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

<b>Case Reference</b>	<b>:</b>	<b>LON/00BG/LRM/2024/0605</b>
<b>Property</b>	<b>:</b>	<b>Cubix Apartments, 42 Violet Road, London E3 3QG</b>
<b>Applicant</b>	<b>:</b>	<b>Cubix Apartments RTM Company Limited</b>
<b>Representative</b>	<b>:</b>	<b>Canonbury Management</b>
<b>Respondents</b>	<b>:</b>	<b>Avon Freeholds Limited</b>
<b>Representative</b>	<b>:</b>	<b>Scott Cohen Solicitors</b>
<b>Type of Application</b>	<b>:</b>	<b>Application in relation to the denial of the Right to Manage under section 84(3) Commonhold and Leasehold Reform Act 2002</b>
<b>Tribunal Member</b>	<b>:</b>	<b>Judge J P Donegan</b>
<b>Date of Paper Determination</b>	<b>:</b>	<b>18 and 19 March 2025</b>
<b>Date of Decision</b>	<b>:</b>	<b>19 March 2025</b>

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**DECISION**

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8. The single issue to be determined in the Second Application, as identified in the directions, is “*whether on the date on which the notice of claim was given, the applicant was entitled to acquire the Right to Manage the premises specified in the notice.*”
9. This decision should be read in conjunction with my decision of today’s date under case reference LON/00BG/CP/2024/0602, dealing with the costs of the First Claim and the First Application.
10. The relevant legal provisions are set out in the appendix to this decision.

### **The parties’ submissions**

11. The Tribunal was supplied with a digital bundle in accordance with the directions. This is overly long (1,005 pages) and unwieldy. It includes numerous leasehold titles and notices of invitation to participate (‘Invitation Notices’) together with copies of the claim notices served on the leaseholders, which was unnecessary. The Tribunal only requires documents relevant to the disputed issues. Conversely, the bundle did not include a key document being the respondent’s statement of case dated 12 December 2024. This was supplied by the respondent’s solicitors on 18 March 2025. In their covering email, they explained the parties had not exchanged witness statements.
12. It is convenient to address the respondent’s submissions, as set out in their statement of case and a statement of reply dated 17 February 2025, first. These are summarised below:
  - (a) The applicant did not have sufficient members on the relevant date, 03 July 2024. It disclosed a register of members on 05 July 2024 showing only 23 registered members. There are 50 flats at the Property so there should have been 25 qualifying tenant members to satisfy section 78(5) of the 2002 Act. The discrepancy appears to have arisen as some members are qualifying tenants of more than one flat. However, this is not reflected in the register.
  - (b) The register of members incorrectly names Gatehouse Bank PLC (‘Gatehouse’) as a member for Flat 45. Gatehouse has a headlease of this flat. The qualifying tenant is Lhipon Miah and Fabiha Sultana, who hold a registered underlease, pursuant to section 75(6).
  - (c) The applicant failed to serve Invitation Notices on the qualifying tenants of Flats 30, 45 and 48, in breach of section 78(1). In the case of Flat 45, notice was not served on Messrs Miah and Sultana. In the case of Flats 30 and 48, no Invitation Notices were served at all. The leaseholders were included in the register of members disclosed in July 2024 but were not listed in an earlier register disclosed on 09 July 2024. The later register

incorrectly states their membership commenced on 05 December 2023, which must be incorrect as their names do not appear in the earlier one. They only became members once their name was entered in the register pursuant to section 112 of the Companies Act 2006 ('the 2006 Act'). That date is unknown but cannot be 05 December 2023. Section 113(1) of the 2006 Act requires every company to keep a register members that must state, amongst other things, the date on which person was registered as a member (section 113(1)(b)).

- (d) The Invitation Notices incorrectly name Gatehouse and the leaseholders of Flats 30 and 48 as members of the applicant, in breach of section 78(5) of the 2002 Act.
  - (e) The Invitation Notices did not specify times for inspection of the applicant's articles of association, in breach of sections 78(4)(b) and (5). The notices do not state that copies of the articles were enclosed, being the alternative requirement at section 78(4)(a) and the applicant has produced no evidence that copies were enclosed.
13. The applicant's submissions are detailed in a statement of case dated 22 August 2024 and a reply to the respondent's statement of case, dated 01 February 2025. The former was in generic terms and states the company was formed on 14 June 2024. This is clearly incorrect, given the applicant commenced the First Claim (and disclosed a register of members) in January 2004.
14. The submissions in the reply can be summarised as follows:
- (a) The 23 members listed in the register of members are the qualifying tenants of 30 flats, in compliance with section 78(5). This is because some members hold more than one flat.
  - (b) Gatehouse is the registered proprietor of Flat 45, but the flat is owned by Messrs Miah and Sultana. They have an Islamic mortgage with Gatehouse and cannot be registered until this is discharged via a rental arrangement. Gatehouse is a member of the applicant, and the tenants are aware of and support the RTM claim.
  - (c) There was no need to serve Invitation Notices on the qualifying tenants of Flats 30, 45 and 48. They all agreed to become members of the applicant after the First Claim and were named as members in the Invitation Notices.
  - (d) Gatehouse and the leaseholders of Flats 30 and 48 are correctly named as members in the Invitation Notices.
  - (e) Copies of the applicant's articles accompanied the Invitation Notices, so there was no need to specify times for inspection, which is an outdated provision. Copies of the articles, sent with the Invitation Notices, were not included in the determination bundle as this would have involved duplication and substantially

increase the size of the bundle. Further, the articles are a matter of public record and can be obtained from Companies House.

### **The Tribunal's decision**

15. The applicant was entitled to RTM for the Property on the relevant date.

### **Reasons for the Tribunal's decision**

16. I make the following findings:

- (a) At the relevant date, the qualifying tenants of 29 flats were members of the applicant. It is necessary to look at the total number of flats held by the members, rather than the number of members. The 23 members listed in the register disclosed on 05 July 2024 were long leaseholders of 30 flats. Gatehouse is not the qualifying tenant of Flat 45, for the reasons set out at paragraph (b) below, and must be excluded.
- (b) Gatehouse is not the qualifying tenant of Flat 45. It holds a headlease registered under title number EGL497189. Messrs Miah and Sultana hold a 25-year underlease of Flat 45, granted on 22 February 2023 and registered under title number EGL592955. They were registered as the proprietors on 31 March 2023, before the Second Claim and are the qualifying tenant pursuant to section 75(6). There can only be one qualifying tenant of a flat (section 78(5)).
- (c) The applicant breached section 78(1) by not serving Invitation Notices on the qualifying tenants of Flats 30, 45 and 48. Messrs Miah and Sultana are the qualifying tenant of Flat 45, rather than Gatehouse. The leaseholders of Flats 30 and 48 are the qualifying tenants of these flats. They were registered as members of the applicant by the time the later register was disclosed on 05 July 2024. This incorrectly states their membership commenced on 05 December 2023. This cannot be correct, as their names did not appear in the register disclosed in January 2024. The applicant has not addressed this point or provided any evidence as to when the membership commenced or was applied for. This could have been covered in a witness statement, as provided for in the directions. The leaseholders of Flats 30 and 48 were members by 05 July 2024 but the Invitation Notices were served on 14 June 2024. There is no evidence they were members on 14 June 2024.
- (d) Gatehouse should not have been listed as a member of the applicant in the Invitation Notices. It was not the qualifying tenant of Flat 45 on 14 June 2024 and was not entitled to membership. Paragraph 26(2)(a) of the applicant's articles states that no person shall be admitted to membership unless they are a qualifying tenant. As stated at paragraph (c) above, there is no evidence the leaseholders of Flats 30 and 48 were

members on 14 June 2024. The applicant breached section 78(2)(b) by incorrectly including them and Gatehouse in the Invitation Notices.

- (e) The Invitation Notices do not say copies of the articles were enclosed and there is no evidence they were. Again, this could have been addressed in a witness statement. In the absence of such evidence I find that copies of the articles did not accompany the notices, and the applicant did not comply with section 78(4)(a). The notices did not comply with the alternative provisions at sections 78(4)(b) and (5). They stated the articles were available for inspection and copying at the applicant's registered office but did not state the times at which they could be inspected in breach of section 78(5)(b). The fact that copies can be obtained from Companies House does not alter this statutory requirement.

- 17. Having found various breaches of the 2002 Act, I must then consider the consequences of those breaches. In its statement of case, the respondent referred to the Supreme Court's decision in ***A1 Properties (Sunderland) v Tudor Studios RTM Company Limited [2024] UKSC 27*** and the Upper Tribunal's decision in ***Avon Freeholds Limited v Cresta Court E RTM Company Limited [2024] UKUT 335 (LC)***. The former clarified the correct starting point is the guidance in ***R v Soneji [2005] UKHL 49***, namely:

- (a) Identify the statutory provision that has not been complied with,
- (b) Ascertain its purpose in the context of a detailed analysis of the statute as a whole, and
- (c) Consider the specific facts of the case and what prejudice or injustice might arise if the validity of the statutory process was affirmed despite the non-compliance.

The focus is on the position of the party directly affected by the procedural omission.

- 18. ***Cresta Court*** also involved a failure to serve an Invitation Notice. The RTM company did not give a notice to a long leaseholder whose lease had been granted but not registered. Judge Cooke found the leaseholder was a qualifying tenant and therefore a person on whom an Invitation Notice must be served. meaning the claim notice did not comply with section 79(2).

- 19. Judge Cooke considered various authorities, including ***A1*** and concluded the failure to give the Invitation Notice did not invalidate the claim notice, as the leaseholder has not sought to challenge that notice, and it could not be challenged by anyone else. Section 79(2) sets out a consequence of non-compliance, namely the claim notice is not valid, but following the reasoning in ***A1*** "*not valid*" means it is voidable at the instance of the leaseholder.

20. In their statement of case, the respondent said it has obtained permission to appeal the **Cresta Court** decision. It remains to be seen if that appeal succeeds but, as things stand, I am bound by this decision.
21. The qualifying tenants of Flats 30, 45 and 48 have not challenged the claim notice. Following **Cresta Court** I conclude the failure to serve Invitation Notices on those tenants did not invalidate the claim notice in the Second Claim.
22. Unlike section 79(2), section 78(2) does not state the consequence of non-compliance. The Invitation Notices incorrectly included the names of Gatehouse and the Flat 30 and 48 leaseholders, in breach of section 78(2)(b). Arguably, this error could be covered by the saving provision at section 78(7), but this was not a point taken by the applicant. The purpose of section 78(2) is to provide information about the RTM company, including the names of all members, to help non-member qualifying tenants decide whether to participate. None of the recipients of the Invitation Notices have challenged the claim notice or suggested they have been prejudiced by the incorrect names. It is difficult to see what prejudice could arise, given 20 of the 23 names were correct. Following **Soneji**, no injustice arises from this non-compliance, and this breach did not invalidate the claim notice.
23. Finally, there is the failure to state the inspection times in the Invitation Notices, in breach of section 78(5)(b). Again, there is no stated consequence of non-compliance. The purpose of this section is to give non-member qualifying tenants an opportunity to inspect and take copies of the articles to help them decide whether to participate. Again, none of the recipients have challenged the Invitation Notices or suggested they have been prejudiced by this omission. Had they wished to consider the articles before making their decision they could have downloaded copies from the Companies House website or requested copies from the applicant. Again, following **Soneji**, no injustice arises from this non-compliance, and this breach does not invalidate the claim notice.
24. In summary, the applicant's breaches of the 2002 Act did not invalidate the claim notice which means the applicant was entitled to RTM on the relevant date.

**Name:** Tribunal Judge Donegan      **Date:** 19 March 2025

### 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.

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



## **Appendix of relevant legislation**

### **Commonhold and Leasehold Reform Act 2002**

#### **Section 75    Qualifying tenants**

- (1) This section specifies whether there is a qualifying tenant of a flat for the purposes of this Chapter and, if so, who it is.
- (2) Subject as follows, a person is the qualifying tenant of a flat if he is tenant of the flat under a long lease.
- (3) Subsection (2) does not apply where the lease is a tenancy to which Part 2 of the Landlord and Tenant Act 1954 (business tenancies) apply.
- (4) Subsection (2) does not apply where –
  - (a) the lease was granted by sub-demise out of a superior lease other than a long lease,
  - (b) the grant was made in breach of the terms of the superior lease, and
  - (c) there has been no waiver of the breach by the superior lease.
- (5) No flat has more than one qualifying tenant at any one time; and subsections (6) and (7) apply accordingly.
- (6) Where a flat is being let under two or more long leases, a tenant under any of those leases which is superior to that held by another is not the qualifying tenant of the flats.
- (7) Where a flat is being let to joint tenants under a long lease, the joint tenants shall (subject to subsection (6)) be regarded as jointly being the qualifying tenant of the flats.

#### **Section 78    Notice inviting participation**

- (1) Before making a claim to acquire the right to manage any premises, a RTM company must give notice to each person who at the time when the notice is given –
  - (a) is the qualifying tenant of a flat contained in the premises, but
  - (b) neither is nor has agreed to become a member of the RTM company.
- (2) A notice given under this section (referred to as a “notice of invitation to participate” must -
  - (a) state that the RTM company intends to acquire the right to manage the premises,
  - (b) state the names of the members of the RTM company,
  - (c) invite the recipients of the notice to become members of the company, and

- (d) contain such other particulars (if any) as may be required to be contained in notices of invitation to participate by regulations made by the appropriate national authority/
- (3) A notice of invitation to participate must also comply with such other requirements (if any) about the form of notices of invitation to participate as may be prescribed by regulations so made.
- (4) A notice of invitation to participate must either –
  - (a) be accompanied by a copy of the articles of association of the RTM company, or
  - (b) include a statement about inspection and copying of the articles of association of the RTM company.
- (5) A statement under subsection (4)(b) must –
  - (a) specify a place in England and Wales at which the articles of association may be inspected.
  - (b) specify as the times at which they may be inspected periods of at least two hours on each of at least three days (including a Saturday or Sunday or both) within the seven days beginning with the day following that on which the notice is given,
  - (c) specify a place (in England or Wales) at which, at any time within those seven days, a copy of the articles of association may be ordered, and
  - (d) specify a fee for the provision of an ordered copy, not exceeding the reasonable cost of providing it.
- (6) Where a notice given to a person includes a statement under subsection (4)(b), the notice is to be treated as not having been given to him if he is not allowed to undertake an inspection, or is not provided with a copy, in accordance with the statement.
- (7) A notice of invitation to participate is not invalidated by any inaccuracy in any of the particulars required by or by virtue of this section.

## **Section 79 Notice of claim to acquire right**

- (1) A claim to acquire the right to manage any premises is made by giving notice of the claim (referred to in this Chapter as a “claim notice”), and in this Chapter the “relevant date”, in relation to any claim to acquire the right to manage, means the date on which the notice of 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 (referred to in this Parts as “the 1987 Act”) to act in relation to the premises, or any premises containing or contained in the premises.
- (7) Subsection (6) does not require the claim notice to be given to a person who cannot be found or whose identity cannot be ascertained, but if this subsection means that the claim notice is not required to be given to anyone at all, section 85 applies.
- (8) A copy of the claim notice must be given to each person who on the relevant date is the qualifying tenant of a flat contained in the premises.
- (9) Where a manager has been appointed under Part 2 of the 1987 Act to act in relation to the premises, or any premises containing or contained in the premises, a copy of the claim notice must also be given to the tribunal or court by which he was appointed.

#### **Section 84 Counter-notices**

- (1) A person who is given a claim notice by a RTM company under section 79(6) may give a notice (referred to in this chapter as a “counter-notice”) to the company no later than the date specified in the claim notice under section 80(6).
- (2) A counter-notice is a notice containing a statement either –
  - (c) admitting that the RTM company was on the relevant date entitled to acquire the right to manage the premises specified in the claim notice, or
  - (d) alleging that, by reason of specified provisions of this Chapter, the RTM company was on that date not so entitled,
 and containing such other particulars (if any) as may be required to contained in counter-notices, and complying with such requirements (if any) about the form of counter-notices, as may be prescribed by regulations made by the appropriate national authority.

- (3) Where the RTM company has been given one or more counter-notices containing a statement such as is mentioned in subsection (2)(b), the company may apply to the appropriate tribunal for a determination that it was on the relevant date entitled to acquire the right to manage the premises.
- (4) An application under subsection (3) must be made not later than the end of the period of two months beginning with the day on which the counter-notice (or, where more than one, the last of the counter-notices) was given.
- (5) Where the RTM company has been given one or more counter-notices containing a statement such as is mentioned in subsection (2)(b), the RTM company does not acquire the right to manage the premises unless –
  - (a) on an application under subsection (3) it is finally determined that the company was on the relevant date entitled to acquire the right to manage the premises, or
  - (b) the person by whom the counter-notice was given agrees, or the persons by whom the counter-notices were given agree, in writing that the company was so entitled.
- (6) If on an application under subsection (3) it is finally determined that the company was not on the relevant date entitled to acquire the right to manage the premises, the claim notice ceases to have effect.
- (7) A determination on an application under subsection (3) becomes final –
  - (a) if not appealed against, at the end of the period for bringing an appeal, or
  - (b) if appealed against, at the time when the appeal (or any further appeal) is disposed of.
- (8) An appeal is disposed of –
  - (a) if it is determined and the period for bringing any further appeal has ended, or
  - (b) if it is abandoned or otherwise ceases to have effect.

## **Companies Act 2006**

### **Section 112 The members of a company**

- (1) The subscribers of a company's memorandum are deemed to have agreed to become members of the company, and on its registration become members and must be entered as such in its register of members.
  - (2) Every other person who agrees to become a member of a company, and whose name is entered in its register of members, is a member of the company.
- ...

### **Section 113 Register of members**

- (1) Every company must keep a register of its members.
- (2) There must be entered in the register –
  - (a) the names and addresses of the members,
  - (b) the date on which each person was registered as a member,  
and
  - (c) the date at which any person ceased to be a member.
- (2A) Where a person ceases to be a member there must be entered in the register the date at which the person's membership ceased.

....