FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BE/BSG/2025/0600**
Property	**:**	**Globe View House, 171 Blackfriars Road, London, SE1 8ER, 27 Pocock Street, London, SE1 0FU, 29 Pocock Street, London, SE1 0FU, and 169 to 173 Blackfriars Road, London, SE1 8ER**
Applicant	**:**	**Clarion Housing Group**
Respondent	**:**	**Globe View House RTM Company Limited**
Type of application	**:**	**For a determination of an accountable person under section 75 of the Building Safety Act 2022**
Tribunal	**:**	**Judge Sheftel**
Date of Directions	**:**	**28 July 2025**

DECISION

Summary of determination

Clarion Housing Group is not an accountable person for Globe View House (as defined below).

Background

1. By an application dated 8 January 2025, the Applicant ("Clarion") seeks a determination under section 75 of the Building Safety Act 2022 (the "BSA") that it is not an accountable person of Globe View House (as defined below).

2. The Respondent is a right to manage company (the "RTM Company"), which is registered as the principal accountable person for Globe View House. It acquired the right to manage Globe View House under Chapter 1 of Part 2 of the Commonhold and Leasehold Reform Act 2002 on 17 March 2021.

3. Clarion is the leaseholder of 27 flats within Globe View House under a single headlease. The flats are occupied by residents on a social rented or shared ownership basis as further set out below.

4. Clarion has been registered as an accountable person for Globe View House pursuant to s.72(1)(a) of the BSA. However, Clarion's argument was, in essence, that it does not fall within the statutory definition of an 'accountable person' as it does not have repairing obligations in relation to the common parts of Globe View House for the purposes of s.72 of the BSA.

5. Following a case management hearing which took place on 26 February 2025, directions were given leading to a hearing on 23 June 2025. At the hearing, Clarion was represented by Mr Rupert Cohen (counsel) and the RTM Company by one of its directors, John Harrison, supported by Mr Jenkins, another director.

Globe View House

6. Globe View House is a mixed-use building with 86 residential units at 171 Blackfriars Road, London, SE1 8ER, 27 Pocock Street, London, SE1 0FU and 29 Pocock Street, London, SE1 0FU, and five commercial units occupying 169 to 173 Blackfriars Road, London, SE1 8ER. Although the application referred to 24, 33, 48-53, 68-86 Globe View House, these are in fact only the flats leased to Clarion. Accordingly, reference to 'Globe View House' should be to the building as a whole.

7. There is no dispute that Globe View House is an occupied higher-risk building within the meaning of section 71 of the BSA.

8. As noted above, the RTM Company is the principal accountable person for Globe View House. The other registered accountable persons are

Brigante Properties Limited (who it is understood is the current freeholder) and Clarion.

9. Clarion's headlease, registered under title TGL402734, is between Opal Land LLP as Landlord (now Brigante Properties Limited), Pentland Estate Management Limited (now FirstPort Property Services No4 Limited) as Manager, and the Applicant, Affinity Sutton Homes Limited (now Clarion Housing Group Limited) and is dated 25 June 2014. As noted further below, the headlease demises only the individual flats; it does not demise any part of the common parts of Globe View House.

10. Flats 33-34, 48-53, 68-69 Globe View House, 27 Pocock Street are let by Clarion on 125-year Shared Ownership underleases ("Shared Ownership Flats") and flats 70-86 Globe View House, 29 Pocock Street are let on Assured Shorthold or Assured Non-Shorthold tenancies pursuant to Clarion's role as a Registered Provider of Social Housing (the "Social Rented Flats").

The legal framework

11. Section 72(1) of the BSA provides as follows:

"*(1) In this Part an "accountable person" for a higher-risk building is*

(a) a person who holds a legal estate in possession in any part of the common parts (subject to subsection (2)), or

(b) a person who does not hold a legal estate in any part of the building but who is under a relevant repairing obligation in relation to any part of the common parts.

(2) A person ("the estate owner") who holds a legal estate in possession in the common parts of a higher-risk building or any part of them ("the relevant common parts") is not an accountable person for the building by virtue of subsection (1)(a) if

(a) each long lease of which the estate owner is lessor provides that a particular person, who does not hold a legal estate in any part of the building, is under a relevant repairing obligation in relation to all of the relevant common parts, or

(b) all repairing obligations relating to the relevant common parts which would otherwise be obligations of the estate owner are functions of an RTM company."

12. The definition of "common parts" in relation to a higher-risk building is contained in subsection (6) as:

"*(a) the structure and exterior of the building, except so far as included in a demise of a single dwelling or of premises to be occupied for the purposes of a business, or*

(b) any part of the building provided for the use, benefit and enjoyment of the residents of more than one residential unit (whether alone or with other persons)."

13. Subsection (6) also contains the following definitions which are relevant to the present case:

"*relevant repairing obligation": a person is under a relevant repairing obligation in relation to anything if the person is required, under a lease or by virtue of an enactment, to repair or maintain that thing ;*

"possession": a reference to "possession" does not include the receipt of rents and profits or the right to receive the same;

"RTM company" has the same meaning as in Chapter 1 of Part 2 of the Commonhold and Leasehold Reform Act 2002 (right to manage)."

14. The tribunal's jurisdiction to determine who is an accountable person for a higher risk building is derived from section 75 of the BSA, which provides as follows:

"*(1) An interested person may apply to the tribunal for a determination, as regards a higher-risk building, of any of the following—*

(a) the person or persons who are accountable persons for the building;

(b) the person who is the principal accountable person for the building;

(c) the part of the building for which any accountable person for the building is responsible.

(2) Where, on an application under subsection (1)(b), it appears to the tribunal that there is more than one accountable person within section 73(1)(b), the principal accountable person is such one of those accountable persons as the tribunal considers appropriate.

(3) In this section "interested person" means—

(a) the regulator,

(b) a person who holds a legal estate in any part of the common parts (or who claims to hold such an estate), or

(c) a person who is under a relevant repairing obligation in relation to any part of the common parts (or who claims to be under such an obligation).

(4) In subsection (3) "relevant repairing obligation" and "common parts" have the same meaning as in section 72."

Procedural matters

15. As noted above, it is Clarion's position that it should *not* be an accountable person as it does not fall within the relevant definition in section 72(1) of the BSA: it is said that Clarion neither holds a legal estate in possession in any part of the common parts, nor that it is under a relevant repairing obligation in relation to any parts of the common parts of Globe View House.

16. Before turning to the substantive issues, it should be mentioned that the RTM Company, in its skeleton argument, raised a procedural point in relation to the bringing of the application. As set out above, pursuant to section 75(1) of the BSA, an application to determine who is an accountable person for a building and/or the part of the building for which any accountable person for the building is responsible, may be brought by an interested person. 'Interested person' is defined in section 75(3) as:

    (a) the Regulator;

    (b) a person who holds a legal estate in any part of the common parts (or who claims to hold such an estate), or

    (c) a person who is under a relevant repairing obligation in relation to any part of the common parts (or who claims to be under such an obligation).

17. The difficulty in the present case, is that Clarion contends that it neither holds a legal estate in any part of the common parts, nor is under a relevant repairing obligation in relation to any part of the common parts. In other words, due to a quirk in the legislation, it might be suggested that a party who has been registered as an accountable person but who does not believe itself to be one, does not fall within the list of persons who may bring and application under section 75 of the BSA. Of course, if Clarion were to fail in its submissions, this would necessitate a finding that it *is* under a relevant repairing obligation in relation to any part of the common parts and so would bring it within section 75(3)(c). In any event, as Mr Cohen submitted there was no

dispute that the RTM Company also sought a determination as to the substantive issue in the application and so the RTM company could, in essence, be treated as an applicant under rule 10 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 insofar as necessary. Certainly, there is no question that the RTM Company falls within the definition of an 'Interested Person' in section 75(3). Accordingly, both parties agreed that the application fell within the tribunal's jurisdiction and should proceed.

Is Clarion an accountable person?

18. According to the RTM Company's statement of case (paras.23-24), Clarion is an accountable person in respect of:

> "*…the portion of the Service Installations or Utility Service Infrastructure (as defined in the relevant lease and which form certain of the common parts) which route throughout the Building to the seventeen social rented flats. In practice this is the portion within 29 Pocock Street, SE1 0FU and the basement of 171 Blackfriars Road, SE1 8ER.*
>
> *Further, pursuant to regulation 30(1), the [RTM Company] believes [Clarion] is accountable for the seventeen social rented flats themselves, excluding the balconies under regulation 29.*"

19. As noted above, under the terms of Clarion's headlease, Clarion holds a legal estate in possession of the flats only and not any common parts of Globe View House. This is confirmed by the lease plan and is not contested by the Respondent: the RTM Company's statement of case (at para.5) that "*… the Applicant does not appear to hold a legal estate in possession in any part of the common parts of the building…*". As such, Clarion does not fall within section 72(1)(a).

20. Rather, the area of challenge relates to section 72(1)(b) – is Clarion under a repairing obligation in relation to any part of the common parts?

Is there a relevant repairing obligation?

21. On the RTM Company's case, it is maintained that Clarion *is* an accountable person. It is said that section 72(6) of the BSA draws a distinction between two types of common parts:

    (1) The structure and exterior of the building (s.72(6)(a)); and

    (2) parts of the building provided for the use, benefit and enjoyment of the residents of more than one residential unit (s.72(6)(b). The RTM Company suggests that examples of this are infrastructure for the provision of heat and other utilities, lifts, stairs, corridors and similar.

22. Further, it is said that section 72(6) of the BSA specifies that a person is under a "relevant repairing obligation" in relation to anything if the person is required, under a lease or by virtue of an enactment, to repair or maintain that thing. In the RTM Company's submission, the definition is simply drawn and so merely requires the identification of a particular lease or enactment, it does not appear to envisage construction of multiple chains of leases or across multiple parties: those provisions are contained in the preceding subsections of section 72 of the BSA.

23. In response, Mr Cohen stressed that the starting point should be to consider the specific provisions of section 72(6) of the BSA. This provides that "*relevant repairing obligation*" is an obligation on a person which "*requires*" them to "*repair and maintain*" something. As set out above, it was submitted, "*rights*" in the headlease to effect repairs in certain circumstances, is fundamentally different from an "*obligation*" to do that thing. On this point, I agree with Clarion that what is needed is an *obligation* to carry out repairs.

24. With regard to the leases in the present case, save for one point, it was not contested by the RTM Company, that under the terms of the headlease, Clarion has only a *right* – but not an *obligation* – to carry out repairs to the common parts:

(1) By clause 5.1 of the headlease, Clarion covenanted, inter alia, to keep in repair the "Demised Premises". The Demised Premises is the internal parts of the flats demised; it does not include common parts within the meaning of section 72(6) of the BSA.

(2) Although paragraph 3.1 of the Second Schedule to the headlease contains a right for the Applicant to "connect to use inspect maintain and renew any Service Installations on the Estate which serve the Demised Premises", this is a *right*, not an *obligation*. In addition, it should be noted that by paragraph (j) of Part 2 of the Fourth Schedule to the headlease, the "Maintained Areas" include, as well as the structure and exterior of the Building, "All Service Installations but excluding any such Service Installations utilised exclusively by individual properties". By Paragraph 1 of Part 1 of the Fifth Schedule, the Manager covenants to keep the Maintained Areas "properly repaired maintained and surfaced". The obligation to keep in repair the common Service Installations rests with the Manager (and now, on Clarion's case, the RTM Company).

25. The exception to this is that it is said by the RTM Company that the headlease includes an 'obligation' to carry out repairs where the Manager becomes insolvent. The relevant provision of the headlease is clause 7.10 as follows:

"*If the Manager goes into liquidation for any reason (whether compulsory or voluntary) or fails in a material way to observe and perform its covenants under this Lease then an in any such case the Tenant will join with the Owners of the Dwellings in arranging for the carrying out of the matters mentioned in the Fifth Schedule to be carried out subject to the Tenant contributing an appropriate part of the expense of so doing in accordance with the provisions of this Lease with a view to agreeing the appointment of a successor to be called the Nominee pursuant to Clause 7.9".*

26. Clarion's argument in response is that all clause 7.10 does is impose a conditional obligation on the Applicant to arrange, in common with all others, for services to be carried out in the event of the Manager's insolvency. That is not a "relevant repairing obligation" which requires there to be a present, extant, repairing obligation.

27. I agree with Clarion that clause 7.10 of the headlease does not create a relevant repairing obligation for the purposes of section 72(1)(b) of the BSA. While it might be the case that Clarion would have become an accountable person following the insolvency of the Manager (leaving aside the effect of the acquisition of the right to manage), it would not be under a relevant repairing obligation unless and until that happens. I agree with Clarion that a relevant repairing obligation for the purposes of section 72 of the BSA, must be one which is present and extant.

28. This issue, however, raises a wider point highlighted by the RTM Company. It was suggested that failure to impose the responsibilities of an accountable person on Clarion now (as opposed to if and when the Manager becomes insolvent) could create practical problems. In the event of the Manager's insolvency, Clarion would suddenly be faced with various responsibilities but would be ignorant about the management of the building and fire safety administration undertaken to that point. A similar point can made in relation to the status of an RTM Company: the right to manage may be terminated at any time (as per section 105 CLRA 2002), upon which all management functions and obligations would immediately revert to other parties. This would mean accountability for matters, including building safety risk mitigation, falling at short notice on persons who had never previously been involved in decisions on safety matters relating to that building, creating issues around continuity of information and decision-making, and potentially jeopardising the underlying freehold and leasehold interests. In the RTM Company's submission, duality of accountability alongside any RTM Company avoids this scenario. However, while this may be an attractive proposition as a matter of practicality, it does not follow under the provisions of the statute, which as noted above, requires a relevant repairing obligation as more particularly set out in section 72 of the BSA. As such, it is not considered that this is sufficient ground for imposing liability on Clarion in the present case.

29. The remaining basis on which it is said by the RTM Company that Clarion is an accountable person derives from (i) provisions in Clarion's underleases and (ii) section 11 of the Landlord and Tenant Act 1985. In summary, the RTM Company's position is that relevant repairing obligations in relation to the common parts arise as follows:

    - The Shared Ownership leases give Clarion an obligation to repair certain common parts of the building, in particular the 'Utility Service Infrastructure' at paragraph 5.11.1, which as drafted also includes repair of the gas-fuelled district heating boiler – although as noted above, this is no longer pursued given the concession as to the consequences of the acquisition of the right to manage;

    - The tenancy agreements for the Social Rented Flats give Clarion an obligation under paragraph 5.2(a) to repair "*any shared parts of the building which your home is part of*". Similarly, paragraph 5.2(b) provides that "*We agree to keep the systems for supplying water, heating and electricity, and for getting rid of waste and water in good working order*."

    - Finally, reliance is placed on section 11(1)-(1A) of the Landlord and Tenant Act 1985 which it was said impose obligations on Clarion as regards the structure and exterior, installations for the supply of water, gas, electricity, sanitation, space heating and water heating, which form part of a part of the building.

30. In view of the fact that such obligations are contained in the tenancies and arise implicitly under the 1985 Act, it is argued that Clarion's tenants and lessees are entitled to regard Clarion as owing to them a repairing obligation in respect of common parts of the building and accordingly to take action to ensure performance of that obligation.

31. It should be noted that although it was initially contended that Clarion was an accountable person in relation to both the Shared Ownership Flats and the Social Rented Flats, by the time of the hearing, the RTM Company's position had been modified and it was accepted that Clarion

was not an accountable person in respect of the Shared Ownership Flats by virtue of the effect of the provisions of the Commonhold and Leasehold Act 2002 (the "2002 Act") as a result of the acquisition of the right to manage by the RTM Company as further set out below

32. On the RTM Company's case, Clarion is and remains an accountable person for the portion of the Service Installations or Utility Service Infrastructure which route throughout the Building to the seventeen Social Rented Flats. In practice this is the portion within 29 Pocock Street, SE1 0FU and the basement of 171 Blackfriars Road, SE1 8ER. It is also said to be accountable for the seventeen Social Rented Flats themselves, excluding the balconies.

33. As regards the tenancies of the Social Rented Flats tenancies, on Clarion's case, it was suggested that obligation to repair common parts arose in any event. The relevant provision of the leases of the Social Rented Flats, clause 5(2) provides as follows:

> "*We agree to repair and maintain the structure of your home including any shared parts of the building which your home is a part of; any outside shared areas we own; or any outhouses we have provided. We retain the right to remove, without replacement, any outhouses or structures if they become unsafe*".

34. Mr Cohen submitted that as a matter of construction, the words "*we own*" in the above clause is referrable to the words "*shared parts*". Were it to be otherwise then Clarion would be covenanting with the lessee in question to repair the structure of a building: (i) over which it has no rights at all; and (ii) in respect of which the Manager / RTM Company is liable to repair. So far as repairing covenants are concerned, it was submitted that there is a general presumption against an intention to create overlapping obligations, i.e. obligations on both parties to do the same work to the same part of the building (*Petersson v Pitt Place Ltd* (2001) 82 P. & C.R. 21).

35. While the presumption against overlapping covenants is noted, the clause must nevertheless be construed on its own terms having regard to established principles of contractual interpretation. Were a landlord

such as Clarion to covenant to repair the structure of a building over which it has no rights of access, it might leave itself open to a claim for breach of contract as between it and its tenant, but that of itself is not a reason to artificially construe a clause to mean something which it does not say. It is also true that in the present case that Clarion has the *right* (if not *obligation*) under its headlease to carry out certain repairs to common parts of the Building, in particular 'Service Installations', which as defined at paragraph 1.39 includes apparatus for the supply of gas and electricity.

36. In the present case, the construction of clause 5.2 of the Social Rented Flats tenancies argued for by Clarion would require rewriting the clause in question. The words 'we own' in clause 5.2 arise in the context of the words 'outside shared areas we own'. The preceding semi-colon separates this from 'shared parts of the building', which are not, on the simple reading of the clause, limited to parts owned by Clarion. In other words, it cannot as a matter of construction be said that reference to 'shared parts of the Building' is limited to parts demised to Clarion.

37. In the circumstances, and subject to what follows, it would appear that clause 5(2) of the leases of the Social Rented Flats does on its face appear to fall within section 72(6) of the BSA insofar as it is an obligation 'under a lease'.

38. Alternatively, Mr Cohen contended that service installations do not properly fall within section 72(6) of the BSA on the basis that they are not 'part of the building' and therefore do not fall within the definition of 'common parts'. As noted above, section 72(6) defines common parts as being:

> "*… any part of the building provided for the use, benefit* ***and*** *enjoyment of the residents of more than one residential unit*". (emphasis added)

39. On Clarion's case, service installations are not a "*part of the building for the use, benefit and enjoyment of the residents*". In Mr Cohen's submission, a resident does not "enjoy" a service installation. Further, the focus and purpose of s.72(6)(b) is the spatial extent of the interiors

of the building; i.e. an interior hallway, lobby or communal bin area which is not otherwise part of the "*structure and exterior*" (being the focus of s.72(6)(a)). It was submitted that such an interpretation is consistent with regulation 4 of the Higher-Risk Buildings (Descriptions and Supplementary Provisions) Regulations 2023, which defines building principally by reference to "*structure*". It was said that if the RTM Company's position were correct then every intercom system in a building would require an accountable person – and that given the extent of information required by the Higher-Risk Buildings (Key Building Information etc.) (England) Regulations 2023 (i.e. type of use, material, insulation to external wall, roofing material, external walls, storeys and staircases etc), this cannot be correct. Mr Cohen also noted that, although not binding, examples of "*common parts used by residents*" given by the Health and Safety Executive are limited to "*the structure and exterior of the building; corridors; lobbies; staircases*".

40. For reasons given below, it was not necessary to decide this question as it is determined that Clarion is not an accountable person be virtue of the consequences of the acquisition of the right to manage. However, were this not the case, I would on balance have preferred the submissions of the RTM Company. Given that section 72(6) of the BSA distinguishes between 'the structure and exterior of the building' (s.72(6)(a)) and 'any part of the building provided for the use, benefit and enjoyment of the residents' (s.72(6)(b)), it would seem doubtful that so narrow a definition of 'part of the building', limited essentially to corridors, staircases and lobbies, as Clarion argues for, would be correct. As such, it is not clear why, as a matter of ordinary language, service installations could not be said to be 'part of the building'. Similarly, as to whether service installations are for the 'use, benefit and enjoyment' of residents, again it is difficult to see why this is not the case. Certainly, service installations are for the use and benefit of residents. While it might be argued that residents 'enjoy' the *product* of those service installations as opposed to the service installations themselves, this would seem to be an unnecessarily restrictive

interpretation and as such it is difficult to see why they do not fall within the statutory definition.

41. It is true that from a practical perspective, if the RTM Company's interpretation is correct, it would leave Clarion as potentially an accountable person for a very limited part of Globe View House, but this is not of itself a reason to find that a person is not an accountable person if this is the limit of their repairing obligations of common parts under a lease.

42. It was also said that this result could lead to some confusion as to the extent of parties' responsibilities with regard to fire safety – and in turn gave rise to the submission that there could only be one accountable person for any particular part of a higher risk building. In support of this proposition, Mr Cohen relied on the provisions of the Higher-Risk Buildings (Key Building Information etc.) (England) Regulations 2023. Regulation 27 provides that if a higher-risk building has more than one accountable person, the parts of the building for which an accountable person is responsible is determined by reference to regulations 28 to 30. However, there is nothing in those regulations which stipulates that there can only be one accountable person for a particular part of the building. There is also nothing in the BSA itself which expressly provides as much.

43. Further, there is no equivalent provision to section 75(2)of the BSA in relation to the determination of a principal accountable person. Section 75(2) provides that where there is more than one accountable person who holds a legal estate in possession in the relevant parts of the structure and exterior of the building or who is under a relevant repairing obligation in relation to the relevant parts of the structure and exterior of the building, the principal accountable person is such one of those accountable persons as the tribunal considers appropriate. In other words, there is nothing in the BSA to resolve the position where there is potentially more than one accountable person for a particular part of a building. As such, notwithstanding the argument that there is the risk of overlapping obligations where more than one

accountable person is under repairing obligations for, or has a legal interest in, a particular part of a higher risk building, this does not appear, of itself to suggest that a person should not be held to be an accountable person for that part of the building where they otherwise fall within the statutory definition.

44. Turning to the arguments in relation to the effect of section 11 of the Landlord and Tenant Act 1985, the relevant provisions of the statute are as follows:

> "(1) *In a lease to which this section applies … there is implied a covenant by the lessor—(a) to keep in repair the structure and exterior of the dwelling-house (including drains, gutters and external pipes), (b) to keep in repair and proper working order the installations in the dwelling-house for the supply of water, gas and electricity and for sanitation (including basins, sinks, baths and sanitary conveniences, but not other fixtures, fittings and appliances for making use of the supply of water, gas or electricity), and (c) to keep in repair and proper working order the installations in the dwelling-house for space heating and heating water.*
>
> (1A) *If a lease to which this section applies is a lease of a dwelling-house which forms part only of a building, then, subject to subsection (1B), the covenant implied by subsection (1) shall have effect as if— (a) the reference in paragraph (a) of that subsection to the dwelling-house included a reference to any part of the building in which the lessor has an estate or interest; and (b) any reference in paragraphs (b) and (c) of that subsection to an installation in the dwelling-house included a reference to an installation which, directly or indirectly, serves the dwelling-house and which either—(i) forms part of any part of a building in which the lessor has an estate or interest; or (ii) is owned by the lessor or under his control."*

45. Section 16 of the Landlord and Tenant Act 1985 provides: *"(b) "lease of a dwelling-house" means a lease by which a building or part of a building is let wholly or mainly as a private residence, and "dwelling-house" means that building or part of a building*".

46. In Mr Cohen's submission, the upshot of the above is that where s.11 applies, the lease in question includes an implied covenant on the lessor to keep in repair installations which directly or indirectly serve the flat and which either form part of the building in which the lessor has an estate or interest or is owned or controlled by the lessor. The argument put by the RTM Company is that Clarion has an "interest" in the common parts because it has "*rights of repair in respect of certain common parts of the Building, in particular 'Service Installations'*".

However, Clarion's argument that this is unsustainable must be correct: Clarion's right to maintain service installations which serve the flats at Globe View House does not mean Clarion has an "*interest*" in that part of the building. For the RTM Company to be correct on this point it would need to show that Clarion has an "*interest*" in those parts of the building in which the service installations are situated. However, there is nothing in the leases to substantiate such a claim.

47. Further, even if the covenants implied by s.11 of the 1985 Act could be construed as obliging Clarion to repair service installations over which it has a right to repair in the headlease, this does not, in Clarion's submission, assist the RTM Company's argument because that obligation is not an obligation to repair service installations which are for the use of more than one residential unit; rather, it is an obligation to repair only service installations at Globe View House which exclusively serve the flat in question.

48. I agree with Clarion's analysis and do not find that section 11 of the Landlord and Tenant Act 1985 assists in determining whether Clarion is under a relevant repairing obligation for the purposes of section 72 of the BSA. However, in view of the findings as to the interpretation of clause 5(2) of the leases of the Social Rented Flats and insofar as it is at least arguable that the service installations are 'part of the building' and fall within section 72(6)(b) of the BSA, it becomes necessary to consider the impact of the acquisition of the right to manage on who is an accountable person.

Does the existence of right to manage impact on whether clarion is an accountable person?

49. Clarion's case is that even if it was under a relevant repairing obligation in respect of the common parts, such management functions became the responsibility of the RTM Company following the acquisition of the right to manage. As noted above, it is not disputed that management

functions in respect of the Shared Ownership Flats have transferred to the RTM Company.

50. So far as is material, section 96 of the CLRA 2002 provides as follows:

> "*(2) Management functions which a person who is landlord under a lease of the whole or any part of the premises has under the lease are instead functions of the RTM company.*
> *(4) Accordingly, any provisions of the lease making provision about the relationship of— (a) a person who is landlord under the lease, and (b) a person who is party to the lease otherwise than as landlord or tenant, in relation to such functions do not have effect.*
> *(5) "Management functions" are functions with respect to services, repairs, maintenance, improvements, insurance and management.*
> *(6) But this section does not apply in relation to— (a) functions with respect to a matter concerning only a part of the premises consisting of a flat or other unit not held under a lease by a qualifying tenant, or (b) functions relating to re-entry or forfeiture.*"

51. Section 97(2) CLRA 2002 provides:

> "*(2) A person who 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 1987 Act to act in relation to the premises, or any premises containing or contained in the premises, is not entitled to do anything which the RTM company is required or empowered to do under the lease by virtue of section 96, except in accordance with an agreement made by him and the RTM company.*"

52. In other words, S. 96 and 97 CLRA 2002 provide that all repairing and maintenance functions in leases become those of the RTM Company. The only exception to this is section 96(6) CLRA 2002, which provides that functions with respect to a matter concerning only a part of the premises of a flat or other unit not held under a lease by a qualifying tenant do not pass.

53. So far as the present application is concerned, the issue relates to the wording of section 96(6)(a) CLRA 2002, which specifies that functions "*with respect to a matter concerning only a part of the premises consisting of a flat or other unit not held under a lease by a qualifying tenant*" are not transferred. It is said by the RTM Company that a distinction can be drawn in respect of aspects of the common parts, and therefore conceptually it is possible to subdivide management functions and obligations in respect of these, for example (a) the structure and

exterior of the building, (b) the internal shared areas for accessing or servicing flats, and (c) the individual flat itself. Thus, it is submitted, it is possible for management functions in respect of (a) to transfer, but not (b) or (c).

54. It is the RTM Company's case that 29 Pocock Street, which although part of Globe View House, has a separate entrance, lift and stair core as well as utility service infrastructure, is 'part of the premises consisting of flats not held under leases by qualifying tenants'. The RTM Company's view is that management functions and obligations in respect of these flats or the internal shared areas/common parts serving them (case (b) above) have not transferred to the RTM Company. Neither the shared ownership leases nor the assured non-shorthold tenancy agreements specify a third-party manager, and whilst management functions have transferred in their entirety in respect of the Shared Ownership Flats because they are qualifying leases, the RTM Company has acquired those management functions from the landlord, not a third-party manager. It is contended that Clarion must retain management functions in respect of the obligations Clarion has covenanted to perform under the leases of the Social Rented Flats.

55. Although section 96(6) of CLRA 2002 refers to the terms 'flat' and 'unit' in the singular, it was submitted that this can be cured by reference to section 6(c) of the Interpretation Act 1978, which provides that unless the contrary intention appears, words in the singular include the plural. In other words, it is suggested that section 96(6) can be treated as applying to "*parts of the premises consisting of flat**s*** *or unit**s*** *not held under a lease by a qualifying tenant*" which it says includes 29 Pocock Street as a whole.

56. The above analysis is disputed by Clarion. According to Clarion, the RTM Company's argument is that because the Social Rented Flats are accessed through a separate entrance at 29 Pocock Street, s.96(6) can be directed at 29 Pocock Street rather than the flats within it. In Mr Cohen's submission, the words of 96(6) CLRA 2002 exclude from the

statutory scheme repairing and maintenance obligations which only concern a demise which is not held by a qualifying tenant. Mr Cohen submitted that section 96(6) CLRA 2002 does not apply in a case such as the present. Instead, he gave an example of where it would apply as being a case of a mixed use building where a landlord demised part of the ground floor (non-residential) premises under a headlease and the headlessee in turn grants four commercial underleases. In that case, the repairing obligations in those underleases would not be owed to everyone else in the building but only to the commercial units, and so would not transfer.

57. In support of this submission, he made reference to the County Court decision *Clerkenwell Green Consulting v (1) St Paul's Square RTM Company (2) Abacus Land 1 (Holdco 1) Limited* (HHJ Backhouse – 08.02.21) at paragraphs 113 – 119, which although not binding on this tribunal, is nevertheless instructive. That decision also stresses that the notion of having dual responsibility for repairs would be contrary to the purpose of the right to manage scheme.

> "113. … the starting point is that all the repairing obligations under the Lease which are functions of the landlord are now functions of D1.
>
> 114. The dispute between D1 and D2 is whether the position in this case is altered by s96(6)(a). In paragraph 7 of the Defence, D1 pleads 'It is denied that "the Covenants" as defined in paragraph 4 of the Particulars of Claim are obligations which have been transferred to [D1] under the [2002 Act]. Management functions do not transfer where they are excluded under s96(6)(a) of the 2002 Act where there are functions with respect to a matter concerning only a part of the premises consisting of a flat or other unit not held under a lease by a qualifying tenant….[D1] avers that all or part of the allegations in the Particulars of Claim concern functions with respect to a matter concerning only the Premises.
>
> 115. In her skeleton argument, Ms Betts suggested that 'concerning' in s96(6)(a) should be interpreted as 'of benefit to'. In her oral submissions, she said it was not an issue of 'benefit' but of the 'impact' or otherwise on the residential tenants of the functions in questions. In this case there is no structural issue affecting the residential tenants. The purpose of the Act is to give the residential tenants control over the management functions which affect them, without burdening them with functions relating to commercial tenants in a mixed-use development such as this. She concluded by saying that 'concerning' means 'pertaining or relating to'. In this case the repairs relate only to the Premises which are the only part affected.
>
> 116. Mr Allison submitted that D1's stance on this issue is unarguable. He says that 'matter' must refer to a particular management function within the transferred covenants i.e. 'the right or obligation in issue'. The management

function which C relies on is an obligation to keep the common parts of the Building in repair, an obligation owed to all the lessees, whether residential or commercial. It is therefore an obligation that concerns all parts of the Building and not just the Premises.

117. To follow D1's argument would mean that the landlord would be obliged to repair in certain circumstances and the RTM in others, leading to dual management which is contrary to the scheme of the Act and requiring the landlord to breach s97(2). He illustrates the point by the example of a leaking roof affecting only one flat in a block where the flat is not owned by a Qualifying Tenant. On D1's argument, the landlord would be obliged to remedy the leak, whereas if the flat were owned by a Qualifying Tenant, the obligation would fall on D1. Turning to this case, if D1 is correct, D1 is not liable if only the Premises suffers water ingress, whereas it would be liable if the disrepair also caused e.g. rising damp in just one residential flat.

118. Ms Betts asked rhetorically that if D2 is correct, when would s96(6)(a) apply? Mr Allison's answer is that the section is directed at the position (a relatively common one) where, for instance, the landlord lets the commercial parts of a development on short term leases with an obligation on the landlord to also maintain the demised parts (or internal commercial only common parts) or to provide security staff - often subject to a service charge contribution by the commercial tenants. In that instance, the effect of s.96(6)(a) is that management of those areas remains with the landlord.

119. In my judgment, Mr Allison's analysis is correct and I find that the repairing obligations in this case have transferred to D1."

58. With regard to the RTM Company's argument in relation to the Interpretation Act, it is said that although section 6 establishes that the singular includes the plural unless the contrary intention appears, in the present case the contrary intention *does* appear: the use of the singular with reference to "a flat or other unit" in section 96(6) CLRA 2002 signifies that the repairing obligation (i.e. the "function") has to be engaged "only" with respect to the singular unit in question. It cannot apply to 29 Pocock Street as a whole.

59. Further, it is said that the RTM Company's analysis is incorrect in any event. Clarion is not the landlord of, nor does it have repairing obligations in respect of, 29 Pocock Street. The fact that the units for which it has a leasehold interest are located there does not advance matters.

60. More fundamentally, Mr Cohen stressed that the subject of s.96(6) of CLRA 2002 are repairing obligations which are relevant only to units held by non-qualifying leaseholders (such as in the case of the example

given in paragraph 56 above). The obligation to repair the common parts of 29 Pocock Street is not exclusive to Clarion's leasehold interest but is owed *in common to all lessees in the Building*. That being so the effect of s.96(6) is that the RTM Company is not liable to repair the assured tenancy units themselves by reason of s.96(6), but it remains liable to repair the common parts by reason of s.96 and s.97 CLRA 2002.

61. Having considered the parties' submissions, I prefer Clarion's analysis as set out above for the reasons Clarion has given. In particular, as we are concerned with repairing obligations in respect of common parts, it is difficult to see why such obligations did not transfer upon acquisition of the right to manage:

    (1) The obligation on the Manager under the headlease and private leases includes keeping in repair the common parts of Globe View House. This includes both 27 and 29 Pocock Street. As such, by the headlease (and private leases), the Manager covenanted to keep those parts in repair. Consequently, the obligation to keep in repair the common parts of 29 Pocock Street, as they are management functions under the private leases, has passed to the RTM Company.

    (2) The reference to "part of the premises consisting of flats not held under leases by qualifying tenants" in section 96(6) CLRA 2002, is to those parts let under those leases; the common parts between the Social Rented Flats are not let under such leases. 29 Pocock Street has not, as a whole, been let to Clarion – only flats within it.

    (3) It is accepted that if the management function relates to parts exclusively serving a (non-qualifying) flat or unit, then those functions do not pass – although a service installation that exclusively serves a flat or unit not held by a qualifying tenant is not a common part and not caught by section 72 of the BSA in any event.

In the circumstances, consistent with the analysis in the *Abacus Land* case referred to above, it is not accepted that section 96(6) CLRA 2002 is applicable: those functions for which there is only an obligation under the non-qualifying leases are retained. The functions in respect of the common parts of 29 Pocock Street are not functions provided only to the Social Housing Flats; per the private leases, the Manager covenanted with the private leaseholders to keep those parts in repair. It is therefore a management function which has passed to the RTM Company. As noted above, the effect of s.96(6) CLRA 2002 is that the RTM Company is not liable to repair the assured tenancy units themselves by reason of s.96(6), but it is liable to repair the common parts by reason of s.96 and s.97 CLRA 2002.

62. Accordingly, it is not accepted that Clarion remains under a relevant repairing obligation in respect of any part of the common parts.

63. At the hearing, Mr Harrison made the point that the BSA does not stipulate how its provisions interact with the right to manage provisions contained within the 2002 Act. Nevertheless, the two can nevertheless be read together consistently in the present context. Section 72 of the BSA is concerned with relevant (i.e. extant) repairing obligations. Section 96 of the 2002 Act provides that following the acquisition of the right to manage, such obligations would be transferred to the RTM company, save for the exception in section 96(6). In light of the above finding with regard to the transfer of management functions, Clarion does not fall within section 72 of the BSA.

Conclusion

64. For the reasons set out above, it is determined that Clarion is not an accountable person in respect of Globe View House.

Name: Judge Sheftel **Date:** 28 July 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. The application should be made on Form RP PTA available at https://www.gov.uk/government/publications/form-rp-pta-application-for-permission-to-appeal-a-decision-to-the-upper-tribunal-lands-chamber

The application for permission to appeal must arrive at the Regional Office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

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