FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	HAV/24UJ/LRM/2025/0606
Property	:	Milton Manor, 43 Manor Road, New Milton, BH25 5WT
Applicant	:	Milton Manor RTM Company Ltd
Representative	:	The Leasehold Advice Centre
Respondent	:	AM Surveying Property Services Ltd
Representative	:	
Type of Application	:	Commonhold and Leasehold Reform Act 2002 (Right to Manage)
Tribunal Member	:	Judge Mark Loveday Mr Chris Skinner Mr David Cotterell FRICS
Date and venue of hearing	:	3 October 2025 (paper determination)
Date of Decision	:	8 October 2025

DETERMINATION

Introduction

1. The applicant RTM company seeks a declaration under s.84(3) of the Commonhold and Leasehold Reform Act 2002 ("the Act") that it is entitled to acquire the right to manage. For the reasons given below, the tribunal finds that the applicant is entitled to acquire the right to manage.

Background

2. The matter relates to premises at Milton Manor, 43 Manor Road, New Milton, BH25 5WT, which it is accepted were qualifying premises under s.72 of the Act. It is unnecessary to describe the premises for the purposes of this application, save to say that they comprise a large, detached house converted into 8 flats. The respondent is the freehold owner of Milton Manor and the landlord for the purposes of s.79(6) of the Act.

3. The applicant was incorporated for the purposes of acquiring the right to manage the premises on 14 November 2024 (Co. No.16079855). A copy of its articles in prescribed form was provided to the tribunal.

4. On 4 December 2024, the applicant gave certain qualifying tenants (Flats 2, 3, 7 and 12) Notices Inviting Participation under s.78 of the Act, and there is no dispute about the validity of these.

5. On 20 January 2025, the applicant gave two s.79 Notices of Claim, and this is the "relevant date" for the purposes of the Act. These were addressed to Christina Joyce Cassady and AM Surveying Property Services Ltd. On 21 February 2025, the respondent gave a counternotice disputing the right to manage on various grounds.

6. The applicant applied to the tribunal for the appropriate declaration on 31 March 2025. Directions were given on 24 June 2025, and the parties each served statements of case. The matter was listed for a determination on the papers without a hearing under rule 31 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. The tribunal is grateful to both parties for their succinct and helpful submissions.

7. The applicant provided copies of the certificate of incorporation, articles of association, share register, claim notice, notices inviting participation and certificates of posting. By the time of its statement of case dated 5 August 2025, the respondent's objections were limited to three grounds of opposition.

The Law: s.79 of the Act

8. The material requirement for a claim notice is at s.79 of the Act:

"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 notice of the claim is given.

(2) The claim notice may not be given unless each person required to be given a notice of invitation to participate has been given such a notice at least 14 days before.

(3) The claim notice must be given by a RTM company which complies with subsection (4) or (5).

(4) If on the relevant date there are only two qualifying tenants of flats contained in the premises, both must be members of the RTM company.

(5) In any other case, the membership of the RTM company must on the relevant date include a number of qualifying tenants of flats contained in the premises which is not less than one-half of the total number of flats so contained.

(6) The claim notice must be given to each person who on the relevant date is—

(a) landlord under a lease of the whole or any part of the premises,

(b) party to such a lease otherwise than as landlord or tenant, or

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

(7) Subsection (6) does not require the claim notice to be given to a person who cannot be found or whose identity cannot be ascertained; but if this

subsection means that the claim notice is not required to be given to anyone at all, section 85 applies.

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

(9) 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.

Ground 1: Claim notice served on multiple freeholders

9. The material facts are not in dispute. Prior to 9 April 2024, the registered freehold proprietor was Christina Joyce Cassady. On that date, it appears the freehold was assigned to the respondent, and an application was made to register title. However, Ms Cassady remained the registered owner during what is commonly known as the 'registration gap'. It appears she was the registered proprietor on the date of the notices of claim. Since the applicant was aware of the purported sale, on 20 January 2025 it therefore took the precaution of serving a claim notice by post on:

(1) Ms Cassady, who was referred to as '"The Landlord", being the current legal owner and registered proprietor of the freehold interest who is registered as such as the Land Registry under Freehold title HP206656)"; and

(2) The respondent, who was referred to as '"the Pending / New Landlord" – to whom it is understood that the Freehold has been sold, the said sale being a registrable disposition that is pending completion by registration at the Land Registry"

Under the landlord's details, the claim notice included the following words:

> "**NOTE** – The registered landlord is currently, CHRISTINA JOYCE CASSADY, though, AM Surveying Property Services Limited may at anytime, upon registration of the disposition to it, and relating back to the date of its application to the Land Registry to register the disposition & at that time become the landlord. "Landlord" for the purposes of this notice is to be construed accordingly."

10. In its statement of case, the respondent's first ground of opposition was that under s.79(6) of the Act, a valid a claim notice must be given to each person who on the relevant date is a landlord under the lease. It contended that serving a claim notice on two entities invalidated the claim notice.

11. The applicant contended that it served on two landlords because of the 'registration gap'. It cited various previous decisions of the tribunal where landlords assigned their reversions, but that the Land Registry did not register the transfer until after a Claim Notice was given. But it argued that serving the Claim Notice on both parties cannot invalidate it.

The tribunal's decision

12. In this case, the Act does not spell out the consequence of not properly serving a Claim Notice. In reaching its decision, the tribunal must therefore apply the re-formulated test for compliance with statutory requirements set out in *A1 Properties (Sunderland) Ltd v Tudor Studios RTM Co* [2024] UKSC 27; [2024] 3 WLR 601.

13. It was common ground that the effect of completion of registration by the Land Registry was that the respondent's new title related back to the date of the application for registration. The parties did not mention the specific statutory provision involved, although it seems they intended to refer to s.27 Land Registration Act 2002.

14. The effect of the registration gap is topical in the area of Right to Manage legislation: see, for example, *Avon Freeholds Ltd v Cresta Court E RTM Co Ltd* [2025] EWCA Civ 1016, which is subject to an outstanding application for permission to appeal to the Supreme Court. However, on the facts of this case, there is no doubt that the a claim notice was in fact "given" to the "landlord" as required by s.79(6)(a). It matters not whether the freehold title remained with Ms Cassady on 20 January 2025 or whether by that date the doctrine of relation back had been engaged. In either case, the a claim notice was given to the correct landlord. It is of course true that the a claim notice was therefore additionally served on someone who was <u>not</u> a landlord. But no authority was put forward to support the proposition that this somehow rendered proper

service on the correct landlord under s.79(6)(a) ineffective. The tribunal rejects this contention.

15. It seems the respondent's real complaint is that the notice was ambiguous, because it named two landlords rather than one. However, the tribunal notes there is no strict requirement in s.79 or s.80 of the Act for the a claim notice to name the landlord at all. But even if there were such a requirement, the tribunal applies the test in *Mannai Investment Co v Eagle Star Life Assurance Co* [1997] AC 749. The notice in this case was not ambiguous to the reasonable recipient. The description of each landlord and the note which followed made it abundantly clear that the s.79(6) "landlord" might be one of two persons, depending on the position with registration of the freehold. The tribunal finds the formula adopted in this case was an effective means of avoiding the risks posed by the registration gap. It therefore rejects the first ground of opposition advanced by the respondent.

Ground 2: Insufficient number of members

16. Given there were 8 flats in the premises, the threshold requirement in s.79(5) of the Act was 4 qualifying tenants.

17. The second ground advanced by the respondent was that there were an insufficient number of members on 20 January 2025. It stated that it had required details of board decisions to establish whether "non-subscribing members" had been properly admitted, but that it had received no information about this.

18. The applicant produced a copy of the register of members, which showed that there were four initial subscribers, namely ATC Estates Ltd (Flat 4), Istvan and Timea Menesi (Flat 5), Jason and Sara-Jane Cottrell (Flat 6) and John and Karen Hoar (Flat 8). Ms Pamela Jefferies (Flat 1) later became a member of the applicant company. It argued this was sufficient. There is no suggestion any of these were not "qualifying" tenants for the purposes of the Act.

19. The respondent argued that there was no requirement for it to provide proof the any of the members were properly admitted to membership, but that in any event the Register of Members supplied was sufficient to show the above-named persons were members.

20. The outcome of this issue depends on several provisions of the Companies Act 2006 ("the 2006 Act"). Section 112 of the 2006 Act provides for the membership 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.

21. Section 127 provides as follows:

> "(1) The register of members is prima facie evidence of any matters which are by this Act directed or authorised to be inserted in it, except for any matters of which the central register is prima facie evidence by virtue of section 128H subsection (2).

22. Membership is in turn covered by s.74 of the 2006 Act and the model articles for RTM companies set out in the RTM Companies (Model Articles) (England) Regs 2009. The material provisions of the model articles are as follows:

> "**Becoming a member**
>
> 26.—(1) Every person who is entitled to be, and who wishes to become, a member of the company shall deliver to the company an application for membership executed by him in the following form (or in a form as near to the following form as circumstances allow or in any other form which is usual or which the directors may approve):
>
> > To the Board of [name of company] I, [name] of [address] am a qualifying tenant of [address of flat] and wish to become a member of [name of company] subject to the provisions of the Articles of

Association of the company and to any rules made under those Articles. I agree to pay the company an amount of up to £1 if the company is wound up while I am a member or for up to 12 months after I have ceased to become a member. Signed Dated

(2) No person shall be admitted to membership of the company unless that person, whether alone or jointly with others, is—

(a) a qualifying tenant of a flat contained in the Premises as specified in section 75 of the 2002 Act; or

(b) from the date upon which the company acquires the right to manage the Premises pursuant to the 2002 Act, a landlord under a lease of the whole or any part of the Premises.

(3) Membership of the company shall not be transferable.

(4) A person who, together with another or others, is to be regarded as jointly being the qualifying tenant of a flat, or as jointly constituting the landlord under a lease of the whole or any part of the Premises, shall, once admitted, be regarded as jointly being a member of the company in respect of that flat or lease (as the case may be).

(5) Applications for membership by persons who are to be regarded as jointly being the qualifying tenant of a flat, or who jointly constitute the landlord under a lease of the whole or any part of the Premises, shall state the names and addresses of all others who are jointly interested with them, and the order in which they wish to appear on the register of members in respect of such flat or lease (as the case may be.)

(6) The directors shall, upon being satisfied as to a person's application and entitlement to membership, register such person as a member of the company."

The Tribunal decision

23. The effect of section 127 was explained in *Bland v Keegan* [2024] EWCA 934 at [58]. The entries on a register of members "are presumptively valid and the members of a company are taken to be those shown on the register 'unless and until the register is rectified'." Although it is wrong to say (as is sometimes suggested) that the register is conclusive of membership, it is correct to say that it is conclusive of membership until such time as it is rectified. This Tribunal

has no power to rectify the register, and it is bound by it. But even if it were possible to displace the statutory presumption, the burden of doing so lies on the respondent to establish that a person was not a member because of a breach of article 26 of the model articles. The respondent has sought evidence of board resolutions from the applicant, but apart from this, it has not produced any evidence of its own. The Tribunal therefore concludes the above-named tenants were members of the company on January 2025.

24. Even if the Tribunal was wrong about this, the register suggests four of the members were subscribers. They were therefore deemed to be members of the company under s.112(1) of the Companies Act 2002. They do not need to be approved by the board as members under art.26 of the model articles. Four is a sufficient number to meet the threshold in s.79(5) of the Act.

25. It follows that the second ground of opposition also fails.

Ground 3: Wrong articles

26. The third argument raises a seemingly novel point. The model articles for the RTM company are in the form required by the RTM Companies (Model Articles) (England) Regs 2009. However, these regulations were amended by the RTM Companies (Model Articles) (England) (Amendment) Regulations 2025 on 6 February 2025, which came into force on 3 March 2025. But in essence, they made textual amendments to art.1 and 33 of the model articles. By virtue of regulation 2(2) of the 2009 Regulations, the amendments have effect for a RTM company "whether or not they are adopted by the company".

27. The respondent argues that s.73 of the Act provides the legal framework for legal constitutions of RTM Companies. This provision makes it mandatory for Right to Manage Companies to adopt articles of association in prescribed formats. As a result, by the proposed date of acquisition the articles will not meet the requirements of the model articles regulations. The respondent contends that the Company should have taken this into account when incorporating the company.

28. The applicant argued that the Company was formed significantly prior to the amendment to the prescribed Articles, and it further relied on para of 2(2) of the 2009 regulations.

The tribunal's decision

29. The tribunal again applies the re-formulated test for compliance set out in *Tudor Studios*.

30. The tribunal considers the respondent's argument is misconceived for various reasons. Firstly, s.79(4) of the Act permits provision to be made in relation to an RTM Company's articles "which is to have effect for an RTM Company whether or not it is adopted by the Company". The 2009 regulations take up this option, and by reg.2(2) they state that the model articles apply, "whether or not they are adopted the company": see reg.2(2) of the 2009 regulations. The statutory form of model articles for RTM companies take effect in all cases. It cannot therefore be said that Parliament intended that an RTM company's failure to adopt any particular form of articles should be fatal to the right to acquire the right to manage. Secondly, for the same reason, the effect of the new regulations was to amend the existing articles for the applicant company[1]. There was therefore no failure to comply. Thirdly, Parliament expressly provided for the consequences of the adoption of non-compliant articles in s.74(5), namely that any articles to the contrary are of "no effect". Again, that is inconsistent with any statutory intention to treat the adoption of non-compliant articles as fatal to the right to manage. Fourthly, the amendments to the model articles took effect on 3 March 2025, which was after the date of the claim notice on 20 January 2025. The tribunal is only concerned with the issue whether the applicant had the right to manage on the "relevant date", which means the date of the claim notice. The respondent is therefore wrong to focus on the date of acquisition of the right to manage. For the purposes of s.84(3) of the Act, validity is tested at the date of the claim notice.

[1] Indeed, it should be noted that the explanatory notes to the 2025 regulations expressly state that "By virtue of regulation 2(2) of the 2009 Regulations, the amendments have effect for a RTM company whether or not they are adopted by the company".

Conclusions

31. The tribunal therefore finds under s.84(3) of the Act that the applicant was entitled to acquire the right to manage the premises at Milton Manor, 43 Manor Road, New Milton, BH25 5WT.

Judge Mark Loveday

8 October 2025

Appeals

1 A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

2 The application must arrive at the tribunal within 28 days after the tribunal sends to the person making the application written reasons for the decision.

3 If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4 The application for permission to appeal must identify the decision of the tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.