



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

Case reference : **MAN/00CX/HTB/2023/0001**

Name and Address of Association : **Victoria Mills Tenants Association, 501 VM1 Victoria Mills, Salts Mill Road, Shipley, BD17 7EE**

Applicant : **Elena Salas Ramirez**

Respondent : **Saltaire Facilities Management Ltd**

Type of Application : **Part 3, Regulation 11 of the Tenants' Associations (Provisions Relating to Recognition and Provision of Information) (England) Regulations 2018**

Tribunal members : **Judge J.M.Going
J.Faulkner FRICS**

Date of Decision : **13 December 2023**

Decision and Orders

Decision and Orders

The Tribunal finds that the Respondent has failed, without a reasonable excuse, to perform its duties under regulations 8,9, and 10 of the Regulations.

Consequently, and pursuant to the powers conferred on it by regulation 11, it now orders the Respondent to remedy the situation by performing those duties and as more particularly set out in the penultimate paragraph of these reasons.

The Tribunal also orders the Applicant to send to the Respondent, or its managing agents on its behalf, within 7 days of receipt of this decision, an up-to-date schedule listing the relevant qualifying tenants who are already members of the Association.

Preliminary and background

1. On 22 February 2023, the Tribunal received an application (“the Application”) under Part 3, Regulation 11 of the Tenants’ Associations (Provisions Relating to Recognition and Provision of Information (England) Regulations 2018 (“the Regulations”) for an order requiring the landlord to perform a duty under regulation 8, 9 or 10.

2. The Tribunal issued directions on 29 August 2023, setting out a timetable for statements, responses and relevant documents to be submitted and confirming that it considered it appropriate for the matter to be determined by a paper determination, unless either party requested an oral hearing. Neither has done so.

3. The Tribunal convened on 11 December 2023 to consider and determine the Application.

Facts and chronology

4. None of the following matters, which are evident from the papers, have been disputed.

| | |
|---------------------|--|
| On 3 February 2023 | The Applicant, who is the secretary of the Association, sent an email to Emma Nicholas at Rendall and Rittner Ltd (“R&R”) who are the Respondent’s managing agents. Attached to the email was a formal request notice (“the Request Notice”) under regulation 7 of the Regulations requiring the Respondent to provide information about tenants who are not members of the Association. |
| On 10 February 2023 | The Applicant sent a letter to R&R referring to the email sent on 3 February stating “we have not received a response...” and enclosing paper copies of the email, the Request Notice, the Association’s constitution, summaries of the minutes of a meeting on 30 November 2022 and duties of a managing agent, and requesting a formal response by 17 February 2023. |

| | |
|---------------------------------|--|
| On 14 February 2023 at 14.55 | Ms Nicholas emailed a response stating “....Having reviewed the application with the Landlord we are sorry to advise that the number of paid up members verified by signatures must b(e) 51% or more of the leaseholders at Victoria Mills. Until such time as the number of authenticated members reaches this level the Landlord is not able to consider this further.” |
| at 16.51 | the Applicant replied “....Please note we are <i>not</i> asking for recognition. A request is being made for “ <i>the landlord to provide information about tenants who are not members of the association</i> ” as set out in this piece of legislation.... Recognition is not a requirement to make this request. Now that you have acknowledged receipt of this request, if we do not receive a response in the next 24-hours, we will assume that the request has been denied...” |
| at 17.52 | Ms Nicholas responded with a further email stating “Thank you for clarifying. I am able to confirm that this information can be provided to the secretary of the tenants’ association. This means that the association needs to be recognised by the landlord before this happens. We cannot provide private tenant information to a non-recognised tenants’ association...” |
| at 18.57 | The Applicant replied “... The term “recognised” is certainly not mentioned in part 3 of the 2018 regulations” and then after cross-referencing the term “relevant tenants’ association” and its definition in section 29(A)(8) of the Landlord and Tenant Act 1985 concluded that “therefore this is not the same as “recognised tenants’ association”. In the light of the above, can you confirm that you will abide by the legislation?” |
| On 17 February 2023 | Ms Nicholas replied “the wording you need to look at is “Relevant” which means recognized...” |
| On 22 February 2023 | The Applicant submitted the Application to the Tribunal. |

The parties’ submissions

5. The Applicant has provided a bundle of documents including copies of a sample lease, the emails and letter referred to above, proof of posting and delivery of the letter, the Request Notice, the Association’s constitution, summaries of minutes of meetings in November 2022, January, February, May and July 2023, an updated members list, her statement of case and a legal opinion from LEASE.

6. In her statement of case, dated 18 September 2023 she said “The Victoria Mills Tenants Association was legitimately formed on 30th November 2022 by the current officers as a Relevant Tenants’ Association under Section 29A(8) of the Landlord and Tenant Act 1985. This association was established based on the ‘ARMA Model Rules/Constitution for Residents Associations’ and upholds a constitution based on those rulesThe membership has grown organically following the formation of the association and currently stands at 126 apartments (28% of the entire complex ... 80 of which are fully paid and 46 of which are currently going

through the payment process).....I had previously contacted the Leasehold Advisory Service (LEASE) for final clarification on (*the point that a “relevant” association is not the same as a “recognised” association and that a tenants association does not need to be “recognised” for the request notice to be fulfilled*).... Unfortunately, due to their substantial workload, we did not receive a response until 13th April 2023. The LEASE legal advisor stated that we can exercise our right to request information about other tenants without the need for the tenant’s association to be recognised first.....Prior to me issuing our formal Request Notice, the treasurer of the tenants’ association ...had spoken with a fellow leaseholder ... and Jonathan Astle (Divisional Director, Rendall & Rittner with two decades of experience at the Property Management & Director levels) via telephone on 23 January 2023 and asked for a letter to be circulated to all leaseholders to make them aware of the presence of the association. During that conversation Mr Astle incorrectly stated that they can send out a letter to leaseholders, but “only once the association is recognised”. He then followed this statement with, it must be said considerable confidence and certainty, that he was sorry but that “it is what the law says”We struggle to comprehend how such an experienced member of senior staff of the managing agent .. could not be cognisant of their duties as specified in the ...Regulations.

7. Mr Astle, in response, by way an email to the Tribunal on 13 October 2023 stated “.... we advise you that our client wishes not to comply with the request relating to the above claim. Our client strongly believes that the claimant does not want to form a recognised tenants’ association. They are in fact using the provision within the Act as a recruitment sergeant for the December 2021 FTT Case, something they do not wish to support. Our client has also asked me to add that the applicants have been invited to several meetings but they have, to date, not replied”

The Law

8. The Regulations came into force on 1 November 2018 to make it easier for tenants’ associations (“TAs”) to become legally recognized, and to obtain information from landlords about other tenants who have a legal right to join the TA. The explanatory memorandum issued by the Ministry for Housing, Communities and Local Government confirms that the purpose of the Regulations was to remove barriers to establishing a membership threshold for a TA to be recognised.

9. Part 3 of the Regulations introduced a requirement that a landlord must disclose the contact details known to it of qualifying tenants in the development to the secretary of the TA.

10. For ease of reference the provisions contained in Part 3 have been reproduced in the schedule to this Decision.

11. In summary, the TA has the power to serve a request notice on the landlord or the landlord’s managing agent to obtain known information about qualifying tenants who are not currently members of the TA. Landlords must, within 7 days of receipt of the request notice, acknowledge receipt in writing and inform the TA’s secretary that they will provide a substantive response. If the landlord does not consider the request notice to be valid, they must inform the TA’s secretary in writing within 7 days that they will not provide a substantive response, giving reasons why the request notice is invalid. A landlord must, as soon as practicable, give a signed and

dated information form to each tenant in relation to whom known information has been requested. An information form informs the tenant that a TA has requested known information relating to them and why it has been requested. The form identifies the TA and includes the postal and email address of the TA. It asks the tenant for written consent to disclose the known information, explains that it will not be disclosed without that consent and informs the tenant to direct any queries to the TA. The tenant is asked to reply within 28 days of receipt either (1) confirming consent to all known information being disclosed, (2) confirming consent to a partial disclosure and stating what may be disclosed, or (3) refusing consent to any information being disclosed. A landlord must provide a substantive response within 4-months of the notice being received. The response must state either all requested known information which the landlord has the consent to disclose or that there is no such known information. It must also state the number of tenants (1) to whom the landlord sent an information form and (2) to whom known information was requested who did not give written consent for information to be disclosed. It must be accompanied by a signed and dated statement that the information contained in the substantive response is true to the best of the landlord's knowledge and belief. Where the landlord receives consent from a tenant to disclose information after the expiry of the 4-month period, the landlord must disclose the information as soon as reasonably practicable after the consent is received together with the statement of truth from the landlord. The Regulations contain a power for the TA to apply to the Tribunal for an order to compel the landlord to comply with its duties under the Regulations. If the landlord fails to comply with such an order, the Tribunal has the discretion to grant a certificate of recognition where the membership of the TA is less than 50% of qualifying tenants.

The Tribunal's findings, reasons and conclusions

12. The Tribunal began with a general review of the papers to decide whether the case could be dealt with properly without holding an oral hearing. Rule 31 of its procedural rules allows this provided that the parties give their consent (or do not object when a paper determination is proposed).

13. Neither party has requested an oral hearing, and the Tribunal is satisfied that this matter is suitable to be determined without one. The issues are clearly identified, and the documentation provides clear and obvious evidence of its contents. It has not been challenged, and the Tribunal finds no reason to doubt the detail contained.

14. The Tribunal next considered whether the Request Notice was valid and complied with the requirements of regulation 7. There has been no assertion from the Respondent or R&R that it was not valid, and the Tribunal found that it was valid, compliant and duly served.

15. The Tribunal also found that the Respondent did not, as mandated under regulation 8, acknowledge the Request Notice within 7 days its receipt.

16. The Tribunal then considered the submissions made on behalf of the Respondent.

17. The emails from Ms Nicholas show, at best, an ignorance and lack of understanding of the Regulations. This is despite the Applicant having clearly set out and explained their meaning and purport.

18. The response to the Application by Mr Astle is clear and obvious evidence of the Respondent's deliberate and wilful disregard for its obligations under the Regulations. The explanations given were not found to be valid, relevant, or to constitute a reasonable excuse for ignoring what are strict mandatory requirements.

19. The notes to the Regulations make it quite clear that the definition of what is a "relevant tenants' association" is to be found in 29A(8) of the Landlord and Tenant Act 1985, which for completeness has also been set out in the schedule hereto.

20. It is abundantly clear that a "relevant" TA is quite distinct from a "recognised" TA. The defining purpose of the Regulations is to assist an aspiring "relevant" TA to become a "recognised" TA.

21. The Applicant has provided ample evidence of the Association being a relevant TA, with appointed officers, a constitution, conducting meetings and having a growing membership.

22. There has been no indication that the Respondent, or R&R on its behalf, has made any attempt to discharge, as it should, its duties as set out in regulations 8, 9 and 10. On the contrary, it has deliberately ignored and sought to avoid such duties.

23. If the Respondent had complied with such duties in a timely fashion when it should have done, the Applicant would have received a substantive response to the Request Notice by no later than the middle of June 2023.

24. The Tribunal has had no difficulty in concluding that the Respondent, as landlord, has failed to perform its duties under regulations 8,9, and 10, and does not have a reasonable excuse for such failure.

25. The Tribunal therefore hereby Orders and requires:-

(1) the Respondent to proceed forthwith, beginning on the day of receipt of this decision by it or R&R, whichever is earlier, ("the receipt date") to properly and completely perform all of its outstanding duties as set out in regulations 8,9, and 10 of the Regulations in relation to the Association, but with the references in regulation 10 to the 4 month period from the receipt of the Request Notice now being read as a reference to a 2 month period beginning with the receipt date. The Respondent must begin by informing the Applicant, within 7 days of the receipt date, that it will provide a substantive response to the Request Notice.

(2) the Applicant to send to the Respondent, or R&R on its behalf, within the same 7 days of the receipt date, an up-to-date schedule listing the relevant qualifying tenants who are already members of the Association.

26. The Respondent is reminded that if it fails to comply with this Order, regulation 4(5) provides that the need for the Association to represent at least 50% of the qualifying tenants in an application for a certificate of recognition under section 29(1)(b)(i) of the Landlord and Tenant Act 1985 would no longer apply.

The Schedule

The Relevant Statutory Provisions

Tenants' Associations (Provisions Relating to Recognition and Provision of Information) (England) Regulations 2018/1043

....

4.— Circumstances in which a certificate is not to be given

(1) The First-tier Tribunal must not give a certificate to a tenants' association in relation to a premises where the tenants' association represents fewer than 50% of the qualifying tenants of dwellings situated in the premises.

(2) But where—

(a) the tenants' association represents qualifying tenants in dwellings situated in related premises; and

(b) those qualifying tenants contribute to the same costs by the payment of a service charge,

the First-tier Tribunal must not give a certificate to the tenants' association in relation to the related premises if the tenants' association represents an aggregate of fewer than 50% of the qualifying tenants of dwellings situated in the related premises.

(3) The First-tier Tribunal must not give a certificate to a tenants' association in relation to any premises if a certificate has previously been given to a tenants' association in relation to the premises and the certificate is in force.

(4) The First-tier Tribunal must not give a certificate to a tenants' association if the First-tier Tribunal is not satisfied that the constitution and rules of the tenants' association are fair and democratic.

(5) Paragraphs (1) and (3) do not apply where—

(a) the landlord has failed to comply with an order made by the First-tier tribunal in relation to the tenants' association under regulation 11 (an order requiring the landlord to comply with regulation 8, 9 or 10); and

(b) the tenants association represents a substantial number of qualifying tenants of dwellings in the premises or, as the case may be, the related premises.

(6) This regulation is without prejudice to any powers the First-tier Tribunal has, including its powers to not give a certificate.

....

6. Interpretation of Part 3

In this Part—

“information form” has the meaning given in regulation 9(2) (landlord's method of contacting relevant qualifying tenants);

“known information” has the meaning in regulation 7(6) (request by relevant tenants' association for known information);

“request notice” has the meaning given in regulation 7.

7.— Request by relevant tenants' association for known information

(1) The secretary of a relevant tenants' association may serve a notice (a “request notice”) on the landlord of a dwelling to which the association relates which contains a request for the landlord to provide known information about relevant qualifying tenants who are not members of the association.

(2) A request notice must—

- (a) include—
 - (i) a schedule listing the relevant qualifying tenants who are members of the relevant tenants' association;
 - (ii) the postal address of the relevant tenants' association; and
 - (iii) an email address for the relevant tenants' association, if it has one; and
- (b) be signed and dated by the secretary of the relevant tenants' association.
- (3) Where the secretary of a relevant tenants' association gives more than one request notice in respect of the same relevant qualifying tenant, the later notice supersedes all earlier notices.
- (4) The request notice must be accompanied by a statement that—
 - (a) the known information being requested will be used only to ask the relevant qualifying tenants concerned if they wish to become members of the relevant tenants' association; and
 - (b) is signed and dated by the secretary of the relevant tenants' association.
- (5) A request notice is duly served on a landlord under this regulation if it is served on the landlord's managing agent.
- (6) In this regulation—
 - “*known information*”, in relation to a relevant qualifying tenant (“T”), means any of the following information that is in the possession of the landlord or the landlord's managing agent—
 - (a) T's name;
 - (b) the address of the dwelling for which T pays a service charge;
 - (c) any address to which service charge demands for T are sent;
 - (d) T's email address;
 - “*managing agent*” means an agent appointed by the landlord to discharge any of the landlord's obligations to the tenants represented by the relevant tenants' association which relate to the management by the landlord of the tenants' dwellings.

8.— Landlords' duty: acknowledgement of request notice

- (1) A landlord who has been served with a request notice must, within 7 days beginning with the date on which the request notice was received—
 - (a) acknowledge receipt of the request notice in writing; and
 - (b) inform the secretary of the relevant tenants' association that the landlord will provide a substantive response to the notice.
- (2) Where the landlord does not consider the notice received to be a valid request notice, the landlord must, within 7 days beginning with the date on which the notice was received—
 - (a) inform the secretary of the relevant tenant's association in writing that the landlord will not provide a substantive response to the notice because the landlord does not consider the notice received to be a valid request notice; and
 - (b) give reasons as to why the landlord does not consider the notice received to be a valid request notice.
- (3) “*Substantive response*” has the meaning given in regulation 10(2).

9.— Landlords' duty: contacting relevant qualifying tenants

- (1) A landlord who has been served with a request notice must, as soon as practicable after the request notice was received, give an information form to each relevant qualifying tenant (“T”) in relation to whom known information has been requested.
- (2) An “*information form*” is a written document which—
 - (a) informs T that a relevant tenants' association has requested that the landlord

- provide known information relating to T;
- (b) sets out what known information has been requested in relation to T;
 - (c) identifies the relevant tenants' association that has made the request;
 - (d) includes—
 - (i) the postal address of the relevant tenants' association; and
 - (ii) an email address for the relevant tenants' association, if it has one;
 - (e) asks T for written consent to disclose the known information to the relevant tenants' association;
 - (f) informs T that the known information will not be disclosed without that consent;
 - (g) informs T that the relevant tenant's association has stated in its request that the known information will be used only to ask T if T wishes to become a member of the relevant tenants' association;
 - (h) informs T that any queries relating to the relevant tenants' association should be directed to the relevant tenants' association;
 - (i) asks T to reply within 28 days beginning with the date of receipt of the information form—
 - (i) confirming that T consents to all of the known information being disclosed to the relevant tenants' association;
 - (ii) confirming that T consents to some of the known information being disclosed to the relevant tenants' association, and stating the known information that may be disclosed; or
 - (iii) confirming that T does not consent to any of the known information being disclosed to the relevant tenants' association;
 - (j) gives a postal address and, if the landlord has one, an email address, which can be used to reply to the landlord; and
 - (k) is signed and dated by the landlord.

10.— Landlords' duty: substantive response to request notice

- (1) A landlord who has been served with a request notice which does not fall within regulation 8(2) must provide a substantive response to the relevant tenant's association which served the notice within 4 months beginning with the date on which the notice was received ("the 4 month period").
- (2) A "*substantive response*" is a written document which—
 - (a) states—
 - (i) all known information requested in the request notice which the landlord has consent to disclose; or
 - (ii) that there is no such known information;
 - (b) states the number of relevant qualifying tenants to whom the landlord sent an information form in connection with the request notice;
 - (c) states the number of relevant qualifying tenants in relation to whom known information was requested who did not give written consent for known information to be disclosed by the landlord; and
 - (d) is signed and dated by the landlord.
- (3) The substantive response must be accompanied by a statement that—
 - (a) the information contained in the substantive response is true to the best of the landlord's knowledge and belief; and
 - (b) is signed and dated by the landlord.
- (4) Where the landlord receives consent from a relevant qualifying tenant to disclose known information after the 4 month period, the landlord must disclose the known information as soon as reasonably practicable after the consent is received ("further disclosure").

- (5) Further disclosure under paragraph (4) must—
- (a) be in writing; and
 - (b) be accompanied by a statement that—
 - (i) the information comprising the further disclosure is true to the best of the landlord's knowledge and belief; and
 - (ii) is signed and dated by the landlord.

11.— Power of First-tier Tribunal to remedy failure by a landlord to comply

- (1) The secretary of a relevant tenants' association may apply to the First-tier tribunal for an order requiring the landlord to perform a duty under regulation 8, 9 or 10 of these Regulations.
- (2) The First-tier Tribunal may make such an order where—
- (a) the landlord has failed to perform a duty under regulation 8, 9 or, as the case may be, 10; and
 - (b) the landlord does not have a reasonable excuse for failing to perform the duty.

Landlord and Tenant Act 1985

s. 29A Tenants' associations: power to request information about tenants

....

- (8) In this section—

"relevant tenants' association", in relation to a landlord, means an association of tenants of the landlord at least one of whom is a qualifying tenant of a dwelling in England;

"relevant qualifying tenant" means—

- (a) a person who is a qualifying tenant of a dwelling in England and a member of the relevant tenants' association, or
- (b) a person who is a qualifying tenant of a dwelling in England by virtue of being required to contribute to the same costs as a qualifying tenant who is a member of the relevant tenants' association;

"qualifying tenant" means a tenant who, under the terms of the lease, is required to contribute to the same costs as another tenant by the payment of a service charge.