[2026] UKSC 31
On appeal from: [2025] EWCA Civ 1016

JUDGMENT

Avon Freeholds Limited (Respondent) *v* Cresta Court E RTM Company Limited (Appellant)

before

Lord Reed, President
Lord Briggs
Lord Stephens
Lady Rose
Lord Snowden

JUDGMENT GIVEN ON
27 August 2026

Heard on 7 July 2026

Appellant
Winston Jacob
Christian Fox
(Instructed directly)

Respondent
Justin Bates KC
Sophie Gibson
(Instructed by Scott Cohen Solicitors Limited, Henley-on-Thames)

LORD BRIGGS (with whom Lord Reed, Lord Stephens, Lady Rose and Lord Snowden agree):

Introduction

1. The statutory scheme which enables lessees within a block of flats to obtain a transfer of the right to manage the building under the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") contains provisions designed to ensure participation in the scheme by various classes of stakeholders, and contains provision for some of those classes to object to a proposed transfer, and for the First-tier Tribunal ("the FtT") to adjudicate upon those objections. This appeal gives rise to the second chapter in this Court's appraisal of the extent to which the landlord or the existing management company of such a building can object to the transfer of management on the ground that procedural safeguards included within the statutory scheme for the benefit of other stakeholders have not been complied with by the right to manage ("RTM") company promoting the transfer, when those other stakeholders either do not, or cannot, make their own objection.

2. The first chapter consisted of the decision of this Court in *A1 Properties (Sunderland) Ltd v Tudor Studios RTM Co Ltd* [2024] UKSC 27; [2025] AC 1075 ("*A1 Properties*"). It concerned an attempted objection to the proposed transfer by the existing management company and intermediate landlord for the relevant building, on the ground that the claim notice had not been given to the intermediate landlord, as required by the statutory scheme. This Court held on a leapfrog appeal that the FtT (and the Upper Tribunal) had been correct to dismiss that objection, mainly on the ground that, on the facts, neither objector had suffered any disadvantage by the breach of the relevant rule.

3. The objection by the landlord of the building in the present case is that before serving the claim notice upon anyone, the RTM company had failed to give a notice of invitation to participate (a "NIP") to one of the qualifying tenants in the block 14 days before the date of service of the claim notice, or at all, as required by sections 78(1) and 79(2) of the 2002 Act. The qualifying tenant herself made no complaint about that failure. Shortly after the service of the claim notice she decided spontaneously to participate by becoming a member of the RTM company. But the landlord objected that the failure to give her a NIP was fatal to the transfer of the right to manage sought by the claim notice. So the RTM company applied to the FtT for a ruling that its application for a transfer of the right to manage the building was well-founded, notwithstanding that failure.

4. The FtT upheld the RTM company's claim. So did the Upper Tribunal. But the Court of Appeal accepted the landlord's submission that the failure to serve one of the qualifying tenants with a NIP before serving the claim notice rendered that notice void, so that the RTM company's claim based upon it could not succeed. Both the Upper Tribunal and the Court of Appeal paid close attention to passages in the *A1 Properties*

case as supporting their different conclusions. It will be necessary to look closely at those passages, and at the disputed question whether one of them formed part of the ratio decidendi for the decision, an expression I explain below. But first it is necessary to map out the relevant parts of the statutory scheme, and in particular the words used by Parliament to express its intention whether or not such a failure to serve a NIP is fatal to a claim for a transfer of the right to manage, based upon a claim notice which should have, but did not, follow service of NIPs upon all eligible qualifying tenants. Save where I indicate otherwise I shall do so by reference to the 2002 Act in the form in force at the relevant time, namely 21 January 2022, the date upon which the RTM company served its claim notice upon the landlord. Generally I shall summarise its contents but quote the key passages where necessary.

The Right to Manage Scheme

5. The statutory scheme for the acquisition of the right to manage is entirely contained in Chapter 1 of Part 2 of the 2002 Act, and in regulations made pursuant to it. It is introduced by section 71, as follows:

> “(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.”

6. Under the heading “Qualifying rules”, sections 72 to 77 then set out a series of eligibility conditions for the acquisition of the right to manage. They include conditions about the premises (section 72), about the applicant RTM company (sections 73–74), about qualifying tenants (section 75) and about the long lease which a tenant must hold in order to qualify (sections 76–77). They are all matters of substance, and all of them must be satisfied if the RTM company is to be entitled to acquire the right to manage the premises.

7. In bare outline the premises must consist of a self-contained building or part of a building, containing two or more flats held by qualifying tenants. If it is only a part of a building then that part must be a vertical division of the building, capable of independent development, and served by services which either are or could without significant interruption be provided to its occupants independently of the services provided to the occupants of the remainder of the building.

8. The RTM company must be limited by guarantee. It must have as one of its objects the acquisition and exercise of the right to manage and have articles of association in a form approved by regulations. Entitlement to membership must extend to qualifying tenants of flats in the premises and (after its acquisition of the right to manage) landlords under leases of the whole or any part of the premises.

9. A further important eligibility condition of substance is that, on the relevant date, the number of qualifying tenants who are members of the RTM company are not less than half of the number of flats in the premises or, if there are only two qualifying tenants of flats in the premises, both of them. This important eligibility condition, which reflects a basic majority rule concept within the scheme that the right to manage is provided only if half or more of qualifying tenants want it to happen, is set out in section 79(3), (4) and (5), and repeated in section 81(2). The relevant date is the date upon which the claim notice (as described below) is given by the RTM company: see section 79(1).

10. The identification of a tenant as a qualifying tenant of a flat is the subject of quite intricate provisions in sections 75 to 77. In outline, to be a qualifying tenant, a tenant must hold a "long lease" as defined (the most usually encountered being a lease of more than 21 years) which is not a business tenancy. There can only be one qualifying tenant of a flat at any one time (although that may include joint tenants under a single long lease). A flat may have no qualifying tenant. For example, it may be let on a short lease, or not let at all by the freeholder. There is no requirement that the qualifying tenant actually occupy the flat. It is common for the qualifying tenant to sub-let the flat to a short term or other non-qualifying tenant. There may be a chain of long leases of a flat but, if so, only the holder of the lowest long lease in the chain qualifies. There was a sustained dispute in the present case as to whether the person not served with a NIP was a qualifying tenant at all (having been granted a long lease but not at the relevant date having been registered as its owner). But that dispute was finally resolved in the affirmative in the Court of Appeal, and has not been pursued further in this Court after this Court refused permission to appeal that determination.

11. These eligibility conditions are then followed by a series of provisions (sections 78–89) which, under the heading "Claim to acquire right", mainly contain procedural rules for the making and withdrawal of a claim to acquire the right to manage, for the provision of information to the RTM company to assist it in making its claim, for rights of access to the premises by stakeholders, for the giving of counter-notices identifying specified grounds for denying the RTM company's entitlement, for adjudication of disputes about entitlement, and for costs. They can mainly be summarised, but these sections contain the provisions centrally relevant to the outcome of this appeal, which I shall quote.

12. Section 78 contains the provisions about the requirement to give NIPs to qualifying tenants. Subsection (1) provides:

> "(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."

I shall call such a person an eligible qualifying tenant.

13. The function of the NIP is to inform the recipient that the RTM company intends to acquire the right to manage the premises and to invite the recipient to become a member of the RTM company: see section 78(2)(a) and (c). It must tell the recipient which qualifying tenants have become members of the RTM company: see section 78(2)(b). It must be in any prescribed form and provide the further particulars required by regulations: see section 78(3). It must either attach the RTM company's articles or explain where they can be inspected: see section 78(4) and (5). A specific sanction is imposed where, having offered a copy or inspection of the articles, it is later refused: the NIP is deemed not to have been given to that participant: see section 78(6). Importantly for present purposes section 78(7) provides that:

> "A notice of invitation to participate is not invalidated by any inaccuracy in any of the particulars required by or by virtue of this section."

14. Sections 79 to 81 deal with claim notices. Section 79 is headed, and concerned with, "Notice of claim to acquire right". The claim notice is the document which, unless withdrawn, sets in motion a process which leads to the acquisition of the right to manage by a RTM company with a claim which satisfies the eligibility conditions. Sub-section (1) provides that:

> "(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."

The concept of the relevant date thus defined is used for various procedural and substantive provisions elsewhere in the statutory scheme. Sub-section (2) lies at the heart of the appeal. It is in the following simple terms:

> "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."

15. I have already explained sub-sections (3) to (5): see para 9 above. They collectively state the eligibility condition that at least half of the qualifying tenants have become members of the RTM company by the relevant date.

16. Sub-sections (6) to (9) then identify to whom a claim notice, or a copy of it, must be given. The claim notice itself must be given to every landlord, to every party to a relevant lease who is neither a landlord or a tenant (such as a guarantor or management company), and to any court-appointed manager of the premises (under Part 2 of the Landlord and Tenant Act 1987): see sub-section (6). The RTM company is excused by sub-section (7) from having to give a claim notice to a person who cannot be found or whose name cannot be ascertained, and provides (by reference to section 85) a fall-back way of acquiring the right to manage if that means that no-one is required to be given a claim notice.

17. Sub-sections (8) and (9) then specify the persons or entities to whom a copy of the claim notice must be given, namely every qualifying tenant and any tribunal which has appointed a manager of the premises under the 1987 Act. The care taken to distinguish between giving the claim notice to some persons and giving a copy of the claim notice to others appears at first sight to be curious, but the explanation (provided in section 84(1)) is that only those persons listed in section 79(6), ie persons to whom the claim notice itself must be given, can give a counter-notice objecting to the transfer of the right to manage on grounds which go to the entitlement of the RTM company. The important corollary for present purposes is that although qualifying tenants are entitled to be notified of the pursuit of a claim to transfer the right to manage, they are given no statutory right to object to it.

18. Section 80 (together with regulations made under it) specifies in detail the information which a claim notice must contain. The precise detail does not matter but in summary the claim notice must specify the premises and provide the grounds why it is claimed that those premises fall within Chapter 1 (sub-section (2)). It must identify by name and flat address all those qualifying tenants who have become members of the RTM company by the relevant date, but not those who have not: sub-section (3). All relevant leases must be sufficiently identified: sub-section (4). It must provide the name and registered office of the RTM company: sub-section (5). It must specify a time frame of

not less than one month from the relevant date for the giving of counter-notices: sub-section (6), and a date, at least three months after the relevant date, when the transfer of the right to manage is to take effect: sub-section (7). Finally the claim notice must comply with any regulations as to content: sub-section (8), and form: sub-section (9). Importantly, the claim notice is not required to state which qualifying tenants have been given a NIP, or when. Nor is the landlord (or other person entitled to object by counter-notice) given any other right under the statutory scheme to obtain that information from the RTM company.

19. Section 81, headed "Claim notice: supplementary", contains important provisions designed to protect the effectiveness of claim notices in leading (subject to withdrawal or successful objection by counter-notice) to a transfer of the right to manage. Sub-section (1) provides that a claim notice is not invalidated by any inaccuracy in the particulars required by section 80. It mirrors the same provision made by section 78(7) in relation to NIPs. Sub-section (2) preserves a claim form from any adverse consequences of naming as a member of the RTM company a person who is not a qualifying tenant. But it expressly preserves the substance of the eligibility requirement that at least half of the qualifying tenants have in fact become members of the RTM company by the relevant date. Sub-sections (3) and (4) in effect give the RTM company a clear field in pursuing its claim, free from subsequent competing claim notices, for as long as the claim notice remains in force, which means from the relevant date until it either takes effect, is withdrawn or ceases to have effect (e.g. by a successful objection by counter-notice). The relevance of these wide-ranging protections will become apparent.

20. Section 82 provides the RTM company with a valuable statutory right to obtain within 28 days from request any information from any person which it reasonably requires for ascertaining the particulars required by or by virtue of section 80 to be included in a claim notice, provided only that the information requested is within that person's possession or control. No such right is given to persons entitled to object by counter-notice. They are only given a right of reasonable access to the premises, by section 83, enforceable against any occupier or (if unoccupied) the person entitled to occupy.

21. Section 84 deals, together with section 90, with the requirements for and effect of counter-notices. As already noted, sub-section (1) entitles only those persons mentioned in section 79(6) to give a counter-notice. That includes landlords, other parties to the relevant leases, and court-appointed managers, but excludes qualifying tenants. Sub-section (2) is central to this appeal. Leaving aside only the concluding passage requiring compliance with regulations as to form and content, it provides:

> "(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,"

The effect of an admission under sub-section (2)(a) is that (if made by all persons giving counter-notices) the RTM company's claim succeeds. The same consequence follows if no-one entitled to give a counter-notice does so within the prescribed time: see section 90(2) and (3). But if a counter-notice contains an allegation of the type set out in sub-section (2)(b), then the claim is deemed to be withdrawn unless the RTM company applies to the FtT under sub-section (3) within the time prescribed by sub-section (4) for a determination that it was on the relevant date entitled to acquire the right to manage the premises: see section 87(1). If such an application is made by the RTM company, then success in its claim depends upon a final determination that it was so entitled (by the FtT or on appeal), or upon its claim being admitted in writing by the person or persons giving counter-notices: see sub-sections (5) to (8). The dispute generated by the combination of one or more counter-notices and an application to the FtT by the RTM company is elsewhere described as "a dispute about entitlement": see section 90(2) and (3).

22. Before moving on through the statutory scheme, it is worth dwelling a little on section 84(2)(b) and identifying the important issue of construction to which it gives rise. It is common ground (and rightly so) that the word "specified" in the phrase "by reason of a specified provision of this Chapter" means specified (ie expressly relied upon) in the counter-notice, not specified in Chapter 1. This is because, first, an important purpose of the counter-notice is to spell out why objection to entitlement is being taken by the person giving it. Secondly, nowhere is there an express list (or other specification) of which provisions in the Chapter are relevant to entitlement, and which are not.

23. Thirdly it is clear that "so entitled" in section 84(2)(b) means entitlement on the relevant date to acquire the right to manage the premises, rather than just entitlement to give a claim notice. It is just shorthand for "entitled to acquire the right to manage the premises specified in the claim notice" as used in sub-section (2)(a). It is, in short, about substance rather than procedure.

24. Fourthly it is also common ground (and verified by a number of authorities) that the reason why section 84(2)(b) restricts objections to the claimed acquisition of the right to manage to objections which are grounded on the "provisions of this Chapter" is that objections based upon the general merits or fairness of the proposed acquisition are not to be entertained. Thus it is irrelevant that the directors of the claimant RTM company

are said by the landlord to have a poor track record, or complete lack of experience, in property management, or that by contrast the landlord or other existing manager of the premises has an exemplary record, backed by long experience of managing a difficult building and providing value for money. Nor is it relevant that a bare majority of qualifying tenants (who support the acquisition) all have small flats and corresponding service charge liabilities whereas a bare minority who oppose the acquisition have large flats and correspondingly large service charge liabilities. The entitlement to acquire the right to manage the premises upon which the FtT has to rule under section 84(5) is governed entirely by the provisions of the statutory scheme in Chapter 1. The FtT has no discretion to refuse the acquisition, and no power to refuse it otherwise than by reference to the provisions of the statutory scheme. And qualifying tenants have no role to play in that determination.

25. The more difficult and contentious question is whether the language of section 84(2)(b) read purposively and in context tells you anything about which provisions of Chapter 1 can ground an objection to entitlement based upon non-compliance by the RTM company. It is one thing to conclude (as is agreed) that the language prevents an objector going outside the provisions of Chapter 1 to ground an objection. It is quite another to conclude that any procedural default by the RTM company in claiming its entitlement is sufficient to justify a "not entitled" objection or, using the statutory jargon, sufficient to give rise to a dispute about entitlement. But before addressing that question directly, I will briefly introduce the remaining relevant provisions of Chapter 1.

26. I have briefly mentioned section 85, which deals with untraceable landlords. The effect of sections 86 and 87 is in summary to enable the RTM company to withdraw its claim at any time before acquisition of the right to manage, either by withdrawing its claim notice or its application to the FtT. And deemed withdrawal occurs not only where (as already noted) the RTM company fails to apply to the FtT after receiving a counter-notice, but also if it suffers one or more of a specified number of terminal corporate illnesses (winding up, the appointment of a receiver or manager, entering into a voluntary arrangement or being struck off the register).

27. Nothing turns on any of the remaining sections in Chapter 1, save as follows. I have already mentioned the relevant provisions in section 90, which is otherwise about fixing what is called the acquisition date. Sections 91–103 describe in detail the consequences of the acquisition of the right to manage. All that needs to be noted is that they involve events with large and difficult-to-reverse economic consequences for stakeholders, including the payment of potentially large sums of money (e.g. accrued but uncommitted service charges). There is provision for cessation of management by the RTM company in section 105, and an anti-avoidance provision in section 106.

28. Finally, and of more significance for present purposes, section 107 enables any person interested to apply to the county court (now instead to the FtT) requiring a person

who has failed to comply with a requirement imposed on him by Chapter 1 to make good the default within such time as is specified in the order. The application must be made on 14 days' notice in writing to the defaulter. The power of the court is expressed to be discretionary.

The Facts

29. When it is borne in mind that the right to manage scheme laid down by Chapter 1 is a one-size-fits-all scheme applicable to buildings of infinitely variable size, complexity and age, with anything from just two flats to hundreds of flats within them, it is inherently unlikely that the determination of the issues of construction raised by this appeal will be dependent to any significant degree upon the particular facts of any one case. The facts of this case can therefore be shortly stated.

30. The Respondent Avon Freeholds Ltd ("Avon") is the registered proprietor of the freehold interest in the residential property known as numbers 7–26 Cresta Court, Hanger Lane, London, W5 3DE ("the Premises"). They included 20 flats. Cresta Court E RTM Co Ltd ("the Appellant") is a RTM company, incorporated by leasehold owners of the Premises for the purpose of acquiring the right to manage.

31. At all material times Ms O'Connor was the residential occupier of Flat 17 within the Premises, pursuant to a lease, granted on 17 April 2020 by the Respondent's predecessor in title for 150 years from 1 January 2015, but for which registration at HM Land Registry, applied for on 15 July 2021, was still pending. By reason of section 27(1) and (2)(b)(i) of the Land Registration Act 2002 she was therefore to be regarded as an equitable tenant only. After a major dispute between the parties to this litigation (to which she was not a party at any stage) it is now common ground that Ms O'Connor was a qualifying tenant throughout.

32. On 4 November 2021 the Appellant RTM company gave NIPs to all those whom it had identified as qualifying tenants who had not become or agreed to become its members. But Ms O'Connor was not given a NIP, either then or thereafter. Nonetheless she agreed to become a member of the Appellant on 26 January 2022, and at the same time signified her support for the Appellant's claim to the right to manage the Premises.

33. Meanwhile however, and only five days earlier, the Appellant gave its claim notice to Avon, on 21 January 2022. That became the relevant date for the purposes of Chapter 1. On 24 February 2022 Avon gave its counter-notice, relying upon a number of grounds for disputing the Appellant's entitlement to acquire the right to manage the Premises. The only ground which remains live is that based upon the Appellant's failure to give Ms O'Connor a NIP.

34. Applying the provisions of Chapter 1 to those facts, the following conclusions appear now to me to be beyond contest:

(i) As at the relevant date the Appellant satisfied all of what I have described as the eligibility conditions for the acquisition of the right to manage the Premises, as set out in the Qualifying rules in sections 72 to 77, and the additional eligibility requirement, in section 79(3) to (5), that the number of qualifying tenant members of the RTM company was not less than half the number of flats in the Premises.

(ii) But as at the relevant date the Appellant was in default under two procedural requirements in Chapter 1, by reason of its failure to give Ms O'Connor a NIP. It had not given a NIP to all qualifying tenants who had not become or agreed to become its members, as required by section 78(1). And it had not waited 14 days after giving a NIP to all eligible qualifying tenants before giving a claim notice, as required by section 79(2).

35. As regards any potential application under section 107 that Ms O'Connor might have wanted to bring, prejudice arising from a default and blame for the default might be of relevance to the exercise of discretion whether to order a default to be made good, under that section. I would suggest that the following conclusions may sensibly be drawn.

(i) On no rational basis can it be said that these defaults caused Avon, Ms O'Connor or anyone else any prejudice.

(ii) Looking first at Ms O'Connor's position, section 78(1) only required her to be given a NIP before the Appellant "made a claim". She could have complained only that she should have received a NIP by 21 January 2022, when the Appellant made its claim. But she agreed to become a member of the Appellant only five days later.

(iii) Section 79(2) is mainly concerned with a timing rule about when a claim notice may be served. But if the Appellant had waited only a further five days, Ms O'Connor would have lost any entitlement to be given a NIP, because by then she had agreed to become a member of the Appellant. Bearing in mind that the statutory scheme gives a qualifying tenant no right to object to a claim, and that Ms O'Connor supported the claim anyway, the timing of the giving of the claim notice must have been a matter of complete indifference to her. If anything, since she supported the claim, the sooner the claim notice was given, the sooner the right to manage would have been transferred to the Appellant, and the better for her.

(iv) It is impossible to identify any prejudice caused to Avon by the breach by the Appellant of either section 78(1) or 79(2), and none was suggested.

(v) As for blame, much ink was spilt and time spent in advocacy about whether Ms O'Connor's presence as a qualifying tenant was or was not reasonably ascertainable without carelessness on the Appellant's part, and more generally whether the risk of invisible qualifying tenants, for which the 2002 Act makes no special provision, was as great as the risk of invisible landlords, for which it does, in section 85. I have not found it easy or necessary to resolve these questions. All I would suggest is that Avon's catch-all answer, that every eligible qualifying tenant can easily be given a NIP, just by posting it to or leaving it at each flat, addressed to "the qualifying tenant", is more of a lawyerish fancy than a real solution. The flat might well be occupied by a short-term sub-tenant, or even an Airbnb licensee. How would he or she know, unless a specialist landlord and tenant lawyer, whether they were or not relevantly qualified, or whether they should send the NIP to someone else, and if so, to whom? True it is that the qualifying tenant is deemed to give the flat as his or her address for service if they do not provide a different one, but the standard form NIP provided for in the relevant regulations assumes that the qualifying tenant will be named. The alternative suggested answer on the facts of this case was that Ms O'Connor could easily have been found by visiting her flat. But it must be a matter of pure speculation what answer she might have given to the question from the cautious process server: "are you the qualifying tenant?"

Analysis

36. I shall begin my analysis of the issues of construction raised by this appeal on the assumption that the matter is free from authority, and being assessed by this Court for the first time. Avon's case was originally straightforward, and reflected the reasoning of the Court of Appeal, as follows:

(i) Section 78(1) requires that every qualifying tenant who has not become, or agreed to become, a member of the RTM company must be given a NIP before a claim notice is given.

(ii) Section 79(2) then provides expressly what is to be the consequence of non-compliance with section 78(1). No valid claim notice can be given to anyone. A document purporting to be a claim notice given while the breach of section 78(1) remains outstanding may look like a claim notice, contain all the required particulars and be given to all the right persons, but it is invalid, i.e. simply void.

(iii) There is therefore simply no room for the more nuanced analysis of the intended consequences of breach set out in *R v Soneji* [2005] UKHL 49; [2006] 1 AC 340 ("*Soneji*") and applied to another provision in this statutory scheme in *A1 Properties*.

(iv) No claim based upon a void claim notice can possibly be upheld.

37. In my opinion this construction faces a number of difficulties which are, at least in the aggregate, insurmountable. The first is that the notion that a claim notice given when there is an outstanding NIP still to give is invalid begs all sorts of questions. Is it absolutely void for all purposes? Or it is void for some, but not other, purposes? Or is it voidable rather than void and, if so, by whom, how and subject to what conditions?

38. The Court of Appeal appear to have taken the rigorous view that the claim notice was rendered absolutely void. At para 74 Sir Launcelot Henderson, giving the lead judgment, said:

> "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."

The trouble with that analysis is that, if the claim notice is a complete nullity for all purposes, it cannot even be a trigger for the right of an objecting landlord (or other person within the list in section 79(6)) to object to the transfer of the right to manage by giving a counter-notice, or therefore for the RTM company to invoke the statutory jurisdiction of the FtT to resolve a dispute about entitlement. Under section 84(1) the right to give a counter-notice is conferred only upon a person given a claim notice, and the RTM company's right to apply to the FtT for a determination of entitlement under section 84(3) depends upon having been given a counter-notice. There is no alternative way of engaging the jurisdiction of the FtT provided by the statutory scheme other than (now) under section 107 (to which I will return). It would also follow that the whole of the current litigation, at least at the level of the FtT and the Upper Tribunal, was outwith the jurisdiction of those tribunals. How would a dispute about whether there had been a breach of section 78(1) and/or section 79(2) be resolved? It seems wholly improbable that the framers of the statutory scheme intended to carve out this little issue from all other disputes as to entitlement, and give it to a non-specialist court with general jurisdiction not dependent upon the 2002 Act.

39. A further difficulty with the absolutely void theory is that entitlement to a transfer of the right to manage is in many respects required to be determined as at the relevant date: see e.g. sections 79(4) and (5) and section 84(2). But the identification of the relevant

date assumes that there is a valid claim notice, because the relevant date is the date upon which it is given: see section 79(1). And that date is critically important for the ascertainment whether there has been a breach of section 78(1), or section 79(2). If by that date a qualifying tenant has become or agreed to become a member of the RTM company, then neither provision is infringed in relation to him or her, as was common ground.

40. Faced with those unpalatable consequences of absolute voidness, Mr Justin Bates KC for Avon sensibly adjusted his sails to steer a more moderate course. He submitted that a claim notice given in breach of section 78(1) or section 79(2) was valid for all procedural purposes, including the fixing of the relevant date, but still void for the purpose of the pursuit by the RTM company of a valid claim. In response to a question from the Court he had no persuasive answer to the proposition that it would also be valid for the purpose of triggering an entitlement if there was no objection by counter-notice: see section 90(2) and (3)(a).

41. And there is no answer. The statutory scheme is intended to operate automatically where no person entitled to object to its going ahead does so, without the need for recourse to the FtT or any court. The transfer of the right to manage gives rise to important financial and economic consequences for a large number of stakeholders, and it would give rise to unacceptable uncertainty if its validity was dependent upon the outcome of some alleged (but possibly disputed) defect in compliance with the rules about NIPs in a situation where the qualifying tenants had no right to object, and none of those with such a right chose to do so.

42. The next problem is whether the supposed invalidity of the claim notice renders it void or voidable and, if the latter, by whom, how and subject to what conditions. The Court of Appeal resolutely chose the former, and Avon submits that it was right to do so. But that outcome seems at variance with reasonable notions of fairness or justice, and also therefore unlikely to have been intended. If something is void, even for limited purposes, then in principle anyone can rely on that voidness to advance their interests, as Avon seeks to do here. It would (as here) enable persons to defeat the transfer of the right to manage who were not within the class of those intended to be benefited in any way by compliance with the procedural rule alleged to have been infringed.

43. In the context of sections 78(1) and 79(2) the obvious and indeed only persons apparently intended to be benefited by rules about the giving of NIPs are eligible qualifying tenants: i.e. those who have not become or agreed to become members of the RTM company: see section 78(1). But they are given no right to object to the transfer of the right to manage even if they are in fact (unlike Ms O'Connor) opposed to it. So it seems unlikely that they were intended to have the right to avoid the claim notice merely because they did not receive a NIP. Furthermore every qualifying tenant is entitled to be

given a copy of the claim notice, but not to raise a dispute as to entitlement by giving a counter-notice: see sections 79(8) and 84(1) as already explained.

44. Although voidability was in the *A1 Properties* case conceived to be a possible solution where the breach consisted of a failure to give a claim notice to a person entitled to it under section 79(6), there at least the person prejudiced by the default (and entitled to avoid the claim notice) was squarely within the class of those intended to be protected by the relevant procedural rule.

45. Standing back, questions arising from the assumption that failure to comply with sections 78(1) and/or 79(2) go to the validity of the claim notice throw up such a raft of problems and least-worst alternative solutions that it becomes a serious question whether invalidity of any kind really was intended to be a consequence of default, all the more so in a context where any number of inaccuracies in a NIP and in a claim notice are expressly provided not to give rise to invalidity, not even incorrectly naming as a member of the RTM company a person who was not a qualifying tenant: see section 78(7) for NIPs, section 81(1) for claim notices and 81(2) for errors about qualifying tenants.

46. Leaving aside for the moment some incautious statements of mine in two earlier decisions of this Court (to which I will have repentantly to return), a fresh and more in-depth look at section 79(2) and its relationship with section 78(1) leads me to the conclusion that neither was intended to affect the validity of the claim notice at all. The assertion that section 78(1) goes to validity is based upon the over-simple assumption that section 79(2) prescribes a clear express statutory sanction for breach of section 78(1) which therefore excludes any more nuanced process for the determination of Parliamentary intention comprised within what I shall label as the *Soneji* principle. In summary, where there is no express statement of the consequences of a failure to comply with a statutory procedural requirement, the *Soneji* principle requires the court to infer what consequences Parliament had intended non-compliance to have by looking at (a) the purpose served by the requirement as assessed in the light of a detailed analysis of the statute and (b) the specific facts of the case, having regard to whether any (and what) prejudice might be caused or whether any injustice might arise if the validity of the statutory process was affirmed notwithstanding non-compliance with the requirement: see the *A1 Properties* case, and recently affirmed by this Court in *Akbars Restaurant (Middlesbrough) Ltd v Secretary of State for the Home Department* [2026] UKSC 26.

47. The first question is therefore whether there is an express statement of the consequences of a failure to comply with section 79(2). If there is, then those consequences must be given effect and there is no room for the *Soneji* principle to apply. Section 78(1) certainly provides a clear rule or requirement that the RTM company gives a NIP to every qualifying tenant who has not become or agreed to become a member of the RTM company before giving a claim notice. But no sanction for breach of that rule is provided in section 78, which appears to be a comprehensive statement of the rules about

NIPs. Furthermore, giving a NIP to such a qualifying tenant just one day (or for that matter 13 days) before giving the claim notice would involve no breach of section 78. The only sanction for not giving a NIP to a person entitled to one would appear to lie within section 107, although a more practical solution for a person who had discovered her entitlement to be given a NIP might be to ask her next-door neighbours for a sight of their copy.

48. In sharp contrast, giving a claim notice only one day (or 13 days) after giving the last NIP to an entitled tenant would be a plain breach of section 79(2). The RTM company should have left a 14-day gap. Indeed the 14-day period starts to run only from the day when the last eligible tenant is given their NIP. The point is that the requirement in section 79(2) is primarily about the need to leave a 14-day gap after the last eligible tenant has received her NIP (which assumes compliance with section 78(1)), rather than to sanction a RTM company for breach of section 78(1). It is a timing rule for claim notices, not a rule about the sanction for a breach of section 78(1).

49. The important point arising from this is that section 79(2) may be infringed without any breach of section 78(1). It is a self-contained rule about when a claim notice may be given, in a section all about claim notices, and it provides no express sanction for breach of its own time-limit. Thus I have concluded that there is no express sanction for a RTM company which complies with section 78(1) by giving a NIP to all eligible qualifying tenants but then gives its claim notice too early. The *Soneji* principle would apply in full to the interpretation of the intended consequences.

50. Yet Mr Bates KC submitted, in response to enquiry from the Court, that the same invalidity consequence would flow from giving a claim notice too soon after giving a NIP to the last eligible qualifying tenant entitled to one, as would flow from giving a claim notice before all such tenants had been given a NIP. There is something to be said for attributing the same type of sanction to giving a claim notice before the 14-day period has started to run as to giving a claim notice when the period has been running, but for less than 14 days. Precisely the same prohibition applies to both: the claim notice "may not be given". In both cases the claim notice has been given too early.

51. But that begs the question why invalidity should be the intended sanction for both, or indeed for either, when no express sanction is given for breach of section 79(2) for giving the claim notice too early. It is instructive first to consider a typical breach of section 79(2) where section 78(1) has been complied with. I will use as an example a case where the RTM company gave its claim notice only 13 days after giving a NIP to the last eligible qualifying tenant. The context is that a claim notice given one day later could be full of errors without thereby being invalidated.

52. I find it inconceivable, applying the *Soneji* principle, that invalidity can have been the intended sanction. The jumping of the gun by one day can have caused no conceivable prejudice to the landlord or other persons entitled to raise a dispute about entitlement. The only conceivable harm to the last eligible tenant to be given the NIP would be the curtailment by one day of the time (before the relevant date) during which to consider whether to lend her support to the transfer of the right to manage by joining the RTM company. In any event she would not lose the right to join the RTM company and play her part as a member in its activities at any time thereafter, and the prescribed constitution for a compliant RTM company gives early joiners no special rights. In any event the RTM company would already have to have the requisite number of qualifying tenants as its members before giving a claim notice, so that the lateness of the addition of one more would do nothing to improve its claim. Nor would a decision not to join by that last recipient (after reading her NIP) in any way weaken the RTM company's claim.

53. I now consider the case where an entitled tenant has not been served her NIP at all by the relevant date, so that there is a breach of both section 79(2) and 78(1). The present case is a good example, where Ms O'Connor was not given a NIP before the relevant date (i.e. the date of the claim notice), but she joined the RTM company a few days later. On those facts (and assuming no additional failure to give her a copy of the claim notice in breach of section 79(8) for which there is also no express sanction), why should the intended consequence be invalidity of the claim notice? All that has been added to a breach of section 79(2), for which there is no express sanction, is a breach of section 78(1) for which there is also no express sanction, at least outside section 79(2) itself. Put another way, why should a provision for the breach of which no express sanction is provided be interpreted as imposing a draconian sanction of invalidity for the breach of another provision which does not contain any express sanction either?

54. The supposed answer to that conundrum is said to be: because that is what section 79(2) says. The claim notice may not be given unless each person required to be given a NIP has been given one. These are no doubt mandatory rather than directory words, but that distinction has long since been cast away as a decisive determinant of intended consequences or sanctions. Apart from that, section 79(2) says nothing about validity, whereas the concept of validity is elsewhere used where needed: see section 78(7) and section 81(1) and (2). There is no need to assume that invalidity is to be implied on the basis that section 79(2) or section 78(1) would otherwise be toothless, because section 107 provides a discretionary power in the court, now the FtT, to order compliance. In my view section 79(2) is not about a sanction for breach of section 78(1) at all. It simply sets a 14-day time delay following the giving of the last NIP to the eligible qualifying tenants, before a claim notice may be served.

55. I have belatedly come to the conclusion that a negative answer to the validity issue is the right one additionally from a focus upon the concept of "dispute about entitlement" around which the provisions about counter-notices and determination by the FtT are built. Speaking generally the statutory scheme for the transfer of the right to manage is divided

into three nearly watertight compartments. The first, headed Qualifying rules, is concerned with the conditions which a RTM company must show are satisfied in order to be able to make a claim to be entitled to the transfer of the right to manage. I will call them entitlement conditions. They are almost all contained in sections 72 to 77, but include the requirement that the number of qualifying tenant members of the RTM company on the relevant date is not less than half the number of flats in the premises, in section 79(3) to (5). These are all rules of substance rather than procedure.

56. The second, headed "Claim to acquire right", contains a procedural code setting out the steps that must be taken for the implementation of that entitlement by a RTM company, for strictly limited objections to that entitlement to be made by a specified class of stakeholders, and for those objections to be determined by the FtT. The objective is for the transfer to go through automatically unless a permissible objection is made and then upheld, or the claim is withdrawn. Those provisions are mainly contained in sections 78 to 89, and end with provisions as to costs.

57. The third section may conveniently be labelled consequences, and runs from section 90 onwards, which are mainly provisions of substance, laying down when the acquisition is to take place, what rights are to be transferred and the principal obligations of persons affected by the transfer. The scheme concludes with miscellaneous provisions, including the discretionary power of enforcement in section 107.

58. To my mind the critical question about the consequences of non-compliance with sections 78(1) and 79(2) is not whether they render the claim notice invalid, void or voidable, and if so by whom. Rather the correct question is whether non-compliance with them by the RTM company is capable of being raised as the basis of a dispute about entitlement by way of counter-notice under section 84(1) and (2) by the classes of stakeholder (landlords and others) entitled to object. For that purpose the language of those sub-sections about "entitlement to acquire the right to manage" and the description of objections by counter-notice as giving rise to a "dispute about entitlement" in section 90(2) and (3) mean that it is only an objection that the RTM company fails to satisfy what I have labelled the substantive entitlement conditions that can be raised by way of objection. Since the rules in sections 78(1) and 79(2) are procedural and do not go to entitlement, they cannot be raised by way of objection to the acquisition of the right to manage by the RTM company. The only sanction for non-compliance which is available is an enforcement order made under section 107.

59. I consider that this interpretation of the words to which I have referred is strongly supported by the overall purpose of the statutory scheme, by the context, and by the available pre-legislative documents. As to purpose, the main point is that invalidity (whether voidness or voidability) is an extraordinarily blunt weapon with which to address procedural defaults of almost limitless variety in seriousness, blameworthiness and practical consequences (if any). One would expect to find a discretionary means of

redress in which the court or tribunal could refuse relief to someone who had suffered no prejudice from a blameless default, and a scheme for enforcement not limited (like the counter-notice procedure) to a specified class (landlords etc.) for whose benefit the rules in question were plainly not made, different from the class (qualifying tenants) for whom they were made. In that context, invalidity is like taking a blunderbuss to a shooting gallery. By contrast section 107 permits an application by any interested person, and the discretion given to the court whether to make any order, or what kind of order, appears much better tailored to providing any appropriate sanction for non-compliance with what are purely procedural rules.

60. I am not of course suggesting that Parliament cannot make compliance with matters of procedure a condition of entitlement to enforce a statutory right. Part II of the Landlord and Tenant Act 1954 is a notorious example where it has done exactly that, by imposing a strict timetable for service of a counter-notice demanding a new business tenancy. But the question is always, has it done so in any particular case?

61. It is easy to see why Parliament may have wanted qualifying tenants who have not become, or agreed to become, members of the RTM company to be given a NIP, so as to enable them to make an informed choice whether to become early joiners in the acquisition of the right to manage. The public policy advantage of having as many as possible of the flats in a building represented by their owners being members of the new RTM manager is plain to see. A deliberate decision by the RTM company (with the requisite number of members to enable it to proceed) to give no NIPs at all might properly be visited by an order under section 107 on the application of one or more eligible qualifying tenants, to give all the requisite NIPs and, even if the RTM company has given a claim notice, a further order to start the claim process again, if only *pour encourager les autres*. But compliance with the requirement for the giving of NIPs to qualifying tenants before, or 14 days before, giving the claim notice is of little if any effect upon the question whether the acquisition of the right to manage succeeds or fails. The qualifying tenants could do nothing to stop the transfer if notified in advance by a NIP. They simply have no statutory or other right to object. It was faintly suggested that, if notified by a NIP in advance, they could take steps to join the RTM company and then try to make it decide not after all to pursue a claim. But that strikes me as fanciful. There would be by then enough members of the RTM company wishing to proceed to make the process unstoppable, and the management of the RTM company is vested by the required articles of association in its board of directors, not its members.

62. If qualifying tenants entitled to be given a NIP cannot stop the transfer, then it seems completely inexplicable that the framers of the statutory scheme should, by inserting a draconian sanction of invalidity of the claim notice for every breach of section 78(1), however minor and inconsequential, have legislated for exactly that outcome, at the behest of landlords and others for whose benefit the obligation was not imposed and who cannot have been prejudiced by the breach.

63. The pre-legislative background prayed in aid for this purpose are first the Consultation Paper on *Commonhold and Leasehold Reform* (Cm 4843), presented to Parliament in August 2000, and secondly the Explanatory Notes on the 2002 Act which were prepared and published by the Lord Chancellor's Department and the Department for Transport, Local Government and the Regions. Taking them in turn, para 46 of the consultation paper states that the purpose of the NIP (and the reason for the two-week wait before giving the claim notice) is to give leaseholders a proper opportunity to consider the information in the NIP before deciding whether to support the transfer of the right to manage. More to the point, para 52 states that the counter-notice could only be served on the grounds of non-compliance with one or more of the specific qualifying criteria. Examples are then given which all fall within what I have labelled the substantive entitlement conditions.

64. Para 149 of the Explanatory Notes is to the same effect as para 52 of the consultation paper. It states:

> "Subsection (2) (*of section 84*) specifies that a counter-notice may only either admit that the RTM company is entitled to acquire the right to manage or state that the company is not entitled to do so. To be effective, a counter-notice to the latter effect must state the grounds on which the company is considered not to comply with the eligibility criteria set out in the Act."

65. Thus far, looking at the matter as if it were free from authority, I have reached the clear but provisional conclusion that the statutory scheme in the 2002 Act does not impose invalidity of the claim notice as the sanction for breach of either or both of sections 78(1) and 79(2). To put it another way, a landlord cannot assert in its counter-notice that by reason of non-compliance with sections 78(1) or 79(2), the RTM company is not entitled to acquire the right to manage at the relevant date. Those provisions do not affect the entitlement to acquire that right. But the Court of Appeal considered, in Avon's submission correctly, that part of the ratio decidendi of the *A1 Properties* decision by this Court consisted of a holding that breach of section 78(1) is, by reason of section 79(2), a default by the RTM company which renders invalid a claim notice given before all the eligible qualifying tenants (who have not become or agreed to become members of the RTM company) have received their NIPs.

66. That allegedly binding holding is said to be derived from this passage in para 69 of *A1 Properties*:

> "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."

67. Even if not part of the ratio of *A1 Properties*, the Court of Appeal considered that this was an authoritative and compelling statement which ought to be followed. For good measure counsel for Avon added this passage from my judgment in *Settlers Court RTM Co Ltd v FirstPort Property Services Ltd* [2022] UKSC 1; [2022] 1 WLR 519, at para 16:

> "Sections 73 and 74, together with sections 78 and 79, ensure that 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 members, and has as its members at least half of them."

Although the decision of this Court was unanimous in both cases, I acknowledge full responsibility for the first (in time), and shared responsibility with Lord Sales for the second.

68. My statement in the *Settlers Court* case can easily be put on one side. It was a small part of a general summary of the structure of the statutory scheme, and sections 78 and 79 had nothing at all to do with the issue which had to be decided in that case, which concerned the effect of the acquisition of the right to manage one block of flats within a multi-block residential estate with shared facilities. As already noted it is of course a feature of the statutory scheme that the invitation contained in the NIP is meant to be sent to eligible qualifying tenants before the acquisition takes place. But that does not answer the question whether a claim notice given too soon, or before all those entitled to a NIP have been given one, is thereby rendered invalid.

69. The *A1 Properties* case was about the consequences of breach of the obligation in section 79(6)(a) of the 2002 Act to give a claim notice to every landlord entitled to receive one. There had been a failure to give a claim notice to an intermediate landlord, one of two entitled landlords, which then claimed that this invalidated the acquisition of the right to manage. Both the freeholder landlord and the existing management company had been given claim notices. The management company served a counter-notice relying upon the

RTM company's failure to give a claim notice to the intermediate landlord, and the FtT joined the intermediate landlord as a party to the proceedings initiated by the RTM company under section 84(3). The FtT and the Upper Tribunal both concluded that the objection should be dismissed, on the ground that the intermediate landlord had no relevant power of management which would be affected by the acquisition. The intermediate landlord appealed directly to this Court, using the leapfrog procedure. This was because, in *Elim Court RTM Co Ltd v Avon Freeholds Ltd* [2017] EWCA Civ 89; [2018] QB 571, the Court of Appeal had already ruled that a failure to give a claim notice to a landlord as required by section 79(6)(a) did not inevitably invalidate the acquisition of the right to manage, and would have been bound by its earlier decision.

70. This Court upheld the decision of the Upper Tribunal, but not for the reason given in *Elim Court*. Rather, the outcome of a careful analysis of the scheme as a whole in accordance with the *Soneji* principle led to the conclusion that the failure to give a claim notice to the intermediate landlord did not render it incapable of giving rise to an acquisition of the right to manage because the intermediate landlord had not, in the event, lost anything of value by reason of that omission. This was because the initial inability of the intermediate landlord to give a counter-notice was remedied by the FtT adding it as a party to the RTM company's application for a determination that it was entitled to acquire the right to manage, so that it had every opportunity to advance, and did advance, any objection to that application which it could have advanced by way of counter-notice, had it been given a claim notice: see in particular para 91.

71. None of this reasoning depended in any sense upon the view expressed in para 69 about the combined effect of sections 78(1) and 79(2) that no valid claim notice could be given if they had not been complied with. Furthermore the Court was using validity (or invalidity) as no more than a convenient shorthand for answering the question whether the claim notice (given to the head landlord freeholder and the then management company) was a sufficient foundation for the acquisition of the right to manage by the RTM company: see para 94. Whether the effect of section 79(2) was or was not a sufficiently clear statement of the effect of non-compliance with section 78(1) to avoid the need to conduct a *Soneji* analysis was irrelevant to the need to do so in relation to a breach of section 79(6). The question what breach of one or other or both of those rules led to in terms of consequence, or whether section 79(2) ousted a *Soneji* analysis, was simply not argued.

72. There have been a range of statements over the years about what constitutes the ratio decidendi of a decision. The narrowest is probably the well-known description of the Earl of Halsbury LC in *Quinn v Leathem* [1901] AC 495 that "a case is only an authority for what it actually decides". A broader and more flexible approach is more recently to be found in the concurring judgment of Leggatt LJ (as he then was) in *R (Youngsam) v Parole Board* [2019] EWCA Civ 229; [2020] QB 387, at paras 48 to 59, that to be part of the ratio, a ruling must be "part of the best or preferred justification for the conclusion reached" (para 51), taking into account all the factors listed in para 59

including, relevantly for present purposes, whether the point was in dispute or subject to argument, whether or how clearly the court evinced an intention to establish a binding rule and whether the court would or sensibly could have reached the same result if it had not ruled as it did. A better known but perhaps a little narrower definition, used by the majority in the *Youngsam* case, but criticised by Leggatt LJ, is whether the ruling was a necessary part of the reasoning for the decision.

73. It is not necessary for this Court to rule on what is or ought to be the modern definition of the ratio. It is enough for me to say that on none of those alternative definitions can the statement in para 69 of *A1 Properties* that, if there is default in compliance with sections 78(1) and/or 79(2) then no valid claim notice can be given, be considered part of the ratio. It was plainly not what the case actually decided. Nor was it a necessary part of the reasoning. In fact it hardly featured in the chain of reasoning at all, which was concerned with section 79(6), a very different provision. It formed no part of the justification for the decision reached. It was not subject to argument, the Court did not intend thereby to lay down any clear rule, and the actual decision in the case both could and would have been the same if the statement had not been made.

74. In that respect the statement must be viewed in the context of para 67 read as a whole. Following the passage quoted (at para 66 above) Lord Sales and I went on expressly to reserve for another occasion the "difficult question" whether a landlord given a claim notice could object to the acquisition of the right to manage on the ground that an eligible qualifying tenant had not been given a NIP before the date of the claim notice, where no objection was taken by the qualifying tenant in question. That is precisely the question which arises in this appeal. We therefore left open the question whether two earlier tribunal cases decided against the landlord on that very point, namely *Sinclair Gardens Investments (Kensington) Ltd v Oak Investments RTM Co Ltd* [2005] RVR 426 and *Avon Freeholds Ltd v Regent Court RTM Co Ltd* [2013] UKUT 213 (LC); [2013] L & TR 23, were rightly decided.

75. Even if not part of the ratio of *A1 Properties*, the question remains whether that statement, expressed to go to validity of the claim notice, is so persuasive that it ought nonetheless to be followed, as the Court of Appeal thought. For all the reasons already given I have come to the conclusion that it ought not. The key word in the passage relied upon is "validly", implying that breach of section 78(1) and 79(2) invalidates a claim notice. In my judgment, while it is plain that the purpose of the two rules is to bring about a 14-day period after all eligible qualifying tenants have been given a NIP, before the RTM company can set in motion the acquisition of the right to manage by giving a claim notice, they say nothing sufficiently clear about what should happen if the RTM company gives a claim notice before every eligible qualifying tenant has been given a NIP, or earlier than 14 days after that has happened, to enable the court to dispense with an analysis of the consequences in accordance with the *Soneji* principle. Such an analysis leads inevitably to a conclusion that the landlord given such a claim notice may not rely upon the breach of sections 78(1) and 79(2) as the basis for a counter-notice, or therefore

as the basis for raising a dispute as to the entitlement of the RTM company to acquire the right to manage the relevant premises under the statutory scheme.

76. The reasons may easily be summarised from the foregoing paragraphs of this judgment:

> (i) The failure caused no conceivable prejudice to Avon, which was not a person intended to be benefited or protected by the two rules in question.
>
> (ii) The failure had no effect upon the progress of the acquisition, since the qualifying tenants had no right to oppose it by a counter-notice.
>
> (iii) Parliament could not have intended that such an error by the RTM company should have invalidated the acquisition of the right to manage the premises unless the qualifying tenant him or herself takes steps under section 107 to invoke the FtT's discretionary jurisdiction to make an enforcement order.

77. There is incidentally much in the *Soneji* analysis carried out by this Court in *A1 Properties* which supports the above conclusion in the present case, in particular in paras 91–92. In para 91 it is emphasised that the question to be addressed, in deciding whether a procedural failure has the effect of invalidating the process, is whether a relevant party has thereby been deprived of a significant opportunity to have their opposition to the making of a transfer order considered. Ms O'Connor had no such right or opportunity to object at any stage, and Avon's right to object was not affected in any way.

78. In para 92 it is stated that there is no good reason to suppose that Parliament intended that a person who has not been affected by a procedural omission in relation to another should acquire, by a windfall, a power to thwart the operation of the statutory process which it would not otherwise have enjoyed. That description fits Avon perfectly, even though it was addressed to different facts and a different procedural omission.

79. More generally, at para 98, this Court observed that:

> "the purpose of the legislative scheme as explained in the Consultation Paper includes the objective that opportunities for obstructive landlords to thwart the transfer of the right to manage should be kept to a minimum. The procedural requirements have not been included to create traps for the unwary, nor to afford unwarranted opportunities for obstruction on the part of objecting landlords who have not themselves

> been significantly affected by any particular omission to comply with them.”

80. Finally, at para 100, this Court placed emphasis on the need to avoid increasing the risk that, by having to make multiple applications, lack of funds might prevent an otherwise deserving RTM company from enforcing its statutory right to manage. It continued:

> “Therefore, to impose on a RTM company an obligation to re-start the process if it happens to omit to comply with any procedural requirement would tend to undermine to an unwarranted degree the ability of tenants and RTM companies to pursue the remedy in respect of problems regarding the management of their building which Parliament intended should be available to them. It is only where a landlord or other stakeholder can show that it has lost a right to assert an objection which has substantive force in the context of the legislative scheme that it may be inferred that the transfer of the right to manage should be voidable and capable of being set aside by the person affected.”

81. For those reasons I would allow this appeal, and restore the decision of the Upper Tribunal.