**UPPER TRIBUNAL (LANDS CHAMBER)**

**UT Neutral citation number: [2022] UKUT 215 (LC)** **UTLC Case Number: LC-2022-75**
**Written representations**

**TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007**

***LANDLORD AND TENANT – RIGHT TO MANAGE – validity of claim notice – failure to include one paragraph of the notes to the prescribed form – importance of that paragraph within the statutory scheme – appeal allowed***

**AN APPEAL FROM A DECISION OF THE FIRST-TIER TRIBUNAL (PROPERTY CHAMBER)**

**BETWEEN:**

**18 Langdale Road RTM Company Limited**

**Appellant**

**-and-**

**Assethold Limited**

**Respondent**

**Property: 18 Langdale Road**
**Thornton Heath**
**Surrey CR7 7PP**

**Upper Tribunal Judge Elizabeth Cooke**

**Judgment Date: 9 August 2022**

Mr Justin Bates for the respondent, instructed by Scott Cohen Limited

The following cases are referred to in this decision:

*Elim Court RTM Company Limited v Avon Freeholds Limited* [2017] EWCA Civ 89
*Mill House RTM Company Limited v Triplerose Limited* [2016] UKUT 80 (LC)
*Natt v Osman* [2013] EWCA Civ 584

## Introduction

1. This is an appeal from the decision of the First-tier Tribunal ("the FTT") that the appellant has not acquired the right to manage the property, 18 Langdale Road, Thornton Heath, Surrey, on behalf of the leaseholders. The respondent is the freeholder.

2. The appeal has been determined under the Tribunal's written representations procedure. The appellant has not been legally represented; Mr Justin Bates of counsel has drafted the respondent's grounds of opposition.

## The legal and factual background

3. The Commonhold and Leasehold Reform Act 2002 gave to lessees who hold long leases of a self-contained building the right to acquire, through a nominee company known as an RTM company, the right to manage their block on a no-fault basis; there is no need for the leaseholders to prove that there was anything wrong with the landlord's management of the block. All the leaseholders have to do is to ensure that their RTM company is constituted in accordance with the requirements of the 2002 Act and that it serves the correct notices on the landlord.

4. Section 79 of the 2002 Act provides, so far as relevant, as follows:

> "79(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. …
>
> (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. …
>
> (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."

5. 18 Langdale Road is a building comprising two flats, on the ground floor and first floor, each held on a long lease; the two leaseholders are each qualifying tenants under the 2002 Act and each is a member of the RTM Company. On 14 May 2020 the RTM company served a notice of claim upon the respondent. Section 80 of the 2002 Act sets out the requirements for the contents of a claim notice:

> 80(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."

6. I have set out those requirements in full although most are not in issue in this appeal, in order to show what the statute expressly requires. The information is designed to demonstrate to the landlord (or other recipient of the notice) that the RTM company is properly constituted,

to indicate who is participating, and to tell the landlord what it has to do if it wants to serve a counter-notice.

7. Section 81 provides:

> "(1) A claim notice is not invalidated by any inaccuracy in any of the particulars required by or by virtue of section 80."

8. The regulations referred to in section 80(8) and (9) are the Right to Manage (Prescribed Particulars and Forms) (England) Regulations 2010. They require the use of prescribed forms, scheduled to the regulations, for the notices required in the process of acquisition of the right to manage. Paragraph 4 of the regulations provides that the claim form must include:

> "(c) a statement that the notice is not invalidated by any inaccuracy in any of the particulars required by section 80(2) to (7) of the 2002 Act or this regulation, but that a person who is of the opinion that any of the particulars contained in the claim notice are inaccurate may—
>
> (i) identify the particulars in question to the RTM company by which the notice was given; and
>
> (ii) indicate the respects in which they are considered to be inaccurate; …
>
> (e) the information provided in the notes to the form set out in Schedule 2 to these Regulations.

9. In the present case the respondent served a counter-notice upon the RTM company, alleging a number of problems with the claim notice. Section 84(3) provides that in those circumstances the RTM company may apply to the FTT for a determination that it was on the relevant date entitled to acquire the right to manage, and the appellant did so. By the time of the FTT's determination the issues had boiled down to two.

10. One was that the claim notice was not signed by an officer of the company (although the covering letter was signed by its director). The FTT decided that, since there is no express requirement in the statute or in the regulations that the claim notice be signed (although the prescribed form makes provision for signature), the claim notice was not invalidated by the lack of a signature.

11. The other issue was that the claim notice omitted one paragraph of the notes in the prescribed form. There are four numbered notes, for the most part cross-referencing the terms used in the form with the provisions of the 2002 Act. Thus note 1 sets out who must be served with the claim notice, setting out the provisions of section 79(6), together with the following paragraph:

> "But notice need not be given to such a person if he cannot be found, or if his identity cannot be ascertained. If that means that there is no-one to whom the notice

> can be given, the company may apply to a leasehold valuation tribunal for an order that the company is to acquire the right to manage the premises. In that case, the procedures specified in section 85 of the 2002 Act (landlords etc not traceable) will apply."

12. Those words were omitted from the claim notice. The FTT held that the claim notice was for that reason invalid, relying upon the Tribunal's decision in *Mill House RTM Company Limited v Triplerose Limited* [2016] UKUT 80 (LC) where a notice (not a claim form, but a notice to lessees inviting them to participate in the acquisition of the right to manage, under section 78 of the 2002 Act) was held to be invalidated by the omission of all the notes from the prescribed form. The appellant appeals that finding.

**The arguments in the appeal**

13. The appellant relies upon *Natt v Osman* [2013] EWCA Civ 584, where the Court of Appeal considered the effect of failure to comply with procedural requirements. At paragraph 28 Etherton C distinguished:

> ""(1) those cases in which the decision of a public body is challenged, often involving administrative or public law and judicial review, or which concern procedural requirements for challenging a decision whether by litigation or some other process, and (2) those cases in which the statute confers a property or similar right on a private person and the issue is whether non-compliance with the statutory requirement precludes that person from acquiring the right in question."

14. The acquisition of the right to manage falls into the second category (*Elim Court RTM Company Limited v Avon Freeholds Limited* [2017] EWCA Civ 89 at paragraph 53). The correct approach to such cases was described as follows at paragraph 31 of *Natt v Osman*:

> " In none of them has the court adopted the approach of "substantial compliance" as in the first category of cases. The court has interpreted the notice to see whether it actually complies with the strict requirements of the statute; if it does not, then the court has, as a matter of statutory interpretation, held the notice to be wholly valid or wholly invalid."

15. But that does not mean that the slightest defect in the claim notice renders it invalid. It is still necessary to determine what are "the strict requirements of the statute"; did Parliament intend that the defect complained of should invalidate the notice? In *Elim Court RTM Company* at paragraph 52 Lewison LJ summarised what was said about that in *Natt v Osman:*

> "Where the notice or the information which is missing from it is of critical importance in the context of the scheme the non-compliance with the statute will generally result in the invalidity of the notice. Where, on the other hand the information missing from the statutory notice is of secondary importance or merely ancillary, the notice may be held to have been valid. … One useful pointer is whether the information required is particularised in the statute as opposed to being

> required by general provisions of the statute. In the latter case the information is also likely to be viewed as of secondary importance. Another is whether the information is required by the statute itself or by subordinate legislation. In the latter case the information is likely to be viewed as of secondary importance. …. A third is whether the server of the notice may immediately serve another one if the impugned notice is invalid. If he can, that is a pointer towards invalidity.

16. Lewison LJ cautioned at paragraph 56 that it is not permitted to consider whether the defect actually caused any prejudice to the recipient of the notice:

> "In considering the question of validity, although the court should not inquire into the question whether prejudice had been caused on the particular facts of the actual case (Osman at [32]) that does not mean that prejudice in a generic sense is irrelevant."

17. Therefore I pay no regard to the fact that the respondent in this case was not prejudiced or misled in any way..

18. The appellant argues that on the basis of the criteria in *Natt v Osman* we can see that the failure to include one paragraph of one of the notes was not intended to invalidate the notice. The respondent argues that that is not the case, and relies in particular upon *Mill House RTM Company.*

19. In my judgment, on the basis of the considerations quoted in paragraph 15 above it is difficult to see how the omission from the claim notice of this particular paragraph from one of the notes in the prescribed form could be fatal to it. The information within it will rarely be needed, and its omission from the claim notice is unlikely to cause any prejudice to a landlord upon whom a claim notice has been served. The notes, which were otherwise accurately reproduced, refer the recipient of the notice to the relevant provisions of the 2002 Act and, once he referred to the Act, the recipient would easily find section 85 which sets out the law where the person to whom notice is to be given cannot be traced. Moreover, turning to the other criteria, the inclusion of the notes is required by the statute, but there is no express statutory requirement that the notice should contain reference to the provisions for missing landlords. The inclusion of the information is purely a requirement of secondary legislation.

20. In *Mill House RTM Company* the Tribunal (the Deputy President, Martin Rodger QC) reached its decision following careful consideration of *Natt v Osman*. The notes as a whole are of course important in the scheme, and were omitted entirely, and so the Tribunal's conclusion was unsurprising. At paragraph 45 the Deputy President said:

> "It does not seem to me to be appropriate in this case to seek to assess the significance of individual pieces of information contained in the notes. Parliament intended that a notice should be in the prescribed form, including all of the notes, and it is not for the Tribunal to categorise some as more important than others. It might be arguable that the omission of a particular note which had no possible application to the circumstances of an individual case might not be fatal, but that question does not arise for consideration in this appeal.

21. The FTT understandably relied upon the decision in *Mill House RTM Company*, but did not consider the final sentence of paragraph 45. The present appeal seems to me to fall squarely within it, and I have no hesitation in finding that the omission of the paragraph relating to missing landlords did not invalidate the claim notice.

22. I do not need to make a decision about the appellant's alternative argument, which is that the notice was saved by section 81(1) of the 2002 Act (paragraph 7 above).

**Conclusion**

23. Accordingly the decision of the FTT is set aside and the Tribunal substitutes its own decision that the claim notice was valid and that the appellant acquired the right to manage on the relevant date.

Judge Elizabeth Cooke

9 August 2022

**Right of appeal**

Any party has a right of appeal to the Court of Appeal on any point of law arising from this decision. The right of appeal may be exercised only with permission. An application for permission to appeal to the Court of Appeal must be sent or delivered to the Tribunal so that it is received within 1 month after the date on which this decision is sent to the parties (unless an application for costs is made within 14 days of the decision being sent to the parties, in which case an application for permission to appeal must be made within 1 month of the date on which the Tribunal's decision on costs is sent to the parties). An application for permission to appeal must identify the decision of the Tribunal to which it relates, identify the alleged error or errors of law in the decision, and state the result the party making the application is seeking. If the Tribunal refuses permission to appeal a further application may then be made to the Court of Appeal for permission.