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HM Courts & Tribunals Service

Residential Property
TRIBUNAL SERVICE

LONDON RENT ASSESSMENT PANEL

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER SECTION 84(3) OFTHE COMMONHOLD AND LEASEHOLD REFORM ACT 2002 ("the Act")

Case Reference:	LON/00BE/LRM/2012/0004
Premises:	369 Upland Road Dulwich London SE22 0DR
Applicant(s):	369 Upland Road RTM Co Ltd
Representative:	Mayfield Law, Solicitors
Respondent(s):	Assethold Ltd
Representative:	Eagerstates Ltd Conway & Co Solicitors
Date of hearing:	23 April 2012
Appearance for Applicant(s):	Margarita Madirska - Mossop
Appearance for Respondent(s):	Philip Sissons
Leasehold Valuation Tribunal:	Mrs N Dhanani LLB (Hons) Mr N Maloney FRICS FIRPM MEWI Mrs L West
Date of decision:	6th June 2012

Decisions of the Tribunal

(1) The Tribunal determines that the Claim Notice dated 21 November 2011 is invalid as it fails to specify the premises with a sufficient degree of accuracy and this failure to provide mandatory information cannot be cured by the application of s.81(1) of the Act. Accordingly, the Tribunal finds that the Applicant is not entitled to acquire the right to manage ("RTM") and so makes no order under section 84(3) of the Act.

(2) The Tribunal makes no order in respect of the Respondent's costs under Schedule 12 paragraph 10 of the Act.

The application

1. The Applicant seeks a determination pursuant to s.84(3) of the Commonhold and Leasehold Reform Act 2002 ("the Act") that it was on the date when the Notice of Claim was given to the Respondent (21.11.2011) entitled to acquire the RTM premises described as 369 Upland Road Dulwich ("the Premises").

2. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

3. The Applicant was represented at the hearing by Margarita Madjirska - Mossop of Mayfield Law Solicitors. Mr Dudley Joiner of the Right to Manage Federation Limited appeared as a witness on behalf of the Applicant. The Respondent was represented at the hearing by Mr Philip Sissons of Counsel.

4. Immediately prior to the hearing the representatives of both parties handed in skeleton arguments. The start of the hearing was delayed while the Tribunal considered these new documents.

The background

5. The property ("the Premises") which is the subject of this application is a detached house converted into five flats and each flat is let on a long lease, each lease having been granted on dates in 1998/1999.

6. The Tribunal did not consider that an inspection was necessary, nor would it have been proportionate to the issues in dispute.

7. The Applicant is a RTM company established to acquire and exercise the RTM the Premises in accordance with the Act.

8. On or about the 21 November 2011 the Applicant served on the Respondent a Notice of Claim [25] pursuant to s.79 of the Act.

9. On or about 23 December the Respondent served a Counter Notice [30] on the Applicant disputing the Applicant's entitlement to acquire the RTM the Premises. The Counter Notice specified three grounds on which the Applicant's entitlement was challenged.

The issues

10. At the start of the hearing the parties identified the relevant issues for determination.

11. Mr Sissons confirmed that the only point still in issue was the validity of the Claim Notice. He confirmed that the Respondent now relied upon only two of the three grounds stated in the Counter Notice as follows:

    (i) The Claim Notice did not identify the Premises in respect of which the Applicant is entitled to acquire the RTM in breach of s.72(1) and s.80(2) of the Act, and

    (ii) The Claim Notice did not provide the details required by s.80(2), (8) &(9) of the Act.

The Applicant's case

12. Ms Mossop stated that the key issue was whether the Applicant had served a valid Claim Notice and specifically whether the Claim Notice accurately describes the Premises as it states at paragraph 1 that the Applicant claims to acquire:

    "the right to manage 369 Upland Road, Dulwich London SE22 0DR and appurtenant property("the premises")."

13. It is the Applicant's case that the Premises are known and commonly referred to as 369 Upland Road, 369 and 371 Upland Road or 369/371 Upland Road. The Applicant relies on the following:

    (i) the witness statement of Mr Dudley Joiner [223] the Chief Executive of the Right to Manage Federation ("RTMF"),

    (ii) the copy correspondence between the Respondent, the qualifying tenants and third parties [225-265],

    (iii) the freehold title plan [81],

    (iv) the plans and registers of the leasehold titles [85-107],

(v) the online description on www.mouseprice.com , www.zoopla.co.uk and www.postoffice.co.uk [108-116], and

(vi) the records from Southwark Council for various planning applications.[117-135].

14. Ms Mossop stated that a demand for ground rent is required by Statute to be in a prescribed form and identify the premises to which it relates; the demand for ground rent issued by the Applicant refers to the Premises as 369 Upland Road.

15. Ms Mossop alleged that the Respondent had cherry picked its evidence to support its argument. She stated that although she accepted the property register of the Freehold Title [33] describes the Premises as "*..369 and 371 Upland Road.....*", the full description is stated as "*The Freehold land shown edged with red on the plan of the above Title filed at the Registry and being 369 and 371 Upland Road*" . She stated that the description refers to the Title Plan and the Respondent failed to disclose that the Title Plan [81] shows the Premises edged red with only the number 369 noted on the plan. She stated that the plan is an extract from the Ordnance survey map. In addition she referred to the Schedule of leases noted on the Freehold Title and the leasehold title for each flat in which the property address is detailed either as 369, or 369-371 or 369/371 Upland Road.

16. Ms Mossop contends that there is overwhelming evidence that the Claim Notice accurately describes the Premises.

17. In the alternative Ms Mossop contends that any inaccuracy in the description of the Premises as 369 Upland Road does not invalidate the Claim Notice and relies on the principles adopted by the House of Lords and applied to contractual notices in the case of Mannai Investment Co Ltd v Eagle Star Life Assurance Co Ltd[1997]3 ALL ER 352 as applied in Keepers and Govenors of John Lyon Grammar School v Secchi(1999) 32 HLR 820 which states "*The court must consider, first whether the error in the notice is obvious or evident and, secondly whether, notwithstanding the error, the notice read in its context is sufficiently clear to leave a reasonable recipient in no reasonable doubt as to its terms.*" Ms Mossop also referred to the case of James McDonald & anr v J Fernanadez [2003] EWCA Civ 1219.

18. Ms Mossop stated that where there is an inaccuracy or error the real test is how a reasonable recipient would understand the notice. She stated that the correspondence between the parties [230 -231] shows that both the Respondent and the Applicant understand that 369 Upland Road refers to the whole building. Ms Mossop stated that the fact that the Respondent responded to the Claim Notice with a photograph of the Premises indicates that the Respondent was not misled by the description of the Premises. Ms Mossop stated that the Claim Notice does not use a wholly different description of the Premises but the most commonly used description of the Premises, a

description which the Respondent itself uses so there can be no doubt as to which premises were referred to in the Claim Notice.

19. Ms Mossop also referred the Tribunal to the case of Assethold Limited v 15 Yonge Park RTM Company Limited [2011] UKHT 379(LC) which is relied upon by the Respondent. She stated that the provision of completely wrong information can mean that the prescribed information is not provided at all, and she submitted that this is not the case here. She stated that in her opinion the omission of the number "371" from the description of the premises in the Claim Notice does not amount to "an inaccuracy" or "lack of exactness", but that if the Tribunal finds that it does, then such an "inaccuracy" or "lack of exactness" is saved from invalidity by s.81(1) of the Act.

20. Ms Mossop further relies on a second statutory saving provision under paragraphs 4(c) –(e) of The Right to Manage (Prescribed Particulars and Forms) (England) Regulations 2010 ("the Regulations"), and paragraph 9 of the Claim Notice [27] which states:

> *"This notice is not invalidated by any inaccuracy in any way of the particulars required by section 80(2) to (7) of the 2002 Act or regulation 5 of the Right To Mange (Prescribed Particulars and Forms) (England) Regulations 2010. If you are of the opinion that any of the particulars contained in the claim notice are inaccurate you may notify the company of the particulars in question, indicating the respects in which you think that they are inaccurate."*

21. In response to the Respondent's submissions Ms Mossop stated that it is very relevant to note that although under paragraph 9 of the Claim Notice the Respondent was given the option of notifying the Applicant of any particulars in the Claim Notice that they considered to be inaccurate, the Respondent did not serve such a notice.

22. Ms Mossop also referred the Tribunal to the schedules in the Claim Notice which give the names of the qualifying Tenants and the particulars of the leases and these specify all five flats and all the leaseholders. She submits that this must have informed the Respondent that the Claim Notice referred to the Premises.

23. Ms Mossop referred to the case of Mannai and asserted that although the inquiry into the reasonable recipient is objective, the question is " *...what reasonable persons, circumstanced as the actual parties were, would have had in mind."* Therefore she asserts that the Respondent's knowledge is relevant.

Respondent's Case

24. Mr Sissons on behalf of the Respondent submitted that the Claim Notice was invalid because it did not properly specify the Premises in respect of which the

RTM was claimed. The Claim Notice states that the Applicant seeks the RTM 369 Upland Road, whereas the Respondent's title includes 369 and 371 Upland Road. Mr Sissons states that although the Applicant has now clarified that it does not contend that 369 Upland Road is a self- contained part of the building known as 369 and 371 Upland Road, this was not made clear until after the application to the Tribunal had been made.

25. Mr Sissons contends that no reasonable recipient of the Claim Notice could have understood whether the Applicant was seeking to acquire the RTM the whole of 369 and 371 Upland Road or some part of that property as a self contained part of the building. Accordingly the Respondent submits that the Claim Notice failed to identify the Premises with a sufficient degree of accuracy and as a result it is invalid. He accepted that the Respondent may not have been misled but he stated that the appropriate test set out in the case of Mannai is not what the Respondent did or did not understand but what a reasonable recipient would have understood by the Claim Notice.

26. Mr Sissons referred to s. 80(2) of the act which sets out mandatory requirements for a Claim Notice and provides that it:

"....must specify the premises and contain a statement of the grounds on which it is claimed that they are premise to which this Chapter applies."

27. The Respondent contends that in breach of the mandatory requirements of s.80(2) of the Act, the Claim Notice failed accurately to specify the Premises in respect of which the RTM is claimed.

28. Mr Sissons also referred to the provisions of s. 72(1) of the Act which provides that a RTM can be claimed in respect of premises if:

"(a) they consist of a self-contained building or part of a building, with or without appurtenant property....."

29. He stated that the Respondent contends that the Claim Notice fails to identify premises which fall within the criteria set out in s.72(1) of the Act as 369 Upland Road, is not a self contained part of the building 369-371 Upland Road.

30. Mr Sissons stated that the Respondent's freehold title [33] describes the property as 369 and 371 Upland Road. Furthermore 4 of the 5 leases of the flats at the Premises describe the flat demise by reference to an address which includes 371 Upland Road.

31. He stated that the first reasonable step a landlord receiving such a notice would take is to check the registered title; paragraph 1 of the Property Register is the most important as this is the definition of the land comprised in the title. Given the inconsistency and uncertainty as to the description of the Premises

it is important that the description in the Claim Notice is accurate or sufficiently detailed. The Proprietorship Register [96] of the leasehold title gives the address of the tenant as 369/371 Upland Road; this information will have been provided by the tenants themselves. He referred to the sample lease of flat 4: clause 1.6 of the lease provides that *"The building means the premises at 369/371 Upland Road"*, and clause 2.2 provides *"The property is all that flat situate at and known as Flat 4 369/371 Upland Road London SE22...."*

32. Mr Sissons stated that more weight should be given to the title registers and the leases than the Council Tax bills etc. He stated that it is incumbent on the tenant to take such steps as it sees fit to ascertain what property it can include in the Claim Notice and to decide what it wants to include in the Claim Notice.

33. Mr Sissons contends that having read paragraphs 1 and 2 of the Claim Notice [25] one cannot know whether the intention is to include a part of the building or the whole building. Paragraphs 1 and 2 state:

"1.369 UPLAND ROAD RTM COMPANY LIMITED.....claims to acquire the right to manage 369 Upland Road, Dulwich, London SE22 0DR and appurtenant property ("the premises")

2. The company claims that the premises are ones to which Chapter1 of the 2002 Act applies on the grounds that the premises a) consist of a self contained building or part of a building with or without appurtenant property , b) they contain two or more flats held by qualifying tenants and c) the total number of flats held by such tenants is not less than two thirds of the total number of flats contained in the premises"

34. Mr Sissons submitted that the difficulty is compounded by the reference to "a self contained ...part of a building ..." in paragraph 2 of the Claim Notice. He stated that the Claim Notice itself must be understandable; it cannot be right that the tenant relies on the landlord to fill in the gaps. The Respondent asserted that it is impossible for any reasonable recipient of the Claim Notice (even one with the same level of knowledge of the Premises as the Respondent) to understand the extent of the Premises to which the Claim Notice relates. He stated that relying heavily on the schedule of leases requires the landlord to do some digging to understand the extent of the Premises to which the Claim Notice relates. He stated that it does not necessarily follow that just because all five leases are mentioned in the Schedule that the whole building is included in the Claim Notice.

35. Mr Sissons referred the Tribunal to Lord Steyn's statement in Mannai:

"The question is not how the landlord understood the notices. The construction of the notices must be approached objectively. The issue is how a reasonable recipient would have understood the notices."

36. He referred the Tribunal to the application of the Mannai test in the context of statutory notices in Ravenseft Properties v Hall [2001]EWCA Civ 2034 where Mummery LJ sitting in the Court of Appeal stated:

"In applying the Mannai approach, it is ....important to have in mind the context of the evident purpose of the requirement of a notice in the prescribed form. If notwithstanding errors or omissions, the substance of the notice is sufficiently clear to the reasonable person reading it, the notice is likely to serve the purpose."

37. In addition he referred to a case concerning a similar situation of a notice of claim served pursuant to s.8 of the Leasehold Reform act 1967, Speedwell Estates Ltd v Dalziel [2002]1 EGLR 55 where Rimer J, sitting in the Court of Appeal said:

"I consider that the better approach is to look at the particular statutory provisions pursuant to which the notice is given and identify what its requirements are. Having done so, it should then be possible to arrive at a conclusion as to whether or not the notice served under it adequately complies with those requirements.

If anything in the notice contains what appears to be an error on its face, then it may be that there will be scope for the application of the Mannai approach, although this may depend on the particular statutory provisions in question. The key question will always be: is the notice a valid one for the purpose of satisfying the relevant provisions?"

38. Relying on the above cases Mr Sissons submitted that in assessing whether the Claim Notice is valid the Tribunal must first consider the purpose underlying the requirement to specify the Premises in the Claim Notice and then assess whether the Claim Notice fulfilled that purpose notwithstanding the defect identified by the Respondent, bearing in mind how a reasonable recipient in the position of the Respondent would have understood the Claim Notice.

39. Mr Sissons submits that the purpose of the requirement to specify the premises and state the grounds is plainly to enable the landlord to understand the extent of the property to which the claim relates. He submits that a subsidiary purpose is to describe the premises with sufficient degree of accuracy that the landlord is able to form a view as to whether or not he accepts the RTM applies. He submits that if the Claim Notice does not fulfil these two purposes then it is invalid.

40. By s.90(2) &(3) of the Act, if no counter notice is served then the RTM is automatically acquired on the date specified in the claim notice. The Respondent submits the automatic consequences that flow from the service of a claim notice where no counter notice is served are such that it is critical that the premises in respect of which a claim notice is served is properly defined.

41. Mr Sissons stated that if a claim notice which describes in vague terms the premises to which it relates is held to be valid, it creates the possibility for a RTM Company serving such a notice to elect which parts of a property it wanted to manage and which parts it didn't after serving the claim notice.

42. He contended that the Applicant's argument that the Respondent has on occasion referred to the Premises as 369 Upland Road and therefore would have understood the Claim Notice is misconceived, as the test is objective and so the actual knowledge of the recipient is irrelevant – per Rimer J in Speedwell at para 24. In addition he submitted that the argument put forward by the Applicant does not eliminate the lack of clarity in the description of the Premises.

43. He relied on the statement made by HHJ Walden- Smith sitting in the Upper Tribunal (lands Chamber) on the issue of the validity of a claim notice served pursuant to s. 80 of the Act in Assethold Ltd v 15 Yonge Park RTM Co Ltd [2011]UKHT 379 (LC):

""18....section 80 sets out mandatory requirements of what must be included in the claim form. A failure to provide those details would clearly prevent the claim form from being valid, otherwise there would be no purpose in the statute providing that inclusion of those details is a mandatory requirement ....All that section 81(1) does is save the claim notice from invalidity if there is an "inaccuracy" in those mandatory details....

19. Providing the wrong name or the wrong registered office of the RTM company is not, in my judgement, an "inaccuracy". It is a failure to provide the mandatory information required by section 80."

44. Mr Sissons submitted that the same reasoning must apply in this case. The description of the premises in the Claim Notice is much more fundamental to the operation of the Act than the details of the registered office of the RTM Company in issue in Yonge Park.

45. Having heard evidence and submissions from the parties and considered all of the documents provided, the Tribunal has made determinations on the various issues as follows.

The Tribunal's decision

46. The Tribunal determines that the Claim Notice dated 21 November 2011 is invalid as it fails to specify the premises with a sufficient degree of accuracy and this failure to provide mandatory information cannot be cured by the application of s.81(1) of the Act. Accordingly, the Tribunal finds that the Applicant is not entitled to acquire the right to manage ("RTM") and so makes no order under section 84(3) of the Act.

47. The Tribunal makes no order in respect of the Respondent's costs under Schedule 12 paragraph 10 of the Act.

Reasons for the Tribunal's decision

48. The Tribunal was persuaded by the submissions put forward by on behalf of the Respondent. The judgement of HHJ Walden-Smith in Yonge Park is clear that s.80 of the Act sets out mandatory requirements of what must be included in the Claim Notice, and a failure to provide those details invalidates a Claim Notice. The issue before the Tribunal in this case is whether the description of the Premises as "369 Upland Road" as opposed to "369 and 371 Upland Road" amounts to a failure to provide the mandatory detail required by s.80 of the Act or whether it amounts to an "inaccuracy" in those mandatory details that is saved by s.81(1) of the Act.

49. S.72(1) of the Act provides that the provisions apply to "...a self-contained building or a part of a building...". S. 80(2) of the Act provides that the Claim Notice ".....must specify the premises ..." It is possible that the Applicant in serving the Claim Notice specifying the premises as 369 Upland Road sought to acquire the RTM of only part of the property known as 369 and 371 Upland Road. Therefore the Tribunal finds that the description of the Premises as 369 Upland Road as opposed to 369 and 371 Upland Road cannot be said to be an error in the Claim Notice which is obvious or evident.

50. The proposition that the Respondent should have understood the Claim Notice related to the whole building as opposed to only part of the building because the whole building has on occasion commonly been referred to as 369 Upland Road cannot be right. This would mean that where the Applicant wished to acquire the RTM of part of the building, and served a claim notice which specified the premises as 369 Upland Road or 371 Upland Road (if a counter notice was not served), it would automatically result in the RTM applying to the whole of the building. The Tribunal accepts that it would be difficult for the recipient of the Claim Notice (even one with the same level of knowledge of the Premises as the Respondent) to understand the extent of the premises to which the Claim Notice relates.

51. The Tribunal is guided by the approach of Rimer J in Speedwell in which he urged caution in expressing any general conclusions as to the application of Mannai to the interpretation of notices served under a statutory regime, and he stated:

"I consider that the better approach is to look at the particular statutory provisions pursuant to which the notice is given and identify what its requirements are. Having done so, it should then be possible to arrive at a conclusion as to whether the notice served under it adequately complies with those requirements. If anything in the notice contains what appears to be an error on its face then it may be that there will be scope for the application of the Mannai approach, although this may depend upon the particular statutory

provisions in question. The key question will always be is the notice a valid one for the purpose of satisfying the relevant statutory provisions?.....I do not accept that the sufficiency or otherwise of the particulars required to be provided by the prescribed form of notice used in cases such as the present can or should be assessed by reference to the extent of the landlords' actual knowledge of the facts. It is likely that in many cases the landlord will already know some of the information required to be provided .....Those are mandatory requirements and if the tenant wants his notice to be a valid one, he must comply with them. If he does not, then he runs the risk that his notice will not do the statutory work he requires of it. The purpose behind the provision of the particulars that the prescribed form requires is to inform the landlord of the nature and basis of the tenants claim....."

52. The Tribunal is of the view that the onus is on the RTM company giving the claim notice to ensure that the claim notice specifies precisely the premises to which it relates. This is particularly so in a case such as this, where the address of the premises in question can be specified in more than one way and in a manner which could conceivably relate to a part of the building. As a result, the description of the whole building as 369 Upland Road as opposed to 369 and 371 Upland Road cannot be considered to be an "inaccuracy" which can be cured by the application of s.81(1) of the Act. To do so would enable a RTM company to be imprecise in specifying the extent of the premises to which the claim notice relates. If this were to be the case there would be no purpose in the Act providing that the claim notice specify the premises as a mandatory requirement.

53. Applying the reasoning of the House of Lords in Mannai, a claim notice must specify the premises to which it relates so that it is clear to a reasonable recipient the extent of the premises to which the claim notice relates. For the reasons set out above the Tribunal finds that the Claim Notice served by the Applicant failed to fully specify the premises, and the Tribunal finds this amounts to a failure to provide the information required by s.80(2) of the Act resulting in the Claim Notice being invalid. The Tribunal finds that such a failure to provide information is not an "inaccuracy" in a particular which can be saved by the application of the provisions of s.81(1) of the Act. Accordingly the Tribunal finds that the Applicant is not entitled to acquire the RTM the Premises.

Costs

54. At the end of the hearing the Applicant made an application for costs under Schedule 12 paragraph 10 of the Act on the basis that the arguments put forward by the Respondent were vexatious and they only proceeded with one of the arguments.

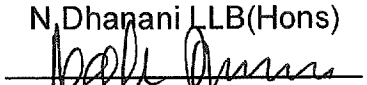
55. The Tribunal has the power to determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings under Schedule 12 paragraph 10 of the Act, where the Tribunal is of the opinion that the party has acted frivolously, vexatiously, abusively, disruptively or otherwise

unreasonably in connection with the proceedings. His Honour Judge Huskinson in the Lands Tribunal case of Halliard Property Company Limited v Belmont Hall and Elm Court RTM company Limited LRX/130/2007 and LRA/85/2008 considered the power of the Tribunal to make an order for costs under Schedule 12 paragraph 10 of the Act and he stated:

> "So far as concerns the meaning of the words "otherwise unreasonably" I conclude that they should be construed ejustem generis with the words that have gone before. The words are "frivolously, vexatiously, abusively, disruptively or otherwise unreasonably". The word "otherwise" confirms that for the purposes of paragraph 10 behaviour which was frivolous or vexatious or abusive or disruptive would properly be described as unreasonable behaviour. The words "or otherwise unreasonably" are intended to cover behaviour which merits criticism at a similar level albeit that the behaviour may not fit within the words frivolously, vexatiously, abusively or disruptively. .....Thus the acid test is whether the behaviour permits of a reasonable explanation."

56. The Tribunal having considered the submissions of the parties was satisfied that the behaviour of both parties was such as could be reasonably explained. The fact that a particular line of argument is advanced but is subsequently conceded in the light of clarification or further disclosure cannot be considered to be vexatious. In this case both parties have conceded various points. Accordingly the Tribunal makes no order as to costs.

Chairman: N Dhanani LLB(Hons)



[name]

Date: 6th June 2012

Appendix of relevant legislation

Commonhold And Leasehold Reform Act 2002

Part 2

Chapter 1

Right To Manage

72 Premises to which Chapter applies

(1)This Chapter applies to premises if—

(a)they consist of a self-contained building or part of a building, with or without appurtenant property,

(b)they contain two or more flats held by qualifying tenants, and

(c)the total number of flats held by such tenants is not less than two-thirds of the total number of flats contained in the premises.

(2)A building is a self-contained building if it is structurally detached.

(3)A part of a building is a self-contained part of the building if—

(a)it constitutes a vertical division of the building,

(b)the structure of the building is such that it could be redeveloped independently of the rest of the building, and

(c)subsection (4) applies in relation to it.

(4)This subsection applies in relation to a part of a building if the relevant services provided for occupiers of it—

(a)are provided independently of the relevant services provided for occupiers of the rest of the building, or

(b)could be so provided without involving the carrying out of works likely to result in a significant interruption in the provision of any relevant services for occupiers of the rest of the building.

(5)Relevant services are services provided by means of pipes, cables or other fixed installations.

(6)Schedule 6 (premises excepted from this Chapter) has effect.

80 Contents of claim notice

(1)The claim notice must comply with the following requirements.

(2)It must specify the premises and contain a statement of the grounds on which it is claimed that they are premises to which this Chapter applies.

(3)It must state the full name of each person who is both—

(a)the qualifying tenant of a flat contained in the premises, and

(b)a member of the RTM company,

and the address of his flat.

(4)And it must contain, in relation to each such person, such particulars of his lease as are sufficient to identify it, including—

(a)the date on which it was entered into,

(b)the term for which it was granted, and

(c)the date of the commencement of the term.

(5)It must state the name and registered office of the RTM company.

(6)It must specify a date, not earlier than one month after the relevant date, by which each person who was given the notice under section 79(6) may respond to it by giving a counter-notice under section 84.

(7)It must specify a date, at least three months after that specified under subsection

(6), on which the RTM company intends to acquire the right to manage the premises.

(8)It must also contain such other particulars (if any) as may be required to be contained in claim notices by regulations made by the appropriate national authority.

(9)And it must comply with such requirements (if any) about the form of claim notices as may be prescribed by regulations so made.

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 under section 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 a leasehold valuation 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

88 Costs: general

(1)A RTM company is liable for reasonable costs incurred by a person who is—
(a)landlord under a lease of the whole or any part of any 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,
in consequence of a claim notice given by the company in relation to the premises.

(2)Any costs incurred by such a person in respect of professional services rendered to him by another are to be regarded as reasonable only if and to the extent that costs in respect of such services might reasonably be expected to have been incurred by him if the circumstances had been such that he was personally liable for all such costs.

(3)A RTM company is liable for any costs which such a person incurs as party to any proceedings under this Chapter before a leasehold valuation tribunal only if the tribunal dismisses an application by the company for a determination that it is entitled to acquire the right to manage the premises.

(4)Any question arising in relation to the amount of any costs payable by a RTM company shall, in default of agreement, be determined by a leasehold valuation tribunal

89 Costs where claim ceases

(1)This section applies where a claim notice given by a RTM company—
(a)is at any time withdrawn or deemed to be withdrawn by virtue of any provision of this Chapter, or
(b)at any time ceases to have effect by reason of any other provision of this Chapter.

(2)The liability of the RTM company under section 88 for costs incurred by any person is a liability for costs incurred by him down to that time.

(3)Each person who is or has been a member of the RTM company is also liable for those costs (jointly and severally with the RTM company and each other person who is so liable).

(4)But subsection (3) does not make a person liable if—
(a)the lease by virtue of which he was a qualifying tenant has been assigned to another person, and
(b)that other person has become a member of the RTM company.

(5)The reference in subsection (4) to an assignment includes—
(a)an assent by personal representatives, and

(b)assignment by operation of law where the assignment is to a trustee in bankruptcy or to a mortgagee under section 89(2) of the Law of Property Act 1925 (c. 20) (foreclosure of leasehold mortgage)

Schedule 12, paragraph 10

(1) A leasehold valuation tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings in any circumstances falling within sub-paragraph (2).

(2) The circumstances are where—
  (a) he has made an application to the leasehold valuation tribunal which is dismissed in accordance with regulations made by virtue of paragraph 7, or
  (b) he has, in the opinion of the leasehold valuation tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.

(3) The amount which a party to proceedings may be ordered to pay in the proceedings by a determination under this paragraph shall not exceed—
  (a) £500, or
  (b) such other amount as may be specified in procedure regulations.

(4) A person shall not be required to pay costs incurred by another person in connection with proceedings before a leasehold valuation tribunal except by a determination under this paragraph or in accordance with provision made by any enactment other than this paragraph.