



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

Case reference	:	LON/00 AH/LRM/2026/0010
Property	:	17 and 17A Whitworth Road London SE25 6XN
Applicants	:	17 Whitworth Road RTM Company Limited
Representative	:	RTMF Services Ltd
Respondent	:	Sterling Rose Freeholds Limited
Representative	:	Sterling Estates Management Limited
Type of application	:	Application in relation to the denial of the Right to Manage under s.84(3) of the Commonhold and Leasehold Reform Act 2002
Tribunal members	:	Mr A Parkinson MRICS
Venue	:	10 Alfred Place, London WC1E 7LR
Date of decision	:	17 June 2026

DECISION

Decisions of the tribunal

- (1) The Tribunal determines that the Applicant complied with the statutory requirement to issue a copy of the Claim Notice to each person who on the relevant date was a qualifying tenant of a flat in the premises as required by section 79(8) of the Commonhold and Leasehold Reform Act 2002 (“the 2002 Act”).
- (2) The Tribunal determines that the Applicant was entitled to acquire the Right to Manage the premises known as 17 and 17A Whitworth Road, London SE25 6XN on the relevant date within the meaning of section 84(3) of the 2002 Act.
- (3) The Tribunal makes no order as to costs.

Background

1. Unless stated otherwise page references in this decisions relate to the 106 page bundle that is before the Tribunal.
2. In an application (Page 32) dated 22 January 2026, the Applicant made an application under section 84(3) of the 2002 Act for a decision that, on the relevant date, the Applicant RTM company was entitled to acquire the Right to Manage in relation to premises known as 17 and 17A Whitworth Road London SE25 6XN (“the premises”).
3. The premises is a self-contained building or part of a building consisting one block containing seven self-contained apartments held on long residential leases.
4. By a Claim Notice dated 12 November 2025 the Applicant gave notice to the Respondent that it intended to acquire the Right To Manage the Premises on 26 March 2026. The 12 November Claim Notice is not included in the tribunal bundle which does contain the previous withdrawn Claim Notice dated 17 September 2025. It is assumed that this is an administrative error on the part of the Applicant. In any case the Tribunal has a copy of the 12 November Claim Notice which was submitted along with the application by the Applicant.
5. By a Counter Notice (Page 31) dated 18 December 2025 the Respondent disputed the claim stating that the Applicant was not entitled to acquire the right to manage the premises specified in the claim notice. The reason specified in paragraph 1 of the Counter Notice is as follows:
 - *I allege that by reason of a failure to properly abide by the requirements of Section 79(8) insofar as no evidence is provided that a copy of the claim notice has been given to each person who on the*

relevant date is the qualifying tenant of a flat contained in the premises

Of Chapter 1 of Part 2 of the Commonhold and Leasehold Reform Act 2002, on 12th November 2025 17 Whitworth Road RTM Company Limited (“the company”) was not entitled to acquire the right to manage the premises specified in the claim notice.

6. The Applicant stated in their application that:
 - *The Applicant seeks to acquire the Right To Manage the Premises. The Respondent alleges that the claim notice was not duly delivered to all qualifying tenants. The Applicant offered the Respondent to withdraw the counternotice on the basis that it can clearly disprove the Respondent’s argument outside of the Tribunal and a determination is not necessary. However nothing was heard from the Respondent and the Applicant is progressing with its intention to acquire the right to manage.*
7. The Tribunal issued Directions (Page 47) on 27 February 2026 which identified that the issue to be decided by the Tribunal is whether on the date on which the notice of claim was given, the Applicant was entitled to acquire the Right to Manage the Premises.
8. It was directed that the matter could be determined on the papers unless either party requested a hearing by 3 April 2026. Neither party requested a hearing. It was directed that the application together with the enclosures (and any supplementary statement) be regarded as the Applicant’s case.
9. Direction 3 required the Respondent to email the Applicant a statement in reply to the application, any legal submissions, and all documents relied upon to be regarded as the Respondent’s case by 27 March 2026.
10. The Applicant was directed to provide to the Tribunal a single digital paginated bundle by 29 May 2026.
11. On 30 March 2026 the Applicant’s representative made an application (Page 51) on Form Order 1 that the Respondent be barred from participating in the claim pursuant to Rules 8 & 9 of the First-tier Tribunal Procedure Rules 2013 on the basis that the Respondent failed to serve its case and has not complied with direction 3 to email the Applicant a statement in reply to the application, any legal submissions, and all documents relied upon to be regarded as the Respondent’s case, by the 27 March 2026 deadline.
12. In response to the Applicant’s application of 30 March 2026 a notice of intention to debar (Page 54) was issued by Judge Martynski on 15 April

2026 stating that the tribunal was considering barring the Respondent from contesting the application. The Respondent was directed to provide an explanation to the tribunal by 30 April 2026 as to why it had failed to respond to the application and to the directions issued by the tribunal.

13. On 17 April 2026 the Respondent's representative emailed the tribunal (Page 55), copying in the Applicant, stating that they had not complied with the tribunal's directions due to administrative oversight. It is apparent that they intended this email to be their explanation as to why they had failed to comply and their statement in reply to the main application.
14. On 27 April 2026 Judge O'Brien ordered (Page 105) (1) There will be no further order in respect of the Applicant's application for a debarring order dated 30 March 2026 and (2) The directions dated 27 February 2026 stand as the Respondent's belatedly complied with the 27 February directions.
15. The Tribunal's paper determination took place on 17 June 2026 based on the evidence contained within the 106 page bundle.

The Law

16. Section 79 of the Commonhold and Leasehold Reform Act 2002:

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 F1... tribunal or court by which he was appointed.

The Respondent’s Objection

17. By an email (Page 55) dated 17 April 2026 to the tribunal case officer by copy to the Applicant the Respondent’s Representative, Mr Philip Sherreard, Head of Property & Systems at Sterling Estates Management provided the Respondent’s statement in reply to the application as required by direction 3 of the 27 February 2026 directions. In his email Mr Sherreard stated:

In response to Direction No. 3 we confirm that, at the date of service of the Claim Notice relied upon in these proceedings, this was the second RTM Claim Notice served by the Applicant. The original Claim Notice was formally withdrawn after it was accepted by the Applicant that it was defective.

The Respondent’s position remains as set out in the Counter Notice served in response to the operative Claim Notice. In particular, pursuant to section 79(8) of the Commonhold and Leasehold Reform Act 2002, the Respondent disputes that the Applicant was entitled to acquire the Right to Manage on the relevant date, as no evidence has been provided that a copy of the Claim Notice was given to each

person who, on that date, was a qualifying tenant of a flat contained within the premises. Compliance with 79(8) is a statutory precondition of a valid claim, and the absence of evidence of service on all qualifying tenants is relied upon by the Respondent as a complete answer to the Claim.

The Applicant's Reply

18. On 17 April 2026 the Applicant submitted the Applicant's Statement of Case in Reply (Page 58) in accordance with direction 4 the tribunal directions dated 27 February 2026. The pertinent paragraphs are extracted as follows:

12. Attached at ANNEX 4 (Page 73) are the official copies of title for the qualifying tenants who were sent a copy of the claim notice: Christine Davey (flat 1), Lucy Clewley (flat 2), Mathilde Collet (flat 3), Benjamin Nichols (flat 4), Caroline and Edward Pipe (flat 5), Kathrine Longmate (flat 1, 17A), and Nana Enninful and Justyna Gryz (flat 2, 17A). The titles show that on the relevant date, these were the qualifying tenants of the flats contained within the premises.

13. The proof of postage at ANNEX 3 (Page 71) shows that these tenants were sent the claim notice in paper form on 12 November 2025. Attached at ANNEX 5 is proof of service of the claim notice to each of the members by email on 13 November 2025.

14. The Applicant submits that this evidence is sufficient to show full compliance with s79(8).

15. The Applicant in the alternative relies on Assethold Ltd v 110 Boulevard RTM Co Ltd [2017] UKUT 316 (LC), where the Upper Tribunal held at [25] that:

"The requirement to serve copies of the claim notice is in my view ancillary and of secondary importance. All of the qualifying tenants were members of the RTM Company and were participating in the application to manage. S79(8) is for the protection of the qualifying tenants and Parliament cannot in my view have intended that the landlord could successfully contend that a breach of s79(8) invalidated all subsequent steps by the RTM Company"

16. In view of this, the Applicant submits that the Tribunal should be minded to dismiss the Respondent's objection on the ground that the common law authoritative interpretation is that failure to comply with s79(8) does not invalidate the RTM claim.

17. Given that s79(8) is the only provision which the Respondent has cited in its grounds in its counter notice dated 18 December 2025 and

Tribunal email dated 17 April 2026, the Applicant avers that the Tribunal should confirm the Applicant's entitlement to acquire the right to manage the Premises for the reasons set out above.

19. In relation to costs it is stated by the Applicant in the Applicant's statement of case in reply that:

18. The Applicant's case has been clear from the outset. It served the Respondent with the evidence by email on 12 January 2026 (ANNEX 6) (Page 102), requesting that it withdraw its objection in view of the above and reserving its position on costs. The Respondent did not withdraw its objection despite the clear evidence before it.

19. The Applicant has incurred considerable quantifiable costs as a result of the Respondent's continued objection to the RTM claim, not to mention the four-month window of time spent in litigation in which further, unquantifiable losses may have occurred.

20. The Respondent has acted frivolously, vexatiously, or otherwise in continuing its objection in light of the above and has been non-compliant with Tribunal directions. The Applicant therefore respectfully request that the Tribunal make an order in respect of costs against the Respondent, pursuant to Rule 13 of the 2013 Rules.

20. The Respondent was provided the opportunity by direction 5 of the tribunal directions to send a response by email to the issues raised in the Applicant's reply by 8 May 2026 but did not do so.

Tribunal Analysis

21. The issue for the Tribunal to decide is if the Applicant issued the Claim Notice to the leaseholders of the seven apartments within the premises in accordance with Section 79(8) of the Commonhold and Leasehold Reform Act 2002.
22. The Applicant has stated that the Tenants were sent the Claim Notice in paper form on 12 November 2025. The bulk certificate of posting certificate (Page 72) dated 12 November 2025 provides details of the leaseholders of the seven apartments, the Respondent and the Respondent's representative.
23. The names of the tenants in the land registry title searches for all seven apartments (pages 72 to 94) at the premises correspond with the tenant names within the bulk certificate of posting certificate (Pg. 72) dated 12 November 2025.

24. The land registry title search for flat 2, 17 Whitworth Road confirms Ms Clewley as the leaseholder for this property as of 2 September 2025.
25. Ms Clewley is understood not to be a member of 17 Whitworth Road RTM Company Limited.
26. Ms Clewley was issued with a copy of the Claim Notice by post on 12 November 2025 as evidenced by the bulk certificate of posting certificate.
27. A Notice of Invitation to Participate (NIP) in Right to Manage to Lucy Rose Clewley dated 3 September 2025 is included at page 66 of the bundle. Also included is the certificate of posting the NIP to Ms Clewley (Pg. 70) dated 3 September 2025.
28. The Applicant has sufficiently proven on the balance of probabilities that the tenants of the seven flats within the premises were given by post the claim notice in compliance with the Act, and the Tribunal has seen no evidence to the contrary.
29. It follows that the Applicant is entitled to acquire the right to manage the Premises as of 17 September 2026 or an earlier date if agreed by the parties.

The Applicants cost application

30. Rule 13 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (Tribunal Rules) states as follows:

“Orders for costs, reimbursement of fees and interest on costs

13.—(1) Subject to paragraph (1ZA), the Tribunal may make an order in respect of costs only—

(a) under section 29(4) of the 2007 Act (wasted costs) and the costs incurred in applying for such costs;

(b) if a person has acted unreasonably in bringing, defending or conducting proceedings;”

31. In the Upper Tribunal decision in *Willow Court Management (1985) Ltd v Alexander (2016) UKUT 0290 (LC)* the Upper Tribunal considered what is meant by acting “unreasonably” and also considered the issue of causation. As to what is meant by “unreasonably”, the Upper Tribunal said that whilst what constitutes acting unreasonably is fact-sensitive, the approach to be followed when determining whether conduct has been unreasonable is as set out in the case of *Ridehalgh v Horsfield (1994) 3 All ER 848*.

32. In *Ridehalgh v Horsfield* Sir Thomas Bingham MR described the acid test of unreasonable conduct in the context of a cost application as being whether the conduct permits of a reasonable explanation. This formulation was adopted by the Upper Tribunal in the case of *Halliard Property Company Ltd v Belmont Hall and Elm Court RTM Company Ltd LRX 130 2007* and in *Willow Court*. One principle which emerges from these cases is that costs are not to be routinely awarded pursuant to a provision such as Rule 13(1)(b) merely because there is some evidence of imperfect conduct at some stage of the proceedings.
33. Sir Thomas Bingham also said that unreasonable conduct includes conduct which is vexatious and designed to harass the other side rather than advance the resolution of the case, but that conduct could not be described as unreasonable simply because it led to an unsuccessful result. The Upper Tribunal in *Willow Court* added that for a lay person to be unfamiliar with the substantive law or with tribunal procedure or to fail properly to appreciate the strengths or weaknesses of their own or their opponent's case should not be treated as unreasonable. Tribunals should also not be over-zealous in detecting unreasonable conduct after the event.
34. On the issue of causation, the Upper Tribunal in *Willow Court* stated that the exercise of the Tribunal's power to make a cost order under paragraph 13(1)(b) was not constrained by the need to establish a causal nexus between the costs incurred and the behaviour to be sanctioned but that nevertheless the nature, extent and consequences of the unreasonable conduct (if the Tribunal were to find that there had been unreasonable conduct) were relevant factors to be taken into account in deciding whether to make an order and (if so) in deciding the form of the order.
35. *Willow Court* also sets out a three-stage test. The first stage is to show that a person has acted unreasonably. The second stage is the discretionary stage of deciding whether – if unreasonable conduct has taken place – the tribunal should make an order for costs. The third stage – if the tribunal decides that it should make an order for costs – is to determine the terms of any cost order.
36. As regards the first stage of the three-stage test, Rule 13(1)(b) relates to a party's conduct in bringing, defending or conducting proceedings. Conduct prior to that point cannot therefore form the basis for a cost award under Rule 13(1)(b).
37. Taking the facts as a whole, it is the Tribunal's view that the Respondent's case in respect of this case was weak but that the Respondent believed it was justified in pursuing it. It is also clear that the Respondent had to be reminded to comply with the tribunal directions and only did so in response to Judge Martynski's order which may have led the Applicant to believe that the Respondent was being obstructive.

38. The Tribunal does not accept that the Respondent has acted frivolously, vexatiously or otherwise in continuing the application or belatedly complying with the directions. Where a party fails to properly appreciate the strengths or weaknesses of their own or their opponent's case this should not be treated as unreasonable.
39. In conclusion, the Tribunal does not accept that the Applicant has shown that the Respondent has acted unreasonably for the purposes of Rule 13(1)(b). As the Applicant's application has failed to pass the first stage of the test set out in Willow Court, it follows that it is unnecessary to go on to consider stages two and three. Accordingly, the Applicant's cost application is refused.

Name: Mr A Parkinson

Date: 17 June 2026

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 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).