to adjourn matters for a very long time pending the outcome of the appeal in *Settlers Court*. It is a matter of some regret that for reasons which will become apparent, it is likely that lengthy adjournment was unnecessary.

The case for each party

53. The Respondent's skeleton advances the argument that each Notice of Claim is invalid.

54. Mr Granby submitted that the applications were based on the Applicants being able to acquire the right to manage the entire estate at Southview Court, including the shared communal grounds around each block. This is the view which the Applicants themselves advanced in their Reply at para 7. They asked that "the boundary markers should be set that divide the lessor's responsibility from the" right to manage. There was always a difficulty with that approach because one of the blocks has not made a right to manage application – but the Applicants suggest this created a situation that "needed to be agreed and clarified".

55. The Respondent's case pre-*Settlers Court* was that this simply was not good enough. The Application notices were required to state the Premises over which the right to manage is claimed: see s.80(2) of the Act. "Premises" included "appurtenant property": see s.72 of the Act. The reference to "appurtenant property" was not simply there to clarify that the right to manage may be exercised where there is appurtenant property. It is a requirement of substance. *Settlers Court* had now settled the issue: the right to manage can only be exercised over land over which the occupants of the building exercising the right to manage have exclusive rights. Accordingly, even if all five blocks were participating, the Application would still fail.

56. The Application could accordingly be resolved on a short point on the construction of the Claim Notices. Although the Applicants have attempted to 'withdraw' their claim for right in relation to the appurtenant property in para.20(b) of their statement of case, the Act was mechanical: The relevant notice is either good or bad, it cannot be good in part. The claims were always doomed on this ground because not all blocks on the estate have claimed the right to manage.

57. Mr Okines' arguments were admirably succinct. He submitted that the Claim Notices clearly identified the "premises" (i.e., the section of the building the claim is for in paragraph 1 of each notice. Part 2 of the schedule to each notice provides the title numbers of each flat belonging to the members. The 'claim' for appurtenant land is no longer relevant to this case. Whatever was stated or not stated in the original Claim Notices with regards to Appurtenant land, all parties and the Tribunal are aware that the four RTM companies cannot claim shared appurtenant land.

Discussion

58. The starting point here is the various Notices of Claim, which are each in the prescribed form. Taking as an example the claim for Block 1, the First Applicant states in para 1 that it:

> "… claims to acquire the right to manage The land and building called block 1 containing flats 530 B,C and D and 528 A,B.C and D on the south west side of Old London Road Hastings, East Sussex, TN35 5BE ("the Premises"). This block forms part of the original block 1 on the lease plan. known as numbers 524, 526, 528 and 530 Old London Road at the land registry, which is capable of being divided vertically as 2 self-contained blocks."

59. The principal provision referred to is s.80 of the Act. This states that:

> "(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."

This in turn engages the definition of "premises" in s.72:

> "(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."

Finally, the Tribunal's jurisdiction is set out in an unusual part of the Act, namely the provisions for counter notices in s.84:

> "(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 for a determination that it was on the relevant date entitled to acquire the right to manage the premises."

60. For the purposes of this part of the application, the Tribunal assumes that part of the estate outside the structure of the four blocks includes communal parts over which there are shared rights. The Tribunal does so without making any finding to this effect, since it has had no evidence of any shared rights. But on this assumption, those areas engage the finding of the Supreme Court in *Settlers Court* that the right to manage does not cover areas over which there are shared "estate facilities" and "estate services": see for example, the conclusions at [54] and [61].

61. But does that mean the s.79 Claim Notices in this case are void? One feature of the right to manage is there is no express requirement for the s.79 notice of claim to specify any appurtenant property. Section 80 of the Act requires each Claim Notice to "specify the premises" but nothing else. In particular, and unlike Ch.1 of Part 1 of the Leasehold Reform and Housing and Urban Development Act 1993, there is no express requirement for a Claim Notice to specify the "appurtenant" property claimed. It is true that the reference to "premises" in s.80 has the same meaning as in s.72 (*Triplerose Ltd v Ninety Broomfield Road RTM Co* [2015] EWCA Civ 282; [2015] H.L.R. 29 at [62]), but the words "appurtenant property" are in addition to the "premises" in the latter provision. The Tribunal does not therefore agree with the contention at para 55 above that s.80(2) of the Act requires a Claim Notice to specify appurtenant property. The Tribunal referred the parties to the case of

Miltonland Ltd v Platinum House (Harrow) RTM Co Ltd [2015] UKUT 0236 (LC); [2016] L. & T.R. 9 at [19], which expressly concluded that:

> "The combined effect of *Gala Unity* and *Pineview* is that it is not necessary for the claim notice to state that there is any property appurtenant to the building or part of the building over which the right to manage is claimed, and if reference is made to appurtenant property, it is not necessary to state what that property is. This approach is confirmed by the prescribed form of claim notice (see Schedule 2 to the Right to Manage (Prescribed Particulars and Forms) (England) Regulations 2010 (SI 2010/825)), which only requires that the premises be named: no provision is made for any appurtenant property to be described or referred to, whether by a plan or otherwise (see *Pineview* at [62])."

This decision is binding on the Tribunal and is not affected by *Settlers Court*.

62. Applying this to the Claim Notice for Block 1, the notice specifies the "premises" as "the land and building called block 1 containing flats 530 B,C and D and 528 A,B.C and D on the south west side of Old London Road Hastings, East Sussex, TN35 5BE." This is plainly a reference to the physical built structure of Block 1 which contains qualifying flats. That structure comprises "premises" which meet the tests for "premises" in s.72 of the Act. That is sufficient to dispose of the Respondent's argument.

63. Another feature of the right to manage is that the statutory machinery contains no mechanism for the Tribunal to work out the appurtenant rights to be acquired during the process itself. This is because, under s.84(3) of the 2002 Act, the Tribunal has a simple binary choice about whether or not the right to manage may be acquired: *Pineview Ltd v 83 Crampton Street RTM company Ltd* [2013] UKUT 0598 (LC) at [70]. At that stage, the Tribunal has no jurisdiction to work out which rights and obligations pass under s.95-103 of the 2002 Act. As a result, disputes about the physical extent of the right to manage have to be worked out after the event. The commonest way of doing this is by way of an application to determine service charges under s.27A of the Landlord and Tenant Act 1985 Act: see for example, *Settlers Court* itself and *G & A Gorrara Ltd v Kenilworth Court Block E RTM company Ltd* [2022] UKUT 90 (LC).

64. For these reasons, the Tribunal rejects the challenge to the s.79 Notices of Claim. As Mr Okines succinctly put it, they clearly identified the "premises" over which the right to manage claimed. In any event, the Tribunal cannot decide the extent of any appurtenant property in the context of claim to determine whether the Applicants have the right to manage premises at Southview Court.

Conclusions and Decision

65. Under s.84(3) of the Act, the Tribunal determines that on the relevant date the First Applicant was <u>not</u> entitled to acquire the right to manage the premises at Block 1 (528A-D and 530B-D Old London Road, Hastings).

66. Under s.84(3) of the Act, the Tribunal determines that on the relevant date the Second Applicant was entitled to acquire the right to manage the premises at Block 3 (520A-D and 522A-D Old London Road, Hastings).

67. Under s.84(3) of the Act, the Tribunal determines that on the relevant date the Third Applicant was entitled to acquire the right to manage the premises at Block 4 (516A-D and 518A-D Old London Road, Hastings).

68. Under s.84(3) of the Act, the Tribunal determines that on the relevant date the Fourth Applicant was not entitled to acquire the right to manage the premises at Block 5 (512A-D and 514A-D Old London Road, Hastings).

Further Directions

69. Under s.88 of the Act, there is a statutory entitlement to costs. There is some suggestion in the directions that an application has been made in these proceedings. If so, the costs application is adjourned generally, with liberty to restore. The Respondent's skeleton argument also suggests an application has been made for costs under Rule 13 of the Procedure Rules. Again, the Tribunal was not referred to any such application, and if it has been made, it is adjourned generally, with liberty to restore. The parties are encouraged to reach agreement on any costs applications that may be pursued before restoring these matters for determination.

Appeals

1 A person wishing to appeal this decision to the Upper Tribunal (Lands 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.

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.