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

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| **Case Reference** | : | **CAM/42UD/LRM/2015/0007** |
| **Property** | : | **Burnham Lodge, Oakstead Road, Ipswich IP4 4HJ** |
| **Applicant** | : | **Burnham Lodge RTM Co. Limited** |
| **Representative** | : | **Mr Peter Hosking Stevensons Solicitors** |
| **Respondent** | : | **HND Investments Limited** |
| **Representative** | : | **Ms Galina Ward Counsel** |
| **Type of Application** | : | **Section 84 Commonhold and Leasehold Reform Act 2002 – determination that the applicant has acquired the right to manage** |
| **Tribunal Members** | : | **Judge John Hewitt**<br>**Mr Gerard Smith MRICS FAAV**<br>**Mr John Francis QPM** |
| **Date and venue of Hearing** | : | **4 December 2015**<br>**Ipswich Magistrates Court** |
| **Date of Decision** | : | **22 December 2015** |

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**DECISION**

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## Decision of the tribunal

1. The tribunal determines that the applicant was, on the relevant date, entitled to acquire the right to manage the premises.

2. The reasons for our decision are set out below.

**NB** Later reference in this Decision to a number in square brackets ([ ]) is a reference to the page number of the hearing file provided to us for use at the hearing.

## Procedural background

3. By a claim notice dated 6 June 2015 (the 6 June claim notice) [90] the applicant sought to acquire the right to manage the subject premises known as Burnham Lodge. Evidently it was given by 18 qualifying tenants who were members of the applicant at the time the claim notice was given. Included were the tenants of flat 6.

4. By a letter dated 22 June 2015 [181] the applicant sought to correct modest errors in the 6 June claim notice and purported to give an amended claim notice dated 22 June 2015 (the 22 June claim notice) [24].

   The issue in this case is which of the two claim notices is before the tribunal and whether that claim notice is a valid claim notice.

5. The respondent freeholder gave two counter-notices. One is dated 3 July 2015 [101] and the second is dated 7 July 2015 [102].

6. The tribunal received an application pursuant to section 84 Commonhold and Leasehold Reform Act 2002 (the Act). It is dated 26 August 2015 [1]. The applicant seeks a determination that on the relevant date it was entitled to acquire the right to manage the premises. The relevant date is defined in section 79(1) of the Act to be the date on which the claim notice is given.

7. Directions were duly given [31]. By direction (1) the respondent was required to file and serve its statement of case by 18 September 2015. It did not do so until a date in October 2015. An undated copy of its statement of case is at [84].

8. The applicant's statement of case dated 1 October 2015 is at [34] and a supplemental statement of case in reply dated 19 October 2015, filed after the respondent's statement of case had been served is at [143].

9. The directions gave notice of the intention to determine the application on the papers without an oral hearing pursuant to rule 31. The respondent requested an oral hearing. The hearing was listed for 4 December 2015.

10. It was clear from the papers that the issues between the parties were rather technical legal issues as opposed to issues of fact. The tribunal

concluded that it would not derive any assistance from an inspection of the subject property and accordingly it did not make an inspection of it.

**The hearing**

11. The hearing took place on Friday 4 December 2015.

12. The applicant was represented by Mr Peter Hosking of Stevensons Solicitors. Mr Hosking was accompanied by a number of long lessees and by Mr Clayton Hodson of Norwich Residential Management. It should be noted that Mr Hosking was instructed to prepare and file the application form but originally he was only given the 22 June claim notice by the applicant and had not been informed about the 6 June claim notice. Mr Hosking only became aware of the 6 June claim notice having taken further instructions after receiving the respondent's statement of case in answer which made reference to it.

13. The respondent was represented by Ms Galina Ward of counsel. Ms Ward was accompanied by Mrs Helen Kemp a director of the respondent, and Mrs Kemp's father, Mr Gold who is a consultant.

14. Neither party proposed to call any oral evidence and both parties wished simply to make submissions to us.

**The key documents in a little more detail**

15. The lease structure is that between 1976 and 1978 a series of 22 underleases of flats within Burnham Lodge were granted for terms of 99 years from 24 June 1976 [107]. There were three parties to those leases – HGS Builders (Ipswich) Limited as the landlord, [the tenant] and HGS Management (Ipswich) Limited as the management company.

    Since 2008 a further five long leases have been granted for varying terms.

16. On 9 September 2009 the respondent was registered at Land Registry as proprietor of the freehold interest [105]. It appears that the respondent may also have acquired the head leasehold interest because there is no reference to that lease in the schedule of leases in the charges register of the freehold title whereas each of the occupational leases are included in that schedule. Mr Gold intimated that his recollection was that the two interests were acquired at the same time and the head lease thereby merged into the freehold title. By all events it was not disputed that for a number of years the parties have understood that the respondent was the immediate landlord of the residential long lessees.

17. Some lease extensions have been granted and a sample (Flat 8) is at [134]. It was made between the respondent as landlord, Michael William Alfred Scoging as tenant and Samnat Investments Limited (Samnat) as the management company.

18. We were told that the burden and benefits vested in the management company had been assigned to Samnat in 2004. Mr Gold said that he had an unexecuted copy of the deed of assignment in his file. We were also told that such an assignment was permitted by virtue of clause 4(D) of the lease – a sample is at [118].

19. It was not in dispute that:

19.1 Mrs Kemp of 1 Heather Way, Stanmore, Middlesex HA7 3RD is one of three directors of the respondent company and that she holds 80 of the 99 shares issued by that company [174];

19.2 Mrs Kemp is sole director of Samnat and that she holds both of the two shares issued by that company [170];

19.3 The sample ground rent and service charge demand at [132] issued on the headed notepaper of Samnat with the address of 1 Heather Way, Stanmore, Middlesex HA7 3RD, records, amongst other things, that:

*"You are hereby notified that your Landlord is HND Investments Ltd Regester* [sic] *Office Leapman Weiss – Chartered Accountants Building 6, 30 Friern Park London N12 9DA*
*The address to which all notices, including notices of proceedings, should be served on the Landlord c/o Samnat Investments Limited at the address as shown above."*

20. By letter dated 22 June 2015 [181] the applicant wrote to the respondent in the following terms:

*"Dear Sirs*

***Claim Notice Burnham Lodge, Ipswich***

*Please find enclosed a revised Claim Notice for Burnham Lodge, Oakstead Close, Ipswich.*

*This has been amended to revise the detail for Flat 6 and Flat 7 as detailed below.*

[There were then set out what were said to be corrected particulars of the leases of flats 6 and 7. In fact comparing [26/27 and 92/93] the amendments were:

In relation to flat 6 to delete the names of the qualifying tenant 'Andrew Deryk Kirkbride and Kelly Marie Kirkbride' and to insert instead the name 'Frances Jane Hicks'.

In relation to flat 7 there was not so much a correction but an addition, because flat 7 was not mentioned in the 6 June claim notice.

The addition was in the following terms:

| | |
|---|---|
| Qualifying tenant/member: | Andrew Deryk Kirkbride and Kelly Marie Kirkbride |
| Title Number: | SK31606 |
| Date of lease: | 20/12/1977 |
| Term: | 99 yrs |
| Commencement of term: | 24/06/1976] |

*I refer to Para 9 of the claim notice which states that the original claim notice is not invalidated by any inaccuracy in any of the particulars.*

*I look forward to hearing from you by 8th July.*

*Yours faithfully"*

Enclosed with that letter was a document purporting to be a revised claim notice dated 22 June 2015 [24]. This document is precisely the same as the 6 June claim notice, save for the correction in respect of flat 6 and the addition of the details for flat 7, including the date of 8 July 2015 for the giving of a counter-notice.

21. The first counter-notice is dated 3 July 2015 [101]. In paragraph 1 it made two points as follows:

*"I allege that:*

*(a) by reason of the provisions of Sections 72,74,75,78,79 and 80 of Chapter 1 pf Part 2 of the Commonhold and Leasehold Reform Act 2002 ('the 2002 Act') on the 6th June 2015 Burnham Lodge RTM Company Limited ('the company') was not entitled to acquire the right to manage the premises specified in the claim notice.*

*(b) in so far as provisions in the 2002 Act will deprive Samnat Investments Limited, which is the Maintenance Company under the Leases of all the flats in the said premises Burnham Lodge, of the remuneration to which it is entitled under Part II of the Fourth Schedule of the said Leases, which is not admitted, without providing for compensation to be paid to Samnat Investments Limited by the RTM company such provisions are not Human Rights compliant and are accordingly invalid."*

22. The second counter-notice is dated 7 July 2015 [30]. It is in broadly the same terms as the first counter-notice save that:

22.1 Paragraph 1 is introduced as follows:

*"I allege that the Claim Notice dated 22.6.2015 received by HND Investments Limited from Burnham Lodge RTM Company Limited*

*(the company) is invalid but without prejudice to this contention I further allege that:*

*(a)* *by reason of*... [same as the first counter-notice save that section 81 is also relied upon - Ms Ward told us that was a reference to section 81(3) of the Act]
*(b)* *in so far as* ... [same as the first counter-notice].

**The rival contentions**

23. The applicant's contentions are helpfully set out in Mr Hosking's skeleton argument dated 3 December 2015.

24. The respondent's contentions are helpfully set out in Ms Ward's skeleton argument also dated 3 December 2015.

25. Both skeletons were of assistance to us and we are grateful to the respective authors.

26. From the respective skeleton arguments and opening arguments it became clear that:

26.1. Ms Ward accepted that the 6 June claim notice was in all respects a valid notice save that:

26.1.1 it had not been given to Samnat (section 79(6)(b); and
26.1.2 the applicant had not made an application to the tribunal pursuant to section 84(3) and (4) in respect of that notice such that it was deemed withdrawn at the end of the two month's period provided for (section 87(1).

26.2 Ms Ward submitted that the 22 June claim notice was not a valid claim for several reasons, including:

26.2.1 it had not been given to Samnat (section 79(6)(b);
26.2.2 no subsequent claim notice may be given so long as an earlier notice continues in force (section 81(3).

26.3 Mr Hosking accepted that the 22 June claim notice was not a valid claim notice for several reasons.

26.4 Mr Hosking submitted that the 6 June claim notice was a valid notice, that it was given to Samnat and that the application to the tribunal embraced the 6 June claim notice even though the application form made reference to the 22 June claim notice.

26.5 Mr Hosking had four further points:

26.5.1 Neither counter-notice was valid or in prescribed form because neither of them contained the printed notes set out as required by schedule 3 to The Right to Manage (Prescribed Particulars and Forms) (England) Regulations 2010 [55];

26.5.2 Both notices were invalid because they simply listed sections of the Act and did not condescend to explain why or in what respect the applicant had not complied fully with each of the sections of the Act listed;
26.5.3 The first counter-notice also invalidated by the fact that it did not bear a 'wet' signature - which the prescribed form requires; and
26.5.4 In the absence of a valid counter-notice the applicant acquired the right to manage on the date specified in the claim notice (here 8 October 2015 in both claim notices) despite any imperfections there may be as regards the claim notice.

**Was the 6 June claim notice given to Samnat?**

27. Mr Hosking submitted that it was given to Samnat. He said that Samnat is the agent of the respondent in respect of this development and that the 6 June claim notice had been sent to the respondent 'c/o Samnat' [90]. It thus came into the hands of Samnat.

28. Mr Hosking argued that the registered offices of the respondent are the same, Mrs Kemp is the sole director of Samnat and also a director of the respondent and is the majority shareholder in the respondent. The claim notice sent to Samnat would have come into the hands of Mrs Kemp even though she may have passed it to one or other of the other two directors of the respondent to deal with.

29. Mr Hosking noted that the Act requires notices to be 'given' rather than 'served'. He drew a distinction and submitted that giving a notice is a slightly less onerous or formal obligation than serving a notice. There was he said some flexibility. The claim notice does not have to be addressed to Samnat, it is sufficient if it comes into the hands of Samnat, or if Samnat otherwise becomes aware of it whether directly or indirectly.

30. Mr Hosking also submitted that allowance should be made for the fact that the claim notice was prepared and sent out by his clients who are lay persons and not property professionals and this should be reflected.

31. Ms Ward submitted that the claim notice had not been given to Samnat. It was not disputed that the notice was sent to the respondent care of its agent Samnat but that was not giving the notice to Samnat, it was giving the notice to the respondent only.

32. Ms Ward submitted that Samnat was entitled to be given a copy of the notice in its own right and that receiving it as agent for the respondent was not good enough. In support of her submission Ms Ward relied upon *Osman v Natt* [2014] EWCA Civ 1520 and the stricter line to be taken where a private party is being deprived of a property right. Ms Ward said that substantial compliance was not enough. Whilst we recognise the guidance given in *Osman* we note that it was a collective enfranchisement case where the reversioner was to lose its freehold interest. In the subject case RTM does not deprive the respondent of its

freehold interest or any property rights. Whilst Samnat is deprived of its right to collect service charges, it is relieved of its obligation to provide services and to that extent the effect of RTM is neutral to Samnat.

33. On this issue we prefer the submissions made by Mr Hosking. They reflect a pragmatic and practical approach. We find that the key point is that the fact of the notice comes to the attention of Samnat so that Samnat can give a counter-notice if it wishes to do so. We accept that there may be a degree of flexibility and there is a difference, albeit a subtle difference, between giving a notice and serving a notice.

34. We are reinforced in this conclusion by the fact that the counter -notice given by the respondent incorporated a human rights point on behalf of Samnat. We infer that Samnat became aware of the claim notice and in some manner requested the respondent to take that point on its behalf. Whilst Samnat could have given a counter-notice in its own right it seems to us that there is nothing inherently wrong in it asking the freeholder to take a point on its behalf. The more so where both companies are effectively managed and controlled by the same person. We acknowledge that the human rights point taken was a bad one and one not pursued at the hearing but nevertheless taking it demonstrates that Samnat had become aware of the 6 June claim notice and that Samnat involved itself in the RTM process.

**Was the 6 June claim notice withdrawn or somehow superseded by the 22 June claim notice?**

35. Mr Hosking submitted that it was not. Ms Ward submitted that it was by reference to the giving of the 22 June claim notice.

36. We prefer the submissions made by Mr Hosking on this issue. We are reinforced in this conclusion because:

    36.1 There is no evidence that the applicants ever withdrew the 6 June claim notice. The letter of 22 June 2015 [181] properly construed sought to amend the 6 June claim notice, not withdraw it or substitute it with the 22 June claim notice. The letter expressly reinforces the validity of the 6 June claim notice by stating:

    *"I refer to Para 9 of the claim notice which states that the original claim notice is not invalidated by any inaccuracy in any of the particulars."*

    36.2 We find what the letter of 22 June 2015 sought to do was to amend or correct a (relatively minor) error in the 6 June claim notice. It was an inept or clumsy attempt and one that the Act does not cater for. There is no express provision in the Act which permits a claim notice to be amended, corrected or varied. That is possibly understandable because a claim notice is required to contain prescribed information and its sets a

timetable of events which are to take place. If there were to be scope for amending a claim notice it might also be necessary to amend the timetable (depending on the nature and extent of the amendment(s)) and we can readily see that that has the serious potential for misunderstanding and uncertainty. As inept or as clumsy as the attempt to amend the 6 June claim notice may have been we find that it did not have the effect of withdrawing that claim notice.

36.3 A claim notice can only be withdrawn by giving a notice compliant with section 86 of the Act and no such notice has been given. None of the circumstances in which a claim notice is deemed to be withdrawn as set out in section 87 has been shown.

36.4 One of the arguments adopted by the respondent that the 22 June claim notice was invalid by reason of section 81(3) was because it was given at a time when an earlier claim notice was in force. Thus it was asserted that the 6 June claim notice was still in force and of effect. This is further reinforced by the fact that the second counter-notice dated 7 July not only alleged that the 22 June claim notice was invalid, it went on in paragraph 1(a) to make further arguments and expressly referred to the date of 6 June 2015 which can only be a reference to the 6 June claim notice. Of course section 84(3) contemplates that one or more counter-notices may be given to a claim notice.

**Was the claim notice of 6 June the subject of an application to the tribunal?**

37. Mr Hosking submitted that it was. The gist of his case was there was ever only one valid claim notice given and that was the 6 June claim notice. The application form inadvertently and in error made reference to the 22 June claim notice and attached a copy of it but what in reality was being referred to the tribunal was the valid and extant claim notice and that is the 6 June claim notice.

38. Ms Ward submitted that the application form plainly referred to the 22 June claim notice only and attached a copy. There was no reference at all to the 6 June claim notice. No application had been made to the tribunal in connection with the time limit imposed and thus by virtue of section 87(1)(a) the 6 June claim notice is deemed withdrawn.

39. On this issue we prefer the submissions made by Mr Hosking. For the reasons set out above the 22 June claim notice was not a claim notice at all and thus it cannot have been referred to the tribunal. The only notice that could have been referred to the tribunal was the 6 June claim notice. Thus we hold that what was referred to the tribunal was the 6 June claim notice albeit that in the application is was mislabelled and inadvertently referred to as being dated 22 June 2015.

40. The 6 June claim notice was before the tribunal [90-94] albeit that it was not filed along with the application form. If, contrary to the rules it was filed late we grant the applicant an extension of time to file to cure any procedural defect that may have occurred, although we are not wholly satisfied that any such defect has occurred.

41. In the circumstances we are satisfied that that the 6 June claim notice was referred to the tribunal and that it was referred within the time limit imposed by section 84(4) namely the period of two months beginning with the day on which the counter-notice (or, where more than one, the last of the counter-notices) was given.

**Were either of the counter-notices invalid**

42. In view of the determinations we have made above the arguments advanced by the applicant on the validity of the counter-notices is of much less, if any, importance.

43. However to provide certainty of dates going forward, out of courtesy to the submissions made and in case this matter is taken further elsewhere we make some brief observations on the rival submissions put to us.

**Wet signature**

44. The first point Mr Hosking made was that the counter-notice dated 3 July 2015 did not bear a manuscript or 'wet' signature. Mr Hosking submitted that the prescribed form plainly contemplates a manuscript signature because it provides a space against the word 'Signed' and below that the words: *'signature on behalf of company'*.

45. The original counter-notice given by the respondent was not put in evidence before us. The only copy we were given was taken from the file copy held by the respondent. Whilst no evidence was given Ms Ward informed us that the file copy was not signed but the original that was given to the applicant was signed. Mr Hosking did not contradict this and did not adduce into evidence the actual counter-notice that was given to the applicant. He gave the strong indication that he saw it as a dead point.

46. In these circumstances and in the absence of any supporting evidence we are not prepared to find as a fact that the counter-notice given was not 'wet' signed. The submission thus fails. In any event it may be noted that it was not in dispute that the second counter-notice was duly signed.

47. We make the observation that even if the original had not been 'wet' signed we are far from convinced that it would have invalidated the counter-notice. Applying the principles set out on *Osman v Natt* it appears to us that in certain circumstances a typed signature or other mark will be perfectly acceptable.

**Scattergun approach and merely citing sections of the Act**

48. The gist of Mr Hosking's submission was that it is simply not sufficient to make reference to various sections of the Act and not to assert in what respect it is alleged the claim notice fails to comply with the statutory requirement. In support of his submission Mr Hosking relied upon the decision in *Assethold Limited v 14 Stansfield Road RTM Company Limited* [2012] UKUT 262 (LC) [66] and an extract from *Service Charges and Management* 3rd edition by Tanfield Chambers – para 36-022 [77]. The passage relied upon said:

*"In Assethold Limited v 14 Stansfield Road... the Upper Tribunal held a counter-notice to be invalid because it merely identified a section of CLRA 2002 with which it was said there had been non-compliance and failed to specify why it was contended that the claim notice did not comply with CLRA 2002."*

49. In rival submissions Ms Ward took us to the decision in *14 Stansfield Road* and in particular paragraph 23 and the words:

*"It is not sufficient for a landlord who has served a counter-notice to say that it puts the RTM company to 'strict proof' of compliance with a particular provision of the Act and then sit back and contend before the LVT (or this Tribunal on appeal) that compliance has not been strictly proved."*

Ms Ward submitted, rightly in our view, that that passage does not support what the authors of the book said in para 36-022. Mr Hosking conceded that but wished to stand by what the authors of the book had to say.

50. On this point we preferred the submissions of Ms Ward. Whilst the scattergun approach and merely citing the statutory provisions relied upon is unhelpful and to be deprecated we find that it does not render the counter-notice invalid.

**Absence of the notes**

51. The final point relied upon by Mr Hosking was that neither of the counter-notices given included the printed notes set out on the prescribed form. Mr Hosking drew attention to the importance of note 2 which, in effect, is a reminder that if the RTM company wishes to maintain that it acquired the right to manage it must make an application to the tribunal within the period of two months beginning with the date on which the counter-notice is given.

52. It was not in dispute that the notes were omitted. Ms Ward relied upon *Osman v Natt* - para 31 – and said that the tribunal must consider whether a notice which does not comply with the strict requirements of the statute should be held to be either wholly valid or wholly invalid. The intention of the legislature in that respect must be ascertained in the light of the statutory scheme as a whole - para 33 -, and the courts have found that in favour of validity where the missing information is

of secondary importance or merely ancillary, and not prescribed by statute itself but by regulations made under it – para 34. Ms Ward submitted that both of those factors apply to the present case and the applicant does not and cannot assert any prejudice from the omission of the notes. Ms Ward said that the applicant was engaged in the process and was plainly aware of the consequences of the counter-notice and the deadline for making an application to the tribunal.

53. In reply Mr Hosking said that at the time of receipt of the counter-notices the qualifying tenants were managing the process themselves and there was no evidence to support what Ms Ward had said about them being aware of the consequences of a counter-notice having been given which denied that the RTM company had acquired the right to manage.

54. We have stood back and looked at the RTM scheme as a whole and the prescribed forms in particular. We find that the notes on both the claim notice and the counter-notice were designed by the legislature to be of key importance in assisting the parties – both qualifying tenants and landlords (and others where appropriate) to guide themselves through what is a quite complex and detailed process.

55. In these circumstances and having regard to the guidance given in *Osman v Natt* we find the absence of the notes to the counter-notice is fatal to the counter-notice and that it was not a valid counter-notice.

**The next steps**

56. Rival submissions were made to us as to the consequences of a counter-notice not being valid. However, in the instant case the applicant did see fit to make an application to the tribunal for a determination that it had acquired the right to manage the subject premises. We have made that determination. In consequence the acquisition date of that right will be as specified in section 90(4) of the Act.

57. For the sake of good order we record that the application made by the applicant for an order pursuant to section 20C Landlord and Tenant Act 1985 was withdrawn on the footing that the applicant is not a tenant within the meaning of that section. The long lessees at Burnham Lodge are not affected by the withdrawal of the application and their personal rights as individuals and long lessees remain in full force and effect.

58. Mr Hosking parked an application for a penal costs order pursuant to rule 13(1) pending this determination and the reasons for it. If any such application is made it shall be made in writing within the time limits provided for and if made further directions will be given for the disposal of it.

**Statutory provisions**

59. Statutory provisions material to this decision are set out in the schedule below.

John Hewitt
22 December 2015

## The Schedule

## 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 tribunal or court by which he was appointed.

**81 Claim notice: supplementary**
(1) A claim notice is not invalidated by any inaccuracy in any of the particulars required by or by virtue of section 80.

(2) Where any of the members of the RTM company whose names are stated in the claim notice was not the qualifying tenant of a flat contained in the premises on the

relevant date, the claim notice is not invalidated on that account, so long as a sufficient number of qualifying tenants of flats contained in the premises were members of the company on that date; and for this purpose a "sufficient number" is a number (greater than one) which is not less than one-half of the total number of flats contained in the premises on that date.

(3) Where any premises have been specified in a claim notice, no subsequent claim notice which specifies—

(a) the premises, or

(b) any premises containing or contained in the premises,

may be given so long as the earlier claim notice continues in force.

(4) Where a claim notice is given by a RTM company it continues in force from the relevant date until the right to manage is acquired by the company unless it has previously—

(a) been withdrawn or deemed to be withdrawn by virtue of any provision of this Chapter, or

(b) ceased to have effect by reason of any other provision of this Chapter.

**84 Counter-notices**

(1) A person who is given a claim notice by a RTM company under section 79(6) may give a notice (referred to in this Chapter as a "counter-notice") to the company no later than the date specified in the claim notice undersection 80(6).

(2) A counter-notice is a notice containing a statement either—

(a) admitting that the RTM company was on the relevant date entitled to acquire the right to manage the premises specified in the claim notice, or

(b) alleging that, by reason of a specified provision of this Chapter, the RTM company was on that date not so entitled,

and containing such other particulars (if any) as may be required to be contained in counter-notices, and complying with such requirements (if any) about the form of counter-notices, as may be prescribed by regulations made by the appropriate national authority.

(3) Where the RTM company has been given one or more counter-notices containing a statement such as is mentioned in subsection (2)(b), the company may apply to the appropriate tribunal for a determination that it was on the relevant date entitled to acquire the right to manage the premises.

(4) An application under subsection (3) must be made not later than the end of the period of two months beginning with the day on which the counter-notice (or, where more than one, the last of the counter-notices) was given.

(5) Where the RTM company has been given one or more counter-notices containing a statement such as is mentioned in subsection (2)(b), the RTM company does not acquire the right to manage the premises unless—

(a) on an application under subsection (3) it is finally determined that the company was on the relevant date entitled to acquire the right to manage the premises, or

(b) the person by whom the counter-notice was given agrees, or the persons by whom the counter-notices were given agree, in writing that the company was so entitled.

(6) If on an application under subsection (3) it is finally determined that the company was not on the relevant date entitled to acquire the right to manage the premises, the claim notice ceases to have effect.

(7) A determination on an application under subsection (3) becomes final—
(a) if not appealed against, at the end of the period for bringing an appeal, or
(b) if appealed against, at the time when the appeal (or any further appeal) is disposed of.

(8) An appeal is disposed of—
(a) if it is determined and the period for bringing any further appeal has ended, or
(b) if it is abandoned or otherwise ceases to have effect.

**86 Withdrawal of claim notice**

(1) A RTM company which has given a claim notice in relation to any premises may, at any time before it acquires the right to manage the premises, withdraw the claim notice by giving a notice to that effect (referred to in this Chapter as a "notice of withdrawal").

(2) A notice of withdrawal must be given to each 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,
(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, or
(d) the qualifying tenant of a flat contained in the premises.

**87 Deemed withdrawal**

(1) If a RTM company has been given one or more counter-notices containing a statement such as is mentioned in subsection (2)(b) of section 84 but either—
(a) no application for a determination under subsection (3) of that section is made within the period specified in subsection (4) of that section, or
(b) such an application is so made but is subsequently withdrawn,
the claim notice is deemed to be withdrawn.

(2) The withdrawal shall be taken to occur—
(a) if paragraph (a) of subsection (1) applies, at the end of the period specified in that paragraph, and
(b) if paragraph (b) of that subsection applies, on the date of the withdrawal of the application.

(3) Subsection (1) does not apply if the person by whom the counter-notice was given has, or the persons by whom the counter-notices were given have, (before the time when the withdrawal would be taken to occur) agreed in writing that the RTM company was on the relevant date entitled to acquire the right to manage the premises.

(4) The claim notice is deemed to be withdrawn if—
(a) a winding-up order is made, or a resolution for voluntary winding-up is passed, with respect to the RTM company, or the RTM company enters administration,
(b) a receiver or a manager of the RTM company's undertaking is duly appointed, or possession is taken, by or on behalf of the holders of any debentures secured by a floating charge, of any property of the RTM company comprised in or subject to the charge,

(c) a voluntary arrangement proposed in the case of the RTM company for the purposes of Part 1 of the Insolvency Act 1986 (c. 45) is approved under that Part of that Act, or
(d) the RTM company's name is struck off the register under section 1000, 1001 or 1003 of the Companies Act 2006.

**90 The acquisition date**
(1) This section makes provision about the date which is the acquisition date where a RTM company acquires the right to manage any premises.

(2) Where there is no dispute about entitlement, the acquisition date is the date specified in the claim notice under section 80(7).

(3) For the purposes of this Chapter there is no dispute about entitlement if—
(a) no counter-notice is given under section 84, or
(b) the counter-notice given under that section, or (where more than one is so given) each of them, contains a statement such as is mentioned in subsection (2)(a) of that section.
(4) Where the right to manage the premises is acquired by the company by virtue of a determination undersection 84(5)(a), the acquisition date is the date three months after the determination becomes final.

(5) Where the right to manage the premises is acquired by the company by virtue of subsection (5)(b) of section 84, the acquisition date is the date three months after the day on which the person (or the last person) by whom a counter-notice containing a statement such as is mentioned in subsection (2)(b) of that section was given agrees in writing that the company was on the relevant date entitled to acquire the right to manage the premises.

(6) Where an order is made under section 85, the acquisition date is (subject to any appeal) the date specified in the order.

## ANNEX - RIGHTS OF APPEAL

1. 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.

2. 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.

3. 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.

4. 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.