CASE REF: UKSC/2025/0170

IN THE SUPREME COURT OF THE UNITED KINGDOM
ON APPEAL FROM THE COURT OF APPEAL

B E T W E E N:

CRESTA COURT E RTM CO LTD

Appellant

AND

AVON FREEHOLDS LTD

Respondent

WRITTEN CASE ON BEHALF
OF THE RESPONDENT

Introduction

1. The Appellant presents this as a case about a landlord taking a technical point of no wider significance purely for the purpose of trying to prevent a group of leaseholders from acquiring a statutory benefit. Hence framing the issue in paragraph 2 of its Written Case as whether a:

> "*landlord can rely on a RTM company's failure to serve a notice of invitation to participate ("NIP") on a qualifying tenant to defeat a right to manage claim, notwithstanding that the tenant herself supports the claim and takes no issue with the failure to serve notice upon her*."

2. That is not the issue on this appeal. The issue, as agreed at paragraph 38 of the Statement of Facts and Issues, is:

> *"… whether the Court of Appeal erred in law in holding that the Appellant's failure to give a NIP to Ms O'Connor invalidated its claim to acquire the right to manage the premises.*"

3. This is a case about the proper construction of a statutory scheme which involves the transfer of property rights (management function) from the owner (freeholder) to a third party for no consideration. As explained by the Supreme Court in *A1 Properties (Sunderland) Ltd v*

Tudor Studios RTM Co Ltd [2024] UKSC 27; [2025] AC 1075 *per* Lord Briggs and Lord Sales JJSC at [67] giving this Court's unanimous judgment: [37/404]

> "[67] … *Where the right to manage is transferred to a RTM company, the effect is that an existing sophisticated contractual regime with multiple aspects and ramifications is subject to significant disruption (hence the complexity and comprehensiveness of the statutory regime)…*"

4. It is unsurprising that Parliament has established a detailed scheme with a prescriptive procedure to be followed, and that this Court has – as in *A1 Properties*, *e.g.* [67] above – recognised the consequential "*complexity and comprehensiveness of the statutory regime*." [37/404]

5. The Respondent contends that the Court of Appeal was right for the reasons it gave. In terms of a pithy summary, the Respondent would agree with what a differently constituted Court of Appeal held in *GR Property Management Ltd v Safdar and others* [2020] EWCA Civ 1441; [2021] 1 WLR 908, at [54] in the context of a collective enfranchisement claim under the Leasehold Reform, Housing and Urban Development Act 1993: [51/574]

> " [54] *I sympathise with both judges in their attempts to avoid potential pitfalls for the unwary, and to simplify the overall procedure. But the fact remains that Parliament has set up a highly prescriptive procedure containing many time limits affecting both lessee and reversioner; and in each case has spelled out in terms the consequences of a failure to comply. That language is, in my judgment, simply too clear to allow of a different interpretation. As Lord Diplock said in Duport Steels Ltd v Sirs [1980] 1 WLR 142 , 157:*
>
> > *'Where the meaning of the statutory words is plain and unambiguous it is not for the judges to invent fancied ambiguities as an excuse for failing to give effect to its plain meaning because they themselves consider that the consequences of doing so would be inexpedient, or even unjust or immoral.'"*

6. The Appellant fails to engage with the clear words of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act" or "the Act") and sets up ambiguities or problems as a way to excuse its own failings. The Appellant simply did not do what Parliament required it to do and it must bear the consequences as specified by Parliament.

7. However, this case is not only about the 2002 Act. It is much broader in application. In *A1 Properties* this Court explained how a court or tribunal ascertains what Parliament intended the consequence of non-compliance with a statutory requirement to be in a situation where the consequence is not expressly stated in the statute. This case addresses the logically prior question: how can a court or tribunal tell if a statute contains an express statement of the consequences of non-compliance with a statutory requirement? *A1 Properties* has since been applied in a range of contexts far beyond property law, to name some recent examples: English and Welsh planning law judicial reviews,[1] Northern Irish criminal procedure,[2] and the appointment of prison officers in Trinidad and Tobago.[3] It is expected that the Court's answer to the logically prior question will be similarly broad in scope. It is important to consider the appeal with this in mind.

8. These submissions take the following form:

(a) In Part 1, the Respondent explains why there is no scope for an analysis akin to that of *R v Soneji* [2005] UKHL 49; [2006] 1 AC 340, with the consequence that the Court of Appeal conclusion is correct. [65/852]

(b) In Part 2, the Respondent responds to the seven arguments advanced by the Appellant in its Written Case.

9. These submissions do not include an overview of the statutory procedure, as at Part 1 of the Appellant's Written Case. This is because the Respondent does not materially disagree with the Appellant's overview insofar as that overview is confined to explaining in neutral language the statutory scheme.

10. The Respondent does, of course, disagree with the submission made by the Appellant which are interwoven with the summary of the statutory scheme (*e.g.* at paragraphs 16 and 17 providing commentary or submissions on how - allegedly - difficult it is to ascertain the existence of all qualifying tenants and how the failure to serve a NIP "*can provide fertile ground for an obstructive landlord to seek to delay, or frustrate, the acquisition of the right to manage*"). The submissions made by the Appellant are answered in this Written Case.

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[1] *R. (on the application of Wildfish) v Buckinghamshire Council* [2025] EWHC 3060 (Admin). [63/775]
[2] *Public Prosecution Service for Northern Ireland v Brown* [2026] NICA 15. [57/684]
[3] *Mahabir v Public Service Commission* [2026] UKPC 3. [55/650]

Part 1: No scope for a *Soneji* analysis

11. The Court of Appeal was correct (in particular, at [77] and [81]). The failure to serve a qualifying tenant with a notice inviting participation has a sanction or a consequence as identified in the 2002 Act. That sanction is that the RTM company cannot then proceed to give a valid claim notice. The task of this Court, indeed of any court, is to give effect to that sanction as determined by Parliament. [5/103; 104]

12. The Court of Appeal judgment:

(a) is consistent with the plain reading of the Act;

(b) is consistent with how this Court has previously read the Act; and

(c) is consistent with the wider jurisprudence of this Court

(a) Court of Appeal judgment is consistent with the plain reading of the Act

13. The court need only undertake a *Soneji* analysis if there is "... *no express statement of the consequences of non-compliance with a statutory requirement*...".[4] Thus, the correct starting point is wording of the 2002 Act itself.

14. The right to manage is a purely statutory scheme. It has no roots in common law. It is not a scheme designed to codify analogous rights. That much is clear from s.71, 2002 Act.

> "*71 The right to manage*
>
> *(1) This Chapter makes provision for the acquisition and exercise of rights in relation to the management of premises to which this Chapter applies by a company which, in accordance with this Chapter, may acquire and exercise those rights (referred to in this Chapter as a RTM company).*
>
> *(2) The rights are to be acquired and exercised subject to and in accordance with this Chapter and are referred to in this Chapter as the right to manage.*"

15. As s.71(2) stresses, the rights conferred by the 2002 Act are to be acquired and exercised subject to, and in accordance with, the statutory scheme.

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[4] *A1 Properties (Sunderland) Ltd v Tudor Studios RTM Co Ltd* [2024] UKSC 27; [2025] AC 1075 at [68]; *Shahid v Scottish Ministers* [2015] UKSC 58; [2016] AC 429 at [20]; and *R (Trail Riders' Fellowship) v Dorset County Council* [2015] UKSC 18; [2015] 1 WLR 1406 at [99]. [37/404] [66/883]

16. Thus, when Parliament says in s.78(1) that "*before making a claim to acquire the right to manage*" a RTM company "*must give notice to*" the relevant class of qualifying tenants, it means what it says. It is imposing a duty on the RTM company to do something (serve the NIP) before that RTM company can move to the next stage of the statutory process (give the claim notice):

> "*78 Notice inviting participation*
>
> *(1) Before making a claim to acquire the right to manage any premises, a RTM company must give notice to each person who at the time when the notice is given—*
>
> > *(a) is the qualifying tenant of a flat contained in the premises, but*
> >
> > *(b) neither is nor has agreed to become a member of the RTM company*.
>
> …"

17. The procedure to be adopted is that specified. Before a claim can be made, the NIP "must" be given to each qualifying tenant.

18. That two-stage process, with compliance with the NIP stage as a pre-condition to be satisfied before any claim can be made, is made express and clear by s.79(2):

> "*79 Notice of claim to acquire right*
>
> *(1)…*
>
> *(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.*
>
> …".

19. The Court of Appeal was right when it held, in particular: [5/101]

> *"*[71] *It is no longer disputed by the respondent that section 79(2) contains a statement by Parliament of the consequence of failure by the RTM company to give each participation notice required by section 78(1) before expiry of the 14-day deadline stipulated by section 79(2), namely that the claim notice "may not be given". On the face of it, that is a clear and unqualified prohibition such that a failure to comply with it will have the effect that the claim notice is invalid, and it therefore cannot set in motion a valid claim to acquire the right to manage. It is simply something that the RTM company must get right as a pre-condition to making a valid claim; and if for any reason the condition is not satisfied, the clear implication in my view is that the RTM company will be obliged to start again."*

And

"[74] *[the judgment in A1] show[s] beyond doubt: (a) that the Supreme Court was confining its formulation of the correct approach to cases where the legislation contains no express statement of the consequences of non-compliance; (b) that it considered section 79(2) to be an example of such an express statement; and (c) that it understood the consequence of non-compliance laid down by Parliament to be that "a claim notice may not be served at all". It follows, in my view, that if a claim notice may not be served at all, any claim notice purportedly served before the non-compliance is remedied must be invalid, or in other words a nullity*." [5/102]

And

"[77] *When construing a statutory scheme, the task of the court or tribunal is to seek the meaning of the words used by Parliament in accordance with the principles of interpretation laid down in the case law. Those principles were authoritatively restated by the Supreme Court in R (O) v Secretary of State for the Home Department [2023] AC 255 at paras 29–31 per Lord Hodge DPSC (with whom Lord Briggs, Lord Stephens, Lady Rose JJSC and Lady Arden agreed). That guidance emphasises that "the words which Parliament has chosen to enact as an expression of the purpose of the legislation" are "the primary source by which meaning is ascertained" (para 29), and although external aids to interpretation play a secondary role, "none of these external aids displace the meanings conveyed by the words of a statute that, after consideration of that context, are clear and unambiguous and which do not produce absurdity" (para 30). Further, the "intention of Parliament" is an objective concept, not subjective, and "is a shorthand reference to the intention which the court reasonably imputes to Parliament in respect of the language used" (para 31, citing the speech of Lord Nicholls in R v Secretary of State for the Environment, Transport and the Regions, Ex p Spath Holme Ltd [2001] 2 AC 349, 396). It follows that where the language used by Parliament to state the consequence of non-compliance with a procedural requirement is clear, unambiguous and does not produce absurdity, it is the duty of the court or tribunal to interpret and apply that language accordingly. That is what the rule of law requires, and the court or tribunal would be overstepping its constitutional boundaries* [5/103] *if it attempted to substitute for the language of Parliament an interpretation which in its view would produce a more reasonable result on the facts of the individual case before it*"

And

"[79] *As I have already said, I consider the language used by Parliament in section 79(2) to be clear and unambiguous, and the Supreme Court was evidently of the same opinion when it said in A1 Properties at para 69, quoted above, that section 79(2) "imposes a clear consequence of failure in good time to give participation notices: no valid claim notice can be given to anyone". It is equally clear to me that this construction does not, objectively, produce any absurdity, however widely the concept of absurdity should be interpreted. In my judgment there is nothing remotely absurd about a rule which in effect requires strict compliance with the procedural requirements for service of participation notices before a valid claim notice may be given. It is relevant here to have in mind the very significant disruption of complex private contractual arrangements that a successful claim under the RTM legislation entails; the early stage in the procedure at which the failure to comply with the relevant requirements occurs; and the comparative ease and speed with which the position can in principle be rectified by the RTM company. It is also relevant that the Supreme Court could not have said what they did in para 69 if they thought that the consequence stipulated by Parliament led to an absurd or unjust outcome. To the contrary, the Supreme Court expressly recognised in para 62 that:* [5/103-104]

> *"Examination of the purpose served by a particular statutory procedural rule may indicate that Parliament intended that it should operate strictly, as a bright line rule, so that any failure to comply with it invalidates the procedure which follows."*

20. The Respondent agrees. The Court of Appeal was correct for the reasons it gave.

(b) Court of Appeal judgment is consistent with how this Court has previously read the Act

21. It is worth noting that this is now the third occasion on which this Court has considered the right to manage provisions of the 2002 Act. On both of the two previous occasions, this Court has read these provisions in the way that the Respondent contends is correct.

22. In *FirstPort Property Services Ltd v Settlers Court RTM Company Ltd* [2022] UKSC 1; [2022] 1 WLR 519, this Court considered the scope of the management functions conferred on an RTM company. In the course of its review of the statutory scheme, this Court summarised the position as follows at [16] *per* Lord Briggs, giving this Court's unanimous judgment: [49/545-546]

"[16]… *the right to manage can* ***only*** *be acquired through an RTM company which has* ***first*** *invited all qualifying tenants within the relevant premises to become member*s…" (emphasis added)

23. The Respondent agrees. That is the proper reading of the Act. Compliance with the requirement to give a NIP to all qualifying tenants is indeed the only way that an RTM company can then proceed to serve a claim notice and acquire the right to manage.

24. In *A1 Properties,* this Court held that a failure to serve a claim notice on a landlord was not necessarily fatal to any RTM claim. There was no sanction or consequence identified in the Act and so there was scope for a *Soneji* analysis. In reaching that conclusion, this Court considered the very scenario which we are now considering:

"[69] *Section 78 requires the RTM company as promoter of the scheme to give a participation notice to all qualifying tenants who have not agreed already to become, or not actually become, members of the RTM company. Section 79(2) provides that until 14 days after that has been done, a claim notice may not be served at all. There will ordinarily be no difficulty in finding or identifying qualifying tenants. The absence of any saving or dispensing provisions of the type found in section 79(7) suggests that this was well understood by Parliament. Section 79(2) imposes a clear consequence of failure in good time to give participation notices: no valid claim notice can be given to anyone*…" (whether a landlord can take the point is discussed below). [37/405]

25. Indeed, this Court in *A1 Properties* accepted that section 79(6) does not contain an express consequence, whereas section 79(2) does. Section 79(6) provides:

"(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."

26. Section s.79(6) contains no consequence for failing to give a claim notice to one, or more, of those persons. It is a paradigm example of a situation where "… *Parliament casts its commands in imperative form without expressly spelling out the consequences of a failure to comply*".[5] Parliament has in s.79(6) 2002 Act cast its command in the imperative form ("must be given to each person…") but then gives no consequence. By comparing and contrasting the language of s.79(6) and s.79(2), as this Court did at [69] of *A1 Properties*, it is even more apparent that s.79(2) contains a sanction whereas s.79(6) does not. Section 79(2) properly interpreted provides that "*no valid claim notice can be given to anyone"* ([69]) whereas there is no such language or consequence in s.79(6). [37/405]

27. The Appellant at paragraph 79 of its Written Case invites the Court to depart from what it held in *A1 Properties*. The Practice Statement (Judicial Precedent) [1966] 1 WLR 1234 presents a high bar to be surpassed for this Court to so depart. It is not enough for this Court to disagree with the (presumably differently constituted) Court in *A1 Properties*. The Practice Statement was recently addressed by this Court in *In re Dalton* [2023] UKSC 36; [2025] AC 235 where it was held (*per* Lord Reed PSC, giving the judgment of the majority on this point): [68/902]

> "[5] *Furthermore, in order to adopt the approach which Lord Hodge DPSC, Lord Sales and Lady Rose JJSC would in principle favour, the court would have to invoke the Practice Statement issued by the House of Lords in 1966 (Practice Statement (Judicial Precedent) [1966] 1 WLR 1234), and depart from its decision in Finucane as qualified in McQuillan , the latter being a unanimous decision made by an enlarged court of seven justices less than two years ago. Lord Hodge DPSC, Lord Sales and Lady Rose JJSC have ultimately drawn back from advocating that step. They are right to have done so. As a general rule the court will be "very circumspect" before accepting an invitation to invoke the Practice Statement: Knauer v Ministry of Justice [2016] AC 908, para 23. That is because it is "important not to undermine the role of precedent and the certainty which it promotes": Henderson v Dorset Healthcare University NHS Foundation Trust [2021] AC 563, 622, para 87. In the circumstances of the present* [68/910]

[5] *R v Soneji* [2005] UKHL 49; [2006] 1 AC 340 at [14]. [65/861]

case, a number of factors give powerful support to that approach. They can be summarised in three propositions: (1) it is unnecessary to decide the point in order to decide the present case; (2) the earlier decisions are in my view correctly decided and, to say the least, not clearly wrong; and (3) departing from the earlier decisions would have a damaging impact on legal certainty in circumstances where maintaining a clear and consistent approach is particularly important.

…

[47] *As I have explained at para 5 above, this court will be very circumspect before accepting an invitation to invoke the 1966 Practice Statement, because it considers it to be important not to undermine the role of precedent and the certainty which it promotes. The court will not overrule a previous decision simply because the justices would decide the case differently today: Peninsula Securities Ltd v Dunnes Stores (Bangor) Ltd [2021] AC 1014, para 49, citing Horton v Sadler [2007] 1 AC 307, para 29. This principle is vitally important to the operation and reputation of a court which does not sit en banc, and whose composition consequently varies from one case to another. In such circumstances, the principle is essential to counter the risk that the outcome of cases might otherwise depend, or at least might appear to depend, on who happened to be sitting. It is also essential to enable the consistent application of the law, and its coherent development, to take place…"* [68/922]

28. The Appellant's proposed departure does not surpass this high bar. It would not be "right"[6] to depart from the judgment of this Court in *A1 Properties*. This Court was right that s.79(2) provides an express sanction and that conclusion was critical to its judgment on the two issues before it (see *A1 Properties* at [4]), that because s.79(6) does not – cf. s.79(2) – contain an express sanction, it is permissible to undertake the *Soneji* analysis). As detailed by the Court of Appeal: [37/387]

"[75] … it was an integral and necessary part of the court's very full and careful reasoning which ultimately led it to conclude that the failure to serve the intermediate landlord, in circumstances where Parliament had not laid down the consequences of non-compliance, was not to invalidate the claim notice, but rather to render it 'voidable, at the instance of the relevant landlord or other stakeholder who was entitled to, but not given, a claim notice, but not void': see para 87 [of A1 Properties]…" [5/102]

[6] The Practice Statement (Judicial Precedent) [1966] 1 WLR 1234. [76/1087]

29. Furthermore, for all the reasons given in this Written Case, this Court was right to hold as it did regards s.79(2). The words are clear. As this Court held in *Shahid v Scottish Ministers* [2015] UKSC 58; [2016] AC 429 at [20] *per* Lord Reed JSC, giving this Court's unanimous judgment: [70/1021]

> "[20]…*No amount of purposive interpretation can however entitle the court to disregard the plain and unambiguous terms of the legislation*…"

30. The Appellant's arguments for departure are arguments from policy, driven by alleged unfairness and backwards reasoning rather than principle. That is not the correct basis upon which to approach this question.

31. Section 79(2) is plain and unambiguous. It fits with s.71 and s.78(1). Parliament has specified the consequence which flows from the failure in this case. That consequence is that the RTM company cannot give a claim notice and its claim must fail.

(c) Court of Appeal judgment is consistent with the wider jurisprudence of this Court

32. It is worth looking at the post-*Soneji* cases to see what sort of language this Court has held was sufficiently clear to exclude the *Soneji* analysis. Three judgments merit particular attention.

33. *Shahid v Scottish Ministers* [2015] UKSC 58; [2016] AC 429, concerned the construction of r.94(5) of the Prison and Young Offenders Institutions (Scotland) Rules 2006. The rule provided that (see [8]): [70/1018]

> *"A prisoner who has been [segregated] by virtue of an order made by the Governor … shall not be [segregated] for a period in excess of 72 hours from the time of the order, except where the Scottish Ministers have granted written authority on the application of the Governor, prior to the expiry of the said period of 72 hours".*

34. This Court considered that the rule provided for the consequence in "*plain and unambiguous terms"* (see [15]-[22] *per* Lord Reed JSC giving the Court's unanimous judgment). As to the plain words, this Court held that: [70/1020 -1022]

> "[15] …*The words "shall not be subject to such removal … except" mean that what follows is a pre-condition to lawful segregation for a period in excess of 72 hours from*

the time of the order. The words "have granted ... prior to the expiry of the said period" mean that, in order for the condition to be satisfied, authority must have been granted before the 72-hour period expires."

35. How is that any different to the provisions in this case? In *Shahid*, the rule has a consequence which can be avoided only if prior conditions are met. In s.79(2), there is a consequence unless prior conditions are met. Both provide for a particular result unless a pre-condition is satisfied. Both expressly state the consequence of non-compliance with a statutory requirement.

36. In *R (Trail Riders' Fellowship) v Dorset County Council* [2015] UKSC 18; [2015] 1 WLR 1406, this Court considered s.67, Natural Environment and Rural Communities Act 2006 provided: [66/880]

"(1) An existing public right of way for mechanically propelled vehicles is extinguished if it is over a way which, immediately before commencement – (a) was not shown in a definitive map and statement, or (b) was shown in a definitive map and statement only as a footpath, bridleway or restricted byway. But this is subject to subsections (2) to (8).

...

(3) Subsection (1) does not apply to an existing public right of way if – (a) before the relevant date, an application was made under section 53(5) of the Wildlife and Countryside Act 1981 (c 69) for an order making modifications to the definitive map and statement so as to show the way as a byway open to all traffic,

...

(6) For the purposes of subsection (3), an application under section 53(5) of the 1981 Act is made when it is made in accordance with paragraph 1 of Schedule 14 to that Act."

37. The *Soneji* analysis was *obiter* (the appeal having been determined on ground 1, ground 2 – *Soneji* – did not arise). That said, the issue was fully argued and a majority of this Court held that s.67 contained an express consequence.

38. At [99]-[100], Lord Neuberger said:

“[99]… *the observations of Lord Steyn in [Soneji] cannot apply to the position under section 67, because this was a case where “Parliament ... [has] expressly [spelled] out the consequences of a failure to comply” with its “command” in that section 67(1) expressly provides that a right of way is extinguished unless (for present purposes) section 67(3)(a) applies. ... Parliament in section 67(1) and (6) has spelled out “the consequence of the non-compliance”, and as “the result of non-compliance goes to jurisdiction ... jurisdiction cannot be conferred where it does not otherwise exist by consent or waiver”* [66/883]

[100]... *if a section 53(5) application has been made, but that application does not comply with the requirements of paragraph 1 of Schedule 14, then it is not to be treated as an application for the purposes of section 67(3)(a). As that is what happened in the present case, it must follow that the ways the subject of the applications have been extinguished pursuant to section 67(1).”*

39. Again, how is that any different from our case? In both cases there is a consequence (the claim notice may not be given / the right of way is extinguished) which can only be avoided by having done something earlier in the statutory process (served the NIP on all relevant qualifying leaseholders / made an application under s.53(5)).

40. Finally, in *R (Iqbal) v Secretary of State for the Home Department* [2016] UKSC 63; [2017] 1 WLR 85 this Court considered reg.37 of the Immigration and Nationality (Fees) Regulations 2011 (SI 2011/1055): [60/722]

“Consequences of failing to pay the specified fee

Where an application to which these Regulations refer is to be accompanied by a specified fee, the application is not validly made unless it has been accompanied by that fee.”

41. As this Court held (at [33] *per* Lord Carnwath JSC, delivering the Court’s unanimous judgment):

“ [33] *There is no ambiguity in the words of regulation 37 of the 2011 Regulations. It provides in terms that if an application is not accompanied by the specified fee the application ‘is not validly made’. In ordinary language an application which is not validly made can have no substantive effect.*” [60/734]

42. Again, why is that any different to this case? How is a provision which says that a claim notice cannot be "given" more permissive than one which provides that an application "is not validly made". Something which cannot be "given" cannot have any validity.

Part 2: Response to the Appellant

43. Although expressed as reasons to depart from what this Court said in *A1 Properties* (Appellant's Written Case at paragraphs 80 and 81), the matters raised there also fall to be considered as possible reasons why it might be said that the plain meaning of the words should not be preferred. As this Court said in *Shahid* (at [21]): [70/1021]

> *"The only principle of statutory interpretation which might enable the plain meaning of legislation to be circumvented is that it can be given a strained interpretation where that is necessary to avoid absurd or perverse consequences …".*

44. Before addressing the points made by the Appellant, there is a preliminary point to make. Running through the submissions for the Appellant is the common theme that the NIP is somehow of secondary importance to the proper working of the scheme.

45. That is not right. The NIP comes at a formative stage in the right to manage process.

(a) It comes before any claim notice has been given and so comes at a stage where the members of the company have yet to decide what they will specify in the claim notice as the "premises" over which they seek to acquire the right to manage. There may be more than one possible configuration of "premises" which could be claimed.[7] Only those leaseholders who are members of the RTM at this critical and formative stage will have any input into that question, which is – self-evidently – of central importance to everyone concerned.

(b) It gives the leaseholder an opportunity to influence the appointment of potential managing agents.[8]

(c) It is at this formative stage that the RTM company and the landlord will engage in any negotiations relating to "buying off" the landlord so as not to serve a counter-notice (or serve a positive counter-notice).[9]

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[7] *Eveline Road RTM Co Ltd v Assethold Ltd* [2024] EWCA Civ 187; [2024] Ch 204. [48/528]

[8] The Right to Manage (Prescribed Particulars and Forms) (England) Regulations 2010/825, reg.3(2)(g)

[9] As to "buying off" see *A1 Properties* at [80] and s.97(2), 2002 Act, for the context in which such negotiations might take place. [37/407]

46. A leaseholder who is not given an NIP in accordance with the statutory scheme has no opportunity to be heard on these important matters. All that leaseholder can do is join the RTM company at some later date (likely after the service of the claim notice, since that is the next time when the leaseholder would be entitled to know about the progress of the RTM process, see s.79(8)).

47. Contrary to what the Appellant intimates at paragraph 23 of its Written Case, the Law Commission has not simply proposed abolishing NIPs. During its consultation on possible reforms, the Law Commission received powerful evidence about the importance of the NIP. For example:[10]

> *"8.13 Many who disagreed with the proposal emphasised the importance of other leaseholders being notified. The RTM Federation argued that although they were 'aware of the issues with NIPs',*
>
> > *"all non-participating leaseholders have a right to know what is taking place. They need to be contacted. ... In our experience the sending of NIPs usually results in more leaseholders becoming members. Many sitting on the fence get the NIP and realise the process is actually happening and this prompts them to join. They are also entitled to join at this stage without contributing to the cost, which is an added incentive."*

48. The Law Commission recognised the importance of leaseholders being given the opportunity to join the RTM company and recommended a replacement system of notification. As matters stand, the government is committed to enacting the Law Commission recommendations during this Parliament.[11]

Parliament did not intend non-compliance with s.78(1) to be a ground of opposition

49. The Appellant starts from the wrong place. One does not start with a consultation paper nor with material prescribed by statutory instruments. One starts with s.84. That deals with counter-notices and, in s.84(2)(b), Parliament tells us what the permissible reasons are for resisting an RTM claim.

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[10] Leasehold home ownership: exercising the right to manage (HC585; Law Com No 393).
[11] https://www.gov.uk/government/speeches/housing-minister-speech-on-leasehold-and-commonhold-reform.

"(1)…

(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****,*

…". (emphasis added)

50. A failure to satisfy any "provision of this Chapter" is therefore a permissible reason for resisting an RTM claim. Section 71(2) details that the rights are to be acquired "in accordance with this Chapter", which includes both the substantive eligibility requirements for acquisition and the procedure through which the rights are to be acquired. A failure to comply with s.78(1) is a "provision of this Chapter". Relying on s.79(2) is similarly within the scope of s.84(2).

Parliament did not intend a failure to serve a NIP as having such extreme consequences when a failure to serve a claim notice does not

51. There is no engagement by the Appellant with the plain words of the statute, nor the *Settlers Court* case, nor any post *Soneji* case, let alone any of the three identified by the Respondent. It is simply an argument that Parliament cannot have intended the result in this case.

52. But why not? The decision of the Court of Appeal is consistent with the plain words and previous decisions of this Court. It also recognises that the NIP is an important part of the architecture of the 2002 Act and situates the 2002 Act in its wider societal and economic context.

53. Neither is there anything inherently 'wrong', or absurd or unworkable, in imposing a procedure and providing that non-compliance with that procedure is a ground for opposition – whether that procedural step is the giving of a NIP or anything else. The Court of Appeal at [79], reproduced above (para.19), explained why it is not absurd for invalidity to follow from [5/103-104]
non-compliance with this step, and the Respondent agrees.

54. Similarly, that there could be a detrimental effect on tenants if their claim is held to be invalid on the basis of non-compliance with procedure does not mean that that non-compliance cannot lawfully be a ground of opposition, especially when property rights are concerned.

55. What this argument really amounts to is an argument that Parliament should look again at this question and consider whether an amendment is required. That, of course, is a matter for Parliament.[12]

The Court of Appeal's construction of s.79(2) renders the statutory scheme unworkable

56. In this argument, the Appellant creates a problem where none exists. There is no question of metaphysics concerning the validity of the claim notice. As this Court explained in *A1 Properties* (at [90]), the notice was effective to do the thing it was intended to do, *i.e.* give [37/410] notice to the landlord of the desire of the RTM company to acquire the right to manage. It was also effective so as to confer power on the FTT to determine the question of compliance with the statutory scheme:

> *".Although the parties in this appeal debated the issue in terms of whether the claim notice served by the respondent on the appellant was valid or invalid, this is best regarded as convenient shorthand. Mr Rainey KC, for the intervener, correctly pointed out that the relevant legal question is not whether the claim notice issued by the respondent was valid, since to the extent it was issued and given to the Freeholder and the Management Company it clearly was valid in the sense that it was what it purported to be and was effective to give notice of the claim to those parties as was required. Rather, the legal question is whether the service of the claim notices on the Freeholder and the Management Company was a sufficient foundation for the commencement of the statutory procedure for the transfer of the right to manage, so that, in the event of a dispute, the tribunal would be clothed with authority to order the transfer of that right to the respondent RTM company, or whether the omission of service of a copy of the claim notice on the appellant intermediate landlord in this case required a negative answer to be given to that question."*

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[12] Parliament frequently legislates in response to judgments of this Court. See, for example, *R v Johnson* [61/736] [2018] EWCA Crim 2485; [2019] 1 WLR 966 or s.103, Renters' Rights Act 2025 in response to the decision of this Court in *Rakusen v Jepsen* [2023] UKSC 9; [2023] 1 WLR. 1028.

57. If no counter-notice is given then the Act itself provides the answer to the problem posed by the Appellant. Parliament has determined that the claim succeeds, see s.90(2), (3)(a):

> *"90 The acquisition date*
>
> *(1)…*
>
> *(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)…*
>
> *…"*

Section 79(2) should be interpreted as specifying the time that must elapse before a claim notice may be given

58. It is impossible to read s.79(2) as simply specifying a time which must elapse before a claim notice can be given. That is not what it says. That is not consistent with s.79(1). The former President of the Upper Tribunal (Lands Chamber), Fancourt J, was correct to reject this argument in *Canary Gateway*[13] and the Respondent adopts that reasoning in full. [45/493]

59. The problems of service are easily solved. In addition to the usual presumptions of service under the Interpretation Act 1978 and at common law,[14] s.111(5) contains a deemed[15] service provision:

> "*A company which is a RTM company in relation to premises may give a notice under this Chapter to a person who is the qualifying tenant of a flat contained in the premises at the flat unless it has been notified by the qualifying tenant of a different address in England and Wales at which he wishes to be given any such notice."*

60. This means that a non-participating tenant is treated as having been given a notice of invitation to participate if s.111(5) is complied with, even when it can be shown that the tenant has not had actual notice of it. That solves most, perhaps even all, of the unusual service cases

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[13] *Avon Ground Rents Limited v Canary Gateway (Block A) RTM Company Limited* [2020] UKUT 358 (LC) (unaffected on this point by the subsequent appeal: [2023] EWCA Civ 616; [2023] 1 WLR 3516). [45/493]
[14] *Khan v D'Aubigny* [2025] EWCA Civ 11; [2025] Ch 168.
[15] *Avon Freeholds Limited v Regent Court RTM Co Ltd* [2013] UKUT 213 (LC); [2013] L&TR 23 at [42] and [48]. [44/484; 485]

identified by the Appellant at paragraphs 99-105 of its Written Case. There is nothing difficult about this. There is no "trap for the unwary" nor is there any particular costs risk to the RTM company in adopting this approach.[16]

61. This was addressed in *Avon Freeholds Limited v Regent Court RTM Co Ltd* [2013] UKUT 213 (LC); [2013] L&TR 23, relied upon by the Appellant at *e.g*. paragraphs 61 and 62 of its Written Case, and cited in the latter part of this Court's judgment in *A1 Properties* at [69]. Indeed, properly interpreted this case concerns whether a failure to serve a NIP on a qualifying tenant *at the address described in s.111(5)* rendered the claim notice invalid, rather than failing to serve a NIP on a qualifying tenant *at all*: see paragraphs [33], [34], and [41]-[50]. [44/469] [37/405] [44/480-481; 484-486]

The Court may adopt a strained construction of s.79(2) to avoid the unreasonable consequences that follow from the Court of Appeal's construction

62. If, by this, the Appellant means that the position is as per *Shahid*, as identified by the Respondent (see para.43, above), then the Respondent agrees. But this part of the argument for the Appellant takes us no further with what the outcome of this case should be.

Consequences issue

63. This assumes that the Court of Appeal was wrong and s.79(2) does not specify a sanction or consequence for failure to comply with s.78(1). In that case, and only in that case, is it appropriate to engage in a *Soneji* analysis.

64. Here, the Respondent draws attention to the purpose of the NIP. As explained above, it enables leaseholders to be involved in the RTM process at the critical and formative time. It is not simply some check box exercise. Without it, a leaseholder may find their opportunity to influence the direction of the RTM claim is lost.

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[16] This issue was the subject of oral argument in both the UT and CA but did not form part of the judgment at either level. Each time, the Appellant rejected this argument by reference to a concern that, properly construed, the secondary legislation which supports the 2002 Act requires the RTM company to name the leaseholder personally, *i.e.* a NIP addressed to "the leaseholder" or "the qualifying tenant" would be invalid. The Respondent does not agree. The common law does not require notices to contain the name of the recipient: *OG Thomas Amaethyddiaeth CYF v Turner* [2022] EWCA Civ 1446; [2023] 2 P&CR 15 at [29]. Other landlord and tenant statutes are satisfied by sending document addressed to "the leaseholder", see *Leaseholders of Foundling Court v London Borough of Camden* [2016] UKUT 366 (LC); [2017] L&TR 7. [56/675] [54/625]

Waiver

65. Waiver is not the answer to this appeal, whether as a matter of law or fact.

66. In order for a waiver to apply to a statutory requirement, it must be a requirement which is imposed solely for the protection or benefit of one party (see *Kammins Ballrooms Co Ltd v Zenith Investments (Torquay) Ltd* [1971] AC 850). Conceptually, it is (*per* Lord Diplock at 883G): [80/1154]

> *"either an estoppel in the strict sense of the term or a quasi-estoppel arising under the doctrine of promissory estoppel…or under the older doctrine of 'acquiescence'".*

67. It needs to be properly pleaded, evidenced and the subject of a finding of fact. That is not the case here.

(a) There was no representation from Ms O'Connor to the FTT to the effect that she was aware of her right to receive a NIP but nevertheless was content not to receive one.

(b) There was no evidence from the Appellant that it had acted in reliance on that representation by failing to serve Ms O'Connor with that NIP.

68. The latter point is not surprising. The Appellant's position before the FTT was that it did not even know of Ms O'Connor's lease, and that in any event Ms O'Connor did not need to be given a NIP as she had agreed to become a member, or was not a qualifying tenant entitled to receive a NIP as she was not at the material time the registered legal proprietor of that leasehold interest.

69. It formed no part of the Appellant's case that Ms O'Connor had waived her rights. The FTT determination at paras.16 and 19 contains the competing cases, neither of which bear on this issue. There is no finding by the FTT of any waiver by Ms O'Connor. The FTT found that (at [35]) that the Appellant was not able to identify Ms O'Connor as a qualifying tenant and on the evidence the Appellant had no information identifying Flat 17 as a flat in respect of which a lease had been completed but not registered.

70. Waiver appears for the first time in the Upper Tribunal judgment (at [42]). The Upper Tribunal concluded Ms O'Connor had waived her rights because: [11/127]

(a) she had signed an "RTM Consent Form" on 26 January 2022; and,

(b) Mr Joiner of the Right to Manage Federation[17] had written a letter dated 28 May 2024 in which he explained that he had inadvertently misstated the position before the FTT. In fact, one of the directors of the Appellant was aware of Ms O'Connor's lease and Ms O'Connor had during a Zoom meeting addressing the RTM claims given her "verbal support" for the claim albeit delayed signing the Consent Form. The 28 May Letter does not give the date of this Zoom meeting.

71. The Upper Tribunal described the 28 May Letter as revealing "*something of a wrinkle […] in terms of the facts that were before the FTT*" ([28]). It transpired that the factual basis presented to the FTT "*may have been wrong*" ([30]) but nevertheless the evidential position was unchanged and the decision was determined in the basis of the facts as they were presented to, and found by, the FTT: [11/124]

> "[28]… *No application has been made to admit new evidence and so there is no witness statement. It is not known whether the director who knew Ms O'Connor told anyone else, at the relevant time, about the existence of a lease of flat 17. Nothing in the letter indicates that the director would have understood that Ms O'Connor had an equitable lease because it had not yet been registered. There has been no argument about whether what she knew was sufficient to alert her to the fact that Ms O'Connor was a qualifying tenant, nor whether the knowledge of one director, such as it was, can be imputed to the respondent company. Nor has there been any argument about whether notice is relevant to what I have to decide.*"

72. The Court of Appeal remarked on this "*wrinkle*" at [33-35], noting that the Court was content to proceed on the same basis as Judge Cooke – i.e. on the basis of the facts as presented to and found by the FTT. So too does the Court's judgment note that this basis was "*inevitable in the absence of any application to admit fresh evidence or of any agreement by the parties to vary the facts found by the FTT*" ([35]). [5/92]

73. It follows that no factual findings were made by the FTT which are capable of forming the basis of any waiver argument. The 28 May Letter was not admitted as fresh evidence on the appeal, even if capable in principle of amounting to evidence in support of waiver. In any

[17] A private entity which assists leaseholders in pursuing RTM claims.

event, the 28 May Letter does not come close to meeting the requirements elucidated in *Kammins Ballrooms Co Ltd*. [80/1121]

74. The Consent Form takes matters nowhere. It was signed after the service of the claim form on 21 January 2022, with the requirement to serve Ms O'Connor having been 14 days prior to 21 January 2022 (s.79(2)) unless and until she had agreed to become a member (s.78(1)).

75. As such, the throw-away suggestion that Ms O'Connor waived the Appellant's failure to serve her with a NIP was without any evidential basis and not in accordance with paragraphs 28-30 of the decision. Self-evidently there is no analysis of the relevant authorities. In short, there is no evidential basis on which this Court could find any relevant waiver.

76. In any event, waiver is not available as a matter of law. As Lord Simon of Glaisdale explained in *Johnson v. Moreton* [1980] AC 37 (at 58D): [53/609]

> "*the key ... to the interpretation of the maxim lies ... in discovering whether the particular liberty or right conferred by the statute or rule of law is entirely for the benefit of the person purporting to renounce it. If there is a public as well as a private interest a contrary Latin maxim applie*s."

77. The Appellant does not address why the obligation to serve a qualifying tenant who is not yet a member of the RTM company with a NIP is entirely for the private benefit of a specific qualifying tenant, rather than for public benefit (*i.e.* a class of persons) or a mix of public and private.

78. Self-evidently, the NIP benefits a class of people (*i.e.* qualifying leaseholders who are *not* members of the RTM company). It exists to ensure that minority rights are not overlooked (*cf* para.8.14 of the Law Commission report). Indeed, the entire RTM scheme exists to empower leaseholders *as a class*. [75/1084]

79. When one steps back and looks at the clear wording of s.79(2), the unavailability of waiver becomes even clearer.

Conclusion

80. Section 79(2), Commonhold and Leasehold Reform Act 2002 provides for the consequences of a failure to comply with the requirement in s.78(1), 2002 Act. That conclusion is consistent with the plain words, other decisions of this Court on the 2002 Act, and the wider jurisprudence from this Court.

81. For these reasons, and in agreement with the analysis contained in the judgment of the Court of Appeal, the appeal should be dismissed.

JUSTIN BATES KC

jbates@landmarkchambers.co.uk

SOPHIE GIBSON

sgibson@landmarkchambers.co.uk

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