

“Yet, for far too many leaseholders, the reality of home ownership has fallen woefully short of the dream”

“A central focus of the Bill will be reinvigorating commonhold through the introduction of a comprehensive new legal framework. To set out our thinking in advance of the Bill and invite consultation and discussion about how we finally transition away from leasehold, we will publish a White Paper on reforms to commonhold early next year.”

Matthew Pennycook 21 November 2024.

an Englishman’s home is his castle

Idiom – UK old-fashioned saying

Used to say that English people believe that they should control what happens in their own homes, and that no one else should tell them what to do there



Communal living

Shared spaces, resources and responsibilities. Social cohesion.

Two Party Lease	Three Party Lease with RMC	Right to Manage (RTM)	Commonhold
This is the “traditional” form of lease. Two parties (1) the freeholder; and (2) the leaseholder.	Most modern leases are three party leases: (1) the freeholder; (2) the leaseholder; and (3) RMC	The RTM is obtained by an RTM Co via the statutory process in CLRA 2002. This allows the management functions to be performed by the RTM Co.	Commonhold is created when a freehold estate in commonhold land is registered. It becomes operative when there are two or more unit holders registered.
Freeholder is responsible for managing the common parts in accordance with the terms of the lease.	RMC has contractual responsibility for managing the common parts in accordance with the terms of the lease.	RTM Co manages the common parts in accordance with the terms of the lease.	The Commonhold Association manages the common parts in accordance with the CCS.
		The RTM is not available to all buildings or all leaseholders. The CRLA 2002 criteria must be met https://www.lease-advice.org/advice-guide/right-manage/	
Management decisions are controlled by the freeholder .	Management decisions are controlled by the RMC, a company which all leaseholders are or are entitled to be members of.	Management decisions are controlled by the RTM Co, a company which at least 50% of leaseholders are members of. The freeholder may also be a member.	Management decisions are controlled by the Commonhold Association, a company which all unit holders are members of.

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The Commonhold Community Statement (CCS)

A lease sets out the obligations which the parties (leaseholder, freeholder and if relevant, the RMC) have to each other. Key obligations include:

- How service and administration charges are calculated and how they are paid
- Placing and payment for insurance
- Whether contributions to a reserve fund are required
- Restrictions on use, alterations and transfer

The relationship between an individual unit holder and the Commonhold Association is set out in the CCS. The prescribed form of CCS is set out in [Schedule 3](#) of the 2004 Regulations. Additional rights, duties and regulations specific to a particular building can be added to the prescribed form of CCS in Schedule 3 in accordance with s31-33 CLRA 2002.

ANNEX 3 : COMMONHOLD ALLOCATIONS

1. Allocation of commonhold assessment

Commonhold unit number	Percentage allocation (Total 100%)
1	33%
2	33%
3	33%

2. Allocation of reserve fund levy

Name of reserve fund	Commonhold unit number	Percentage allocation (Total 100%)
Roof and repair structure	1	33%
Roof and repair structure	2	33%
Roof and repair structure	3	33%

3. Allocation of votes

Commonhold unit number	Number of votes allocated to member
1	1
2	1
3	1

3. **Total number of commonhold units in the commonhold**

3

4. **Description of the location and extent of the commonhold units**

Commonhold unit number	Plan Number	Details of how the commonhold unit is shown on the plan	Property Description
1	2	edged red	Flat 1, [REDACTED]
2	2	edged green	Flat 2, [REDACTED]
3	2	edged blue	Flat 3, [REDACTED]

5. **Further description of commonhold units**

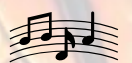
A commonhold unit does not include:

- (a) the structure and exterior of the building which it is part;
- (b) the beams and joists supporting the floor and the ceiling of the unit; or
- (c) the pipes cables or other fixed service installations in the unit, other than those exclusively serving the commonhold unit.



***He told me he built a time machine
Like the one in a film I've seen
Yeah, yeah***

***He said, "I've been to the year 3000
Not much has changed but they lived
underwater..."***



The residents would like to retrofit some EV charging points. Who is responsible for that?

	Decision Maker	Cost Recoverability
Two Party Lease	Freeholder	Retrofitting EV charging points is an improvement. Whether the freeholder/RMC/RTM Co can recover costs of improvements from the service charge will depend on the terms of the lease. If a lease specifically permits improvements the cost will be recoverable via the service charge if it was reasonably incurred (s19 LTA 1985, <i>Waller v Hounslow LBC</i>). If a lease does not permit improvements the costs may not be recoverable. The FTT and courts have generally interpreted clauses which allow additional costs to be recovered very narrowly.
Three Party Lease (RMC)	RMC and/or Freeholder (lease dependent)	
RTM	RMC and/or Freeholder (lease dependent)	
Commonhold	Commonhold Association	

Mairead's Musings

- Where a freeholder/RMC/RTM Co is not obliged to carry out improvement works and is not certain that costs can be recovered from leaseholders they may be reluctant to carry out improvement works.
- What constitutes an improvement is a question that frequently troubles the FTT. Retrofitting EV points, solar panels, water harvesting systems are clearly improvements. Sometimes it isn't so clear. For example, replacing wooden windows with energy efficient uPVC?
- With 999-year leases becoming more common the inability to carry out improvements to make a property suitable for modern living may become problematic. In 2045 a flat without access to an EV charging point may be less attractive to potential purchasers than flats with access to those facilities.
- It is possible that there will be statutory intervention to allow improvements to achieve net zero objectives.
- In future the FTT may find itself inundated with applications for declarations as to whether works constitute an improvement or applications to vary leases to allow improvements/retrofitting to bring buildings up to the standard expected by buyers at the time.
- The provisions of s33 CRLA and CCS allow the local rules in the CCS to be amended. What would be considered an improvement under a lease can simply be added to the CCS by an ordinary resolution (more than 50% of the vote) at a quorate meeting. The amended CCS takes effect upon registration at the Land Registry.
- The flexibility of the CCS means that commonholds will be able to adapt and modernise more easily than leasehold blocks.
- Whether proposed amendments are successful will be at the mercy of the competing interests of unit holders – those who want to maintain a 5★ standard and those who do not want to expend funds.

RMCs	RTM Companies	Commonhold Associations
RMCs may be limited by shares or by guarantee. RTM Cos and Commonhold Associations are companies limited by guarantee. How a company is run is set out in its articles of association ("articles").		
There are model forms of articles for companies limited by <u>guarantee</u> or <u>shares</u> . It is common for additional bespoke articles for an RMC to be added to these at or after incorporation.	Model form of articles of association as set out in The RTM Companies (Model Articles) (England) Regulations 2009 and (Wales) Regulations 2011 .	Model form of articles in Schedule 2 of the 2004 Regulations as amended by the Commonhold (Amendment) Regulations 2009 .
The lease will give each leaseholder the right or obligation to become a member of the RMC and transfer the membership when they sell the lease. The bespoke articles should require all members to also be leaseholders.	Leaseholders become members if they choose following a Notice of Intention to Participate. At least 50% of leaseholders must be members. The freeholder is also entitled to be a member.	All unit holders are required to be a member.
The articles give the members rights including the rights: to vote at meetings, appoint and remove directors and call meetings. The way that meetings must be conducted is set out in the articles.		
The day-to-day business of the company is carried out by the directors in accordance with the provisions in the articles. The directors are subject to all the normal duties of directors as set out in the Companies Act 2006		
The RMC must be incorporated before the first lease is entered. The original directors may be members of the developer. They will remain in control until leaseholders take up membership and appoint new directors.	As the RTM Co is set up after the leases have been entered, the original directors are nominated by the leaseholders.	The Commonhold Association must be incorporated before the land is registered as a freehold estate in commonhold land. The original directors may be members of the developer. They will remain as directors until there are at least two unit-holders to hold a meeting.
Members have the right to vote on decisions to be made by the company at general meetings but ultimately decisions are made by a vote (% required depends on the decision and the structure – some votes require 50%, some 75%, others 100%) of the members. A meeting can proceed so long as a quorum is present. The quorum is set out in the articles.		
Quorum: 2 – s318 Companies Act 2006	Quorum: 20% of members or two (whichever the greater) – Article 29(2)	Quorum: one fifth of members or two members (whichever the greater) – Article 16.
Number of votes: (guarantee) 1 vote per member. If a leaseholder owns 5 leases, they are still only 1 member unless amended articles give a vote per lease – s284 Companies Act 2006. (shares) 1 vote per share – s284 Companies Act Casting vote: None	Number of votes: Each member has a vote per flat owned – Article 33 Casting vote: None	Number of votes: Each member has the number of votes allocated in the CCS – Article 30(b) Casting vote: In the case of an exact 50/50 split of votes, the chairperson of the meeting (a director – Article 15) has a casting vote – Article 26
In a building with 20 units and a company limited by guarantee a vote could be carried by 2 people (2 attendees both voting in favour) or in a company limited by shares by 1 person if they had sufficient votes (2 attendees, 1 with 1 vote and 1 with five votes)	In a building with 20 units a vote could be carried by 3 people (4 attendees, 3 in favour) or by 1 person if they had sufficient votes (e.g. 3 members with 1 vote each and 1 member with 4 votes on a poll vote)	In a building with 20 units a vote could be carried by just 2 people (4 attendees, 2 votes + casting vote) or by 1 person if they had sufficient votes (e.g. 3 members with 1 vote each and 1 member with 4 votes on a poll vote)



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