



**Law
Commission**
Reforming the law

Leasehold home ownership: exercising the right to manage

Law Commission Consultation Paper

Analysis of responses to Leaseholder Survey

INTRODUCTION

Background

- 1.1 The right to manage (“RTM”) is a right for leaseholders to take over the management of their property from the landlord, without having to buy the freehold.
- 1.2 In January 2019, the Law Commission published a Consultation Paper¹ setting out proposals for the reform of the existing RTM regime. At the same time, we published a leaseholder survey (the “survey”) and invited leaseholders and RTM company directors to respond. The period for responding to both the Consultation Paper and the survey closed on 30 April 2019.
- 1.3 The purpose of the survey was to collect information on leaseholders’ experiences of the current RTM process. We wanted to hear directly from leaseholders about their experiences of acquiring and operating the RTM and their reasons for seeking to acquire the RTM in the first place. We also wanted to understand what leaseholders have found to present bars to acquiring the RTM, or to the RTM being successful following acquisition. The responses to survey were also intended to provide part of the evidence base that we would use for making our final recommendations for law reform in this area.
- 1.4 We received 150 responses to the survey. A list of those who responded is provided in the appendix to this document.
- 1.5 This document is a summary of the responses we received to the survey. It aims to report the arguments and evidence of the people who responded to the survey, and does not give the views of the Law Commission. Our final recommendations are set out in a Report, published alongside this summary of responses.² The Report also includes some references to the leaseholder survey, where we use it to illustrate the experiences of claiming the RTM under the current law.
- 1.6 We are extremely grateful to all those people who took the time to complete the survey. In this document, we summarise and in some cases quote directly from responses. Where we have quoted or summarised from particular responses, we do not attribute them to individuals.

Form of survey

- 1.7 The first section of the survey was titled “About you”, and asked people to indicate where their leasehold property was located. Most respondents said that their property was in London (24%), the South East (26%), the North West (18%), or the West Midlands (15%). The remaining respondents said that their property was in the South West, East Midlands, East Anglia or the North East. The remaining respondents said

¹ Leasehold home ownership: exercising the Right to Manage (2019) Law Commission Consultation Paper No 243. Available at <https://www.lawcom.gov.uk/project/right-to-manage/>.

² Leasehold home ownership: exercising the right to manage (2020) Law Com No 383. Available at <https://www.lawcom.gov.uk/project/right-to-manage/>. Shorter summaries of the Report and of our Reports on enfranchisement and commonhold are also available.

that their property was in the South West, East Midlands, East Anglia or the North East. Only three respondents (2%) said that their property was in Wales.

1.8 The survey was split into six further parts, with respondents completing the part(s) relevant to them:

- (1) “If you live on an estate”;
- (2) “If you have successfully acquired the RTM”;
- (3) “If you acquired the RTM, but the RTM has since come to an end”;
- (4) “If you have been involved in an unsuccessful attempt to acquire the RTM”;
- (5) “If you have considered making an RTM claim and decided not to”; and
- (6) “If you are currently considering or planning an RTM claim”.

1.9 We summarise and provide some statistics for the responses to each part of the survey, drawing out key themes that emerged. The survey was not intended to be a detailed review of the RTM in practice and the statistical data we have collated and presented in this summary cannot be reliably applied to all RTM schemes, or all leaseholders, in England and Wales. However, the survey responses provide useful insight into some experiences of leaseholders in practice and have fed into our recommendations for law reform.

Summary of key findings

1.10 Multi-building or whole estate RTMs set up under the current law are operated through complicated arrangements.

1.11 Many people who responded to the survey had experienced disputes in relation to RTM acquisition. A majority of respondents (54%) said that there was conflict in the form of obstructive or non-cooperative managing agents and landlords.

1.12 The following recurring themes arose across the different parts of the survey:

- (1) Reasons for wanting to acquire, seeking to acquire or having acquired the RTM were mainly related to poor service provision by the landlord or managing agent, and high service charges.
- (2) Respondents found the process of claiming the RTM complicated.
- (3) When some leaseholders decide to claim the RTM, there can be a lack of cohesion and engagement with other leaseholders.
- (4) Some respondents said that landlords and/or managing agents had been uncommunicative, obstructive and difficult. There were also some references bullying and harassment, and even dishonesty, on the part of landlords and managing agents.

- (5) Several people told us that their buildings did not meet the qualification criteria and therefore they could not claim the RTM. Shared ownership flats and non-residential restrictions were cited as presenting particular bars to the RTM.
- (6) The costs associated with the RTM acquisition were often referred to as excessive or prohibitive, such costs including landlord and solicitors' costs. The costs people quoted varied widely, indicating that they can be volatile and unpredictable.
- (7) Several respondents noted that there appears to be a lack of knowledge and understanding about the RTM on the part of landlords and professional advisors, including solicitors, as well as leaseholders themselves.
- (8) Several reported difficulty in obtaining uncommitted service charges from the landlord or managing agent following acquisition of the RTM.
- (9) The majority of respondents who answered the relevant question said that their insurance costs had reduced following acquisition of the RTM.

PART 1: IF YOU LIVE ON AN ESTATE

1.13 87 (58%) consultees responded to section of the survey about living on an estate.

Description of the estate (Questions 1(a), (b) and (c))

- 1.14 87 respondents described their estate. 49 (56%) said that there were leasehold houses on their estate; 26 (30%) said that there were no leasehold houses on the estate; and 12 (14%) said that they did not know.
- 1.15 Although we did not ask a specific question, 21 (44%) respondents indicated in their additional comments that their estate contained social housing or affordable housing.
- 1.16 Three respondents said that their estate contained freehold houses where maintenance charges applied in relation to communal property.

Is the whole estate managed by the same company? (Question 1(d))

- 1.17 87 respondents responded to this question. 70 (81%) answered "Yes"; 9 (10%) answered "No"; and 8 (9%) said that they did not know.
- 1.18 Respondents who answered "Yes" typically provided the name of a management company, housing association or local authority.
- 1.19 Respondents who answered "No" described various arrangements that are in place for shared management of the estate. For example, the following five responses illustrated different management arrangements:
- (1) Four different companies have responsibilities for managing the estate;
 - (2) The building is managed by the freeholder (a housing association), but a managing agent manages shared areas on the estate.
 - (3) Management of the estate is shared between an RTM company which is responsible for a large block, and a managing agent which is responsible for a small block.
 - (4) One block is managed by a housing association, and two blocks by RTM companies, with the original managing agent providing estate services.
 - (5) One managing agent manages most of the blocks, save for those owned by a housing association, which are managed by a separate company.

Are there separate service charge funds for each block? (Question 1(e))

- 1.20 82 respondents answered this question. 26 (32%) answered "Yes"; 29 (35%) answered "No"; and 27 (33%) said that they did not know.
- 1.21 In some cases, there was a common fund for maintenance of landscaping and external works. One person told us that they lived on an estate which was split into areas, with each area being consolidated into one fund.
- 1.22 Most people who answered this question focused on whether service charges are levied uniformly across the estate. For example, respondents told us variously: that

tenants pay a lower service charge than freeholders; affordable houses and social rent houses pay less than private houses; and service charges were lower in block without lifts. By contrast, one respondent said that all properties pay the same “escalating and uncontrollable” annual charge.

- 1.23 Several respondents complained that it was unfair to levy service charges differently across the estate. For example, one respondent told us that:

The freehold houses on the “estate”- which is an open/publicly accessible area are frequently charged for the repair and maintenance of council flats. There is no transparency and accountability.

Another respondent said:

Most houses pay £150. However flats pay upwards of £600. Some houses which have nothing to do with flats (like mine) pay over £650 because they got lumped in with the flats, purely because of proximity. I don't have any shared spaces!

If you have successfully acquired the RTM on an estate, did you do this by making individual applications for each block or did your block alone acquire the RTM? (Question 2(a))

- 1.24 19 respondents answered this question, indicating that they had acquired the RTM on an estate. 4 (21%) said that the whole estate acquired the RTM by making individual applications; 3 (16%) said that their block alone acquired the RTM; and 12 (63%) responded “Other”.
- 1.25 The respondents who answered “Other” generally said that they had not acquired the RTM, had not yet applied for it, or were not eligible (for example, because they owned the freehold).

Did you have any problems/disputes with the landlord over whether you could acquire the RTM because you live on an estate? (Question 2(b))

- 1.26 24 respondents answered this question. 13 (54%) respondents said they had problems/disputes over whether they could acquire the RTM because they live on an estate; and 11 (46%) said they did not.
- 1.27 Respondents who had disputes told us variously that:
- (1) The managing agent was the most obstructive party.
 - (2) The landlord tried to obstruct the RTM by requiring that the RTM Co specify appurtenant property, or arguing that the blocks were not separate (for example, because they shared a structurally separate water pump).
 - (3) The landlord “accepted” the RTM for one of the blocks, but not for the rest.
 - (4) The landlord engages in bullying and non-cooperation.
 - (5) Management provided an income stream for the landlord, so the landlord resisted the RTM.

Did you have any problems/disputes with the landlord over whether you could acquire the RTM because you live on an estate? (Question 2(c))

- 1.28 23 (26%) respondents answered this question. 10 (43%) said that they had problems; 13 (57%) said that they did not. There were limited substantive comments. However, of those who did make additional comments, the most cited issue was the management of car parks.

If you applied to acquire the RTM and the claim failed, did it fail because you were part of an estate? (Question 3(a))

- 1.29 30 people responded to this question. 3 (10%) answered “Yes”; 2 (7%) answered “No”; and 25 (83%) responded “Other”.
- 1.30 The respondents who answered “Yes” did not provide detailed comments.
- 1.31 The respondents who answered “No” identified alternative reasons why the claim failed (for example, because they owned the house on freehold).
- 1.32 Respondents who answered “Other” explained why their RTM claim had failed, or why they had not yet instituted a claim. Some examples of reasons were:
- (1) Some leaseholders were not on board.
 - (2) The freeholder would not communicate with the leaseholders about the RTM.
 - (3) The building was not eligible; for example, the majority of the flats were shared ownership.
 - (4) The building had had ongoing building works.
 - (5) The claim process is too complicated to understand, and/or the block could not afford solicitor’s advice.

If multi-building RTM were available, would you want to acquire it? (Question 3(b))

- 1.33 Of the 46 people who responded to this question, 41 (89%) answered “Yes” and 5 (11%) answered “No”.
- 1.34 A respondent who answered “No” stated:
- I personally would oppose it as I am satisfied with the Council’s efforts. I am aware of opposing views of residents but do not feel there is enough engagement from residents to make a successful go of managing the estate.
- 1.35 Respondents who answered “Yes” variously said that multi-building RTM had the following advantages:
- (1) The ability to set up one company only.
 - (2) The benefits of “unification”.
 - (3) Practical benefits of a joint claim, for example:

We are a small building of 6 flats, next door is a block of 2 flats. We share the carpark area, it would be very helpful if we could seek RTM together.

(4) Greater control over estates, for example:

At present we have no control on who or what is done with our estate the amount charged is expensive and we have very limited say in any matters relating to how monies are spent and who carries out the work, if we had the right to manage we could hopefully approach our council about adoption of the estate even if this means an extra surcharge on top of our council tax.

1.36 However, some respondents emphasised that buildings should be given the option to RTM individually, or to RTM as a multi-building.

1.37 One respondent suggested that leaseholders should be able to claim two types of RTM over the same estate. They explained that their estate is a complex arrangement of different forms of tenure (110 leasehold flats in 6 physical blocks, with freehold in all flats owned by umbrella company; 62 freehold houses; 7 leasehold flats in a separate physical block). Their submission concluded:

Ideally it seems our estate needs access to two forms of RTM:

(a) RTM for all home-owners with regard to the annual Estate Rentcharge. ...

(b) RTM for the 110 Leasehold flat-owners only, with regard to their annual Blocks Charge.

We expect that it would not be possible for the above two forms of RTM to be combined. We expect that the two forms would need to be pursued separately.

PART 2: IF YOU HAVE SUCCESSFULLY ACQUIRED THE RTM

Have you successfully claimed the RTM? (Question 4)

1.38 35 respondents answered this question. 26 (74%) indicated that they had successfully acquired the RTM; 9 (26%) indicated that they had not.

Why did you decide to acquire the RTM? (Question 5)

1.39 29 respondents answered this question, giving a variety of reasons for acquiring. For example:

- (1) To replace the managing agents. For example, one respondent said:

Due to appalling service from existing Management Company. Service charges increasing much higher than inflation, 'one off' costs for major works totalling tens of thousands of pounds. Management fees and building insurance deemed as not being reasonable as determined through a FTT hearing.
- (2) Dissatisfaction with current management and wish to improve quality of management.
- (3) Wanting to take control of managing common services and communal parts, or to control the future of the development.
- (4) The building was in disrepair, or repair works had been poor.
- (5) Fees were excessive, or the landlord failed to account for service charge expenditure.
- (6) Aggressive, hostile or uncommunicative behaviour by the landlord.
- (7) Failure to comply with healthy and safety requirements.

How did you obtain the contact details for the qualifying tenants? (Question 6)

1.40 29 respondents (83%) answered this question. Respondents said that they obtained contact details for qualifying tenants in various ways, including:

- (1) Residents were already in contact (for example due to previous disputes with the freeholder, previous major works, or because it was a small block).
- (2) Sourced from the Land Registry.
- (3) Provided by managing agents, the landlord or the developer.
- (4) Provided by the existing residents' association.
- (5) Door knocking/direct canvassing, or posting signs on the property.
- (6) Asking local estate agents to put the RTM company in touch with the registered leaseholders.

(7) Use of social media.

1.41 This response indicated that a range of techniques may be required to locate all addresses:

Initially by word of mouth, talking to everyone we met on the development. Inviting all leaseholders to a meeting by word of mouth and by writing to them individually c/o their flat address. Where we had not received a response we literally knocked on doors of the flats asking tenants if they could ask their landlords or letting agents to get in touch with us. Once any remaining flat owners purchase was registered with Land Registry we were able to write out to them again at the address they had provided.

Did you encounter any difficulties securing the requisite membership for the RTM company? If you answered, please give further details. (Question 7)

1.42 27 respondents answered this question. 10 (37%) indicated that they had encountered difficulties securing the requisite membership for the RTM company; 17 (63%) said they had not.

1.43 Respondents who answered “No” were not asked to provide further comment.

1.44 Respondents who answered “Yes” explained that they encountered the following problems in securing the requisite membership, including:

- (1) Leaseholders living abroad, or were otherwise absent/disengaged (such as buy-to-let leaseholders).
- (2) Some leaseholders expressing an interest but being unwilling to contribute to solicitors’ fees.

How long did the process of acquiring the RTM take? (Question 8)

1.45 29 respondents answered this question. Answers ranged between:

- (1) “A few weeks”.
- (2) A “few months”, six months, eight months, or nine months.
- (3) One year, or “over a year”.
- (4) Two years, or “a couple of years”. A respondent explained:

The legal process including tribunal involvement took a couple of years, once it became clear that the freeholders wanted to contest aspects of the scope of the RTM's activities and responsibilities.

- (5) Four years. A respondent explained:

We set up the RTM Company in 2003 and acquired the right to manage in 2007. However, for unrelated reasons, it wasn't until 2006 that we actively pursued the right. Then, our solicitor, miscalculated the timing - he was responsible for the delay towards the end.

How much did the process of acquiring the RTM cost the RTM company/qualifying tenants (including to cover the landlord's costs)? (Question 9)

- 1.46 27 respondents answered this question.
- 1.47 Some respondents provided the overall cost, with various experiences including £1000; £2000; £2300; £2500; £3500; £4000; £4881; £5000; £8000; £10,000; £12,000 and £15,000. Other respondents quoted the cost per leaseholder, variously: including £50; £140; £308; £400 and £500.
- 1.48 Respondents most commonly referred to solicitors' fees, but also mentioned the costs of company formation, surveyors' reports, the cost of filing documents with Companies House, and legal costs incurred by managing agents. One respondent explained:
- We employed a "Lease" recommended law firm to handle the RTM... at a cost of £4000, this was split between 5 of the total of 7 flats... the managing agent served counter notice for unknown reasons... our solicitor then informed us that to take the case to tribunal would cost us a further £10,000 and at that point we decided we could not afford to continue.... On top of this the landlords managing agent charged us nearly £3000 in legal fees.
- 1.49 By contrast, one respondent said that that managing agents covered these costs:
- It didn't cost anything as a managing agent offered to facilitate on condition that they then took over management of the block. Certain managing agents have identified an opportunity here, and actively promoted RTMs, recognising that the structure pretty much lets them off the hook since the RTM company takes on all legal liability and the chances of the RTM company (and its amateur directors) then holding the managing agent to account under contractual law are very remote.

Did you encounter any difficulties acquiring the RTM? (Question 10)

- 1.50 28 respondents answered this question. 15 (54%) said they encountered difficulties acquiring the RTM; 13 (46%) said they had not.
- 1.51 Respondents noted that issues creating difficulty including:
- (1) Lack of knowledge and experience on the part of the solicitor.
 - (2) The difficulty of obtaining the firm commitment of leaseholders.
 - (3) Dishonest behaviour by managing agents (including one respondent who referenced false reporting of service charges, creating a sham health and safety scare).
 - (4) Attempts by landlords to block the acquisition of the RTM.

Do you have any other comments to make about your experience of claiming the RTM? (Question 11)

- 1.52 15 respondents made further comments about the experience of claiming the RTM. They generally commented on the difficult and complicated nature of the claim process, with one referring to the process as a "minefield" and another as

“unnecessarily complicated”. Respondents also stated that the process “took a lot of my time” and required “a lot of dedicated hard work”.

Have you experienced any difficulties since acquiring the RTM? (Question 12)

- 1.53 Of the 29 respondents who answered this question, 19 (66%) said they had experienced difficulties since acquiring the RTM, and 10 (33%) said they had not.
- 1.54 Respondents who answered “No” were not asked to provide further comment. Respondents who answered “Yes” raised the following difficulties since acquiring the RTM:
- (1) Lack of knowledge on the part of RTM company directors about legal issues, such as issuing licences for alterations.
 - (2) The difficulty of finding replacement directors.
 - (3) Lack of cooperation by previous managing agents (such as a failure to hand over information about service contracts and accounts, failure to collect outstanding service charges).
 - (4) Directors being required to pay D&O (directors’ and officers’ liability) insurance costs themselves.
 - (5) Difficulties dealing with managing agents (such as managing agents who use their own contractors rather than contractors chosen and vetted by the RTM company).

How is/was your relationship with your landlord after you acquired the RTM? (Question13)

- 1.55 26 respondents answered this question. 3 (12%) said that they had a positive relationship with their landlord after they acquired the RTM; 11 (42%) said they had a negative relationship; 12 (46%) marked “Other”.
- 1.56 Of those who reported a negative relationship:
- (1) Several noted that the landlord had become absent and/or stopped responding to leaseholders. One said that when the leaseholders wanted to end the RTM, they made efforts to re-establish contact with the landlord.
 - (2) One respondent said they had had to pursue the landlord through the property redress scheme to access information that took a further six months.
 - (3) One respondent noted that the freeholder did not understand the responsibilities of the RTM, and insured the building and demanded a premium despite the building already being insured by the RTM company.
- 1.57 Of the respondents who reported a positive relationship, only one provided further comment. This respondent noted that the relationship with the landlord had been positive during the formation of the RTM, but declined after acquisition of the RTM.

- 1.58 Respondents who responded “Other” generally said that the relationship with their landlord was neutral, and had not changed after the RTM was acquired. Some of these respondents reported that the landlord had been absent before they acquired the RTM and remained so, or was still refusing to respond to leaseholder enquiries. One respondent said:

What I do find strange, in particular after [the] Grenfell Tower tragedy, is that the freeholder has shown no interest at all in the building; in the fire safety precautions and measures in place, or other health and safety matters. I'd have thought that they would be interested in obtaining some assurance that we (the RTM Board) had considered the aftermath of the Grenfell Tower tragedy and considered any lessons learned. Instead, nothing.

In short, we have no contact at all with the landlord.

Did you experience any difficulty obtaining from the landlord the information necessary to carry out management, such as the insurance claims history and existing management contracts? (Question 14)

- 1.59 26 respondents answered this question. Respondents were exactly divided as to whether or not they had experienced difficulties obtaining information from the landlord.

- 1.60 Respondents who experienced difficulty obtaining information said that:

- (1) There was no methodical transfer of information. For example, one person said that:

All that was handed over was a small cardboard box with random documents in it. Our new managing agent's accountants went through everything and basically told us to start from scratch which we did. We then discovered the freeholder's agents had not paid the insurance for the previous year... we never did get a service charge for the last two years we were with them.

- (2) Landlords sought payment for information that already existed. For example, one respondent reported that a landlord tried to charge £500 for a survey that had been completed and paid for 11 years ago.

- 1.61 Respondents who did not experience difficulty said variously that:

- (1) A managing agent organised the handover to the RTM company.
- (2) They retained the existing managing agent, who was willing to provide all relevant information.
- (3) They had acquired this information pre-acquisition.

Did you experience any difficulty acquiring the uncommitted accrued service charge funds from the landlord? (Question 15)

- 1.62 Of the 26 respondents who answered this question, 18 (69%) said they had had difficulty getting the uncommitted service charge funds from the landlord; 8 (31%) said they had not.

- 1.63 Respondents who answered “Yes” told us that the amount recovered was lower than expected, or that the managing agent did not produce sufficient accounts. For example:
- (1) Some respondents reported that they were never transferred the uncommitted accrued service charge funds, or that they received less money than expected. One RTM company was sent outstanding invoices by the managing agent that had been incurred on behalf of the landlord (such as outstanding electricity bills for £4000).
 - (2) One respondent said that the balance was transferred in instalments over an extended period.
 - (3) One respondent reported that the managing agent transferred the funds, but declined to produce accounts because the acquisition date did not align with the accounting year dates defined in the lease.
 - (4) One respondent explained that leaseholders deliberately withheld a portion of their service charge payments in the six months leading up to the acquisition of the RTM. This was because they were “certain that [they] would have difficulty getting uncommitted funds from the managing agent”.
- 1.64 A respondent who answered “No” explained they did not have difficulty acquiring the uncommitted accrued service charge funds because they instructed the existing managing agents, who held the funds on trust.

Was there any uncertainty about which management functions transferred to the RTM company on acquisition of the RTM? (Question 16)

- 1.65 26 respondents answered this question. Half of these said there had been uncertainty about which management functions transferred to the RTM company, and half said there had not.
- 1.66 The respondents who answered “Yes” to this question said that there was uncertainty over management responsibility for the following matters: responsibility for the CCTV system; granting permissions; shared facilities, and maintaining a register of sublets.

Was there any property (such as gardens or a car park) which was shared with other buildings? If there was shared property, how was that property managed after you acquired the RTM? (Question 17)

- 1.67 27 respondents answered this question. In response to the first part of the question, 9 (33%) respondents answered “Yes”; 18 (67%) answered “No”.
- 1.68 Respondents who answered “Yes” mentioned landscaping, paving, car parks, gardens, access roads, street lights, grass verges, children’s play areas, bin stores, and water stand pipes/water booster pumps.
- 1.69 Several respondents told us the original managing agent continued their responsibility in respect of shared appurtenant property. One respondent said that estate-wide property is managed by the original managing agent, but property shared by two neighbouring blocks is shared by the RTM company for each of those blocks.

Were the RTM company directors aware of their obligations under company law, the leases and under the RTM legislation? (Question 18 – First part)

1.70 26 respondents answered this question. 17 (65%) said that the RTM directors were aware of their obligations and 9 (35%) said they were not.

1.71 Respondents who answered “Yes” told us that:

- (1) Directors’ duties are clearly explained in Companies House documentation, and in the LEASE and gov.uk advisory leaflets.
- (2) Directors should be guided by their solicitors.
- (3) Directors are generally retired business people with experience of company law and the ability to research specific leasehold and RTM legislation.

1.72 Respondents who answered “No” told us that:

- (1) The RTM company had to employ a company secretary.
- (2) Understanding directors’ duties was a “massive learning curve”.
- (3) The directors completed a first-time directors course at Companies House.
- (4) Directors should be more aware of their legal responsibilities before taking up their roles, especially regarding fire safety, health and safety and water safety.

1.73 One respondent said:

Despite different directors being in place over time; none had an understanding of the legal liabilities. They thought they were on the board of a glorified residents’ association, with no responsibility...

Was information on what the obligations are, and how to perform them, readily available? (Question 18 – Second Part)

1.74 26 respondents answered this question. 17 (65%) said information on directors’ obligations was readily available, and 9 (35%) said it was not.

1.75 Respondents variously said that they relied on information from LEASE, Leasehold Life, the Institute of Residential Property Management and ARMA.

1.76 Respondents also said they had received advice from professional managing agents or solicitors.

Have you been involved in the granting of lease consents through the RTM company? If you answered “Yes” above, have there been any difficulties? (Question 19)

1.77 With regards to involvement in the grant of leases, 24 respondents answered this part of the question. 9 (38%) respondents answered “Yes”; 15 (62%) answered “No”.

1.78 In terms of whether difficulties were encountered, 10 respondents answered this question. 5 (50%) answered “Yes”; 5 (50%) answered “No”.

- 1.79 Few people provided details about the difficulties encountered by RTM companies and leaseholders. However, one person said that lease consents are handled by the managing agents. Another said that the RTM company only gave consents to subletting and alterations to windows, and that all other consents reverted to the landlord.

Did you receive details of the insurance claims history from your landlord? (Question 20 – First part)

- 1.80 26 respondents answered this question. 9 (35%) answered “Yes”; 17 (65%) answered “No”.

Was insurance less expensive or more expensive after you acquired the RTM? (Question 20 – Second part)

- 1.81 27 respondents answered this question. 19 (70%) said insurance became less expensive after the acquisition of the RTM; 2 (7%) said insurance became more expensive; 4 (15%) said that the price of insurance was the same; and 2 (7%) said they did not know.

Is your landlord’s interest in the property noted on the policy? (Question 20 – Third Part)

- 1.82 27 respondents answered this question. 13 (48%) answered “Yes”; 2 (7%) answered “No”; and 12 (44%) answered “I don’t know”.
- 1.83 There was no opportunity to provide comments in relation to the insurance questions.

Have you experienced any other difficulties in the exercise of the management functions? (Question 21)

- 1.84 Respondents mentioned the following difficulties:

- (1) difficulty of running effective board meetings;
- (2) managing agents failing to hand over essential information;
- (3) difficulty of finding a replacement secretary;
- (4) strained or very difficult relations between landlords or managing agents and RTM company (threats, intimidation, harassment, tribunal hearings);
- (5) financial reporting arrangements; and
- (6) getting members to agree on principles of apportionment.

PART 3: IF YOU ACQUIRED THE RTM, BUT THE RTM HAS SINCE COME TO AN END

Have you successfully acquired the RTM and has it subsequently been ended? (Question 22)

- 1.85 Two respondents said that the RTM had ended after it had been successfully acquired.

How and why did the RTM end? (Question 23(a))

- 1.86 One respondent said:

The two RTM directors had to cover the costs [of essential repairs] and then resigned due to not being able to progress plans to maintain the building, which is now dangerous with flats being sublet to vulnerable elderly/disabled tenants despite the roof leaking and ceiling falling down in the hallway over the stairs.

- 1.87 The other provided a detailed “case study of a dysfunctional RTM which highlights the lack of meaningful and accessible recourse for individual leaseholders in a situation where the RTM board is either corrupt and/or culpable of mismanagement”. The respondent made various recommendations for reform of the RTM regime:

- (1) Leaseholders who join the RTM company should be required to make a financial contribution.
- (2) The continuation of an RTM should require the demonstration of continued democratic engagement. The respondent suggests various amendments to the model articles, including: rules on length of tenure of directors; increasing the quorum for AGMs; increasing the number of directors; strengthening rules on conflicts of interest. If there is evidence that the RTM company is not functioning on a democratic basis, this should be grounds for termination of the RTM.
- (3) There needs to be better mechanisms for individual leaseholders to challenge the RTM company and achieve meaningful redress.
- (4) Training should be obligatory and paid for by the RTM company.
- (5) Standard information should be produced and distributed to all RTM company members on the RTM, and their rights in the Tribunal.

Who took over management when it ended? (Question 23(b))

- 1.88 The first respondent said that a managing agent took over management, and in the second case the landlord took over management.

Were there any problems when the RTM ended, such as issues with the service charge account or with the person who took over management? (Question 23(c))

- 1.89 Both respondents said there had been problems when the RTM ended. The second respondent referred to above said that:

It was difficult to get some leaseholders 'back in the box' and recognise the management arrangements had changed which meant continued interference and obstruction of the new management for many months.

PART 4: IF YOU HAVE BEEN INVOLVED IN AN UNSUCCESSFUL ATTEMPT TO ACQUIRE THE RTM

Have you attempted to acquire the RTM but have been unsuccessful in doing so? (Question 24)

1.90 20 respondents answered this question. 16 (80%) respondents said they had been involved in an unsuccessful RTM claim; 4 (20%) had not.

Why did you want to acquire the RTM? (Question 25)

1.91 20 respondents answered this question. Respondents raised a range of reasons for wanting to acquire the RTM, including:

- (1) Issues with maintenance and repairs.
- (2) Excessive fees (for example, administration and bank fees, insurance premiums, contractors at above market rates), and lack of transparency regarding fees and accounts.
- (3) To replace managing agents.
- (4) To unify management of an estate.

What made your attempt to acquire the RTM unsuccessful? (Question 26)

1.92 24 respondents answered this question. Respondents were asked to select a reason from the list below:

- (1) 6 (25%) said the landlord raised procedural objections. A few respondents also reported that the landlord would not communicate.
- (2) 3 (12.5%) said their building did not qualify, because the premises were mixed use (that is, commercial floor space exceeded the 25% threshold), the premises were on an estate, or the flats were owned on a shared ownership basis.
- (3) 6 (25%) did not have enough leaseholders in the building to support the claim.
- (4) 3 (12.5%) said that the RTM claim was abandoned due to the costs of the claim and disputes that arose. One respondent said that they abandoned the claim because the managing agent served a counter-notice, and they were informed that legal fees to proceed to the Tribunal would amount to £10,000.
- (5) 2 (8%) said they could not claim the RTM because they were freeholders.

Have you made a further attempt to acquire the RTM, or do you plan to? (Question 27)

1.93 17 respondents answered this question. 10 (59%) said they had made a further attempt to acquire the RTM; 7 (31%) said they had not. Respondents were not invited to give further comment.

PART 5: IF YOU HAVE CONSIDERED MAKING AN RTM CLAIM AND DECIDED NOT TO

Have you considered acquiring the RTM but decided not to? (Question 28)

1.94 37 respondents answered this question. 34 (92%) respondents answered "Yes"; 3 (8%) answered "No".

Why did you consider claiming the RTM? (Question 29)

1.95 36 respondents answered this question. As in response to the similar question under Part 4 of the survey, respondents raised a range of reasons for wanting to acquire the RTM, including:

- (1) Poor quality of maintenance and repairs by the landlord or managing agent.
- (2) Excessive and rising fees (for example, excessive insurance premiums), and lack of transparency and control over fees.
- (3) Bullying and harassment by managing agents.

Do your premises qualify for the RTM? If your premises do not qualify for the RTM, please describe them for us – what prevents them from qualifying? (Question 30)

1.96 35 respondents answered this question. 20 (57%) said their premises qualified for the RTM; 6 (17%) answered "No"; and 9 (26%) answered "I don't know".

1.97 Respondents who answered "No" variously explained that their premises did not qualify due to:

- (1) The 25% non-residential threshold. For example, one respondent explained that:

Because of the building's layout, whereby the commercial space reaches far back from the storefront in the form of a rarely used basement area, we do not meet the current criteria. Despite this it is clearly a predominantly residential building, used as residences for 8 people across 4 units, above 1 shop.

Another respondent said that:

The premises do not qualify because the building is mixed use - basement, ground and 1st floor is offices, and 2nd 3rd and 4th floor is flats. The flats are accessed through a segregated door and stair/lift core. The two parts of the building are essentially separate and are largely separately maintained but because the building is horizontally divided and not vertically (and the offices are just over 50%), it does not qualify.

The government, through planning policy, insists on mixed use developments - but then penalises people who live in them by making it very difficult to prevent abuse by unscrupulous landlords/managing agents of such developments.

- (2) Most flats being let on shared ownership leases.

- (3) Freehold ownership of premises.
 - (4) The flats are let on long leases by the local authority.
- 1.98 Respondents who answered “I don’t know” said that they had doubts about whether they qualified because:
- (1) They live on a large estate, with both freehold and leasehold properties, all using shared gardens.
 - (2) The majority of flats are occupied by tenants, not leaseholders.

Why did you decide not to proceed with the RTM claim? (Question 31)

- 1.99 35 respondents answered this question. Respondents offered a range of reasons for not proceeding with the RTM claim:
- (1) Leaseholders having insufficient interest and not participating, including where units are owned by overseas or buy-to-let investors.
 - (2) Premises do not qualify.
 - (3) Complexity of the claims process. One respondent noted that the RTM process looked more complex than purchasing the freehold.
 - (4) Prohibitive costs, including legal costs.
 - (5) Difficulty in finding names and addresses of leaseholders. One respondent noted that the freeholder/managing agent “hid behind GDPR rules” in refusing to provide this contact information.
 - (6) Difficulty contacting the landlord.
 - (7) Lack of interested directors, including concerns about directors’ responsibilities and potential liability.
 - (8) Difficulties with the local council.

PART 6: IF YOU ARE CURRENTLY CONSIDERING OR PLANNING AN RTM CLAIM

Are you currently considering making an RTM claim? (Question 32)

1.100 Of 71 people who answered this question, 62 (87%) respondents answered “Yes”; 9 (13%) answered “No”.

Why are you considering making an RTM claim? (Question 33)

1.101 65 respondents answered this question. As in the responses to Parts 4 and 5 of the survey, respondents raised a range of reasons for considering making an RTM claim, including:

- (1) A desire to replace the current managing agents.
- (2) Excessive and increasing service charges, or lack of transparency regarding the service charge. One respondent said:

The service charge accounts within any given year have varying itemised headings. For example, one year we are billed for CCTV on the estate, the next year there is no such item. We were also billed one year for a communal heating system in another block, which has no connection to our block. In our block, each flat has its own gas supply and gas central heating system, yet we were charged for the communal heating in another block until I queried this with the managing agent. I believe RTM would allow us to assume responsibility for the management of our own block and, in particular, it would give us the freedom to choose the providers and ensure full control and transparency of costs.

- (3) Inadequate services, repairs and maintenance. One respondent said:

We have been very poorly managed over the years and not had concerns responded to. We pay a premium rate for little service and our interests are not being looked after. It is confusing to pay variable management fees and a fixed rate land rental charge and we feel uncertain and unsafe about our home ownership. Taking control of management or common parts (for example, “for a total say in how our homes are run and the contractors used”). One respondent said:

Our estate is small, compact, with no through-road, a close community, all properties adjoining other properties, and sharing a single architectural appearance which we wish to protect as a self-managing community.

- (4) Allegations of corruption and harassment against managing agents.

Do you have any concerns about making an RTM claim, or taking over management functions? (Question 34)

1.102 61 respondents answered this question. 40 (66%) answered “Yes”; 41 (34%) answered “No”.

1.103 Respondents who answered “Yes” said that they were concerned about making an RTM claim or taking over management functions for the following reasons:

- (1) The cost of claiming the RTM, including having to pay their landlord's costs. Respondents specifically mentioned high legal fees.
- (2) The complicated nature of the claim process, including the need to establish an RTM company.
- (3) The difficulty of getting other leaseholders on board, especially where there are low levels of owner occupation, or where the estate is extremely large.
- (4) Confusion about whether the premises qualify. One respondent said:

The requirements about a self-contained building seem irrelevant and almost designed to trip leaseholders up, in particular the requirement about a vertical division. In a block of 105 apartments, one of three fire escapes crosses the boundary of another property and it seems like this could halt the whole process.
- (5) Concerns about liability, such as the obligation to purchase public liability insurance.

1.104 Respondents who answered "No" said that they were not concerned because:

- (1) They would appoint a managing agent, who would conduct the RTM process on behalf of the residents, and manage the estate.
- (2) Leaseholders in the building and estate have previous experience claiming the RTM, or have sufficient professional experience.

What are the key factors which may influence your decision to proceed, or not to proceed, with an RTM claim? (Question 35)

1.105 58 respondents answered this question. Many respondents repeated their answers to the questions above (for example, stating that they would be influenced by attitudes of other leaseholders, and the cost and complexity of the claim process). One respondent said:

It feels like a David and Goliath battle. These management companies are making serious profit and will not give it up easily.

1.106 Some respondents added that the following issues would influence their decision to proceed:

- (1) The need for better guidance and advice.
- (2) The ongoing relationship between leaseholders, landlord and managing agent.
- (3) Whether they would be penalised if they start the process but then decide not to proceed.

Appendix 1: List of respondents to the leaseholder survey

The list of respondents set out in this Appendix excludes any respondents who asked to remain anonymous, or for the response to be treated in confidence. We have reproduced the names as they were given to us.

A Williams	Daniel Hooley	Fiona Merritt
Alan West	Danielle Morgan	Gavin Thirlwall
Amanda Lewis	Daria W	George Gilroy
Andrew Rabeneck	Darren Shelton	Glyn Jenkins
Angela Turnbull	Daryl Kerin	Gowthami
Ann Feltham	David Bryan	Graeme Cornwall
Ann Kellett	David Cade	Harold T Hillier
Anna Campbell-Twells	David Raymond Evans	Harry Taylor & Francis D'Souza
Anne Butler	David Silverman	Helen Gibbons
Antonia Bowett	David Smith	Hugh Donaldson
Asmita Naik	Dawn Barnes	Ian Humphreys
Avril Pino	Dawn Rowatt	Ian Rice
B Connolly	Deborah Hawkes	Iuliana Chiriac
Brian Raymond Murphy	Deborah Malone	J Fairhall
Bridget Murphy	Denise Clark	James Wood
Carol Molyneux	Des Kinsella	Jamie John Atkins
Celesta	Dr Agustin Rico Albero	Javed Akram
Chris Atkinson	Dr Graham Smith	Jay Beeharry
Chris Wylie	Edyta Harrison	Jean Breakey
Clive Hicks	Elaine M Cooper	Jeanette Allen
Craig Martin	Fanar Khan	

Jeremiah Mannion	Michael King	Ruth Martin
Jo	Michael Lister	Ruth Watton
John Campbell	Michael Lister	Sarah Denly
John Scarrott	Michelle Gracie	Sathia Balakrishnan
John Southall	Miles Turner	Selwyn Lewis
Karen Callister	Mr & Mrs Scott	Shira Baram
Karl Layland	Neha Sahni	Simon Davies
Kevin Bell	Neil Hunt	Stephen Duncan
Kevin Flynn	Nell Burford	Stephen Kirk
Kid Kalanon	Norman Moss	Stephen McGarry
Kristel Tracey	Orla Dargan	Stephen Morley
Lesley Newnham	Patricia Farrington	Stephen Thoms
Lisa Robson	Patricia Fielden	Steven Ardron
Lord Collins Of Highbury	Paul Fallows	Stuart Holliday
Lorraine Jimenez	Paul Keith Davies	Susan Akers
Lou Valdin	Paul Wood	Susan Gibbons
Louise Whitnall	Peter Bennett	Susan Moss
Luca Castiglioni	Peter Knight	Tamara Karim
Lynda Smith	Phyll Buchanan	Teresa Nunn
Lynn Myers	Rafal Deputat	Tina Norkett
Mahalingham Kannan	Richard Taylor	Vanessa Yardley
Kirushnamoorthe	Robert Campbell-Barr	Wendy Rainbow
Margaret Donaldson	Robert Lewis	William Imbrogno
Margaret Gardner	Robert Niesiolowski	William Jones
Mark Bresnahan	Robin O'Neill	Zena
Mary Elizabeth Ross Calder		