Press Summary

27 August 2026

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

[2026] UKSC 31

On appeal from: [2025] EWCA Civ 1016

Justices: Lord Reed (President), Lord Briggs, Lord Stephens, Lady Rose and Lord Snowden

Background to the Appeal

This appeal concerns the operation of the regime in the Commonhold and Leasehold Reform Act 2002 (the "**CLRA**") under which qualifying tenants may acquire the right to take over the management of their block of flats through the formation and interposition of a right to manage ("**RTM**") company. The acquisition process requires the RTM company to give a notice of invitation to participate (a "**NIP**") on each qualifying tenant who is not, and has not agreed to become, a member of the RTM company at least 14 days before making a claim to acquire the right to manage. The principal issue in this appeal is whether a landlord may rely on non-compliance with this requirement to defeat a RTM claim where the RTM company otherwise satisfies the statutory conditions entitling it to acquire the right to manage.

The dispute in this appeal concerns the right to manage the residential property known as numbers 7-26 Cresta Court, Hanger Lane, London (the "**Premises**"). The Premises comprises twenty flats. The appellant, Cresta Court E RTM Co Ltd, is a RTM company incorporated by leasehold owners of the Premises for the purposes of acquiring the right to manage. It gave NIPs to all those it had identified as qualifying tenants who had not become or agreed to become its members. It did not give a NIP to Ms O'Connor, the residential occupier of a flat within the Premises. It is now common ground (although in issue in the courts below) that Ms O'Connor was a qualifying tenant and should have been given a NIP. Ms O'Connor nonetheless agreed to become a member of the appellant on 26 January 2022 and supported the appellant's claim to the right to manage the Premises. Five days earlier, on 21 January 2022, the appellant gave its claim notice to the respondent, Avon Freeholds Limited, the registered freehold owner of the Premises.

The respondent disputed the appellant's entitlement to acquire the right to manage the Premises. It argued that the appellant was in default under two statutory procedural requirements: 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)).

The appellant applied to the First-tier Tribunal (the "**FtT**") for a ruling that its application for a transfer of the right to manage the building was valid. The First-tier Tribunal and the Upper Tribunal upheld the appellant's claim. The Court of Appeal allowed the respondent's appeal on the basis that the failure to serve one of the qualifying tenants with a NIP before serving the claim notice rendered that notice void. The appellant now appeals to the Supreme Court.

Judgment

The Supreme Court unanimously allows the appeal. The appellant's failure to give Ms O'Connor a NIP did not invalidate its application for a transfer of the right to manage the Premises. Lord Briggs gives the sole judgment, with which the other Justices agree.

Reasons for the Judgment

The first question is whether the legislation expressly states what the consequence is of failing to comply with the procedural requirements. The respondent argued that section 79(2) provides that, where a RTM company has failed to comply with section 78(1), any purported claim notice given is invalid [**36**]. The Court rejects that interpretation as it would give rise to significant difficulties across the statutory scheme **[38]-[41]**. If the claim notice were invalid, the landlord could not give a valid counter-notice and the RTM company could not invoke the FtT's jurisdiction to determine its entitlement to acquire the right to manage. It is improbable that Parliament intended disputes about whether there has been a breach of section 78(1) and section 79(2) to fall outside the FtT's jurisdiction. It would also raise difficulties for determining the "relevant date", which is defined by reference to the date on which the notice is given. The relevant date is crucial for determining whether there is an entitlement to a transfer of the right to manage and for assessing whether there has been a breach of section 78(1) or section 79(2).

Further, the procedural requirements were clearly designed to benefit qualifying tenants **[42], [43]**. If failure to comply with them resulted in the claim notice being void, anyone (including the landlord) could rely on that failure to defeat the transfer of the right to manage. That would be unjust and unfair and go against the intended operation of the scheme.

All these considerations support the view that neither section 78(1) nor section 79(2) were intended to affect the validity of the claim notice. Where a statute does not expressly state the consequences of a failure to comply with a statutory procedural requirement, the court must infer what consequences Parliament had intended non-compliance to have by considering: (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 what prejudice or injustice might arise if the validity of the statutory process was affirmed notwithstanding non-compliance with the requirement **[46]**. This is referred to as the *Soneji* principle.

Section 78(1) and section 79(2) provide for distinct self-contained rules **[47]-[49]**. Section 79(2) is concerned with the need to leave a 14-day gap and can be breached without any parallel breach of section 78(1). Neither rule contains an express sanction for breach. The Court first applies the *Soneji* principle to a case where section 79(2) has been breached but section 78(1) has been complied with (e.g. the RTM company gives its claim notice only 13 days after giving a NIP to the last eligible qualifying tenant) **[51], [52]**. In such a case, neither the landlord nor the last eligible qualifying tenant would have suffered any material prejudice. Invalidity would not be an appropriate sanction. The conclusion is the same where there has been a breach of both section 79(2) and section 78(1), as in the present case **[53]**.

This reading of the legislation does not render section 79(2) or section 78(1) toothless, as section 107 provides a discretionary power for a court to order compliance. The fact that section 79(2) uses mandatory words is not determinative of the intended consequences for non-compliance **[54]**. Section 79(2) says nothing about validity, whereas the concept of validity is referenced elsewhere in the legislation.

The Court draws further support for its conclusion from consideration of the concept of "dispute about entitlement" **[55]**. The legislation distinguishes between the substantive conditions of entitlement which a RTM company must show are satisfied to make a claim and the procedural code setting out the steps that must be taken by the company for the implementation of that entitlement **[55]**. The critical question is whether non-compliance with sections 78 and 79, which form part of the procedural code, are capable of being raised as the basis of a dispute about entitlement by way of counter-notice under section 84(1) and (2). The Court concludes that only objections concerning the RTM company's satisfaction of the substantive entitlement conditions, and not procedural requirements in sections 78 and 79, can be raised by counter-notice **[58]**.

This interpretation is supported by the overall purpose of the statutory scheme. Invalidity is too blunt a tool to address procedural defaults which may be of almost limitless variety in seriousness, blameworthiness and practical consequence **[59]**. Section 107 provides a more suitable mechanism for providing relief, as the court has discretion to determine what consequences should follow from a procedural default. The notification requirements have little bearing on whether the acquisition of the right to manage succeeds or fails. Given that qualifying tenants entitled to be given a NIP cannot stop the transfer, there is no reason to assume that the statutory scheme was intended to provide for the draconian sanction of invalidity of the claim notice for every procedural breach **[62]**. This conclusion is supported by the pre-legislative materials, including the government Consultation Paper and the Explanatory Notes **[63].**

The respondent relied on statements made in the Court's judgment in *A1 Properties (Sunderland) Ltd v Tudor Studios RTM Co Ltd* [2024] UKSC 27 as supporting its position on invalidity. The Court holds that those statements did not form part of the binding reasoning of that decision. The relevant issue was not subject to argument, and the Court did not intend to lay down any clear rule **[74]**. Much of the analysis in *A1 Properties* supports the Court's conclusion in the present appeal **[75]-[80]**.

References in square brackets are to paragraphs in the judgment.