

## **Appendices**

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## The legal framework for leasehold and safeguards for leaseholders

### Introduction

1. This appendix provides an overview of the legal framework surrounding leasehold ownership of flats and how this impacts on the relationship between landlords, leaseholders and property managers. It sets out the various safeguards for leaseholders in relation to the payment of service charges and conduct of property managers, as well as the legal mechanism for taking control of the management of a premises.

### Leasehold ownership and property management

2. Leasehold is a form of property ownership whereby the purchaser ('the leaseholder') is granted exclusive occupation and use of the property for a fixed period of time. This may only be for a very limited number of years, but it is often in excess of 100 years, or even 999 years (known as a 'virtual freehold').<sup>1</sup> Ultimate ownership of the property remains with the freeholder, who is entitled to recover full ownership rights once the term of the lease has expired. Rather than occupy the property, the leaseholder may be permitted to grant a further lease to a third party for a shorter time period, but often the freeholder will also be the immediate landlord of the occupant leaseholder.<sup>2</sup> There are variations of this structure and sometimes the landlord will be a different entity such as an RTMCo (see paragraphs 45 to 51).
3. Every landlord-leaseholder relationship is governed by a lease, which is the property contract that sets out the details and conditions of the leaseholder's ownership of the property. The contract imposes mutual obligations on the parties relating to the use and upkeep of the property: for example, it may make the leaseholder liable to pay an annual 'ground rent' for their continued occupation of the property or it may restrict them from building on or subletting the property, either absolutely or subject to the landlord's consent. Conversely, the landlord will be prohibited from disturbing the leaseholder's lawful enjoyment of the property and may be required to ensure that adequate buildings insurance is in place over the property.

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<sup>1</sup> Given the extensive time period over which many leases subsist it is common for leaseholders to sell their property for the remaining leasehold term to third parties. The length of the remaining period under the lease is one of the factors which goes to determine the market value of the leasehold interest in the property.

<sup>2</sup> Where the leaseholder has granted a subsidiary lease to a third party then the lease granted to them by the freeholder is known as the 'head lease' and any other leases as 'underleases'.

4. In the residential context, leasehold ownership is more common in properties comprising multiple units such as blocks of flats. This allows the landlord to retain control of the fabric and common parts of the property after the individual units have been purchased by leaseholders; the leases in such situations will make clear that the leaseholders are responsible for the maintenance and repair inside their own flats, and the landlord for the maintenance and repair of the common parts and overall management of the block.<sup>3</sup>
5. Where the landlord has primary responsibility for the management and maintenance of the building, there will be a corresponding obligation on the leaseholders to reimburse the landlord's management and maintenance expenses by way of service charges.<sup>4</sup> What proportion of those expenses each leaseholder is expected to pay will be governed by the terms of their respective leases though, as shall be seen below, there are various statutory provisions which seek to protect leaseholders from unfair and unreasonable charges.
6. Often (and especially in larger developments) landlords will engage third party agents to carry out their management and maintenance duties. Through this contractual arrangement a managing agent is empowered to carry out the landlord's management functions, including the calculation and enforcement of service charges against the leaseholders. The managing agent will be subject to the same statutory restraints on recovering service charges as the landlord would be if they carried out these functions themselves.

## **Service charges and sinking funds**

### ***'Reasonableness' of service charges***

7. Section 19(1) of the 1985 Act contains the general limitation on unreasonable service charges. This states that relevant costs shall be taken into account in determining the amount of a service charge payable for a period (a) only to the extent that they are reasonably incurred, and (b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard. An additional limitation is contained in

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<sup>3</sup> There is a type of lease known as a 'tripartite lease' in which a third party residents' management company (RMC) is written into the lease. Membership of the RMC is made up of each leaseholder at the premises and it is the RMC that then has management responsibility for the premises in the place of the landlord. In some tripartite leases developers write a named managing agent into each lease from the start of the development, often for an initial period or with a clause providing for the replacement of the named manager under certain circumstances.

<sup>4</sup> Section 18(1) of the Landlord and Tenant Act 1985 ('the 1985 Act') defines a service charge as 'an amount payable by a tenant of a dwelling as part of or in addition to the rent (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's cost of management, and (b) the whole or part of which varies or may vary according to the relevant costs.'

section 20B of the 1985 Act, which states that unless written notification of costs incurred is provided to a leaseholder within the time period, a leaseholder will not be liable to contribute towards costs that were incurred more than 18 months before being served with a service charge demand concerning those costs.<sup>5</sup>

### ***Sinking funds***

8. Leases frequently contain a clause that allows a landlord to demand money in advance from their leaseholders to be placed in a 'sinking fund', either to cover estimated service charge expenses or in anticipation of major works on the property at some future date.<sup>6</sup> Section 19(2) of the 1985 Act imposes the same limitation of reasonableness on sinking fund contributions as on service charge payments for costs already occurred.
9. At present there are no statutory provisions requiring landlords or their agents to hold sinking fund payments in specified accounts.<sup>7</sup> Section 42(2) and 42(3) of the Landlord and Tenant Act 1987 ('the 1987 Act') do, however, provide that any sums paid by way of service charges are to be held by the landlord or managing agent in trust for the contributing leaseholders. By this trust mechanism the landlord or agent is restricted to using these sums (and any interest or income accruing thereon) for payment of any works or services for which the leaseholders are liable to pay service charges.<sup>8</sup> Any credit balance retained by the landlord or agent is held for the contributing leaseholders, proportionate to their respective liabilities to pay the total service charge.<sup>9</sup>
10. Section 42(6) of the 1987 Act provides, however, that when any contributing leaseholder's lease comes to an end, they will not be entitled to any part of the fund, and any part of the fund attributable to that leaseholder's service charge payments will continue to be held on trust for the above purposes. Where the lease of the last remaining leaseholder comes to an end, the trust fund will be dissolved and the landlord will then be entitled to any balance

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<sup>5</sup> It was held in *Paddington Walk Management Ltd v Governors of the Peabody Trust* [2009] 2 EGLR 123 that any demand for service charges must be finalised within the statutory 18-month period, and a landlord cannot seek to recover additional service charges by purporting to serve a 'corrective' demand outside of that time period. The court further held that for the purpose of demanding service charges after the time period, any prior written notification must set out the costs that have actually been incurred as opposed to just estimates of those costs.

<sup>6</sup> A leaseholder will not be liable to pay money into a sinking fund without an express provision to this effect in the lease.

<sup>7</sup> Section 42A of the 1987 Act, which has not been brought into force, provides that any money held on trust under section 42 must be held in a designated account at a relevant financial institution; a leaseholder will be entitled to withhold payment if he has reasonable grounds for believing that the landlord or their agent has failed to comply with this duty. Section 42B, if brought into force, would make it a criminal offence not to comply with section 42A.

<sup>8</sup> 1987 Act, section 42(3)(a).

<sup>9</sup> 1987 Act, section 42(4).

remaining from the fund.<sup>10</sup> These provisions are subject to any express terms in the lease relating to the distribution of amounts paid into the sinking fund either before or at the termination of the relevant lease,<sup>11</sup> though apart from this it is not possible to administer any sinking fund in a way that is inconsistent with the statutory trust created by virtue of section 42 of the 1987 Act.<sup>12</sup>

### **Provision of service charge information to leaseholders**

11. Section 21(1) of the 1985 Act<sup>13</sup> gives leaseholders the right to demand from their landlord or managing agent a written summary of any costs incurred in the previous 12-month period (or the last 12-month accounting period) that have been used in the calculation of a service charge. This summary must be provided to the leaseholder within six months of the date of the demand or, if a 12-month accounting period is used, within one month if this is later than six months since the end of the last accounting period.<sup>14</sup> If the relevant service charges are payable by the leaseholders of more than four dwellings then the summary of costs must be certified by a qualified accountant.<sup>15</sup>
12. Section 21B of the 1985 Act states that any service charge demand served on a leaseholder must be accompanied by a summary of the rights and obligations of leaseholders in relation to service charges.<sup>16</sup> If this summary is not provided with any demand then the leaseholder may withhold payment of that service charge,<sup>17</sup> and the landlord or managing agent will not be able to enforce any terms of the lease relating to non-payment or late payment of service charges in respect of that demand.<sup>18</sup>
13. Section 22 of the 1985 Act grants a leaseholder the right to inspect and take copies of any accounts, receipts and other documents supporting any summary of costs obtained pursuant to section 21(1) of the Act. A request to inspect the supporting documents must be made by the leaseholder within six

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<sup>10</sup> 1987 Act, section 42(7).

<sup>11</sup> 1987 Act, section 42(8).

<sup>12</sup> 1987 Act, section 42(9).

<sup>13</sup> There is an amended section 21 that has been enacted but which is not currently in force. This empowers the Secretary of State to make regulations governing the provision of service charge information to leaseholders. There is also a corresponding section 21A, similarly not yet in force, which permits a leaseholder to withhold payment of a service charge if they have not been provided with the required information pursuant to the regulations.

<sup>14</sup> 1985 Act, section 21(4).

<sup>15</sup> 1985 Act, section 21(6). The qualified accountant must be independent of the landlord or managing agent, except where the landlord is a local authority (section 28(4), (6)).

<sup>16</sup> The form and content of this summary with respect to England is contained in the Service Charges (Summary of Rights and Obligations, and Transitional Provision) (England) Regulations 2007 (SI 2007/1257), and with respect to Wales in the Service Charges (Summary of Rights and Obligations, and Transitional Provisions) (Wales) Regulations 2007 (SI 2007/3160).

<sup>17</sup> 1985 Act, section 21B(3).

<sup>18</sup> 1985 Act, section 21B(4).

months of receiving the summary of costs,<sup>19</sup> and the landlord or their agent must make reasonable facilities to do so available to the leaseholder within one month of receiving the request.<sup>20</sup> Facilities to inspect the documents (but not to take copies) must be provided to the leaseholder free of charge,<sup>21</sup> but any costs incurred to provide inspection facilities can be treated as management costs which can be recovered through the service charge.<sup>22</sup>

## **Buildings insurance**

14. In the case of blocks of flats the freeholder, as ultimate owner of the block, will usually be responsible for the insurance of the building and the cost of the insurance will be recovered from the leaseholders by way of the service charge. The Schedule to the 1985 Act contains additional leaseholder rights in respect of insurance payments made through the service charge.<sup>23</sup>
15. Paragraph 2(1) of the Schedule states that a leaseholder is entitled to request a written summary of any insurance for the time being in effect and for which the leaseholder pays directly or indirectly through the service charge.<sup>24</sup> The landlord or their agent must comply with this request within 21 days of receiving the leaseholder's request and the summary must include (a) the insured amount(s) under any relevant policy; (b) the name of the insurer(s); and (c) the insured risks of the policy.<sup>25</sup>
16. A leaseholder is further entitled to inspect and take copies of any relevant insurance policy or associated documents.<sup>26</sup> The landlord must make reasonable facilities to do so available to the leaseholder within 21 days of receiving the leaseholder's request.<sup>27</sup> Facilities to inspect the documents (but not to take copies) must be provided to the leaseholder free of charge, but any costs incurred to provide inspection facilities can be treated by the landlord as management costs.<sup>28</sup>

## **Administration charges**

17. In addition to service charges, a leaseholder will usually be liable under the terms of their lease to pay such charges as are required by the landlord for

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<sup>19</sup> 1985 Act, section 22(2).

<sup>20</sup> 1985 Act, section 22(4)

<sup>21</sup> 1985 Act, section 22(5)

<sup>22</sup> 1985 Act, section 22(6)

<sup>23</sup> Pursuant to the 1985 Act, section 30A.

<sup>24</sup> Paragraph 4(1) of the Schedule ensures that a leaseholder holding their property on an underlease is able to obtain a written summary of the insurance from the freeholder through the intermediate landlord(s).

<sup>25</sup> 1985 Act, Schedule, paragraph 2(4).

<sup>26</sup> 1985 Act, Schedule, paragraph 3(1).

<sup>27</sup> 1985 Act, Schedule, paragraph 3(4).

<sup>28</sup> 1985 Act, Schedule, paragraph 3(5).

granting consents or approvals under the lease,<sup>29</sup> or to cover the landlord's costs for dealing with any breaches of the leaseholder's obligations under the lease. These charges are known as 'administration charges' and are regulated by Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (the 2002 Act).<sup>30</sup>

18. Where the amount of an administration charge is not specified in a lease or calculated in accordance with a formula specified in that lease then, as in the case of service charges, it shall be payable only to the extent that the amount of the charge is reasonable.<sup>31</sup> Any demand for an administration charge must also be accompanied by a summary of the rights and obligations of leaseholders in relation to administration charges.<sup>32</sup> If this summary is not provided with any demand then the leaseholder may withhold payment of that administration charge and the landlord or managing agent will not be able to enforce any terms of the lease relating to non-payment or late payment of administration charges in respect of that demand.

## **Jurisdiction of First-tier Tribunal over payment of charges**

### ***Service charges***

19. Under section 27A of the 1985 Act, an individual is able to make an application to the FTT<sup>33</sup> for a determination as to the appropriate level of service charges payable by a leaseholder.<sup>34</sup> The FTT's jurisdiction includes applications to determine whether, if costs were incurred by the freeholder or their property manager, a service charge would be payable, and if so its appropriate amount.<sup>35</sup> Such an application can take into account all of the provisions limiting the level and payment of service charges as set out in this appendix.

### ***Administration charges***

20. Schedule 11 of the 2002 Act gives the FTT an analogous jurisdiction with regard to administration charges,<sup>36</sup> and the provisions of that Schedule

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<sup>29</sup> Such consents usually include consent to sublet or to keep pets at the property, or the consent to carry out approved building works on the property.

<sup>30</sup> Pursuant to the 2002 Act, section 158.

<sup>31</sup> 2002 Act, Schedule 11, paragraph 2.

<sup>32</sup> 2002 Act, Schedule 11, paragraph 4(1). The form and content of this summary with respect to England is contained in the Administration Charges (Summary of Rights and Obligations) (England) Regulations (SI 2007/1258), and with respect to Wales in the Administration Charges (Summary of Rights and Obligations) (Wales) Regulations (SI 2007/3162).

<sup>33</sup> The LVT in respect of premises in Wales.

<sup>34</sup> 1985 Act, section 27A(1).

<sup>35</sup> 1985 Act, section 27A(3).

<sup>36</sup> 2002 Act, Schedule 11, paragraph 5.

limiting the level and payment will similarly have effect. Paragraph 3 of that Schedule also gives the FTT jurisdiction to vary the terms of a lease relating to ‘fixed’<sup>37</sup> administration charges if those terms result in unreasonable charges being payable by the leaseholder.

## **Scrutiny of property managers’ performance**

### ***Management audits***

21. The Leasehold Reform, Housing and Urban Development Act 1993 (‘the 1993 Act’) gave certain leaseholders the right to have a management audit carried out on their behalf. To qualify for this right, leaseholders have to hold their respective flats under long leases and they have to be liable to pay service charges under their respective leases.<sup>38</sup> The number of qualifying leaseholders who own dwellings in the relevant premises then determines how the right can be exercised:
- (a) Where there is only one dwelling let to a qualifying leaseholder, the right may be exercised by that leaseholder.<sup>39</sup>
  - (b) Where there are two such dwellings, the right is exercisable by either or both of those leaseholders.<sup>40</sup>
  - (c) Where there are three or more such dwellings, the right may be exercised by not less than two-thirds of those leaseholders acting collectively.<sup>41</sup>
22. The purpose of a management audit is to ascertain the extent to which the landlord’s obligations relating to the discharge of management functions are being discharged in an efficient and effective manner, and the extent to which sums paid by way of service charges are being applied in an efficient and effective manner.<sup>42</sup> In determining whether any such management obligations are being discharged in an efficient and effective manner, regard is to be had to any code of practice approved by the Secretary of State.<sup>43</sup> The audit must be carried out by a qualified person, which means either a ‘qualified accountant’ as defined in section 28 of the 1985 Act<sup>44</sup> or a ‘qualified

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<sup>37</sup> ie administration charges that are specified in the lease or are calculated in accordance with a formula specified in the lease.

<sup>38</sup> 1993 Act, section 77(1).

<sup>39</sup> 1993 Act, section 76(5).

<sup>40</sup> 1993 Act, section 76(2)(a).

<sup>41</sup> 1993 Act, section 76(2)(b).

<sup>42</sup> 1993 Act, section 78(1).

<sup>43</sup> 1993 Act, section 78(2).

<sup>44</sup> See also footnote 17 above.



surveyor'.<sup>45</sup> The auditor also cannot be a leaseholder of any premises contained in the relevant premises.<sup>46</sup>

23. Before carrying out the audit, the auditor must give to the landlord a notice signed by each of the leaseholders on whose behalf it is given.<sup>47</sup> The notice must contain the names and addresses of those qualifying leaseholders and the auditor, specify any documents which the auditor wants to inspect and state the date of any proposed inspection of the premises.<sup>48</sup> This date should be at least one month but not more than two months after the date of the notice.<sup>49</sup> The landlord should respond to this notice within one month by supplying the auditor with the required documents or facilities for inspecting them (or by giving notice with reasons stating why they object to producing the documents) and by approving or proposing an alternative to the proposed date of inspection.<sup>50</sup> If the landlord fails to respond to the notice within two months of the date of the notice then the auditor may apply to the court for an order requiring the landlord to do so.<sup>51</sup>
24. Section 79 of the 1993 Act sets out the various rights granted to the auditor when carrying out their audit. These include:
- (a) the right to require the landlord or their property manager to supply the auditor with a summary of any costs payable as service charges<sup>52</sup> and to afford the auditor reasonable facilities to inspect the accounts, receipts and other documents supporting that summary;<sup>53</sup>
  - (b) the right to require the landlord or their property manager to provide reasonable facilities to inspect and take copies of any other documents reasonably required by the auditor to carry out the audit;<sup>54</sup> and
  - (c) the right to carry out an inspection of any common parts comprised in the relevant premises.<sup>55</sup>

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<sup>45</sup> ie a fellow or a professional associate of RICS or the Incorporated Society of Valuers and Auctioneers, or a member or fellow of the Architects and Surveyors Institute – the 1993 Act, section 78(5) and the Collective Enfranchisement and Tenants' Audit (Qualified Surveyors) Regulations 1994 (SI 1994/1263).

<sup>46</sup> 1993 Act, section 78(4).

<sup>47</sup> 1993 Act, section 80(2).

<sup>48</sup> 1993 Act, section 80(3).

<sup>49</sup> 1993 Act, section 80(4).

<sup>50</sup> 1993 Act, section 81(1).

<sup>51</sup> 1993 Act, section 81(4), (6).

<sup>52</sup> ie a summary pursuant to the 1985 Act, section 21.

<sup>53</sup> 1993 Act, section 79(2)(a).

<sup>54</sup> 1993 Act, section 79(2)(b), (c).

<sup>55</sup> 1993 Act, section 79(4).

## ***Appointment of a manager by the First-tier Tribunal***

25. Under Part II of the 1987 Act leaseholders also possess the right to apply to the FTT for an order appointing a manager in substitution for the landlord or their property manager. The FTT can only order such an appointment where it is satisfied that the landlord or their property manager:
- (a) is in breach of any obligations relating to management functions at the relevant premises;
  - (b) has made, or has proposed or is likely to make, unreasonable service charges or administration charges; or
  - (c) has failed to comply with any code of practice approved by the Secretary of State.<sup>56</sup>
26. In addition to each of the above, the FTT also has to be satisfied that it is just and convenient to make the order in all the circumstances of the case. It can also make an order of appointment where it is satisfied that other circumstances exist which make this just and convenient.<sup>57</sup>
27. Before a leaseholder can make an application for the appointment of a manager to the FTT, they must serve a preliminary notice on the landlord and any property manager at the relevant premises.<sup>58</sup> The notice must specify the leaseholder's name and address and the grounds on which the leaseholder is bringing the application, and must also allow the landlord or their property manager a reasonable period in which to remedy those matters which are capable of being remedied.<sup>59</sup> The leaseholder cannot then make an application unless that period has expired, or there were no matters capable of remedy by the landlord and therefore the reasonable period provision did not apply.<sup>60</sup> The FTT has the power to dispense with the requirement to serve a preliminary notice where it is satisfied that it would not be reasonably practicable to serve such a notice, though in granting such dispensation it can order the leaseholder to carry out such other preliminary steps as the FTT thinks fit.<sup>61</sup>

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<sup>56</sup> 1987 Act, section 24(2).

<sup>57</sup> 1987 Act, section 24(2)(b).

<sup>58</sup> 1987 Act, section 22(1).

<sup>59</sup> 1987 Act, section 22(2).

<sup>60</sup> 1987 Act, section 23(1).

<sup>61</sup> 1987 Act, section 22(3).

## Recognised tenants' associations

28. The 1985 Act gave leaseholders the ability to form recognised tenants' associations (RTAs). To be recognised, the RTA either has to be given written notice of recognition by the landlord or it has to obtain a certificate of recognition by the FTT.<sup>62</sup> If an application is made to the FTT then it will usually grant a certificate of recognition if it is satisfied that the constitution and rules of the association are fair and democratic and that the membership of the association represents more than 60% of the potential membership.<sup>63</sup>
29. The secretary of an RTA is able to act on behalf of its individual members, with the member's consent, in a number of situations. These include the right to request a summary of relevant costs in relation to service charges,<sup>64</sup> the right to inspect and take copies of the supporting accounts and other documents<sup>65</sup> and the parallel rights relating to payments for building insurance.<sup>66</sup> An RTA also has the right to participate on its own behalf in the consultation process on major works.<sup>67</sup>
30. In addition to this, there are certain rights that can only be exercised by an RTA. The first of these is the right to appoint a surveyor, as contained in section 84 of the Housing Act 1996. Under this section an RTA can appoint a qualified surveyor<sup>68</sup> to advise on any matters relating to, or which may give rise to, service charges payable by one or more members of the RTA.<sup>69</sup> The RTA must first give written notice to the landlord stating the name and address of the surveyor, the duration of their appointment and the matters in respect of which they are appointed.<sup>70</sup>
31. The other right exclusive to RTAs is that of serving notice on the landlord requesting them to consult the RTA on matters relating to the appointment or employment of a managing agent.<sup>71</sup> Where such a notice is served and the landlord does not already employ a property manager, they must give the RTA details of any proposed manager and the obligations which that manager will be required to discharge, along with the opportunity for the RTA to make

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<sup>62</sup> 1985 Act, section 29(1).

<sup>63</sup> HM Courts & Tribunals Service Form T545 – Guidance on Recognition of Tenants' Association; General information about the process, p2.

<sup>64</sup> 1985 Act, section 21(2).

<sup>65</sup> 1985 Act, section 22(2).

<sup>66</sup> Schedule to the 1985 Act.

<sup>67</sup> See section 'Consultation on major works' below.

<sup>68</sup> 'Qualified surveyor' has the same meaning as for the management audit provisions contained in the 1993 Act – see footnote 46 above.

<sup>69</sup> Housing Act 1996 ('HA 1996') section 84(1). The rights of the surveyor to access documents and premises in the discharge of their appointment are contained in HA 1996, Schedule 4.

<sup>70</sup> HA 1996 section 84(3).

<sup>71</sup> 1985 Act, section 30B(1).

observations on the proposed appointment.<sup>72</sup> If a manager is already employed, then upon service of the notice the landlord must give details of the obligations to which the manager is subject, along with the opportunity for the RTA to make observations on the manner in which those obligations have been discharged and on the desirability of the manager's continuing employment.<sup>73</sup> Once an RTA has served a notice to consult on the landlord, the landlord is under a continuing duty to keep the RTA informed of a manager's employment by serving a notice every five years, or whenever they propose to appoint a new manager.<sup>74</sup>

## **Consultation on major works**

### ***Introduction***

32. A further statutory safeguard contained in the 1985 Act is the requirement for landlords or their agents to consult with leaseholders before going ahead with major maintenance or repair works that will be paid for through the service charge. At present, a landlord must comply with the consultation requirements in relation to works if the contribution towards the cost of those works payable by any leaseholder exceeds £250.<sup>75</sup> If the landlord fails to comply with the requirements, the amount they will be able to recover from each tenant by way of service charge will be limited to £250.<sup>76</sup>
33. The consultation requirements are set out in the Schedules to the Service Charges (Consultation Requirements) Regulations 2003 ('the 2003 Regulations'). Different procedures apply depending on whether the landlord is undertaking works or entering into a long-term agreement<sup>77</sup> and whether public notice<sup>78</sup> is required; Part 2 of Schedule 4 contains the most commonly used requirements, which set out the consultation process for qualifying works where no public notice is required.

### ***The consultation process***

34. The first stage under Part 2 of Schedule 4 to the 2003 Regulations is for the landlord or their agent to give notice to each leaseholder and to any RTA of

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<sup>72</sup> 1985 Act, section 30B(2).

<sup>73</sup> 1985 Act, section 30B(3).

<sup>74</sup> 1985 Act, section 30B(4).

<sup>75</sup> 1985 Act, section 20(3); Service Charges (Consultation Requirement) Regulations 2003 (SI 2003/1987) ('Consultation Regulations 2003') reg 6.

<sup>76</sup> 1985 Act, section 20(1),(7).

<sup>77</sup> ie an agreement entered into by a landlord or their agent for a term of more than 12 months (1985 Act, section 20ZA(2)).

<sup>78</sup> ie notice published in the *Official Journal of the European Union* pursuant to the Public Contracts Regulations 2006 (SI 2006/5).

their intention to carry out qualifying works.<sup>79</sup> The notice must describe, in general terms, the proposed works or specify the place and hours at which a description of the proposed works may be inspected.<sup>80</sup> It must also state the landlord's reasons for considering it necessary to carry out the works.<sup>81</sup> The landlord must give the leaseholders and any RTA a period of 30 days from the date of the notice in which to make written observations in relation to the proposed works; the notice must also invite each leaseholder and any RTA within that period to nominate a contractor from whom the landlord should try to obtain an estimate for the works.<sup>82</sup> If any observations are received within the 30-day period, the landlord or their agent shall have regard to those observations.<sup>83</sup>

35. The second stage, after the 30-day notice period has expired, is for the landlord or their agent to obtain estimates. At least one of the estimates must be that of a contractor wholly unconnected with the landlord.<sup>84</sup> Where a leaseholder or the RTA has nominated a contractor, the landlord must try to obtain an estimate from the nominated party. If both the RTA and a leaseholder make a nomination, the landlord must try to obtain an estimate from both nominated parties.<sup>85</sup> Where there are multiple nominations from the leaseholders, the landlord must try to obtain an estimate from the party with the most nominations.<sup>86</sup> Where two or more parties receive more leaseholder nominations than the others, the landlord must approach one of them.<sup>87</sup> Where there are also multiple nominations from the RTA, then the landlord must also try to obtain an estimate from one nominated party who is not also a party whose estimate is sought on behalf of the leaseholders.<sup>88</sup>
36. Once the landlord or their agent has obtained estimates for the proposed works they must supply each leaseholder and any RTA with a statement setting out the estimated cost of the works for at least two of the estimates.<sup>89</sup> The statement must include the estimated cost from any estimates obtained from parties nominated by the leaseholders or the RTA,<sup>90</sup> and the landlord

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<sup>79</sup> Consultation Regulations 2003, Schedule 4, paragraph 8(1).

<sup>80</sup> *ibid*, Schedule 4, paragraph 8(2)(a); where the description is made available for inspection, the place and hours must be reasonable and either there should be facilities to take copies or the landlord should provide a copy of the description free of charge on request (paragraph 9).

<sup>81</sup> *ibid*, Schedule 4, paragraph 8(2)(b).

<sup>82</sup> *ibid*, Schedule 4, paragraph 8(3).

<sup>83</sup> *ibid*, Schedule 4, paragraph 10.

<sup>84</sup> *ibid*, Schedule 4, paragraph 11(6); paragraph 11(7) sets out the circumstances in which it shall be assumed that there is a connection between a party and the landlord.

<sup>85</sup> *ibid*, Schedule 4, paragraph 11(1),(2).

<sup>86</sup> *ibid*, Schedule 4, paragraph 11(3)(a).

<sup>87</sup> *ibid*, Schedule 4, paragraph 11(3)(b).

<sup>88</sup> *ibid*, Schedule 4, paragraph 11(4).

<sup>89</sup> *ibid*, Schedule 4, paragraph 11(5)(b)(i).

<sup>90</sup> *ibid*, Schedule 4, paragraph 11(8).

must make all of the estimates available for inspection.<sup>91</sup> The statement must also contain a summary of any observations received during the initial notice period and the landlord's response to them.<sup>92</sup>

37. At this stage the landlord or their agent shall also give to each leaseholder and to any RTA a second notice specifying the place and hours at which the estimates may be inspected and inviting the leaseholders and any RTA to make written observations in relation to the estimates within 30 days of the date of the notice.<sup>93</sup> As with the initial notice, the landlord or their agent shall have regard to these observations.<sup>94</sup>
38. After this second notice period has expired the landlord or their agent may enter into a contract for the proposed works. If the party with whom the contract is made is a nominated contractor or submitted the lowest estimate then there are no further consultation requirements on the landlord.<sup>95</sup> If, however, neither of these is the case then the landlord must give to each leaseholder and to any RTA a further written notice within 21 days of entering into the contract. This notice must state the landlord's reasons for awarding the contract or specify the place and hours at which a statement of those reasons may be inspected;<sup>96</sup> it must also contain a summary of any observations received during the second notice period and the landlord's response to them.<sup>97</sup>

### ***Dispensing with the consultation requirements***

39. Under section 20ZA(1) of the 1985 Act a landlord is entitled to apply to the FTT asking it to dispense with some or all of the consultation requirements for particular works. The FTT has the power to grant a dispensation where it is satisfied that it is reasonable to do so. Such dispensation may be appropriate where emergency works need to be undertaken urgently and it is not practicable to comply with the consultation requirements.
40. The Supreme Court has recently decided<sup>98</sup> that the key question for the FTT to determine when granting a dispensation is whether the leaseholders will suffer any real prejudice as a result of the landlord's non-compliance with the consultation requirements. The purpose of the consultation requirements (as

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<sup>91</sup> *ibid*, Schedule 4, paragraph 11(5)(c).

<sup>92</sup> *ibid*, Schedule 4, paragraph 11(5)(b)(ii).

<sup>93</sup> *ibid*, Schedule 4, paragraph 11(10); Schedule 4, paragraph 9 applies to the inspection of estimates as it does to the inspection of the description of the works.

<sup>94</sup> *ibid*, Schedule 4, paragraph 12.

<sup>95</sup> *ibid*, Schedule 4, paragraph 13(2).

<sup>96</sup> Schedule 4, paragraph 9 applies to the inspection of the statement of reasons as it does to the previous notices.

<sup>97</sup> Consultation Regulations 2003 Schedule 4, paragraph 13(1).

<sup>98</sup> In *Daejan Investments Ltd v Benson* [2013] UKSC 14.

with the 'reasonableness' requirement of section 19 of the 1985 Act) is to ensure that leaseholders are not required to pay for unnecessary or defective services, or to pay more than they should for necessary services provided to an acceptable standard. Dispensation should therefore normally be granted if the extent, quality and cost of the works are unaffected by the landlord's failure to comply. Compliance with the requirements is not an end in itself and it will not be appropriate for the FTT to distinguish between 'serious' and 'technical' breaches of the requirements, save in relation to the prejudice caused to the leaseholders.

41. The Supreme Court also confirmed that the FTT has the power to impose conditions on the grant of a dispensation as it thinks fit, provided that these are appropriate in their nature and effect to address any prejudice caused by granting the dispensation. Such conditions may include reducing the amount recoverable by the landlord from the leaseholders, or requiring the landlord to pay the leaseholders' reasonable costs of the dispensation application.

### **Collective enfranchisement**

42. The 1993 Act (as amended by the 2002 Act) gives leaseholders the right upon qualification to compel the sale of the freehold building or part of the building to a Nominee Purchaser.<sup>99</sup> This will usually be a company in which the participating tenants are all shareholders. Upon completion of the purchase, the leaseholders each own a share in the company which owns the freehold and the board of that company, usually comprising a number of the leaseholders, is responsible for the management of the building, including the appointment of a property management company if this is considered appropriate.
43. The provisions and procedures relating to the right to collective enfranchisement are contained in Chapter 1 of Part 1 of the 1993 Act. The leaseholders must fulfil a number of criteria before they can acquire the freehold, including:
  - (a) At least two-thirds of the flats must be let to 'qualifying tenants' as defined by section 5 of the 1993 Act. 'Qualifying tenants' must have a long lease as defined in section 7 of the Act.
  - (b) There must be at least two flats in the building.<sup>100</sup>

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<sup>99</sup> 1993 Act, section 1.

<sup>100</sup> But there must be more flats if it is a conversion and then certain other conditions apply.

- (c) No more than 25% of the internal floor area of the building, not including any common parts, must be used or intended to be used for non-residential purposes.
  - (d) The minimum number of participating tenants must equal half of the total number of flats contained in the building, unless there are only two flats, in which case both must participate.
  - (e) If the tenants choose to have a company wholly owned by them as Nominee Purchaser, this company must be incorporated before the claim procedure is commenced.
44. The 1993 Act also contains strict rules relating to the form and contents of the Initial Notice and the parties upon whom it must be served.<sup>101</sup> The landlord is required to respond with a counter-notice which may agree to or challenge the leaseholders' claim.<sup>102</sup> If the leaseholders do not receive a counter-notice or receive a counter-notice challenging their qualification to buy, the matter will have to be determined by the county court.<sup>103</sup> If terms cannot be agreed after service of a counter-notice, either party may apply for terms to be determined by the FTT,<sup>104</sup> which can be done between two months and six months after the service of the counter-notice.

## **The Right to Manage**

### ***Introduction***

45. The 2002 Act introduced a new right enabling leaseholders to take over the management of their building by setting up a 'right to manage' company (RTMCo). This right is different to the right to apply to have a manager appointed by the FTT<sup>105</sup> in that the leaseholder does not have to establish that the current manager (be it the landlord or their managing agent) is at fault; also, the RTMCo assumes full management responsibility for the building and so is free to appoint any managing agent of its choosing.<sup>106</sup>

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<sup>101</sup> 1993 Act, section 13.

<sup>102</sup> 1993 Act, section 21.

<sup>103</sup> 1993 Act, section 22.

<sup>104</sup> 1993 Act, section 24.

<sup>105</sup> ie under Part II of the 1987 Act (see paragraphs 25 & 26 above).

<sup>106</sup> It is also different to the right of qualifying leaseholders to acquire the freehold of their building pursuant to Part I of the 1993 Act. The right of collective enfranchisement involves the transfer of the freehold at a price to a 'nominee purchaser' acting on behalf of the leaseholders; there are currently no legal restrictions on who can act as a nominee purchaser, which could be any individual or corporate entity of the leaseholders' choosing, a trust or (more likely) a company set up by the leaseholders for the express purpose of purchasing the freehold. Collective enfranchisement leaves the existing leasehold structures in place, though this is subject to the nominee purchaser's powers as freeholder to renegotiate with the leaseholders.



## ***The claim process***

46. The provisions and procedures relating to the right to manage are contained in Chapter 1 of Part 2 of the 2002 Act. Whilst it is a 'no-fault' claim, the leaseholders must fulfil a number of criteria before they can assume management responsibility through an RTMCo. In order to acquire the right to manage:
- (a) The claim must be made in relation to a 'qualifying premises' as defined by section 72 of the 2002 Act.<sup>107</sup> This section excludes, among other things, buildings with substantial non-residential parts,<sup>108</sup> buildings in which less than two-thirds of the flats are owned by long leaseholders<sup>109</sup> and buildings owned by a local authority.<sup>110</sup>
  - (b) A RTMCo must be incorporated before the claim procedure is commenced. The articles of association of the RTMCo must comply with national regulations,<sup>111</sup> and membership of the company is open to all long leaseholders in the building and (once the right to manage has been acquired by the company) landlords under leases of the whole or any part of the building.<sup>112</sup>
  - (c) Before making a claim, an RTMCo must give written notice to all long leaseholders who are not already members of the company informing them of the company's intention to acquire the right to manage and inviting them to become members of the company. This notice must comply with national regulations<sup>113</sup> and should be accompanied by a copy of the RTMCo's articles of association or a statement specifying the place and hours at which the articles of association may be inspected.<sup>114</sup> The RTMCo must wait at least 14 days from giving this notice to each relevant leaseholder before it can give notice of the right to manage claim to the relevant parties.<sup>115</sup>
  - (d) At the date of giving notice of the right to manage claim to the landlord, the membership of the RTMCo must include a number of long

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<sup>107</sup> Incorporating the 2002 Act, Schedule 6 (Premises Excluded from Right to Manage).

<sup>108</sup> ie buildings in which the internal floor area of any non-residential parts exceeds 25% of the total internal floor area of the building (2002 Act, Schedule 6, paragraph 1).

<sup>109</sup> 2002 Act, section 72(1)(c).

<sup>110</sup> 2002 Act, Schedule 6, paragraph 4.

<sup>111</sup> Currently, the RTM Companies (Model Articles) (England) Regulations 2009 (SI 2009/2767).

<sup>112</sup> 2002 Act, section 74(1).

<sup>113</sup> Currently, the Right to Manage (Prescribed Particulars and Forms) Regulations 2010 (SI 2010/825).

<sup>114</sup> 2002 Act, section 78(4), (5).

<sup>115</sup> 2002 Act, section 79(2).

leaseholders which is not less than half of the total number of flats contained in the building.<sup>116</sup>

47. The 2002 Act also contains strict rules relating to the form and contents of the claim notice and the parties to whom notice of the claim should be given.<sup>117</sup> An RTMCo must give the relevant parties at least one month from the date of giving the notice to respond with a counter-notice challenging the company's claim.<sup>118</sup> The grounds for such challenge can be a breach of the statutory requirements for acquiring the right to manage, or a procedural defect in the claim. If the RTMCo receives a counter-notice challenging its claim, it may apply to the FTT to determine whether it was in fact entitled to acquire the right to manage on the date of giving its claim notice to the relevant parties.<sup>119</sup>

### ***Acquiring the management function***

48. Upon acquiring the right to manage a building, an RTMCo assumes the management functions of a landlord and any third parties to a lease of the whole or any part of the building.<sup>120</sup> The company will not, however, take over the management functions relating to flats or units which are not held by long leaseholders, nor will it assume any functions relating to re-entry or forfeiture.<sup>121</sup> Also, where an RTMCo assumes the power to grant approvals to leaseholders under their respective leases, it may not grant any approval without first seeking the consent of the landlord.<sup>122</sup> If the landlord objects to the granting of the approval then the RTMCo may grant it only if the landlord subsequently agrees to it in writing or in accordance with the determination of the FTT.<sup>123</sup>
49. The 2002 Act contains a number provisions intended to assist the transfer of management functions to the RTMCo. Where there are existing contracts in place between the property manager and any contractors, the property manager must give notice both to the existing contractors (a 'contractor notice', stating that the right to manage is to be acquired by the RTMCo and giving particulars in relation to the company) and to the RTMCo (a 'contract

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<sup>116</sup> 2002 Act, section 79(5). If there are only two long leaseholders of flats in the building on the date that notice is given, both must be members of the RTMCo – section 79(4).

<sup>117</sup> 2002 Act, sections 79–81, currently supplemented by the Right to Manage (Prescribed Particulars and Forms) (England) Regulations 2010 (SI 2010/825).

<sup>118</sup> 2002 Act, section 80(6).

<sup>119</sup> 2002 Act, section 84(3).

<sup>120</sup> 2002 Act, section 96(2), (3). 'Management functions' are services with respect to services, repairs, maintenance, improvements, insurance and management – section 96(5).

<sup>121</sup> 2002 Act, section 96(6).

<sup>122</sup> 2002 Act, section 98(4).

<sup>123</sup> 2002 Act, section 99(1).

notice', giving particulars of existing contracts);<sup>124</sup> if a contractor is party to an existing subcontract then they must send a copy of the contractor notice to the subcontractor and give to the RTMCo a contract notice in relation to the subcontract.<sup>125</sup> The RTMCo is also entitled, upon giving notice to the landlord or other relevant party, to receive any information which it reasonably requires in connection with the exercise of the right to manage.<sup>126</sup>

50. The 2002 Act also requires the landlord and any other relevant party to pay to the RTMCo a sum equal to the amount of any 'accrued uncommitted service charge' held by them on the date on which the company acquires the right to manage.<sup>127</sup> In effect, this means any money held as a sinking fund by the landlord or their managing agent.<sup>128</sup>

### ***Terminating the right to manage***

51. There are a number of situations in which an RTMCo ceases to exercise the right to manage a building. This can be done by voluntary agreement between the company and each party who is landlord to a lease of the whole or any part of the building.<sup>129</sup> The company will automatically lose the right to manage if it is wound up, or put into receivership, or struck off the register of companies held at Companies House.<sup>130</sup> It will also lose the right to manage if a manager is appointed by the FTT to manage the building under Part 2 of the 1987 Act.<sup>131</sup>

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<sup>124</sup> 2002 Act, sections 91 & 92. The contractor and contract notices must also contain the additional particulars specified in regs 6 and 7 of the Right to Manage (Prescribed Particulars and Forms) (England) Regulations 2010 (SI 2010/825)

<sup>125</sup> 2002 Act, section 92(4).

<sup>126</sup> 2002 Act, section 93(1).

<sup>127</sup> 2002 Act, section 94(1).

<sup>128</sup> The Upper Tribunal (Lands Chamber) held in *OM Ltd v New River Head RTM Co Ltd* [2011] 1 EGLR 97 that section 94 of the 2002 Act is strictly limited and does not extend to sums to which the landlord or other relevant parties were entitled but do not actually hold at the date of the RTMCo's acquisition of the right to manage. It was also confirmed that the legislation does not permit the RTMCo to interfere with any pre-existing relationships and rights, such that not only will the landlord or other relevant party be entitled to retain those sums needed to pay expenses already accrued but it will be for the landlord and not the RTMCo to sue any leaseholders for the shortfall under the lease and any previous service charge demands.

<sup>129</sup> 2002 Act, section 105(2).

<sup>130</sup> 2002 Act, section 105(3).

<sup>131</sup> 2002 Act, section 105(4).

## Regulatory initiatives and redress schemes

### Introduction

1. This appendix provides an overview of the several regulatory and redress schemes to which property management companies are subject. It first looks at recent initiatives brought in by DCLG, then sets out the systems of self-regulation devised by the main representative bodies and trade associations. Finally it looks at the ombudsmen and tribunal systems that have been set up to resolve disputes.

### Recent regulatory initiatives

#### ***Ombudsman schemes and the Enterprise and Regulatory Reform Act 2013***

2. The 2013 Act gave powers to the Secretary of State<sup>1</sup> to establish redress schemes for dealing with complaints against persons engaged in lettings agency and/or property management work.<sup>2</sup> Pursuant to these powers, on 15 April 2014 DCLG announced that it had approved three schemes that all lettings and property management agents would be required to join later in the year.
3. According to DCLG, these three schemes – The Property Ombudsman, Ombudsman Services: Property and the Property Redress Scheme (see paragraphs 15 to 31) – will offer independent investigations of complaints about hidden fees or poor service. If a complaint is upheld, tenants and leaseholders may be entitled to receive compensation. The first two named redress schemes cover RICS and ARMA code subscribers and at the time of the April 2014 announcement DCLG suggested that 60% of the lettings and property management sectors were already covered. A subsequent statutory instrument was enacted which required all remaining lettings and property management agents to join one of the approved schemes by 1 October 2014.<sup>3</sup> After that date, failure to belong to a scheme may result in the payment of a monetary penalty not exceeding £5,000.<sup>4</sup>

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<sup>1</sup> ie the Secretary of State for Communities and Local Government.

<sup>2</sup> The 2013 Act, sections 84–88.

<sup>3</sup> Redress Schemes for Lettings Agency and Property Management Work (Requirements to Belong to a Scheme etc) (England) Order 2014 (Redress Schemes Order 2014).

<sup>4</sup> Redress Schemes Order 2014, Article 8.

## ***DCLG capping of service charges for social landlords***

4. Another DCLG initiative introduced on 12 August 2014 was a cap on the amount of service charges that local authority landlords and housing associations can demand from resident leaseholders for repairs, maintenance and improvement works which are wholly or partly funded by central government assistance.<sup>5</sup> Outside London the maximum level of service charge payable by individual leaseholders in any five-year period will be capped at £10,000; in London the maximum level will be capped at £15,000.<sup>6</sup> These provisions do not address self-funded schemes not in receipt of central government funding, nor past schemes.
  
5. Additional directions were also enacted on the same day giving social landlords a discretion to reduce service charges pursuant to a number of criteria including financial hardship on the part of an individual leaseholder.<sup>7</sup> DCLG is also currently examining<sup>8</sup> what further support can be offered to leaseholders, specifically looking at possibilities to address:
  - providing access to summaries of FTT decisions (most likely at a cost), so that people have a better understanding of its work;
  - making it easier for tenants' associations to be recognised under the 1985 Act;
  - increasing awareness of leasehold ownership and the obligations of a leaseholder before buyers purchase leasehold properties;
  - access to information on absentee landlords, especially where leaseholders wish to buy the freehold;
  - ensuring landlords provide a realistic valuation of the price a leaseholder would have to pay to buy the freehold or extend their lease; and
  - the specific issue of transfer/exit fee covenants found in the retirement leasehold sector, by referring this issue to the Law Commission.

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<sup>5</sup> Pursuant to the Social Landlords Mandatory Reduction of Service Charge (England) Directions 2014 ('Mandatory Reduction of Service Charge Directions 2014').

<sup>6</sup> Mandatory Reduction of Service Charge Directions 2014, Article 3.

<sup>7</sup> Social Landlords Discretionary Reduction of Service Charge (England) Directions 2014.

<sup>8</sup> [DCLG press release, 12 August 2014](#).

## Regulatory codes

### *The RICS Code*

6. The RICS Service Charge Residential Management Code (the RICS Code) is an approved code of practice pursuant to the 1993 Act.<sup>9</sup> The RICS Code applies only to leasehold properties where a variable service charge is payable and the landlord is not a local housing authority or a registered social landlord. However, the RICS Code does apply where a social landlord acts as a managing agent for a private sector landlord. The RICS Code is not mandatory but managers should be able to justify departures from its provisions, and as an approved code the FTT can have regard to its provisions when determining a dispute before it. The existence of the RICS Code should be brought to the attention of all private sector leaseholders to whom it applies.
7. Major provisions of the RICS Code deal with the following matters:
  - Charges should be ‘appropriate to the task involved and pre-agreed with the client [ie the landlord or other person or organisation who appointed the property manager] whenever possible’.
  - Service charges must be ‘no more than is reasonable’ and property managers should ‘routinely monitor the cost-effectiveness of services’.
  - As with the ARMA-Q Code, convenience to the property manager is set out as a factor to be taken into account when considering guidance given by the Code.
  - A property manager should declare to the landlord and leaseholders whenever a contractor is engaged with whom the manager has a financial or other connection.
  - For qualifying works under the section 20 consultation process, a property manager must obtain at least two estimates, one of which must be from a contractor wholly unconnected to the manager.
  - Insurance commissions and all other sources of income to the managing agent arising from the management of a premises should be declared to the client and the leaseholders.
  - Although not set out in the RICS Code, RICS told us that member firms would be subject to audits at least every three years (firms identified as higher risk could be audited more frequently), and that RICS had the

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<sup>9</sup> Pursuant to the 1993 Act, section 87.

power to discipline, fine or expel individual members as well as member firms.

8. With regard to complaint handling, the RICS Code requires property managers to maintain and make available a clear procedure for handling complaints and grievances, which should include a series of steps that dissatisfied clients/customers can take to resolve problems or misunderstandings. Any complaints about a member of the manager's staff should be referable to a responsible principal and should be investigated quickly and fairly, and where the property manager is not the landlord then the procedure should usually allow for a leaseholder to complain to the landlord.

### **ARMA-Q Code**

9. From January 2015 ARMA<sup>10</sup> members will have to comply with the ARMA-Q consumer charter and professional standards. Unlike the RICS Code, ARMA-Q has not been approved pursuant to the 1993 Act. The Independent Regulator for the Code will not normally intervene unless and until other channels for complaint and redress (including ombudsmen and the FTT) have been exhausted, but he does have an ability to take cases directly without waiting for the outcome of other avenues if he judges that there is a case for doing so. The charter requires property managers to provide information on the ombudsman scheme to which they subscribe.
10. Major provisions of the ARMA-Q Code deal with the following matters:
  - The management fee should be quoted as a fixed fee unless otherwise specified in the lease.
  - Service charges and reserve fund contributions must be 'reasonable', and any charge for services not covered by the management fee must be a 'proportionate charge', ie 'a reasonable charge, fee or commission which may include a profit'; managers must also ensure that only a proportionate charge is made for administration costs.
  - The property manager must make an annual declaration to the client and the leaseholders of all income and related income or other benefits in relation to the service charge including insurance fees, interest, associated companies and in-house service providers.

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<sup>10</sup> See the [ARMA website](#).

- Property managers must undertake a three-yearly audit check ‘to ensure standards are maintained’.
  - Again, convenience to the property manager is one of the factors to be taken into account when taking management decisions within the framework of ARMA-Q.
  - Property managers must not receive any income from any insurance premiums they, or any associated company, have dealt with other than to receive a proportionate charge for services provided; they must also only request a payment for handling insurance activities if it is a proportionate charge and disclosed in writing and agreed with the client – this charge is to be disclosed in writing to any leaseholder who requests it.
  - There is no specific requirement for blanket competitive tendering for contractors but property managers should appoint contractors suitable and competent to provide the service to a reasonable standard, having regard to the size and nature of the contract, cost, efficiency, quality and value for money.
  - In a competitive tender,<sup>11</sup> property managers must choose from a minimum of two contractors, at least one of whom is unconnected to the manager or landlord.
11. With regard to complaint handling, ARMA-Q requires property managers to maintain and fully implement a complaints handling procedure appropriate to the size and structure of their respective organisations, meeting the minimum requirements of ARMA and any other professional organisation to which they belong. If any complaint has not been resolved within an eight-week period then the manager must offer access to an independent ombudsman and must agree to abide by the ombudsman’s rules and decisions. All members of a property manager’s staff must be made aware of the procedure and it should also be publicised and made readily known to all clients and leaseholders.

### ***ARHM Code of Practice***

12. The ARHM<sup>12</sup> Code of Practice (the ARHM Code) is another approved code under the 1993 Act. The ARHM Code applies only to ARHM members operating in England and covers retirement housing, whether managed by private companies or registered social landlords.

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<sup>11</sup> As required by LTA 1985, section 20.

<sup>12</sup> See [ARHM website](#).



13. Major provisions of the ARHM Code deal with the following matters:
- Property managers must ensure that service charges are reasonable and must charge management fees which are reasonable having regard to the services provided.
  - Managers should arrange for maintenance work to be carried out either by staff or by approved contractors who provide a customer-orientated and competitively priced service.
  - In addition to statutory consultation requirements, managers are advised that they should consult with all leaseholders on other management matters that are likely to have a significant effect on the quality of services and level of service charges or which will otherwise significantly affect some or all leaseholders.
  - Property managers should declare on request any commissions and all other sources of income arising out of the provision of services and be able to demonstrate that any service involving receipt of commission represents good value for leaseholders' money.
14. With regard to complaint handling, the ARHM Code requires property managers to ensure that their complaints procedures state to whom leaseholders should complain in the first instance and the steps they should follow if the matter is not satisfactorily resolved at that stage. The procedure should also set down reasonable target timescales for each stage of the procedure, and should ultimately allow leaseholders the right to a face-to-face hearing before a panel at senior level in the management organisation. Managers should offer mediation and conciliation as an option for resolving complaints and make leaseholders aware of other organisations which can provide advice and take up complaints, eg LEASE and Citizens Advice, respectively. They are also required to become members of an independent redress scheme approved by ARHM.

## **Overview of ombudsmen schemes**

### ***The Property Ombudsman***

15. The Property Ombudsman came into being on 1 May 2009. It was previously the Ombudsman for Estate Agents. The name change was made to reflect the broader jurisdiction in relation to complaints that can now be dealt with, eg sales, lettings, commercial and overseas. The scheme is open to firms of estate agents with a principal, director or partner who is a member of the National Association of Estate Agents or RICS; to all corporate estate agents,

defined as those who are subsidiaries of a bank, building society or insurance company, or are themselves quoted on the Stock Exchange and to other estate agents who are sponsored and seconded by existing member agents. From June 2006, the Ombudsman for Estate Agents extended its services to lettings and property management agents.

16. The ombudsman's role is to reach a resolution of unresolved disputes in full and final settlement and, where appropriate, he will make an appropriate award of financial compensation or take other action, for example requiring that the transgressor should make an apology. Therefore, anyone feeling that they have been disadvantaged by the actions or inactions of a Property Ombudsman member has access to an independent dispute resolution service and, according to the Property Ombudsman's website, can be certain of receiving a fair and reasonable judgment of their complaint.
17. A consumer can approach the Property Ombudsman to consider their complaint if they believe an agent has:
  - infringed their legal rights;
  - failed to follow the rules and obligations set for agents under any code of practice to which they may subscribe;
  - treated the consumer unfairly;
  - been guilty of maladministration (including inefficiency or undue delay); or
  - acted in a way that results in the consumer losing money or suffering avoidable aggravation, distress and/or inconvenience. However, the Property Ombudsman will not normally review a case until the agent's internal complaints procedure has been exhausted.
18. The Property Ombudsman can make compensatory awards of up to £25,000 against an agent if the ombudsman is convinced that the complainant has suffered:
  - actual, proven financial loss as a direct result of the agent's conduct; and/or
  - any avoidable aggravation, distress and inconvenience over and above what is reasonable in the circumstances of the case.
19. The Property Ombudsman can also criticise the agent for any failings or breaches of the Property Ombudsman Code of Practice where this applies to the agent. In cases of particularly severe breach, the Property Ombudsman

can report an agent to the Property Ombudsman Council for consideration of further action against the agent (such as being removed from the Property Ombudsman scheme). Alternatively, the Property Ombudsman may direct that the agent apologises to the complainant.

20. If the complainant accepts the Property Ombudsman's award, this will be in full and final settlement of all complaints referred to the Property Ombudsman by the complainant. As such, if a complainant wishes to pursue a case through the FTT or courts, the complainant must reject the Property Ombudsman's findings in their entirety.

### ***The Housing Ombudsman***

21. The Housing Ombudsman Service deals with complaints about registered housing providers, including housing associations and local housing authorities. All bodies, other than local housing authorities, that are or have ever been social landlords must be registered with the Housing Ombudsman in respect of all of their housing activities. Local housing authorities in England which are registered providers of social housing must be registered with the Housing Ombudsman in respect of those housing activities that relate to the provision or management of social housing; they must also be registered in regard to the management of dwellings they own and let on long leases. The scheme will accept registration of other housing providers which agree to be bound by the scheme and which establish and publish a complaints procedure that informs complainants of their right to complain to the Housing Ombudsman.
22. The Housing Ombudsman will uphold complaints where it is satisfied that the conduct of a registered housing provider has adversely affected the complainant in respect of their application for or occupation of property. The Housing Ombudsman will not, however, normally consider complaints that have been brought more than six months after the complainant has exhausted the housing provider's internal complaints procedure, or which were not originally raised with the housing provider within a reasonable period.
23. The Housing Ombudsman cannot consider complaints that have not originally been considered by the relevant housing provider and encourages individuals to contact their landlord/property manager as soon as they identify a problem. It also encourages complainants to contact a 'designated person' (ie local councillor, MP or a tenant panel) who can help them pursue the complaint and work with the landlord/manager to put things right – if this still does not lead to a satisfactory resolution then the designated person can refer the complaint to the Housing Ombudsman.

24. The Housing Ombudsman considers complaints about how a landlord has responded to reports of a problem and whether this was in line with the tenancy agreement or lease, and with the landlord's/manager's own policies – it does not examine the original problem, such as whether there has been antisocial behaviour or problems with damp at the property. In determining any complaint referred to it the Housing Ombudsman will decide what is fair in all the circumstances of the case.
25. In its determination the Housing Ombudsman may reject the complaint or make orders or recommendations, including that the registered member:
  - apologise to the complainant
  - pay compensation to the complainant
  - fulfils or refrains from any of the contractual or other rights and obligations existing between it and the complainant
  - undertakes or refrains from undertaking works
  - takes such other reasonable steps to secure redress within its legal power
26. The Housing Ombudsman members are expected to comply with the ombudsman's determination following his consideration of a complaint.
27. The Housing Ombudsman does not, however, have jurisdiction to consider complaints about the level of rent and/or service charges, and individuals seeking a binding decision on these matters will have to refer their case to the FTT in the first instance.

### ***Ombudsman Services: Property***

28. The Ombudsman Services: Property scheme is one of the redress schemes approved by DCLG under the 2013 Act to monitor property management services. The service is free to use for consumers. The type of complaints that can be dealt with by the Ombudsman Services: Property scheme include:
  - an apparent breach of obligations
  - unfair treatment
  - avoidable delays
  - failure to follow proper procedures
  - not explaining matters

- poor or incompetent service
29. Before referring a complaint to the Ombudsman Services: Property scheme a complainant must give the property manager a reasonable opportunity to resolve the complaint. It can be passed to the Ombudsman Services: Property scheme if the property firm fails to resolve the matter or if it remains unresolved eight weeks after the initial complaint was made.
30. As with the other ombudsmen schemes, the purpose of the Ombudsman Services: Property scheme is not to punish property firms but to resolve individuals' complaints in an appropriate manner. If it finds against a property firm, the Ombudsman Services: Property scheme can require:
- an apology
  - an explanation of what went wrong
  - a practical action to correct the problem
  - the payment of financial compensation up to £25,000
31. It can also make recommendations to the property firm to help it avoid similar problems in the future. Any Ombudsman Services: Property scheme decision is binding on the firm and it must then put the remedy in place within 28 days of it being accepted by the complainant. If the firm fails to do this then the Ombudsman Services: Property scheme's decision is enforceable in the courts.

## **Overview of Property Tribunal System**

### ***First Tier Tribunal – Property Chamber (Residential Property)***

32. The FTT was established to handle certain types of dispute which would otherwise have to be dealt with by the courts. It took over the work of the LVT on 1 July 2013.<sup>13</sup> It has five regional offices across England.
33. Under the LVT rules both sides would bear their own costs, except if a party acted unreasonably or vexatiously, when the LVT was able to award costs of up to £500 against them. There is now no costs cap and under the current rules the FTT can make an order for costs where 'a person has acted

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<sup>13</sup> It should be noted that Wales has retained the LVT and so properties within Wales will be subject to its jurisdiction and rules.

unreasonably in bringing, defending or conducting proceedings' in a leasehold case.<sup>14</sup>

34. Matters directly relevant to leasehold ownership which can be dealt with by the FTT are discussed in detail in Appendix A. If a case has been brought in the county court and that court decides that some or all of the issues in the case should be dealt with by the FTT, the judge can order that the case be transferred to the FTT.
35. In disputes concerning service and/or administration charges the application fee in the FTT varies depending on the amount in dispute, and ranges from £65 to £440.<sup>15</sup> In section 20 dispensation cases and applications for the appointment of a manager under the 1987 Act the fee varies depending on the number of dwellings in the premises, ranging from £190 to £440.<sup>16</sup>

### ***Upper Tribunal***

36. The Lands Chamber of the Upper Tribunal has power to determine a range of disputes and appeals concerning land in England and Wales. It took over the work of the Lands Tribunal in June 2009. It has jurisdiction to hear appeals against all decisions made by the Property Chamber, except those relating to land registration which must be made to the Tax and Chancery Chamber of the Upper Tribunal.
37. An appeal can only be brought before the Lands Chamber if the appellant has first obtained permission to appeal from the FTT. If permission is not granted by that tribunal then the party may apply to the Lands Chamber for permission to appeal. The current fee for a permission application is £200, and that for lodging an appeal with the Lands Chamber is £250.
38. Parties have a further right of appeal from the Lands Chamber to the Court of Appeal.

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<sup>14</sup> The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (SI 2013/1169) ('the Tribunal Rules') rule 13(1)(b).

<sup>15</sup> £50–£350 in Wales.

<sup>16</sup> £150–£350 in Wales.

## Property manager questionnaire results

### Introduction

1. This appendix presents the results of a questionnaire sent to property managers by the CMA during March and April 2014.
2. The questionnaire aimed to gain a better understanding of the residential property management services provided to leaseholders in apartments, flats and maisonettes across the private sectors, local authorities and housing associations sectors. The questionnaire was divided into six sections:
  - size and scope of the business
  - communication with leaseholders
  - complaints and redress mechanisms
  - competition in the market
  - areas for improvement and ways to make a change
3. The questionnaire also asked respondents to send us a copy of documents such as budgets and end-of-year service charge accounts, consultation for major work (section 20) and a copy of any published internal complaints handling procedures (CHPs).
4. A summary of the main findings is presented in paragraphs 5 to 22. The methodology is explained in paragraphs 23 to 29. Detailed results are presented in paragraphs 30 to 81. A copy of the questionnaire is attached as [Annex 1](#).

### Summary of main findings

#### ***About the businesses***

5. A total of 113 businesses participated in the property managers' questionnaire. The information-gathering exercise was aimed at commercial property management companies providing services across the private sector, including retirement properties, but also housing associations and local authorities. The participating businesses provide services to a total number of around 679,000 private residential apartments, flats and

maisonettes (property units), 104,000 private residential retirement properties units and 8,200 housing association property units.

6. Most participants provide property management services to private residential developments including to retirement homes. A few also provide services to housing association developments in addition to the private and retirement developments. Nine out of ten businesses (88 out of 99) had revenues under £3 million in the last financial year.
7. Respondents were active in different areas across Wales and England. Most of them were concentrated in London and in the South-East. Fourteen businesses out of 99 said that they operated in Wales.
8. Almost 70% (57 out of 83) indicated that they were members of ARMA. Other trade associations mentioned by the respondents were RICS (43%), ARCO (5%), ARHM (5%) and IRPM (16%).

### ***Communication with leaseholders***

9. In most cases businesses reported providing financial information to their clients such as budgets, end-of-year accounts and copies of bids for major repairs as a matter of routine. Other information such as copies of invoices for specific items of work or documents explaining the choice of a particular contractor were mostly provided on request.
10. 43% of businesses (20 out of 44) stated that leaseholders partially understood the information sent to them about the service charge. Some participants (12 out of 44) said that leaseholders fully understood information provided on service charges and 5 out of 44 agreed that there was poor understanding of the information sent to leaseholders. Similar results were registered in describing the leaseholders' understanding for sinking funds.
11. Overall, participants (30 out of 67) agreed that they had problems maintaining good communication with leaseholders who were not living in the dwelling. A smaller proportion of businesses (14 out of 67) experienced problems in communicating with leaseholders who did not provide the property management companies with up-to-date correspondence addresses or emails. Only 22% of respondents (15 out of 67) said they did not have any difficulties in communicating with leaseholders.
12. In relation to payment of regular fees, 15 out of 40 businesses felt that there were particular types of leaseholders that were more likely to encounter difficulties in paying service charges – such as buy-to-let leaseholders and leaseholders experiencing financial difficulties.



### ***Complaints and redress mechanism***

13. We asked participants to explain their processes for dealing with complaints from customers and to describe the redress mechanism they used. When we asked businesses to describe their debt recovery process, replies demonstrated a high degree of uniformity. Typically this would involve sending two letters to leaseholders within about one month of the due payment date, with subsequent reference to a solicitor or debt collection agency in cases where the debt remained outstanding.
14. The majority of businesses (44 out of 60) said that they referred between 5 and 75 cases to the county court in the last financial year. Very few respondents (three out of 61) referred more than 75 cases to the county court for non-payment in the last financial year.
15. In the questionnaire respondents were asked whether they had a standard time within which to respond to complaints received. Responses were relatively consistent. Nine out of ten businesses (67 out of 72) said they had a standard time to handle the complaints received. Standard procedures for handling complaints varied between companies. Most of the businesses (49 out of 72) usually provided a copy of the complaint handling procedures to leaseholder when requested. Some of them also published it on their websites.
16. In the last financial year leaseholders rarely took a complaint to a trade organisation, the RICS, an ombudsman or the FTT. It appeared that the complaints were usually resolved internally rather than being reported to the organisations mentioned above.
17. Overall on the effectiveness of the redress system available to leaseholders, respondents (53 out of 72) largely agreed that the avenues of redress available to leaseholders were effective. However, some of them also agreed that the process was costly.

### ***Competition***

18. Businesses indicated that there was a certain degree of competition in the market. Respondents provided us with estimates of developments won from other managing agents and it emerged that about one in three respondents won more than 50% of their business from competitors in the last financial year.
19. Businesses (52 out of 73) agreed that competition was mainly local. Some (15 out of 73) said that they competed at national level.

20. Finally, participants commented on whether there were any types of customers or developments that they would not consider managing. Views varied across businesses. Some participants said that they always considered new developments and each case was considered on its merits. On the other hand, another group said that they usually did not consider blocks with ongoing disputes, small blocks, blocks located too far from their offices and poor-quality blocks.

### ***Areas for improvements***

21. In this section we asked open-ended questions to obtain participants' views on areas for improvements in the residential property management market that would help the market to work better for consumers and businesses.
22. Businesses' views covered several issues. Transparency of information for buyers of leasehold flats about property managers' services and fees was mentioned several times by respondents. Improving regulation and adopting legislative changes were also mentioned. Specifically on improving regulation, respondents commented that the industry would benefit from a rationalisation of the codes into a single industry Code of Practice. Some of them suggested that there should be a requirement for all property management companies to comply with ARMA-Q\RICS.

### **Methodology**

23. The findings provided in this appendix are from an online questionnaire of property managers conducted by the CMA.
24. The questionnaire presented a number of challenges, the most serious of which were the lack of a comprehensive sample source or even information about the number of firms in scope.
25. Since the CMA did not have contact details for the target audience, we approached trade organisations, such as ARMA, RICS, ARCO and ARHM. These trade organisations were asked to bring the questionnaire to the attention of their members and send them links to the online questionnaire. In addition, the CMA identified a number of individual firms which were not members of these trade associations. These firms received an invitation to take part in the questionnaire directly from the CMA.

26. The data collection period was March and April 2014. During this period, the questionnaire was sent to about 660 property management companies.<sup>1</sup> We received a total of 164 responses from private businesses, housing associations and local authorities. Of those only 128 completed the questionnaire and only 113 were eligible for our analysis.
27. Respondents included three housing associations and one local authority.<sup>2</sup> These observations were removed and added to the local authority and housing associations' questionnaire result as not in scope with the property managers' questionnaire. Finally, for 11 questionnaires, some companies completed the questionnaire two or more times. Those observations were eliminated.
28. The participating businesses reported providing services to a total number of almost 679,000 private property units, 104,000 private residential retirement property units and 8,200 housing association property units.<sup>3</sup> In relation to the information on the market on the number of leasehold units in the private sector in England and Wales derived from DCLG and our internal research,<sup>4</sup> the responses appear to cover 25 to 37% of the property management services provided in the leasehold sector.<sup>5</sup>
29. In light of the issues set out above, it is important to note that the results of this information-gathering exercise may not reflect the target population as a whole since we cannot describe the responses as 'representative' in a statistical sense. In particular we have mainly captured views of those business that belong to one or more of the trade bodies mentioned above. Unfortunately it has not been possible to identify all property management companies, hence we do not know how representative our responses are of the sector as a whole. Therefore any inferences made need to be treated with caution.

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<sup>1</sup> The questionnaire was sent to: 270 RICS members, 315 ARMA members, 24 ARCO members and 51 ARHM members.

<sup>2</sup> We excluded observations related to businesses serving exclusively housing association and/or local authority developments. However, our respondents include businesses providing services together to private, retirement, housing association and local authority developments.

<sup>3</sup> Respondents also provided an estimate of how many developments they managed in each group: Private residential developments: 18,814 properties, private residential retirement developments: 1,758, and 1,015 housing association developments.

<sup>4</sup> See paragraphs 3.41 to 3.45.

<sup>5</sup> 25 to 37% is derived as the ratio between the total number of units managed by the businesses who took part in the questionnaire and the estimate of between 2.1 million and 3.1 million leaseholders' flats under property management provision (see paragraph 3.45).

## Results: Property management companies

### Size and scope of your business

30. We asked respondents to indicate the type of development(s) managed by their business. One hundred and nine property management companies answered this question. The majority of these (78 out of 109) said that they provided services only to private developments. Eleven out of 109 respondents provided services to private and retirement developments, and only seven indicated that they exclusively provided services to retirement developments. Very few of the respondents provided services to both local authorities and housing associations together with private or retirement developments.<sup>6</sup>

TABLE 1 Question 5: Type of development managed

	Responses
Private	78
Private, retirement	11
Retirement	7
Private, retirement, housing association	5
Private, housing association	4
Retirement, housing association	3
Private, retirement, local authority, housing association	1
Total	109

Source: CMA property manager questionnaire.

31. Twenty-five respondents indicated that their company had a related company, such as a parent company, subsidiary or other companies in a group that provided property management services to private developments. Seven respondents indicated that they had a related company that provided property management services to private residential retirement developments and just five said that they had a related company also serving housing associations.
32. We asked respondents to give us an estimate of how many developments and property units they managed in each group. The results varied widely from one to 3,665 developments managed. Twenty-three out of 88 respondents indicated that they managed fewer than 20 developments and 31 respondents managed more than 100 developments. Of these 31 respondents, 21 managed between 100 and 450 developments and ten managed more than 450 developments. In terms of property units managed,

<sup>6</sup> As specified in paragraph 27, we excluded observations related to property managers serving exclusively housing association and/or local authority developments. However, as shown in Table 1, our respondents include businesses providing services together to private, retirement, housing association and local authority developments.

there was a wide range among respondents, with the majority of respondents (41 out of 86) managing between 1,000 and 9,000 units.

33. In private retirement developments, 12 out of 24 respondents managed between one and three retirement developments. Just over a third (36 out of 24) managed between 4 and 60 developments and a further 9% (2 out of 24) managed between 60 and 1,500 developments. Among these the number of units managed by respondents was smaller, with 12 out of 24 managing between one and 100 units.
34. Revenues – based on figures of the most recent financial year – from property management services did not exceed £3 million a year for 88 out of 99 businesses.

TABLE 2 **Question 9: Annual revenues for the last financial year**

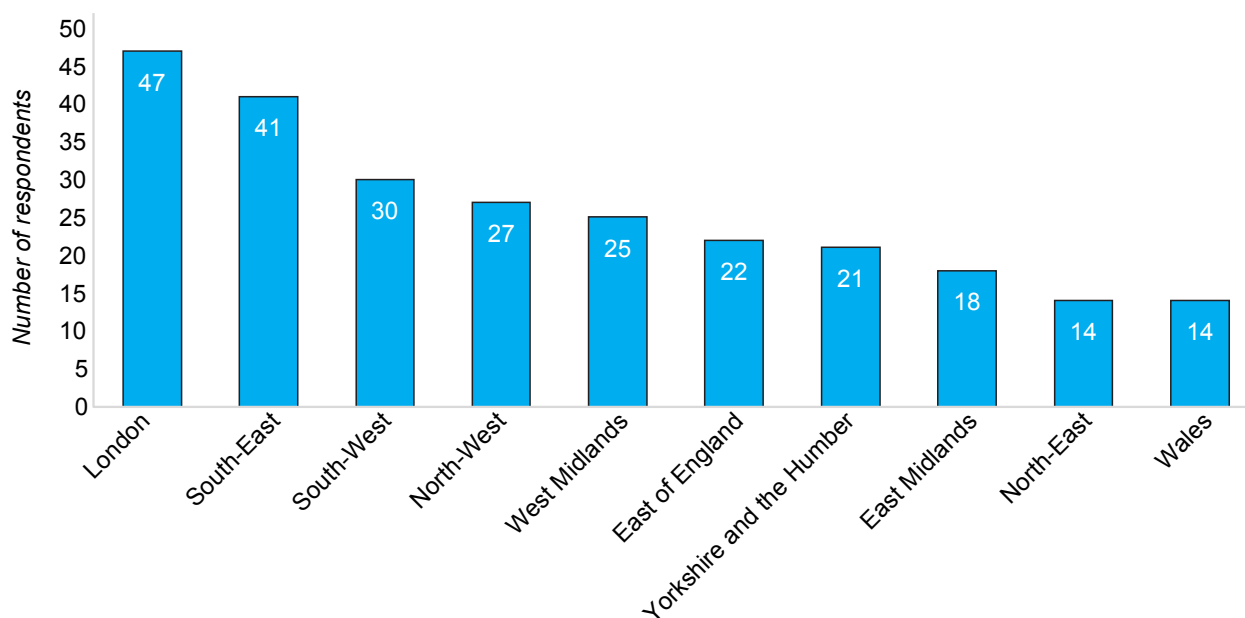
	<i>Responses</i>
Under £3 million	88
Between £3 million and £11 million	7
Between £12 million and £50 million	3
Above £50 million	<u>1</u>
Total	99

Source: CMA property manager questionnaire.

35. Specifically, of 71 businesses which provided services exclusively to private developments, nine out of ten (67 out of 71) had revenues under £3 million in the last financial year, 3% (2 out of 71) had revenues of between £3 million and £11 million and only one had revenues above £12 million. All respondents managing retirement developments indicated revenues of under £3 million.
36. Ninety-nine respondents to the questionnaire who answered this question were active in different areas across Wales and England. The chart below summarises the main results at a regional level.

FIGURE 1

**Question 10: Geographic distribution of the respondents**



Source: CMA property manager questionnaire.

37. We asked the respondents to indicate which types of landlord(s) appointed their businesses. Table 3 shows the results in terms of contracts held by the property management companies with a range of landlords. Seventy-five respondents indicated that 28% of their contracts were appointed by RMCs, 61 indicated that 22% of their contracts were appointed by developer freeholders, 55 (20%) by RTMCs) and 55 by investor-freeholders. Seventeen respondents said that 6% of their contracts were appointed through management orders.<sup>7</sup>

TABLE 3 Question 11: Type of landlord that appointed the respondents

Type of landlord that appointed the respondents	Count of responses
RMC	75
Developer-freeholder	59
Investor-freeholder	53
RTMC	53
Management Order	16
Housing association	10
Local authority	1

Source: CMA property manager questionnaire.

38. According to their answers above, some respondents also provided an estimate of the share of activity that each landlord represented on their

<sup>7</sup> Management orders are a legal device used in England and Wales, which enable local authorities to put an unoccupied property back into use as a 'social house'.

businesses.<sup>8</sup> For 69 respondents, working for RMCs represented on average 63% of their activity. For 50 respondents, working for investor-freeholders represented on average 28% of their business, whilst for 57 respondents, working for developer-freeholders represented on average 23%. The average respondent answering this question obtained 8% of their business from RTMCos. Few respondents said they provided services to local authorities or housing associations. Housing associations represented 15% of respondents' activity.

39. Seventy-nine businesses that responded provided comments on profitability. Of those, six were not informative. Respondents mentioned several factors that impacted positively on performance, including:
- level of management fees (23 out of 79);
  - efficiencies and/or economies of scale (13 out of 79): size of portfolio managed by property managers, size of the properties, quantities of units managed; and
  - revenues generated from additional services (nine out of 79) such as insurance commissions and debt management.
40. Factors impacting negatively on performance included the following:
- Level of staff costs and labour costs in general (16 out of 79).
  - Various costs (14 out of 79): administration costs, IT requirements, transportation costs, time spent on organising and repairs, cost of providing good quality services.
  - Relationship with leaseholders (12 out of 73) and specifically leaseholders paying on time, communication compliance, rent arrears.
  - Competition (9 out of 79): low quotation for management fees by unregulated small providers who are not members of ARMA or any regulated bodies, unfair competition from big providers.
  - Other factors such as dealing with legislative requirements, managing unplanned requests and the condition of the building were also mentioned by 8 out of 79 respondents.
41. The questionnaire asked an open-ended question to understand what other services were provided in addition to those remunerated through

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<sup>8</sup> See question 12 of the questionnaire.

management fees. Arranging insurance and provision of surveying services were indicated by 53 out of 81 respondents. Twenty-two respondents provided services associated with property transfers as property lettings and sales and lease extensions. Eighteen respondents also indicated that in addition to the services remunerated through management fees they provided administration and supervision of major work and programme maintenance and improvements. The rest of the respondents stated that they provided a miscellaneous range of services such as: legal enquiries (16 out of 81); debt collections (16 out of 81); company secretarial (13 out of 81); property evaluations (4 out of 81); and care services for retirement homes (4 out of 81). Only eight respondents said that they did not provide any extra service in addition to the one remunerated by the management fees.

42. We also asked the respondents to specify the percentage of total revenues due to those other services. Businesses only serving private developments who answered this question (55) indicated that these extra services accounted for approximately 20% of their revenues.
43. The questionnaire asked a range of questions on insurance. From the data collected, it appears that it is very common for property management companies to arrange building insurance. Sixty-three respondents who provide services to private development indicated that on average they arranged insurance for around 70% of their buildings.
44. We asked respondents to clarify how they determine what level of cover is appropriate. Eighty-two respondents who answered this question identified three main approaches:
  - Using insurance valuations (54 out of 82): businesses indicated that they requested internal or external valuations every three to five years.
  - Asking insurance brokers for advice (17 out of 82).
  - The buildings were valued to RICS standards (5 out of 82).
  - Others (14 out of 82) used different approaches such as: level of cover determined by freeholders, discussions with directors or lease and client instructions.
45. Of the businesses that responded, the majority of them (48 versus 35) said that they did receive a commission to arrange insurance at their sites.<sup>9</sup> Where

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<sup>9</sup> Question 18: Are you taking a commission fee?: Yes: 48 respondents, No: 35 respondents, Don't know: 4 respondents



respondents indicated that they did take a commission on insurance, we asked them to clarify how the level of commission was typically determined. Responses did not show much variation: 23 out of 47 respondents said that the commission was agreed with brokers to cover the value of the services provided or discussed with clients, based on work involved in managing claims and cover and/or through negotiation between directors and brokers. Nine said that the commission was a percentage of the premium, normally set at around 7.5%.

46. Finally on insurance we asked respondents which services they provide in return for these commissions and fees. Of 47 respondents who answered this question, 38 indicated that the commission covered services such as administration of claims and dealing with queries relating to the cover. The rest of the respondents mentioned other factors such as policy administration, meeting with brokers and negotiating renewal terms.
47. We asked an open-ended question to understand whether the businesses were part of any trade organisation or professional body. The responses show that the participants were members of a number of different organisations and sometimes members of more than one trade association. The majority of respondents (57 out of 83) indicated that they were members of ARMA and 36 out of 83 indicated that they were RICS members. One respondent said it did not belong to any trade or professional body. As shown in Table 4, other trade associations or professional bodies were mentioned, in most cases alongside ARMA and RICS: ARCO, ARHM, IRPM, The Property Ombudsman scheme and others as United Kingdom Homecare Association, ARLA, Architects Registration Board, Royal Institute of British Architects Chartered Institute of Arbitrators, British Institute of Facility Management.

TABLE 4 Question 21: Names of trade associations or professional bodies of which the respondents are members

	<i>Count of responses</i>
ARMA	57
RICS	36
IPRM	14
ARHM	4
ARCO	3
TPO scheme	8
Other	23
None	<u>1</u>
Total	146
Number of respondents	83

Source: CMA property manager questionnaire.

48. Seventy-seven respondents also indicated the professional qualifications that their company required senior staff to have. The responses were quite standard. Almost all of the respondents who answered this question

mentioned that they would require a relevant degree or equivalent qualification in land management or surveying from RICS or IRPM (MRICS, MIRPM or AIRPM). Other respondents also mentioned Chartered Surveyors, Chartered Accountants and ARLA. Only seven said that they did not require any professional qualifications from senior staff.

49. From the questionnaire, it seems that the majority of respondents who took part in the information-gathering exercise (63 out of 87) are seeking to attain accreditation by a self-regulatory body such as ARMA-Q.<sup>10</sup> Respondents who said they were not seeking accreditation (22) gave reasons including that ARMA accreditation was not useful to them, or was considered too expensive, or that they were regulated by RICS and they had not considered accreditation, or felt it was not required.
50. From the questionnaire, it appears that only a few businesses also act as freeholders for some of the developments managed. The majority of respondents (65 out of 87) indicated that they did not act as developer-freeholder, investor-freeholder and/or housing association.<sup>11</sup>
51. We asked respondents to indicate at what percentage of their developments, they also acted as developer-freeholder, investor-freeholder or/and housing association. Only 18 businesses answered (14% of total). Thirteen of them said that they acted as investor-freeholders on average at 25% of the buildings they managed.

#### *Communication with leaseholders*

52. In this section we sought to understand how property management companies communicate with leaseholders and in practice how effective this was considered to be. We asked respondents to indicate how they informed leaseholders about how their money is spent, in terms of what was provided, how often and at what level of detail.
53. Statements and individual bills, as for example budgets or end-of-year charge accounts, were commonly provided as routine in accordance with the lease. Regular provision of financial information was less common when related to specific items of work, and information related to choices of particular contractors and major works was generally provided on an ad hoc basis.

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<sup>10</sup> Question 23: Are you seeking to attain accreditation by a self-regulatory body? Yes: 63 respondents, No: 24 respondents.

<sup>11</sup> Question 25: Do you act as developer freeholder, investor freeholder, HA? No: 65 respondents, Yes: 20 respondents, Not sure 2 respondents.

TABLE 5 Question 27: Frequency and type of information provided to leaseholders

<i>Information supplied</i>	<i>In accordance with lease</i>	<i>If requested</i>	<i>When requested under a statutory notice</i>	<i>Not supplied</i>
Budget	75	18	5	1
End-of-year charge accounts	74	18	6	1
Copies of bids for major repairs or improvements	31	61	12	2
Explanation of your choice of a particular contractor	57	31	15	2
Copies of invoices for specific items of work	50	40	8	13
Any other financial information	29	43	14	2

Source: CMA property manager questionnaire.

54. Some of the respondents clarified what other information they provided to leaseholders. They mentioned that they may also supply accounts and annual reports, summary of expenditure, budget reports, debtors list, ground rent information and trial balance.
55. We also asked respondents to indicate how one could best describe the extent to which leaseholders understand the information that is sent to them about the service charge and the operation of sinking funds. The response rate to this question was fairly low (44 out of 113). The respondents' perception of leaseholders' understanding is summarised in the table below. It seems that the majority of the property management companies thought that leaseholders only partially understood the service charges (20 out of 44) and sinking funds (14 out of 43). Perception of poor understanding was greater when related to sinking funds (compared with understanding of the service charge).

TABLE 6 Question 30: Businesses' perception of leaseholders' understanding of service charges and sinking funds

	<i>Service charge</i>	<i>Sink funds</i>
Fully understand	12	10
Partially understand	20	14
Understand	7	10
Poor understanding	6	9
Total	44	43

Source: CMA property manager questionnaire.

56. We asked respondents to indicate whether there were any circumstances where it was more difficult to communicate with leaseholders. The majority of respondents (30 out of 67) said that they experienced difficulties in communicating with non-resident owners, such as buy-to-let owners, second home owners and overseas owners, for example. Eleven out of 67 businesses said that in some cases it was difficult to contact leaseholders as they may not update the property management company with their new contact details (email, telephone number, new address) when they changed.

Few of them (11 out of 67) said that they did not have any particular difficulties in communicating with leaseholders.

57. The majority of respondents (36 out of 58) indicated that they usually communicated with leaseholders by all reasonable mediums, ie post, email, telephone calls and in some cases via their web portal and notice boards. Some of them also said that they tried to keep up-to-date records of leaseholder contact details to ensure appropriate communication with leaseholders.
58. We asked respondents to indicate how often leaseholders take part in the choice of contractors and how often a contractor is appointed by leaseholders. The majority of the businesses that responded (56 out of 73) said that leaseholders occasionally or rarely nominated a contractor. Only 12 respondents said that this situation may often arise.

TABLE 7 Question 34: Frequency of leaseholders taking part in contractors' decision process

<i>Responses</i>	
Occasionally	31
Rarely	25
Often	12
Never	5
Total	73

Source: CMA property manager questionnaire.

59. The questionnaire explored the businesses' experience of and approach to communicating with leaseholders and identified some differences in both experience and approach. Thirty-four versus 28 respondents (76 respondents in total) agreed that there were some particular types of leaseholders that were more likely to encounter difficulties in paying their service charges.<sup>12</sup>
60. Some of the respondents (33 businesses) identified specific types of leaseholders who may encounter difficulties in paying the service charges. In particular, the types of leaseholders mentioned by the property management companies in the questionnaire were:
  - Leaseholders experiencing financial difficulties, such as unemployed, low-income leaseholders, young owners with a high level of debts (mortgage) or simply those who were unable to manage their financial position (15 out of 33).

<sup>12</sup> Question 35: Are there any particular types of leaseholders that are more likely to encounter difficulties in paying their service charge?: Yes: 34 respondents, No:28 respondents, Don't know: 14.

- Buy-to-let leaseholders. As they were not resident they tended to have a lower appreciation of the need for works to be done (8 out of 33).
- Elderly leaseholders, as they showed poor knowledge of their obligations under the terms of the lease and the real cost of good building repair, service and maintenance (6 out of 33).
- Leaseholders who had low interest in the property (5 out of 33).
- First-time buyers who have no comprehension of leasehold and its obligations (3 out of 33).

TABLE 8 Question 36: Types of leaseholders that are more likely to encounter difficulties in paying their service charges

	<i>Count of responses</i>
Leaseholders with financial difficulties (ie unemployed)	15
Elderly	6
First-time buyers	3
Investor	8
Leaseholders with low interest in the property	4
Not specific type	<u>3</u>
Total	39
Number of respondents	33

Source: CMA property manager questionnaire.

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### ***Complaints and redress***

61. In this section we asked participants to explain their process for dealing with leaseholder complaints and what avenues of redress they use.
62. We asked questions to understand how businesses communicate with leaseholders about their debt recovery process. We also asked respondents to describe their debt recovery process. Their replies indicated that businesses usually send leaseholders two reminder letters. The first is sent within approximately one week of the due payment date and the second is sent between 21 days to a month of the payment due date. Respondents told us that the second letter warned leaseholders that, if the payment was not received in a short time frame, further actions would be taken and the letter would be sent to solicitors or a debt collection agency. The solicitor or the debt collection agency would then issue a further letter before taking any further legal action. If the debt remained outstanding the solicitor would then issue court proceedings.
63. We asked the respondents to indicate how many cases as a proportion of their total late payment cases they referred to the county court for non-payment in the last financial year. Sixty-one respondents answered this

question, with wide variation in the number of cases referred to court. In the last year on average 37 cases were reported to the court, according to the respondents to the questionnaire. Thirteen respondents indicated that they had referred no cases, 29 said that they referred between 5 and 50 cases to the courts and only 4 respondents had referred more than 50 cases to court in the preceding year.

TABLE 9 Question 39: Number of total cases and proportion of total late payment cases referred to the county court for non-payment in the last financial year

<i>Total cases referred to the court</i>		<i>As percentage of total cases</i>	
0	13	0%	11
Fewer than 5	15	Less than 5%	13
Between 5 and 25	17	Between 5% and 25%	25
More than 25	15	More than 25%	6
Total	60	Total	55

Source: CMA property manager questionnaire.

- 
64. Respondents were asked whether they had a standard time limit within which to respond to complaints received. Replies demonstrated a high degree of uniformity. Seventy-seven out of 72 respondents said that they did have a standard time to handle the complaints received.
65. Procedures for handling complaints varied between companies. The majority of businesses (49 out of 72 respondents) indicated that they usually provided a copy of the CHPs to leaseholders when requested. Thirty-two out of 72 usually publicised the existence of CHPs to leaseholders and in some cases they also publicised the contents of their CHP on their website. Only 15 of the businesses that responded said that they used a procedure for handling complaints that included a mixture of those options – publishing internal CHPs, publicising the existence of CHPs to leaseholders and when requested providing a copy to leaseholders/landlords and publicising contents of CHPs on their website.
66. We asked respondents to indicate how many times in the past financial year a leaseholder took a complaint to trade organisations, RICS, one of the ombudsmen and the FTT. The majority of the respondents, as shown in the table below, indicated that they never had a complaint that was taken to any of these organisations. Fewer than ten complaints were reported to either the ombudsmen or the FTT for, respectively, 16 and 15 of our respondents. It was rarely the case that more than ten complaints were taken to any of these organisations.

TABLE 10 **Question 43: Number of times a leaseholder took a complaint to a trade organisation, RICS, Ombudsmen and FTT**

	<i>Trade organisation</i>	<i>RICS</i>	<i>Ombudsmen</i>	<i>FTT/LVT</i>
Never	54	58	49	48
Fewer than ten	7	1	16	15
More than ten	<u>0</u>	<u>0</u>	<u>3</u>	<u>2</u>
Total	61	59	68	65

Source: CMA property manager questionnaire.

67. We asked open-ended questions on the effectiveness of the redress system available to leaseholders. Respondents (53 out of 72) largely agreed that the avenues of redress available to leaseholders were effective. However, some of them also agreed that the process was costly. Only a small percentage of respondents (7 out of 72) disagreed that the redress system was effective. One of the respondents commented that the current ombudsman service was infrequently used and had limited scope for redress.<sup>13</sup>

*Tell us about how competition works in the market*

68. In this section we sought to have a clearer understanding of the nature of competition in the market. The large majority of respondents (52 respondents out of 73) said that they mainly competed at a local level while 15 indicated that their business competed mainly at a national level.

TABLE 11 **Question 45: Level of competition in the market**

<i>Responses</i>	
Mainly local level	52
Mainly national level	15
Don't know	<u>6</u>
Total	73

Source: CMA property manager questionnaire.

69. We asked the businesses to describe the degree of competition in the market, providing an estimate of how many developments in their portfolio were acquired as new developments and what percentage were won from other managing agents. Sixty-six respondents answered this question, reporting wide variation in the amounts of business they acquired from new developments and from existing ones. Table 12 below outlines the results. Almost half of the respondents to this question (30 out of 66) said that the large majority of their developments (between 75% and 100%) were acquired

<sup>13</sup> From the questionnaire: 'FTT complex, legalistic and adversarial. At present mediation is only offered by the FTT once an application has been issued and only in certain locations'.

as new developments. About 15% (10 out of 66) of respondents indicated that between 5% and 25% of their business was acquired by new developments.

70. Our questionnaire respondents indicated that there is a certain degree of competition in the market. About 38% of the respondents indicated that they won less than 25% of their business from competitors. Twenty-two out of 66 respondents indicated that they won between 50% and 100% of their business from competitors.

TABLE 12 **Question 46: Percentage of businesses' portfolio acquired as new development and percentage won from competitors**

<i>Percentage acquired as a new development</i>		<i>Percentage won from other managing agents</i>	
None	6	None	12
Less than 25%	11	Less than 25%	25
Between 25% and 50%	12	Between 25% and 50%	7
More than 50%	<u>37</u>	More than 50%	<u>22</u>
Total	66	Total	66

Source: CMA property manager questionnaire.

71. When we asked respondents to indicate the percentage of tenders for new instructions that their business won during the last financial year replies varied across participants. About a sixth of the respondents indicated that they did not win any tenders in the last year. On the other hand, 38 respondents out of 61 said that they won between 25% and 75% of tenders in the last financial year.

TABLE 13 **Question 47: Percentage of tenders for new instructions that businesses won during the last financial year**

<i>% of tenders won in the last financial year</i>	<i>Responses</i>
Between 0% and 5%	11
Between 5% and 25%	10
Between 25% and 50%	19
Between 50% and 75%	19
Between 75% and 100%	13

Source: CMA property manager questionnaire.

72. Finally we asked for open-ended comments on whether there were any types of customers and/or developments that property management companies would not consider managing. Respondents had differing views. The table below summarises the key findings. Sixteen out of 66 respondents said they would not consider managing small blocks (between 10 and 25 units) or more generally developments with low management fees. Other concerns were raised on problematic blocks with ongoing disputes or blocks which had been badly self-managed. Only five respondents to this question said that they always considered a new development and that each development was considered on its merits.



TABLE 14 Question 48: Are there any type of customers and/or developments that you will not consider managing?

	<i>Count of responses</i>
Small blocks	16
Problematic blocks*	13
Blocks far from the office (ie 20 miles away)	7
Rented blocks	4
RTM blocks	4
Retirement blocks	2
Student accommodation	2
Not specific type	5
Other (poor blocks, self-managed blocks etc)	<u>12</u>
Total	65†
Number of respondents	66

Source: CMA property manager questionnaire.

\*Problematic blocks are intended as blocks with a bad reputation or unable to pay service charges.

†One response was not informative.

73. Some respondents (46 out of 72) also agreed that there were some blocks where leaseholders may find more difficult to organise themselves into a properly representative body. One in three respondents (20 out of 75) indicated that they could not answer this question.<sup>14</sup>

#### *Areas for improvements and ways to make changes*

74. In this section we asked open-ended questions to obtain participants' views on areas for improvements in the residential property management market that would help the market to work better for consumers and businesses.

75. The respondents suggested several areas where they believed an improvement may be appropriate:

- Twenty-three out of 60 suggested that transparency could be improved: property managers have the perception that there is a lack of leaseholders' understanding in terms of fees and services provided. Respondents suggested sharing more information with first-time buyers of leasehold flats about property managers' services and fees.
- Twenty out of 60 suggested improved regulation: property managers believe that the industry would benefit from improved industry regulation and a rationalisation of the codes into a single industry Code of Practice. Some of them suggested that there should be a requirement for all property management to comply with ARMA-Q/RICS.

<sup>14</sup> Question 49: Are there any developments where leaseholders find it more difficult to organise themselves into a properly representative body? Yes: 46 respondents, No: 6 respondents, Don't know: 20 respondents.

- Ten out of 60 highlighted the weakness in legislation: respondents suggested revising the section 20 consultation both in terms of the threshold at which it was triggered and in terms of the process to be followed. The general perception was that the section 20 consultation was confusing and lengthy, resulting in delays when works were required.
- Three out of 60 suggested removal of non-specialised firms from the market in order to improve consumer services.

76. We collected respondents' views on how to implement these improvements. Of the 56 businesses that answered this question, 12 suggested legislative changes without specifying how to address those changes. Fifteen suggested improvements to industry regulation and the promotion of good practice: 'Compulsory membership of an appropriate recognised professional body (currently only RICS and ARMA)'.

77. Also some respondents agreed on improving the level of information of leaseholders: 'Better education when people are buying a leasehold property from Estate Agents to Solicitors.'

78. Finally, more general comments on the market touched on different areas:

Training better property managers. As an employer I am shocked at the poor quality of experienced managers from other firms. Their technical and lease understanding is woefully inadequate. Standard industry defined service charge budget should be considered, especially for new builds so that all developments can be compared. Insurance and Reserve Funds should be included as a statutory minimum for new developments. Many developers' service charges are unrealistically low leading to dispute and low standards.

If you allow leaseholders to choose with RMC's [sic] in place in all cases, poor management will be resolved naturally.

79. Finally, 36<sup>15</sup> respondents provided further information that they considered relevant to the CMA in considering whether the market is working well for consumer and businesses. Some of the comments were about regulation (6 out of 40). The following comments were representative of the responses received:

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<sup>15</sup> Of those, ten were not informative.

Regulation is the way forward, either through ARMA-Q or by statute. ARMA-Q has a fantastic opportunity to 'clean up' our industry.

More statutory [...] regulation would provide managers with the backing to provide a more efficient service.

80. Other comments were about communication with leaseholders:

Better education for leaseholders and high standards for agents – this will lead to higher agents fee's [sic] but would improve service levels across the industry.

One of the biggest single problems in the leasehold market is the ignorance of leaseholders in understanding leasehold property. This can be blamed, to a large degree, on the conveyancing process that is often undertaken too cheaply for solicitors to properly advise their clients of the obligations of owning leasehold property.

81. Other comments were about how to achieve higher standards in the industry:

Ensure all block management companies have PI Insurance; are qualified, have knowledge in leasehold law, belong to compensation scheme.

Like all industries the sector has consolidated and larger firms become less focussed on their customers and more inward looking, focussing on their procedures to maximise profits. In turn their ability to squeeze management fees, whilst earning income from their client base from other services means less effective competition. Small practices dedicated to providing good management services, and nothing else, are tarred with the same brush as the large providers and those who tie themselves into leases on new developments who thus have no similar concern about client satisfaction as us.

## Copy of property manager questionnaire

Our market study aims to gain a better understanding of the residential property management services provided to leaseholders in apartments, flats and maisonettes (Property Units) across the private sector, local authorities and housing association sectors. We need to be able to understand how leaseholder experiences differ across these sectors and whether the market is working well. We are therefore seeking information from businesses like yours who offer residential property management services, as well as leaseholders who have used such services.

The questions are arranged under 5 themes:

- The size and scope of your business,
- Communication with leaseholders,
- Complaints and redress mechanisms,
- Competition in the market,
- Areas for improvement and ways to make change

### A. Tell us about your business

We would like to understand how your business operates so that we can build up a picture of what constitutes the activities of property management organisations across the different segments of the market.

- 1) Name of your Organisation
- 2) Name and position in Organisation
- 3) Contact details - Email address:
- 4) Please indicate in column 2 of the table (with an x) the types of residential blocks or developments ( 'Developments') you manage. In column 3, please provide names of any Related Organisation (such as a parent company, subsidiary or other companies in a group) that provide property management services to these types of Developments.

	<b>Your Organisation</b>	<b>Related Organisation</b>
Private residential Developments (excluding retirement)		
Private residential Retirement Developments		
Local Authority Developments		
Housing Association Developments		

- 5) For the most recent financial year available, please indicate in column 2 of the table below an estimate of how many Developments you manage in each group and in column 3 an estimate of how many apartments, flats and maisonettes ('Property Units') you manage.

	<b>No of Developments</b>	<b>No of Property Units</b>
Private residential Developments (excluding retirement)		
Private residential retirement Developments		
Local authority Developments		
Housing Association Developments		

- 6) Please indicate (with an x) for your Organisation total revenues derived from property management services during the last financial year.

\_\_\_\_\_ under £3m  
 \_\_\_\_\_ between £3m - £11m  
 \_\_\_\_\_ between £12m - £50m  
 \_\_\_\_\_ above £50m

7) Please indicate with an (x) in the table below the region(s) where your business is active.

<b>Region</b>	<b>Active in Region</b>
North East	
North West	
Yorkshire and the Humber	
East Midlands	
West Midlands	
East of England	
London	
South East	
South West	
Wales	

8) Please indicate in column 2 (with an x) the type of Landlord that appoints you to manage their Developments. In column 3 indicate an estimate of the percentage of your activity this represents.

	<b>Appointed by (x)</b>	<b>% of activity</b>
Developer Freeholder		
Investor Freeholder		
Residential Management Company (RMC)		
Right to Manage Company (RTMCo)		
Local Authority		
Housing Association		
Management Orders (S.24, 1987 Act)		

Other (specify)		
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- 9) Please indicate the main factors that affect the profitability of your property management business.
- 10) Please state what other services you provide in addition to those that are remunerated through the management fees.
- 11) What proportion of your total revenues do these other services represent?
- 12) In respect to any building insurance that you provide:
  - a) At what proportion of the Developments you manage do you arrange insurance?
  - b) How do you determine what level of cover is appropriate?
  - c) Are you taking a commission/fee? If so, how is the level of commission/fee typically determined and what services do you supply for that sum e.g. do you administer claims or deal with queries relating to level of cover?
- 13) Please indicate membership of any trade associations or professional bodies.
- 14) Please indicate what professional qualifications, if any, you require your senior operational staff to have.
- 15) Please indicate whether you are seeking to attain accreditation by a self regulatory body (such as ARMA-Q accreditation) and if not, why not?
- 16) Do you also act as any of the following: developer freeholder, investor freeholder, housing association. If so please indicate below which activities you perform and the percentage of your Developments for which you perform this function.

## B. Tell us about how you communicate with leaseholders

Communication with leaseholders we understand is an important part of your business and we would like to know how it works in practice and how effective you consider it to be.

17) Please indicate in the table below (with an x) the frequency with which you supply information relating to Service Charges to leaseholders.

	<b>In accordance with lease/legislation</b>	<b>If requested</b>	<b>When requested under a statutory notice</b>	<b>Not supplied</b>
Budget				
End year service charge Accounts				
Copies of invoices for specific items of work				
Copies of bids for major repairs or improvements				
An explanation of your choice of a particular contractor, including an explanation of any links with the contractor				
Any other financial Information (give details)				

18) Please send us an example of the Budget and end year Service Charge accounts type of information you supply to leaseholders. If these differ greatly between different Developments please provide several examples. Please indicate below what you will be sending us.

19) Please can you indicate how one could best describe the extent that leaseholders understand the information that is sent to them about Service Charges and the operation of Reserve Funds:

- Fully understand \_\_\_\_\_
- Partially understand \_\_\_\_\_
- Understand \_\_\_\_\_
- Poor understanding \_\_\_\_\_



20) What information do you supply to leaseholders when consulting them about proposals to award long term agreements or major works? Please send us an example of the type of information you supply and indicate below what you will be sending us.

21) Are there any circumstances where it is more difficult to communicate with leaseholders (for example, because they are not resident in the property)? If so, what other steps does this require you to take?

22) Please mark (with an x) below in your view the frequency that a contractor nominated by leaseholders is appointed:

- Never \_\_\_\_\_
- Rarely \_\_\_\_\_
- Occasionally \_\_\_\_\_
- Often \_\_\_\_\_
- All the time \_\_\_\_\_

23) In your view, are there particular types of leaseholders that are more likely to encounter difficulties in paying their Service Charges? If yes, which types?

24) In circumstances when a leaseholder is unable to pay the Services Charge how do you communicate your debt recovery process?

25) What is your debt recovery process and indicative timings related to the process?

26) How many cases by number/as a proportion of your total late payment cases did you refer to the County Court for non payment in the last financial year?

### C. Tell us about how you deal with complaints and what redress schemes are available

We want to understand what happens in circumstances where a leaseholder complains about the services they receive and what avenues of redress they use.

27) Do you have a standard set time within which to respond to complaints received?

28) Please indicate (with an x) which of the following in respect to complaints handling procedures (CHP) applies to your business:

- Publish internal CHP \_\_\_\_\_
- Publicise existence of CHP to Landlords/Leaseholders \_\_\_\_\_

- When requested provide a copy of CHP to Landlords/Leaseholders \_\_\_\_\_
- Publicise contents of your CHP on your website \_\_\_\_\_
- None of the above \_\_\_\_\_

29) Please provide a copy of any published internal CHP and indicate below what you will be sending us.

30) How many times in the past financial year has a leaseholder taken a complaint to the following:

- Trade organisation \_\_\_\_\_
- RICS \_\_\_\_\_
- Ombudsmen \_\_\_\_\_
- First-tier tribunal/LVT \_\_\_\_\_

31) In your view, are the avenues of redress available to customers and leaseholders effective or could they be improved? If so, how?

#### D. Tell us about how competition works in the market

We need to understand the nature of competition e.g. whether it takes place at a local/regional level or at a national level. It is also important to understand whether competition is more intense at certain times (for example, when competing for the business of a new Development as opposed to an existing Development) and whether there are segments in the market where competition is perhaps less intense.

32) Do you mainly compete with firms that operate nationally (England and Wales) or do you compete mainly on a local or regional level?

33) What proportion of your Organisation's portfolio would you estimate has been acquired as a new development and what proportion has been won from other managing agents?

34) What is the proportion of tenders for new instructions that your Organisation has won during the last financial year?

35) Are there any types of customers and/or Developments that you will not consider managing? What are the typical characteristics of these sorts of customers and/or Developments?

36) Are there certain types of Developments where leaseholders find it more difficult to organise themselves into a properly representative body?

## E. Areas for Improvement and ways to make changes

We are interested in your views as to what can be done to improve how the market operates. This relates to the actions of business or trade bodies; actions related to other third parties that advise leaseholders; and changes to the regulatory or legislative landscape.

37) Please indicate any particular areas for improvement in the residential property management market that would help the market to work better for consumers and businesses?

38) How do you think these improvements might be made? Do you think any of these should be addressed by changes to the legislation or could they be addressed through regulation or at an industry level?

39) Finally, please provide any further information that you consider is relevant to the OFT in considering whether this market is working well for consumers and businesses

## Leaseholder survey

1. The CMA commissioned Ipsos MORI to undertake a leaseholder survey to examine how well RPMS was working for consumers. The full Ipsos MORI report is published on our webpages.<sup>1</sup>
2. This leaseholder survey presented some challenges when designing and conducting it. There are very few statistics about the size of the RPMS market.<sup>2</sup> There was also no comprehensive source of profile information for the target audience overall or for key subgroups. It was therefore difficult to estimate how many leaseholders of different types (eg residing in general private blocks, retirement communities, local authority blocks, etc) might respond – but response rates were expected to be low, ie between 5% and 10%.<sup>3</sup> In these circumstances a random sampling approach could have been prohibitively expensive, so it was decided that Ipsos MORI should purchase a consumer sample that it was used to working with, from the UK Changes ‘Lifesketch’ database. This database was drawn from multiple sources, including lifestyle and product surveys, and provided contact details and some demographic information for about 62,000 (self-identified) leaseholders.
3. Ipsos MORI, in section 1.5 of its report, details some of the limitations that may arise from using a purchased sample. These include that the nature of the sources affects the sample profile, potentially skewing it away from the target population. This effect is not quantifiable given the lack of available profile information relating to leaseholders. Also, since the UK Changes sample is drawn from self-identified leaseholders by tenure, it is likely that any buy-to-let leaseholders were only picked up by chance. In addition, use of UK Changes could not ensure that every group of interest was proportionally represented, or that targets for groups could be reached. Such limitations mean that any inferences must be treated with caution as there is uncertainty over the extent to which the surveyed population reflects the target population. However, it must be stressed that in the absence of other sources of evidence that reflect the range of experiences across all leaseholders, it was important to be able to put leaseholder complaints (from a small proportion of all leaseholders) into a context reflecting the whole market. The survey represents the views of over 1,000 leaseholders and provides a much

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<sup>1</sup> [Ipsos MORI CMA Leaseholder Survey 2014](#).

<sup>2</sup> DCLG estimated 2.8 million leaseholder flats in England in 2013 – which should cover all leasehold flats in England, including those that are owned privately on a long lease and rented out or let to tenants as their main home. See DCLG, [Residential leasehold dwellings in England: Technical Paper](#), August 2014.

<sup>3</sup> Ipsos MORI used mainly 2011 Census data to gauge the size of the leasehold market in England and Wales and the incidence rates of the survey.

broader reflection of leaseholders' experience in the market for RPMS than has been available from any other source.

4. In interpreting these results, we should note that it may be difficult for leaseholders to form well-evidenced perceptions. For example, they may have difficulties determining whether the charges they pay are value for money and competitive, given the services they receive. This could be because circumstances differ between blocks and leaseholders may have little knowledge of what others elsewhere pay. Also, leaseholders might not be able to observe whether work undertaken is necessary and efficiently sourced (or indeed whether necessary work is not undertaken). We were also informed that elderly respondents in surveys are more inclined than younger respondents to be satisfied with services.
5. Ipsos MORI sought to manage the sample draw-down actively, to ensure a good mix of respondents. This involved boosting certain subgroups to more closely match the available proxy population figures.<sup>4</sup> Ipsos MORI completed the survey of 1,050 leaseholders.<sup>5</sup> Half (51%) of those interviewed were resident in London/South-East and three-fifths (62%) were over 55 years of age (see paragraphs 7 to 10).
6. The majority of interviews were with owner-occupiers, and were spread across different groups as follows: private owner occupier (411), local authority (166), housing association (97) and retirement development (131) – with an additional 192 owner-occupier responses lacking sufficient information to be classified by group. Within the private owner-occupier group a reasonable split of interviews was achieved between leaseholders at blocks with an RTMCo/RMC (142) and those without (269). As expected, due to the UK Changes sample being based on self-identified leaseholders, very few private buy-to-let leaseholder interviews were achieved (53).

### **Effect of interdependence between variables on interpretation of survey results**

7. Ipsos MORI noted the importance of understanding the sample profile when analysing by subgroups or making comparisons. In particular we were concerned that the make-up of our sample might give rise to some misleading implications, for example we were concerned whether the age and/or

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<sup>4</sup> This was estimated using Census 2011 data to derive a proxy for the regional distribution of owner-occupier leaseholders and English Housing Survey 2011/2012 data to provide a proxy for the age profile of owner-occupier leaseholders.

<sup>5</sup> Ipsos MORI achieved an incidence rate of 28%. This is calculated as the number of eligible respondents (those passing through the screener questionnaire, ie 1,215 respondents) divided by the total number of screened respondents (those screened in added to those screened out, ie 4,334 respondents).

geographic location of respondents might influence our results with regard to overall satisfaction, the ratings for local authorities and housing associations relative to the private sector, and findings in relation to satisfaction in RTMCo/RMC properties.

8. London represented a quarter of the respondents to the survey and the sample of leaseholders is younger than those in other regions – among our sample 27% are aged 44 or under compared with just 9% in the West Midlands (joint lowest in terms of younger leaseholders with the South-West) and 19% of our leaseholders overall. In addition, local authority leaseholders make up a higher proportion of the London sample than is the case elsewhere – 30% compared with 10% in the North-East and 20% of the total leaseholders' sample.
9. Given the above, it could be that the survey results showing lower levels of satisfaction in London merely reflect the lower age profile given that it is not uncommon in survey research for age to correlate with satisfaction, with older persons more likely to be satisfied. Or in the same way it could be that lower satisfaction in London might be reflected by the fact that there are more local authorities in London than elsewhere and local authority leaseholders seem to be less satisfied than other types of leaseholders.
10. To investigate that the interdependence between these variables is not leading to a wrong interpretation of the survey results, cross-tabulations were run to examine several factors, for example, whether levels of satisfaction are uniformly lower among younger age groups, or among types of leaseholders, regardless of which region they are in. Such analysis finds consistently lower levels of satisfaction, and higher dissatisfaction, among local authority/housing association leaseholders across regions, despite those regions having different age profiles. Moreover, the same analysis applies to the interdependence between leaseholders under RTMCo/RMC and the age group (with a greater proportion of the older group exerting RTMCo/RMC than the young respondents). In addition, we can see that among the RTMCo/RMC group – as with leaseholders more generally – both satisfaction and value for money perceptions increase with age but also within each age category, the RTMCo/RMC group are more positive than those who are not RTMCo/RMC.

## Freeholder-landlord questionnaire results

### Introduction

1. This appendix presents the results of a questionnaire for freeholder-landlords who appointed property management companies, sent out by the CMA during April and May 2014.
2. The questionnaire sought to explore how freeholder-landlords owning sites comprising flats, apartments or maisonettes in buildings with communal areas deal with property management companies. It was divided into six sections:
  - [Section A](#): Background information about the respondent.
  - [Section B](#): Choice of property management company, services provided and satisfaction.
  - [Section C](#): Communication with leaseholders.
  - [Section D](#): Dealing with complaints and providing redress.
  - [Section E](#): Competition in the market for residential property management services.
  - [Section F](#): Areas for improvement.
3. A copy of the questionnaire is included as [Annex 1](#).

### Summary of main findings

4. It is important to note that the questionnaire was answered by a small number of respondents. Consequently, not all results are statistically significant. A more detailed discussion of methodology appears below.

#### **A. *Background information about freeholders***

5. A total of 70 freeholder-landlords within the scope of the market study answered the questionnaire to some extent, though many skipped some questions. These respondents reported owning the freehold (outright or shared) for a total of 150 properties.
6. Respondents were mainly private freeholders who had bought the freehold of the block where they lived or jointly bought the freehold of one or more blocks.

Investor freeholders, developer freeholders, housing associations and RTMCos also responded.

7. Respondents owned sites across England and Wales. Most were concentrated in London and the South-East. Only one was active in Wales.
8. Thirty-six respondents indicated that they currently had an active property management company at one or more sites.

**B. *Choice of property management company, services and satisfaction***

9. Most respondents answering a relevant question (25 out of 33) agreed that the services provided by the property management companies at their sites were no more than required by the lease. The most common services provided included major repairs, maintenance of common areas, cleaning, care of courtyards, and plant and equipment maintenance. Respondents (32 out of 35) seemed to be aware of the fees and charges paid by leaseholders to property management companies at their sites.
10. Thirty respondents ranked in order of importance four different outcomes that property management companies could, in principle, provide for them – as follows:
  - ‘Maintaining the property to the standard required by the lease, or better’ – was the outcome most often ranked ‘most important’ (by 15 out of the 30 respondents).
  - ‘Providing the best possible services to leaseholders’ – was the outcome most often ranked ‘important’ (by 15 out of the 30).
  - ‘Minimising what leaseholders pay for maintenance’ – was the outcome most often ranked ‘less important’ (by 16 out of the 30).
  - ‘Minimising leaseholders’ complaints’ – was the outcome most often ranked ‘least important’ (by 19 out of the 30).
11. We asked if respondents set incentives for property management companies to achieve the above outcomes. Of the few respondents that answered this question (19) the majority indicated they did not.
12. When we asked how respondents assessed property management companies before appointing them, one in five who provided answers (11 out of 54) said they used companies belonging to some trade body, like RICS or ARMA. Recommendations from other freeholders and previous experience were used by only a few respondents (respectively six and seven out of 54).



One in five respondents (12 out of 54) said it was very difficult to assess the quality of service that a property manager was likely to provide.

13. Respondents tended to indicate that property management companies provided them with information on service charges, budgets and accounts for sinking funds on a regular basis. Other information, such as copies of invoices for specific items of work, was provided on request.
14. Most respondents answering a question about monitoring property managers' work (22 out of 29) indicated that they did do some monitoring – by getting feedback from leaseholders, visiting sites and checking expenses.

**C. *Communication with leaseholders***

15. Respondents usually said they provided leaseholders with information about the property as a matter of routine. This information included annual accounts and interim accounts, reserve fund accounts, insurance policies and costs, and details of planned maintenance. One in two respondents answering a relevant question experienced difficulties in communicating with leaseholders.

**D. *Complaints and redress***

16. Among those answering a relevant question, less than half (12 out of 28) provided leaseholders with any guidance on how to complain. Almost two-thirds received at least some complaints from leaseholders regarding their property management company's performance. Respondents also indicated that leaseholders more often complained to the property management company itself.
17. When asked to explain what complaints tended to be about, respondents said that they mainly focused on costs of services, ground maintenance, inadequate responses to enquiries, unnecessary work and poor supervision by management staff.
18. There were low response rates to questions about who resolved complaints and whether they were resolved to leaseholders' satisfaction.

**E. *Competition***

19. We asked respondents to tell us about the level of competition between property management companies in the market, and about their experience of finding a suitable property manager for their sites.
20. Regarding the last time they appointed a property management company, respondents usually indicated that they had considered a handful of

alternative providers (five on average). Typically these were local companies that respondents approached themselves and, as far as the respondents could tell, there seems to have been relatively little variation between them in terms of services or charges to leaseholders.

21. Finally we asked about the process of switching. Respondents typically said that a main reason for switching was when important services were not provided to satisfactory standards. Few respondents provided us with information on how difficult switching was.

#### ***F. Areas for improvement***

22. As areas for improvement, respondents mentioned the following: improving regulation in the property management market, improving the redress system (less lengthy and less costly tribunal processes) and improving transparency.
23. Finally, some respondents suggested that such changes could be implemented through industry bodies such as ARMA. Some respondents also mentioned that a change in the law, and specifically in the redress system, would be beneficial for leaseholders.

#### **Methodology**

24. The questionnaire was conducted online (using SurveyMonkey software), during April and May 2014.
25. There were a number of challenges to execution and design. Primarily, we lacked information about the number and identities of freeholder-landlords in scope. The target audience was freeholders of private properties, including retirement homes, who employed property management companies at their site(s). Discussions with some larger freeholders helped us understand the sector – but there is no comprehensive record of freeholders' identities or contact details. The best available sample source was a database maintained by LEASE that records contacts to the service. As of mid-2014 the database contained details of 554 freeholders, whom LEASE invited on the CMA's behalf to answer the questionnaire. We also directly invited several larger freeholders, not in the database, that we identified by researching the sector.
26. A total of 121 respondents answered the questionnaire to some extent, though many skipped some questions. Only 70 were freeholder-landlords within the scope of the market study. The 50 excluded said they owned only one site, which they lived in and happened to self-manage. Only a few large investor freeholders and developer freeholders responded. Most respondents

were small private freeholders who owned up to five sites. The other respondents were housing associations owning up to 200 sites.

27. As a further challenge, experiences with freeholder-landlords who agreed to pilot the questionnaire indicated that respondents may be reluctant to spend too much time answering – which constrained the number and detail of the questions finally included.
28. In light of these issues, it is important to note that the results may not reflect the full experiences of the target population as a whole, and we cannot describe the respondents as ‘representative’ in a statistical sense. In particular, we have mainly captured views of smaller freeholder-landlords, but not those of many of the larger investor freeholders who are thought to own many of the freeholds in England and Wales. We cannot say how representative the respondents are of the sector as a whole.

### Background information about the respondent

29. In question 4 we asked respondents to indicate what type of freeholder-landlord they are. The table below provides a breakdown of the respondents within the scope of the market study who answered. Thirty-five out of 70 respondents said they were private freeholders who had bought the freehold of the block where they lived or jointly bought the freehold of one or more blocks. The rest included investor freeholders (17 respondents), housing associations (8 respondents), RTMCos (5 respondents) and a mixture of property developers (3 out of 70). Only two respondents said they were local authorities.

TABLE 1 Types of freeholder-landlords responding to the questionnaire

Type	Responses
Private freeholders	35
Investor-freeholder	17
Housing association	8
RTM	5
Local authority	2
Property developer, operator of retirement homes and housing association	1
Property developer and investor-freeholder	1
Developer of retirement homes, operator of retirement homes	1
Total	70

Source: The CMA questionnaire (see Annex 1).

30. In order to understand the size of respondents’ holdings, question 5 asked for an estimate of how many units (flats, apartments, maisonettes) and sites they owned, and at how many sites they owned the freehold outright. It appeared that the freeholder-landlords who answered this question were quite small in

terms of sites and units owned – most owning only one site (28 out of 43) and fewer than five units (26 out of 42).

TABLE 2 Number (where question answered)

Sites owned	Responses
One	28
Fewer than 5	6
between 5 and 20	<u>9</u>
Total	43

Source: The CMA questionnaire (see Annex 1).

TABLE 3 Question 5: Estimate of units owned by the respondents

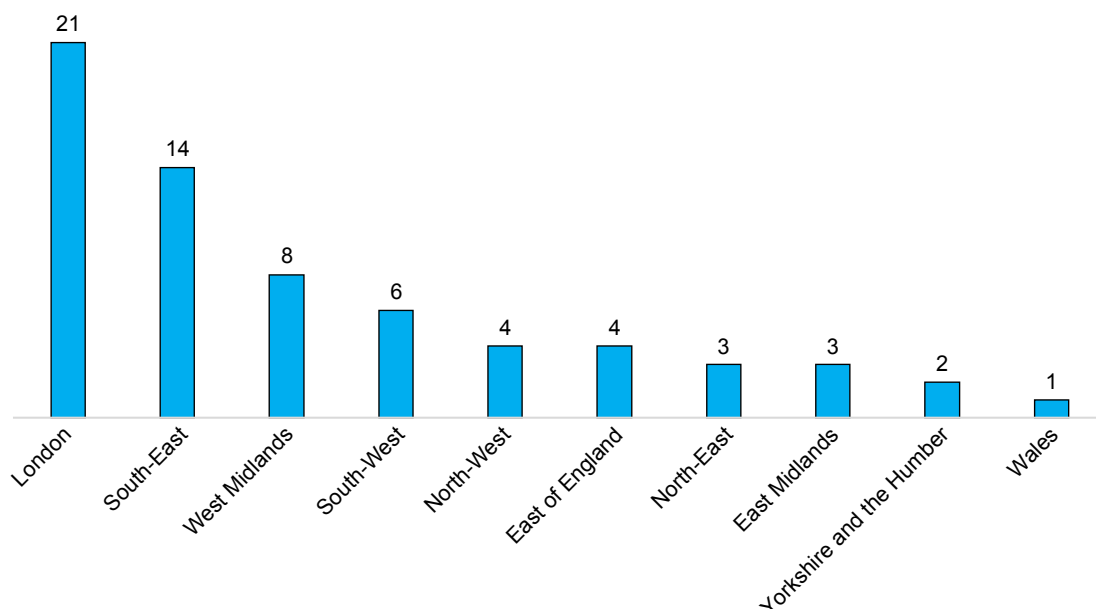
Units owned	Responses
Fewer than 10	26
Between 10 and 50	12
50	<u>4</u>
Total	42

Source: The CMA questionnaire (see Annex 1).

31. Fifty-three respondents answered a question asking them to indicate the region(s) where each of their freehold sites is located (question 6). The chart below shows the count of sites, summing over all freeholders, for each region.

FIGURE 1

**Question 6: Distribution of freehold sites across England and Wales**



Source: The CMA questionnaire (see Annex 1).

32. Question 7 asked respondents to indicate at how many sites there was a property management company (regardless of who employed it). The majority of those answering (26 out of 36) had an active property management

company at only one of their sites. Six said they had an active property management company at fewer than five sites. Only two had a property management company at more than ten of their sites.

33. Finally question 8 asked respondents to indicate the number of sites they owned where the property management company was employed by the following: themselves, the original site developer, an RTM or RMC, or another party. Twenty-three respondents said that the property management company was appointed by themselves on average at 4.8 of their sites; 16 said that the agents were appointed by RTM or RMCs; and one said that the original developer had appointed the company.

**Choice of property management company, services provided and satisfaction.**

34. In questions 9 to 11, we asked respondents to identify a representative site and property management company that they employed – before further questions explored the services provided, why the management company was chosen and whether leaseholders were involved in the choice at this representative site.
35. Question 12 asked respondents what services were provided by property management companies at their representative sites. Thirty-three respondents answered, most selecting multiple options from a list provided. The table below shows the total counts of responses across different basic service types from the list. A range of other services not specifically listed were also mentioned by some respondents (in an ‘other’ field). These included providing buildings insurance, service charge collection, credit control (debt recovery activities) and services of company secretary.

TABLE 4 Question 12: What services are provided by the property management company?

	<i>Count of responses</i>
Major repairs	30
Maintenance of common areas	27
Cleaning	23
Care of courtyards	22
Plant equipment maintenance	16
Other	<u>12</u>
Total	130

Source: The CMA questionnaire (see Annex 1).

36. Question 13 asked respondents to indicate whether the services provided were dictated by the lease. Most respondents (25 out of 33) agreed that all the services provided were required by the lease. For services provided beyond stipulations in the lease, a few respondents specified that those

included ground maintenance, lighting, sweeping, maintenance of the gardens and overnight staff (in a retirement development).

37. In question 14 we asked who instructs property management companies to carry out any services beyond lease stipulations. In most cases (10 out of 22) it was freeholder-landlords who authorised extra services, often in consultation with leaseholders.
38. From question 15 it seems that in some cases property management companies hired by respondents have discretion over the services provided.<sup>1</sup> From question 16 it appears that respondents were aware of all the fees and charges that their leaseholders pay for their services.<sup>2</sup>
39. At the end of this section (question 17), we asked respondents to give us an estimate of the service charges paid by the leaseholders at their sites. There were only a small number of responses (22). However, in summary:
  - management fees ranged from £120/year per unit to £7,250/year per unit;
  - service charges ranged from £100/year per unit to £2,500/year per unit; and
  - sinking fund contributions ranged from £100/year per unit to £4,500/year per unit.

### ***Insurance***

40. This subsection of the questionnaire asked freeholder-landlords to provide us with information on how insurance is arranged at their sites.
41. From question 18, it appears that most respondents who answered (24 out of 29) usually arranged buildings insurance at more than 75% of their sites. Responses regarding other types of insurance (question 19) were quite mixed. Seventeen out of 28 respondents said that they arranged other insurance at less than 10% of their sites. On the other hand, nine others arranged other insurance at more than 75% of their sites. When we asked about the nature of other insurance, respondents mentioned cover for directors' and officers' liability, lift failures, terrorism, and loss management.

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<sup>1</sup> Question 15: Does the PMC have discretion over the services provided? Yes: 18 respondents, No: 14 respondents.

<sup>2</sup> Question 16: Are you aware of the charges that leaseholders pay for the services? Yes: 32 respondents, No: 3 respondents.

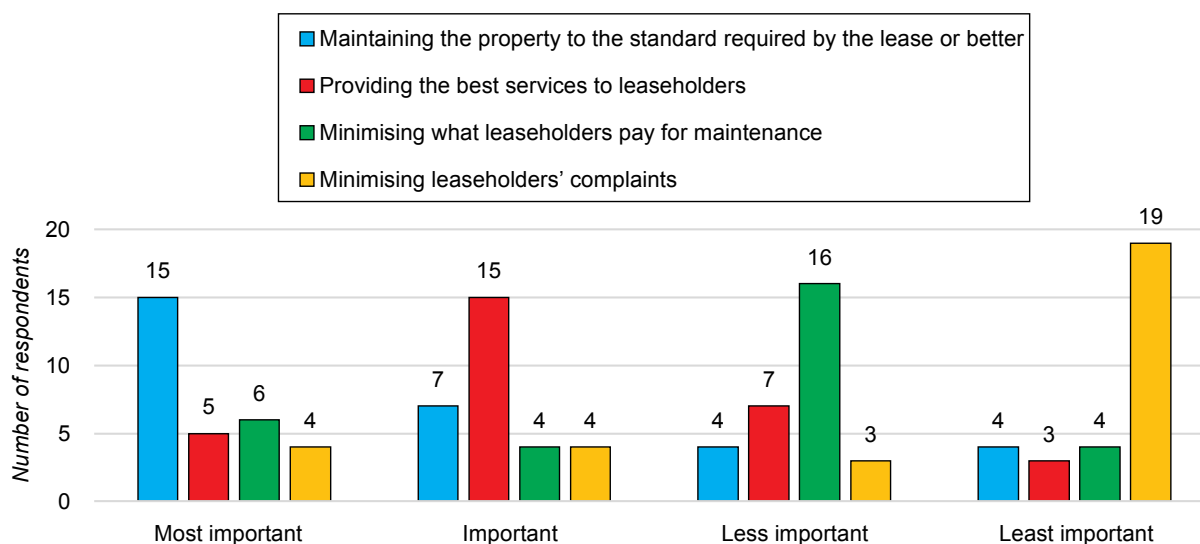
42. Question 20 asked respondents whether any other party arranged buildings insurance on their sites. Sixteen out of 23 respondents said that other parties provided buildings insurance at less than 10% of their sites and six said that other parties provided insurance at more than 75% of their sites.
43. Regarding question 21 where we asked respondents whether any other party arranged any other insurance, out of 20 freeholders answering 14 said that other parties provided other insurance at less than 10% of their sites, and six said that other parties arranged other insurance at more than 75% of their sites.
44. From question 22, the vast majority of respondents (29 out of 31) said they did not receive any commission related to the arrangement of insurance at their sites.
45. In the remaining questions, about commissions or other payments related to arranging insurance, the response rate was very low. We asked whether commissions or payments were reported to leaseholders, whether any property management companies received any commissions or payments for arranging insurance, whether those commissions were reported to leaseholders, and whether property management companies receive any payments for insurers in return for services provided. The results were not informative.

### ***Satisfaction with the property management company***

46. This section explored landlords' experiences in appointing property management companies and their level of satisfaction.
47. In question 27, we asked respondents to rank in order of importance four outcomes that a property management company could provide for them. Only 30 respondents answered. Half (15 out of 30) ranked as most important 'Maintaining the property to the standard required by the lease or better'. A majority (19 out of 30) ranked 'Minimising leaseholders' complaints' as being least important.

FIGURE 2

**Question 27: Ranking of the outcomes that the management company provides in terms of service**



Source: The CMA questionnaire (see Annex 1).

48. Question 28 asked respondents to indicate how they assessed the quality of the services that a property management company is likely to offer. Just over one in five (11 out of 54) who answered indicated that they only used property management companies belonging to a trade body (eg RICS or ARMA). Only one in eight (seven out of 54) indicated that they tended to use property management companies used for other properties or used previously, and one in nine (six out of 54) said that they went by recommendations from other freeholders.
49. Question 29 asked respondents whether they had involved leaseholders in the choice to appoint or retain a property management company at their representative site. A slight majority of respondents (15 out of 27) said that they had not involved leaseholders. Some mentioned that when an RTM was in place, involving leaseholders in the choice of the property management company was easier. One also said it was difficult to involve leaseholders as they were not interested in actively taking part in the decision process.
50. Respondents indicated that the information that property management companies most regularly gave them were accounts for service charges, budgets and accounts for sinking funds (question 30). Copies of invoices for specific work seemed to be provided only on request for 11 out of 26 respondents. On leaseholder complaints, respondents' views were mixed. Six out of 23 indicated that they did not receive any information about complaints, while nine said that they regularly received information from the property management company.



51. Regarding 'Accounts for other elements' – including information on bank charges, accountancy charges, administrative charges and accounts with agents – most freeholder-landlords who answered were only given such information on request, if at all.
52. When we asked respondents whether they monitored the services provided by their representative property management company (question 31), most who answered (22 out of 29) indicated that they did. Some provided further information, explaining how they exerted control, for example by encouraging feedback from leaseholders, visiting sites, attending monthly board meetings, checking the accounts and checking that expenses were not being improperly paid.
53. In question 32, we asked respondents whether they set any performance incentives or targets for their representative property management companies. Specifically we asked about any incentives to maintain properties to a high standard, to minimise complaints by leaseholders, or to minimise fees and charges to leaseholders. A few respondents answered this question, and the majority who did explicitly said that they did not set any incentives for their property management company.
54. Finally question 33 asked respondents to indicate their overall level of satisfaction with the representative property management company that they employed. Views were widely spread and not informative.

### **Communication with leaseholders**

55. This section aimed to assess whether communication between freeholder-landlords and leaseholders was effective. From question 34, it seems that most answering (23 out of 31) regularly provided information to leaseholders about the property. Respondents mentioned several types of information provided, including:
  - notices on boards to inform all residents of works;
  - annual accounts and interim accounts;
  - reserve fund account; repairs carried out, insurance policy and costs, legal processes (eg recent FTT case), gardening activities; and
  - planned maintenance and section 20.
56. Questions 36 and 37 asked about how aware respondents thought their leaseholders were of their legal rights, and how difficult it was to communicate with leaseholders. It appeared that two in three who answered thought their

leaseholders were aware of their legal rights to information about the activity of the property management company.<sup>3</sup> Finally, mixed views were given by respondents when we asked about difficulties in communicating with leaseholders.<sup>4</sup>

### **Dealing with complaints and providing redress**

57. In this section of the questionnaire we aimed to understand the extent to which respondents were aware of any complaints that leaseholders make about property management companies. Questions 38 to 47 were about who (freeholder-landlords or property management companies) tends to lead on dealing with complaints and providing redress. Overall, more than half of respondents who answered indicated that they received some complaints from leaseholders directly, even if property management companies were formally the first port of call. Most respondents who answered had little experience of the various tribunals in this sector.
58. The questionnaire also asked an open-ended question to gain a better understanding of what some leaseholder complaints were about.<sup>5</sup> The 15 responses received indicated that the issues most complained about included cost of services, ground maintenance, poor inadequate responses to enquiries, unnecessary jobs done and poor supervision by management staff.
59. When we asked who resolved complaints (question 42) and whether the complaints were resolved to leaseholders' satisfaction (question 43), the response rates were low. Therefore no conclusions could be drawn.
60. Low response rates were also registered when we asked whether any of the complaints were taken to the FTT or to the ombudsman. Nineteen out of 24 freeholders indicated that at least some of the complaints received had been taken to the ombudsman, and 14 out of 24 said that some complaints had been reported to the FTT.

### **Competition in the market for residential property management services**

61. This section of the questionnaire sought to understand how competitive the market for residential property management services may be. We asked respondents to think about the last time that a property management

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<sup>3</sup> Question 36: Do you think that your leaseholders are aware of their legal rights to information and consultation about the activities of the property management company? Yes: 20 respondents, No: 5 respondents, Don't know: 4 respondents.

<sup>4</sup> Question 37: Do you have any difficulties communicating with any of the leaseholders? No: 15 respondents, Yes: 14 respondents.

<sup>5</sup> Question 41 of the survey.

company was appointed at any of their sites, and to assess how easy or difficult the process had proved.

62. Regarding the last time they appointed a property management company, respondents tended to indicate that they had considered a handful of alternative providers (five on average). Typically these were local companies that landlords approached themselves (they did not receive cold calls).<sup>6</sup> Respondents indicated that often there seemed to be little variation between them in terms of services or charges to leaseholders.<sup>7</sup>
63. There were low response rates when we asked respondents to indicate how many property management companies were able to provide services at reasonable service charges for leaseholders.<sup>8</sup>
64. Question 53 was an open-ended one aiming to understand the main reasons that led respondents to select the property management companies at their sites. Twenty-three respondents said that the main reasons were: recommendation by a third party; proximity to the site; companies being large, experienced and recognised; value for money; and reliability.
65. This section ended with a set of questions asking for information about the last time respondents had switched property management company (if ever). Respondents tended to indicate that the main reason for switching was because important services had not been provided to satisfactory standards.
66. Finally, only a few respondents provided information about how difficult switching was. It was not possible to draw conclusions from the results.

### **Areas for improvement**

67. This section of the questionnaire aimed to collect views about what can be done to improve the property management market.
68. Respondents made the following suggestions as areas for improvement:
  - Improve regulation in order to ensure that service charges can be levied at a rate required to reflect the amount of repairs and maintenance needed to run a building properly.

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<sup>6</sup> Question 48: Did any of the companies proactively approach you? No: 19 respondents, Yes: 6 respondents, don't know: 1 respondent.

<sup>7</sup> Question 50: Between the companies considered, was there much variation in the following factors? Management fees: 12 respondents, Level of services provided to leaseholders: 8 respondents, Quality of property maintenance: 5 respondents, Service charges: 5 respondents, Other: 7 respondents

<sup>8</sup> Question 51 of the survey.

- Quicker and inexpensive methods of extracting due service charges from owners without having to resort to lengthy tribunal processes and expensive legal bills.
  - More accountability and transparency.
  - Setting realistic management fees.
69. Finally, some respondents suggested that the changes mentioned above could be implemented through industry bodies, such as ARMA. Some also mentioned that a change in the law and specifically in the redress system would be beneficial for leaseholders.

## **Copy of the questionnaire to freeholder-landlords who appointed a property management company**

### **BACKGROUND**

Our market study is focused on the residential property management services provided to leaseholders in apartments, flats and maisonettes across the private, local authority and housing association sectors. We are seeking to understand how leaseholders' experiences differ across these sectors and whether the market for residential property management services is working well.

In pursuit of this, we are issuing questionnaires to leaseholders, property management companies, freeholders, property developers and other relevant parties.

### **THIS QUESTIONNAIRE**

This questionnaire is for freeholder-landlords. Its main aim is to explore how freeholders who own sites of flats, apartments or maisonettes that share communal parts of the building (like hallways, stairs and roof) deal with property management companies. We also aim to understand freeholder-landlords' perspectives on how the relationship works.

This questionnaire is in 6 sections:

- Background information about the freeholder
- Choice of property management company, services provided and satisfaction
- Communication with leaseholders
- Dealing with complaints and providing redress
- Competition in the market for residential property management services
- Areas for improvement

1. Freeholder name

2. Freeholder sector (public or limited company, trust, private individual, etc)

3. Email address

4. What type of freeholder are you? Tick all that apply

- Property developer of new builds (not retirement homes) that owns freeholds
- Developer of retirement homes that owns freeholds
- Operator of retirement homes that owns freeholds
- Investor freeholder
- Local Authority
- Housing Association
- Right to Manage Company that owns one or more freeholds
- Other (please specify)

5. This question is about your holdings and leaseholders that may be relevant to the scope of our study. Please provide estimates of:

- How many units (e.g. apartments, flats, maisonettes, etc) you own
- At how many sites (e.g. blocks of flats, retirement developments, or other developments with common areas for leaseholders) you own units
- At how many of these sites you own the freehold outright
- At how many of these sites you share the ownership

6. Please indicate the region(s) where your freehold site(s) is/are located. Tick all that apply

- North East \_\_\_\_\_
- North West \_\_\_\_\_
- Yorkshire and the Humber \_\_\_\_\_
- East Midlands \_\_\_\_\_
- West Midlands \_\_\_\_\_
- East of England \_\_\_\_\_

- London \_\_\_\_\_
- South East \_\_\_\_\_
- South West \_\_\_\_\_
- Wales \_\_\_\_\_

These questions are about the property management companies at your sites, and who employs them.

7. At how many of your sites is there a property management company? (Regardless of who employs it)

8. Please indicate the number of sites you own where the property management company was employed by the following:

- Yourselves \_\_\_\_\_
- Original site developer (if not you) \_\_\_\_\_
- Residents' Management Company \_\_\_\_\_
- Right To Manage Company \_\_\_\_\_
- Other (please specify) \_\_\_\_\_
- Jointly by one or more of the above (please specify) \_\_\_\_\_
- Other \_\_\_\_\_

If any property management companies are employed at your site(s), we would like to know what you can tell us – for a representative site and management company that you employ – about the services provided, why the management company was chosen, whether leaseholders were involved in the choice. Also whether and how you monitor the management company and any other contractors.

9. Please indicate, where you have multiple sites, the type of site you have chosen as your representative site.

10. Please give us a brief description of your representative site

- Block of flats, apartments/maisonettes (urban) \_\_\_\_\_
- Blocks of flats, apartments/maisonettes (rural) \_\_\_\_\_
- House with flats, apartments/maisonettes that share communal parts of the buildings like hallway, stairs and roof (urban) \_\_\_\_\_

- House with flats, apartments/maisonettes that share communal parts of the buildings like hallway, stairs and roof (rural) \_\_\_\_\_
- Retirement development comprising flats, apartments/maisonettes (urban) \_\_\_\_\_
- Retirement development comprising flats, apartments/maisonettes (rural) \_\_\_\_\_
- Other (please specify) \_\_\_\_\_

11. Please provide the name and the address of the property management company that operates in the representative site indicated above ('The representative property management company').

- Name \_\_\_\_\_
- Address \_\_\_\_\_

12. What services are provided by the property management company?

- Cleaning \_\_\_\_\_
- Major repairs \_\_\_\_\_
- Maintenance of common areas such as stairs and lifts \_\_\_\_\_
- Care of courtyards, parking and other outside areas \_\_\_\_\_
- Plant equipment maintenance \_\_\_\_\_
- Other (please specify) \_\_\_\_\_

13. At the representative site, are all the services provided by the representative property management company dictated by the lease(s), or are any other services provided, such as services extra to or higher quality than required by the lease(s)?

- All services provided are required by lease \_\_\_\_\_
- Services beyond stipulations in lease are provided \_\_\_\_\_

Further details, if necessary

14. Where extra or higher quality services are provided, please indicate who instructs the property management company to carry out these services

- Yourselves \_\_\_\_\_
- The leaseholders \_\_\_\_\_



- Yourselves by consultation with leaseholders \_\_\_\_\_
- Other (please specify) \_\_\_\_\_

Please tell us about the services provided by the representative property management company at the representative site.

15. Does the property management company have any discretion over services provided?

- Yes \_\_\_\_\_
- No \_\_\_\_\_
- If yes explain \_\_\_\_\_

16. Are you aware of all the fees and charges that leaseholders pay for their services?

- Yes \_\_\_\_\_
- No \_\_\_\_\_

17. Looking across all the sites that you own, please indicate below the range of fees and charges paid by leaseholders. What do leaseholders pay, in terms of:

- Management fees \_\_\_\_\_
- Service charges \_\_\_\_\_
- Contribution to sinking funds \_\_\_\_\_
- Other (please specify) \_\_\_\_\_

Please tell us about how insurance is arranged at your sites.

18. At what proportion of your sites do you arrange buildings insurance?

- Less than 10% \_\_\_\_\_
- Between 10%-25% \_\_\_\_\_
- Between 25%-50% \_\_\_\_\_
- Between 50%-75% \_\_\_\_\_
- Above 75% \_\_\_\_\_

19. At what proportion of your sites do you arrange any other insurance?

- Less than 10% \_\_\_\_\_

- Between 10%-25% \_\_\_\_\_
- Between 25%-50% \_\_\_\_\_
- Between 50%-75% \_\_\_\_\_
- Above 75% \_\_\_\_\_

20. At what proportion of your sites does any other party arrange buildings insurance?

- Less than 10% \_\_\_\_\_
- Between 10%-25% \_\_\_\_\_
- Between 25%-50% \_\_\_\_\_
- Between 50%-75% \_\_\_\_\_
- Above 75% \_\_\_\_\_

21. At what proportion of your sites does any other party arrange any other insurance?

- Less than 10% \_\_\_\_\_
- Between 10%-25% \_\_\_\_\_
- Between 25%-50% \_\_\_\_\_
- Between 50%-75% \_\_\_\_\_
- Above 75% \_\_\_\_\_

22. Do you receive any commissions or payments related to the arrangement of insurance on any of your sites?

- Yes \_\_\_\_\_
- No \_\_\_\_\_
- If yes, what is the typical level of commission or payment? \_\_\_\_\_

23. Are these commissions or payments reported to leaseholders?

- Yes \_\_\_\_\_
- Yes, on request \_\_\_\_\_
- No \_\_\_\_\_
- Don't Know \_\_\_\_\_

24. Do any property management companies receive any commissions or payments related to the arrangement of insurance on any of your sites?

- Yes \_\_\_\_\_
- No \_\_\_\_\_
- If yes, please explain \_\_\_\_\_

25. Are these commissions or payments reported to leaseholders?

- Yes \_\_\_\_\_
- Yes, on request \_\_\_\_\_
- No \_\_\_\_\_
- Don't Know \_\_\_\_\_

26. Do any property management companies receive any payments from insurers in return for services provided to insurers, such as providing information or handling claims?

- Yes \_\_\_\_\_
- No \_\_\_\_\_
- If yes, please explain \_\_\_\_\_

From this point on, unless otherwise specified, questions relate to the representative site and property management company that you specified in question 9-11.

27. Please rank in order of importance to you (1=most important, 4= least important) the outcomes that the management could provide:

- Maintaining the property to the standard required by the lease or better \_\_\_\_\_
- Providing the best possible services to leaseholders (e.g. carrying out repairs or improvements as quickly as possible, or providing non-maintenance services to the highest standard possible if relevant) \_\_\_\_\_
- Minimising what leaseholders pay for maintenance and/or services of an appropriate standard \_\_\_\_\_
- Minimising leaseholder complaints \_\_\_\_\_

28. When selecting a property management company to appoint, how do you assess the quality of service they are likely to offer?

- Tend to use property management companies used for other properties or used previously. \_\_\_\_\_
- Tend to use property management companies who provide services for the cheapest price \_\_\_\_\_
- Only use property management companies that belong to a trade body like RICS or ARMA. \_\_\_\_\_
- Go by recommendations from other freeholders. \_\_\_\_\_
- Seek views from leaseholders who have received property management services from the company in question. \_\_\_\_\_
- It is very difficult to assess quality of service that is likely to be provided by a property management company \_\_\_\_\_
- Other (please specify) \_\_\_\_\_

29. Have you involved your leaseholders in the choice to appoint or retain a property management company at your representative site?

- Yes \_\_\_\_\_
- No \_\_\_\_\_
- Don't know \_\_\_\_\_

If you would like to explain more fully how you choose property management companies, please use this box

30. Does the representative property management company provide you with any of the following information, and how often?

	Regularly	Occasionally	Only on request	Not at all
Planned budget				
Account for service charge				
Accounts for sinking funds				
Accounts for other elements				
Copies of invoices for specific works				

Detail of leaseholders' complaints				
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31. Do you monitor the services provided by the representative property management company and/or their contractors to leaseholders?

- Yes \_\_\_\_\_
- No \_\_\_\_\_
- If yes, please explain how you carry out any monitoring \_\_\_\_\_

32. Do you set any performance incentives or targets for the representative property management company(ies) at your representative site(s) regarding services, value, etc?

- Incentives to maintain property to a high standard (e.g. contractual requirements beyond what required by lease, or any other incentives) \_\_\_\_\_
- Incentives to minimise complaints by leaseholders (e.g. bonuses if complaints minimised, or any other incentives) \_\_\_\_\_
- Incentives to minimise fees and charges to leaseholders (e.g. fix or limit services charges or sinking funds, or any other incentives) \_\_\_\_\_

33. Overall, are you satisfied with the property management company that you employ at your representative site?

- Extremely Satisfied \_\_\_\_\_
- Satisfied \_\_\_\_\_
- Neither Satisfied nor Dissatisfied \_\_\_\_\_
- Dissatisfied \_\_\_\_\_
- Extremely Dissatisfied \_\_\_\_\_

if you would like to explain your choice, please use this box

34. Are your leaseholders provided with regular information about the property?

- Yes \_\_\_\_\_
- No \_\_\_\_\_

- I don't know \_\_\_\_\_

35. If you answered yes above:

- What information is provided? \_\_\_\_\_
- Who provides it? (E.g. the property management company, you, or both? Please explain.) \_\_\_\_\_

36. Do you think that your leaseholders are aware of their legal rights to information and consultation about the activities of the property management company?

- Yes \_\_\_\_\_
- No \_\_\_\_\_
- I don't know \_\_\_\_\_
- If yes, do you know how they were made aware? \_\_\_\_\_

37. Do you have any difficulties communicating with any of the leaseholders?

- Yes \_\_\_\_\_
- No \_\_\_\_\_
- If yes why? And what steps does this require to take?  
\_\_\_\_\_

We would like to understand the extent to which freeholders are aware of any complaints that leaseholders make about property management companies.

38. If leaseholders have any reason to complain about any property management companies at your sites, do they ever complain to you?

- Yes, usually \_\_\_\_\_
- Yes, sometimes \_\_\_\_\_
- Not usually \_\_\_\_\_
- Never \_\_\_\_\_

39. If leaseholders do not usually complain to you, do you think they complain to others any more often?

- Yes, to another party that appointed or employs the property management company \_\_\_\_\_
- Yes, to the property management company itself \_\_\_\_\_

- Don't know \_\_\_\_\_
- if you answered yes, to "another party that appointed or employs the property management company", please specify \_\_\_\_\_

If you are aware of leaseholders' complaints about any property management companies at your sites, please answer the following questions:

40. How many times in the last year have leaseholders complained about a representative property management company at the representative site?

41. What were these complaints about?

42. Who led on resolving these complaints?

- You \_\_\_\_\_
- The property management company \_\_\_\_\_
- Other (please specify) \_\_\_\_\_

43. Do you believe that the majority of complaints were resolved to leaseholders' satisfaction?

- Yes \_\_\_\_\_
- No \_\_\_\_\_
- Don't know \_\_\_\_\_
- if no, please provide brief details of complaints not satisfactorily resolved and explain why \_\_\_\_\_

44. Were any complaints taken to an Ombudsman?

- Yes \_\_\_\_\_
- No \_\_\_\_\_
- Don't know \_\_\_\_\_
- if yes, which one and what are your views of the process, costs and the outcome? \_\_\_\_\_

45. Were any of the complaints taken to the First tier Tribunal (Property chamber, or formerly the Leaseholder Valuation Tribunal)?

- Yes \_\_\_\_\_
- No \_\_\_\_\_

- Don't know \_\_\_\_\_
- if yes, what are your views on the process, costs and outcome?  
\_\_\_\_\_

46. Do you or anyone else make available guidance on complaints handling?

- Yes \_\_\_\_\_
- No \_\_\_\_\_
- Don't know \_\_\_\_\_

47. In your view, could redress to leaseholders be provided better by any of the parties involved?

We need to understand how competitive the market for residential property management services may be. Thinking about the last time that a property management company was appointed at any of your sites, please tell us about how easy or difficult it was to find a suitable company (or companies) for your site(s).

48. How many property management companies were considered?

49. Did any of the companies proactively approach you (or the party that ended up appointing them), looking for business?

- Yes \_\_\_\_\_
- No \_\_\_\_\_
- Don't know \_\_\_\_\_

50. Between the companies considered, was there much variation in the following factors? Tick all for which there was more than minimal variation.

- Quality of property maintenance \_\_\_\_\_
- Level of services provided to leaseholders \_\_\_\_\_
- Management fees to leaseholders \_\_\_\_\_
- Service charges to leaseholders \_\_\_\_\_
- Other (please specify) \_\_\_\_\_

51. How many companies were able to provide services that were required for suitable leaseholder charges?

52. Were these local, regional or national companies?

- National \_\_\_\_\_



- Regional \_\_\_\_\_
- Local \_\_\_\_\_
- Other (please specify) \_\_\_\_\_

53. What were the main reasons for selecting the property management company(ies) that you did at this site(s)?

If you have ever switched the property manager company of one of your sites recently, please answer the following questions.

54. Thinking about the last time you have switched property management company, what were the reasons?

- Important services were not provided to satisfactory standard \_\_\_\_\_
- Repairs and maintenance were performed to a low standard \_\_\_\_\_
- Repairs and maintenance were carried out unnecessarily \_\_\_\_\_
- Repairs and maintenance were not carried out when required \_\_\_\_\_
- They did not do enough to get value for money for services and repairs \_\_\_\_\_
- High level of leaseholder complaints \_\_\_\_\_
- Other (please specify) \_\_\_\_\_

55. Can you tell us how easy was to make the change?

- Extremely Easy \_\_\_\_\_
- Easy \_\_\_\_\_
- Neither Easy or Difficult \_\_\_\_\_
- Difficult \_\_\_\_\_
- Extremely Difficult \_\_\_\_\_

56. Was the process you followed similar to the one usually used to appoint the property management company?

- Yes \_\_\_\_\_
- No \_\_\_\_\_

- Don't know \_\_\_\_\_
- if no, please explain briefly the process \_\_\_\_\_

This section is for views about what can be done to improve market for residential property management services.

57. Please indicate any particular areas for improvement in the residential property management market that would help the market to work better for consumers and businesses

58. How do you think these improvement might be made? Would these require changes to the law, government regulation, industry bodies or other institutions?

59. Please provide any further information that you consider is relevant to the CMA in considering whether this market is working well for consumers and businesses

60. Finally, it is possible that the Competition and Markets Authority would like to contact you again to discuss your responses. Would you be happy for this to happen?

## Local authority and housing association questionnaire results

### Introduction

1. This appendix presents the results of a questionnaire sent to registered providers of social housing (local authorities and housing associations) property management. This information-gathering exercise was conducted by the CMA between April and July 2014.
2. The questionnaire aimed to gain a better understanding of the property management services provided to leaseholders in apartments, flats and maisonettes across the local authorities and housing associations sectors. The questionnaire was divided into four sections:
  - size and scope
  - communication with leaseholders
  - complaints and redress mechanisms
  - areas for improvement and ways to make changes
3. This appendix is structured as follows: The main findings from the market questionnaire are summarised in paragraphs 5 to 23. The methodology we used to analyse the responses from social housing property managers is described in paragraphs 24 to 32. Paragraphs 33 to 63 present all the results according to the four sections above.
4. A copy of the questionnaire is attached at [Annex 1](#).

### Summary of main findings

#### ***Coverage and number of responses***

5. The questionnaire cannot be considered as a statistically designed survey across social housing property managers as a whole. Accordingly, the results presented should not be treated as being representative of all social housing property managers across England and Wales. Additionally, numbers of responses were low, both in total and for some questions in particular, so the results should not be treated as providing robust quantitative information, but rather describing the experience, views and practices among a small group who may, or may not, be indicative of the wider group of interest. Furthermore, the method of targeting property managers (mainly via trade

associations) may have led to bias in those responding and the responses given.

### ***About the sector***

6. Our questionnaire provided response from 62 property management organisations or companies. Thirty-five of these provided services to local authorities and 27 to housing associations.
7. Eighteen out of the 27 housing associations property managers also provide services to private and retirement properties. Of the 35 local authority property managers, nearly half of them (17) provide this service through an ALMO and the rest (18) provide this service directly.
8. Half of the respondents to questions about the revenues generated by property management (not necessarily just revenues arising from social housing) said they had revenues under £3 million in the last financial year.
9. The participating companies or organisations reported providing services to a total number of around 253,000 local authority apartments, flats and maisonnettes ('property units'), and around 131,000 housing association property units. Also property managers that provide services to housing associations and private or retirement properties said they provided services to almost 50,000 property units.
10. Respondents said that they arranged buildings insurance on 70% of their developments on average and two-thirds said they did not receive a commission fee for arranging insurance.
11. Respondents were active in different areas across England. Many social housing property managers were concentrated in London, the South-East and the North-West. None of the respondents said they operated in Wales. Note that local authorities only operate in a single region while housing association property managers may operate across several regions.
12. Almost all respondents belonged to a trade association with memberships spread across a number of different trade associations. ARMA, Chartered Institute of Housing (CIH) and National Federation of ALMOS (NFA) were mentioned over ten times.
13. Of those social housing property managers (28) that said they usually required their staff to have some qualification or degree, half said that it depended on the role of the staff member in question. Qualifications mentioned included surveying, accountancy or engineering degrees.

### ***Communication with leaseholders***

14. In most cases respondents reported providing financial information to their clients such as budgets, end-of-year accounts, copies of bids for major repairs and explanations of the choice of a particular contractor in accordance with legislation. On the other hand, copies of invoices for specific items of work were mostly provided if requested.
15. Social housing property managers said that leaseholders usually had some degree of understanding of service charges. Over a third said they did not understand information about the sinking fund but they were mostly local authority property managers which on many occasions did not have reserve funds.
16. Many respondents agreed that they had problems maintaining good communication with leaseholders that were not living in the dwelling. Three respondents said they used alternative means of communication (phone calls, emails, visits, etc) in cases where there were communication difficulties.
17. In relation to the appointment of contractors, social housing property managers' responses show that they are often reluctant to let leaseholders participate in the appointment of contractors.
18. More than half of both local authority and housing association property managers thought that there were certain types of leaseholders that encountered more difficulties in paying service charges. This type of leaseholders were basically the elderly, those in financial distress and ex-right-to-buy leaseholders.
19. We asked participants to explain their processes for dealing with leaseholders that do not pay their service charges. Typically this would involve sending additional letters to leaseholders in cases where the debt remained outstanding. Moreover, social housing property managers referred 80 cases per year on average to the county court which represents 7% of cases due to non-payment of service charges.

### ***Complaints and redress mechanism***

20. The questionnaire also asked respondents whether social housing property managers have a standard set time within which they aim to respond to any complaints received. Of those that responded to this question, all confirmed that they did.

21. The most mentioned avenue for complaints in the past financial year was the local councillor/MP, followed by The Property Ombudsmen and FTT. There were very few responses mentioning a trade organisation.
22. The majority of respondents considered that the avenues of redress available to leaseholders were effective. All still considering avenues of redress effective, a few respondents also considered that the FTT/LVT was time-consuming and costly.

### ***Areas for improvements***

23. In this section we asked participants' views on areas for improvements in the residential property management market that would help the market to work better for consumers and businesses. Respondents raised several issues including the following:
  - Transparency of information for buyers of leasehold flats and guidance to customers and potential purchasers was the main concern of social housing property managers.
  - Leaseholders lack understanding of service charges and management fees.
  - Improving regulation, adopting legislative changes or improvements in the qualifications required to be a property manager.

### **Methodology**

24. This exercise presented a number of challenges, the most significant being the lack of a fully representative sample source and difficulties obtaining a large sample from available sources.
25. The CMA circulated the questionnaire with the help of the three largest trade associations representing local authorities and housing associations – the NFA (with 47 local authority members), the Association of Retained Council Housing (ARCH, with about 50 local authority members) and the National Housing Federation (NHF, with about 1,000 housing association members). We also sent the questionnaire directly to a number of social housing organisations to ensure wider coverage.
26. However, we cannot be certain how representative any sample of respondents drawn from these sources would be – of England's over 300

local authorities, Wales' 20 Principal Areas, and of the up to 1,800 housing associations in the two countries.<sup>1</sup>

27. The questionnaire was open online<sup>2</sup> between April and July 2014. During the period, 85 local authority and housing association property management companies logged in. However, there were only 48 questionnaires completed or partially completed<sup>3</sup> that could be used for our analysis.
28. Once the questionnaire was closed, we contacted some of the respondents for further clarifications on their responses.
29. In addition to the 48 responses to this questionnaire, we considered 14 responses made by social housing providers to our similar questionnaire of private property management companies. Hence, in total, 62 responses were used for this analysis.<sup>4</sup>
30. Though most respondents were able to tell us how many sites and units they have in total, not all clearly identified how many privately-held leaseholds they manage.
31. We also note that base sizes for each question are not always the same. This is mainly because many respondents answered the questionnaires only partially. Combining the two questionnaires, which did not always ask identical questions, also had an effect.
32. In light of these issues it is important to note that answers to this questionnaire are not likely to reflect the target population as a whole, and the achieved sample cannot be described as 'representative' in a statistical sense. Therefore any inferences made must be treated with caution.

## **Results**

### ***Size and scope***

33. There were 62 property managers in the social housing sector that responded to our market questionnaire. Of these, 35 respondents said they managed only local authorities and 18 said they also undertook management services

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<sup>1</sup> The total number of housing associations in England and Wales is particularly uncertain, for various reasons, including due to changing definitions of what constitutes a housing association. See HCA notice, [Current registered providers of social housing](#).

<sup>2</sup> SurveyMonkey software was used.

<sup>3</sup> Some of the respondents completed the questionnaire partially. However, we took their responses into account for our analysis. Due to empty responses, the total number of responses varies depending on the question.

<sup>4</sup> Note that the 14 social housing respondents in the property manager questionnaire were not taken into account for the analysis of the property management companies.

across the social housing and private and/or retirement housing sector. Nine managed only housing associations.

34. It should be noted that much of the questionnaire asked questions about property management as a whole, so the answers cannot necessarily be attributable to social housing alone where the manager in question also provides services in other sectors. Local authorities can provide management services in a number of ways, ie in-house by providing these services themselves, through an ALMO or, much less commonly, outsource to a property management company. Housing associations can manage their own stock or outsource to a property management company.
35. Of the 35 respondents that manage local authority properties, 17 local authority property managers said that they provided their services through an ALMO and 18 said they provided their property management services in-house. Of the nine housing association property managers, they all said that they managed their own stock in-house. Of the 18 property managers for housing associations and also private/retirement properties there were eight that said they managed their own stock of social housing and ten said they were appointed by a housing association.
36. We asked about the revenues that local authority and housing association property managers generated. We had 56 responses to this question. Revenues from providing property management services, based on figures of the most recent financial year, did not exceed £3 million a year in half of the cases (28/56), 14 were between £3 million and £11 million, 8 cases were between £12 million and £50 million, and 6 were above £50 million. The breakdown of revenues by type of developments managed are given in Table 1.

TABLE 1 Revenues derived from property management services during the last financial year

	<i>Under £3m</i>	<i>£3m–£11m</i>	<i>£12m–£50m</i>	<i>Above £50m</i>
Local authority (n=31)	11	5	10	5
Housing association (N=7)	4	1	2	0
Housing association & private/retirement (N=18)	<u>13</u>	<u>2</u>	<u>2</u>	<u>1</u>
Total (N=56)	28	8	14	6

Source: CMA local authority and housing association questionnaire.

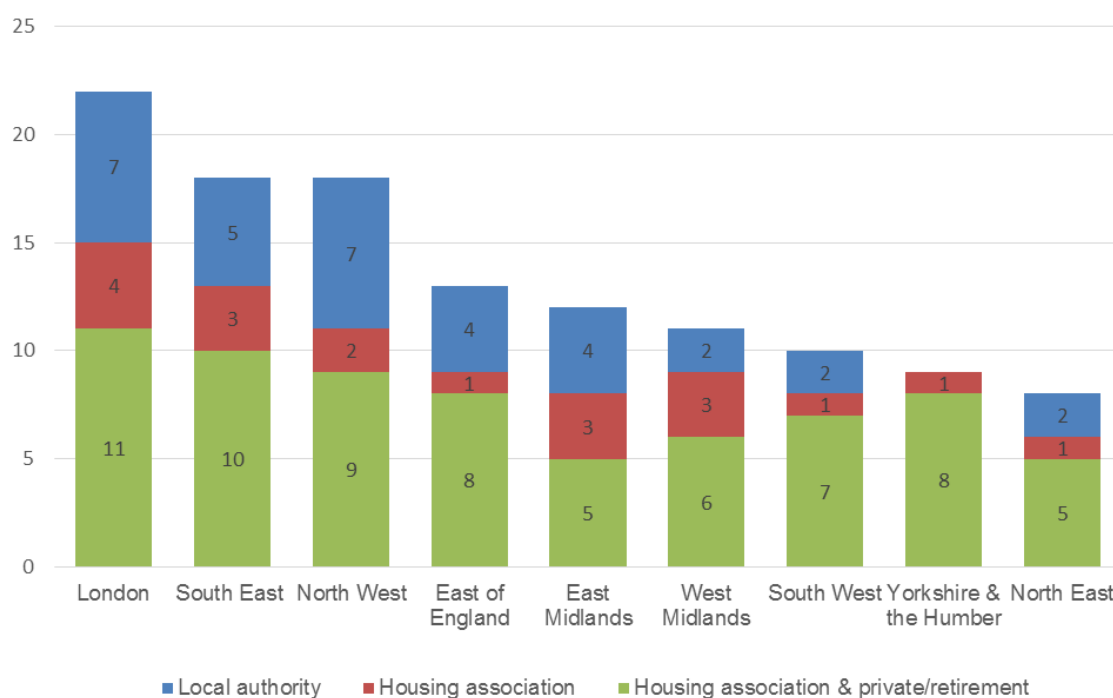
37. Social housing property managers were active across several regions except Wales. All local authorities were active in one region while some housing associations operated across various regions at the same time. Figure 1 summarises in which regions respondents reported that they operated. Twenty-two respondents operated in London, followed by the South-East and North-West where there were 18 property managers in each region. In the East of England there were 13 and in the East and West Midlands there were



12 and 11 respectively. The South-West, Yorkshire and the Humber and the North-East were at the bottom of the ranking where there were fewer property managers for social housing who responded to the questionnaire (10, 9 and 8 respectively). Two-thirds (41 out the 59) of respondents operated in a single region of which 33 were local authorities. There were 18 housing associations that operated in several regions and five of them operated across all regions in England.

FIGURE 1

**Number of social housing property managers by region**



Source: CMA local authority and housing association questionnaire.

Notes:

1. Base size: 59 respondents.
2. There are 18 housing associations operating in more than one region.

38. We also asked respondents for an estimate of the percentage of leaseholders in their developments. We had 39 responses to this question and on average they estimated there were 25% of leaseholders in their developments. Twenty-seven local authority property managers said there were 17% leaseholders on average in their developments. We had a smaller number of housing association responses (12) but the average number of leaseholders they reported was greater, specifically 37% for only housing association and 54% for housing association and private/retirement property managers.
39. Property managers were also asked about the percentage of leaseholds still owned by those who exercised right to buy (ex-RTB). We had 34 responses

to this question and on average they reported 25% were owned by ex-RTB leaseholders. Specifically, twenty-three local authority property managers reported that they managed, on average, 32% of ex-RTB leasehold developments. Five housing association respondents reported 18% and six housing association and private/retirement respondents said 7% of the developments they managed continue to be owned by ex-RTB leaseholders.

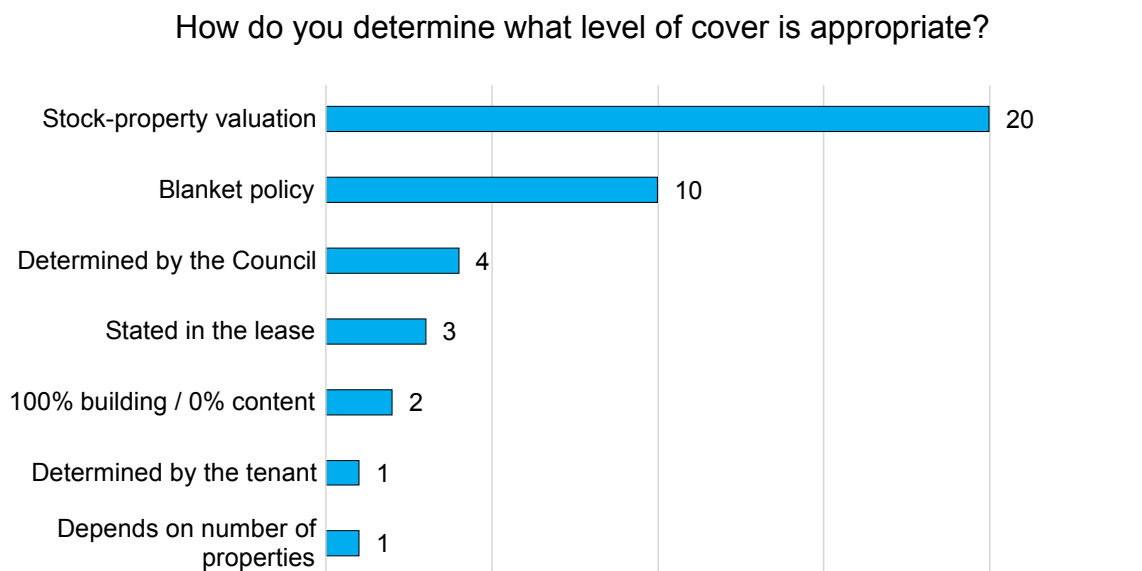
40. We also asked property managers to estimate the percentage of leasehold properties that are in shared ownership.<sup>5</sup> Twenty-six local authority property managers responded that on average only 1% of their leasehold properties were shared ownership leases. Six housing association property managers estimated shared ownership on average to be 46% whereas another six housing association property managers that also operated in private and retirement sector provided a slightly lower estimate of 38%.
41. We asked respondents about the percentage of leaseholders that sublet to tenants. In total, there were 32 responses to this question and, on average, leaseholders sublet in 25% of cases.
42. We also asked how local authority/housing association property managers acquired their property portfolio. All local authority respondents (31) said they acquired the management of their properties from an existing local authority stock and also, but much less frequently, from a new building (6) or a private purchase (3). For housing association property managers, there were 14 responses in total and most of them said they acquired the management from a new development (12), followed by a private purchase (9) and a transfer from a local authority (7).
43. The questionnaire contained a range of questions on insurance. From the data collected, it emerged that it is very common for social housing property managers to arrange building insurance. In total, there were 50 responses to this question and, on average, social housing property managers arranged insurance on 70% of their developments.
44. Moreover, in response to how the appropriate level of insurance cover was determined, 41 responses to this question identified the approaches shown in Figure 2. A stock-property valuation was the most common response.

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<sup>5</sup> Shared ownership is a system by which the occupier of a dwelling buys a proportion of the property and pays rent on the remainder, typically to a local authority or housing association.

FIGURE 2

**Frequencies for ways social housing property managers determine insurance coverage**



Source: CMA local authority and housing association questionnaire.

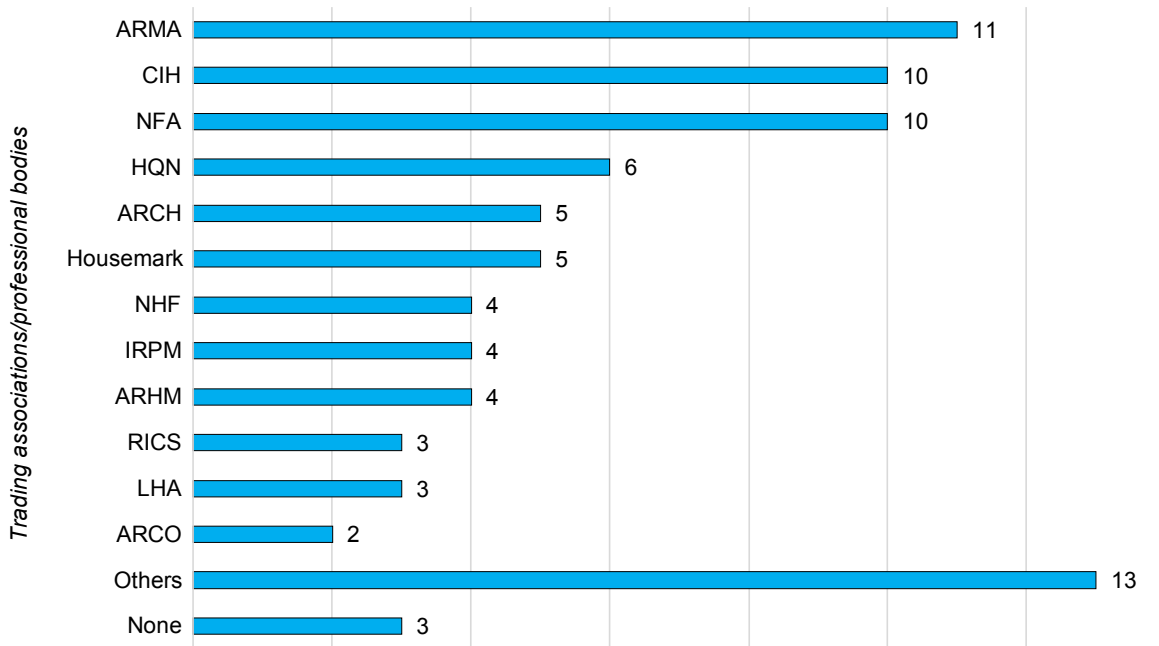
Note: Base size: 41 respondents.

45. There were 55 responses with respect to whether social housing property managers receive a commission fee for arranging insurance. Over two-thirds of local authority respondents said they did not receive a commission. Housing association respondents (8) said they did not take a commission fee except for one respondent who did not know. Of the 14 property managers active in housing association and private/retirement developments, half said they took a commission fee.
  
46. Our questionnaire also asked whether businesses were members of any trade association or any professional bodies. There were 43 responses to this question: 40 belonged to at least one, while there were only three that said they did not belong to any trade association. Moreover, the responses show that a number of the respondents were members of more than one organisation and there were only nine respondents that mentioned just one trade association. Figure 3 shows the frequencies of respondents for each trade association. The trade associations most frequently mentioned were ARMA (11), CIH and the NFA (10). Those trade associations mentioned less frequently included Housing Quality Network (HQN), ARCH, Housemark, the

NHF, the IRPM, the ARHM, RICS; the Local Housing Association (LHA) and ARCO.<sup>6</sup>

FIGURE 3

**Names of trade associations or professional bodies to which social housing property managers belong**



Source: CMA local authority and housing association questionnaire.

Note: Base size: 43 respondents.

47. We asked whether property managers require their staff to have any qualifications. Among the 35 responses received, 28 said they required a qualification and half of these said that it depended on the role of the staff member in question. Qualifications mentioned included surveying, accountancy or engineering degrees. Some mentioned qualifications from specific institutions such as the IRPM (in 12 occasions), and RICS and CIH which were both mentioned seven times.

**Communication with leaseholders**

48. In this section we aimed to understand how local authority and housing association property managers communicated with leaseholders and in practice how effective this was considered to be. Specifically, we asked respondents how they informed leaseholders about the way their money is

<sup>6</sup> The group 'Others' identifies professional bodies that were mentioned only by one respondent. These are some examples: HCA, Investors in People, Institute of Housing, London Directors Benchmarking group, Retirement Housing Managers, ARLA, and Ombudsman Service.

spent, in terms of what information is provided, how often and in what level of detail.

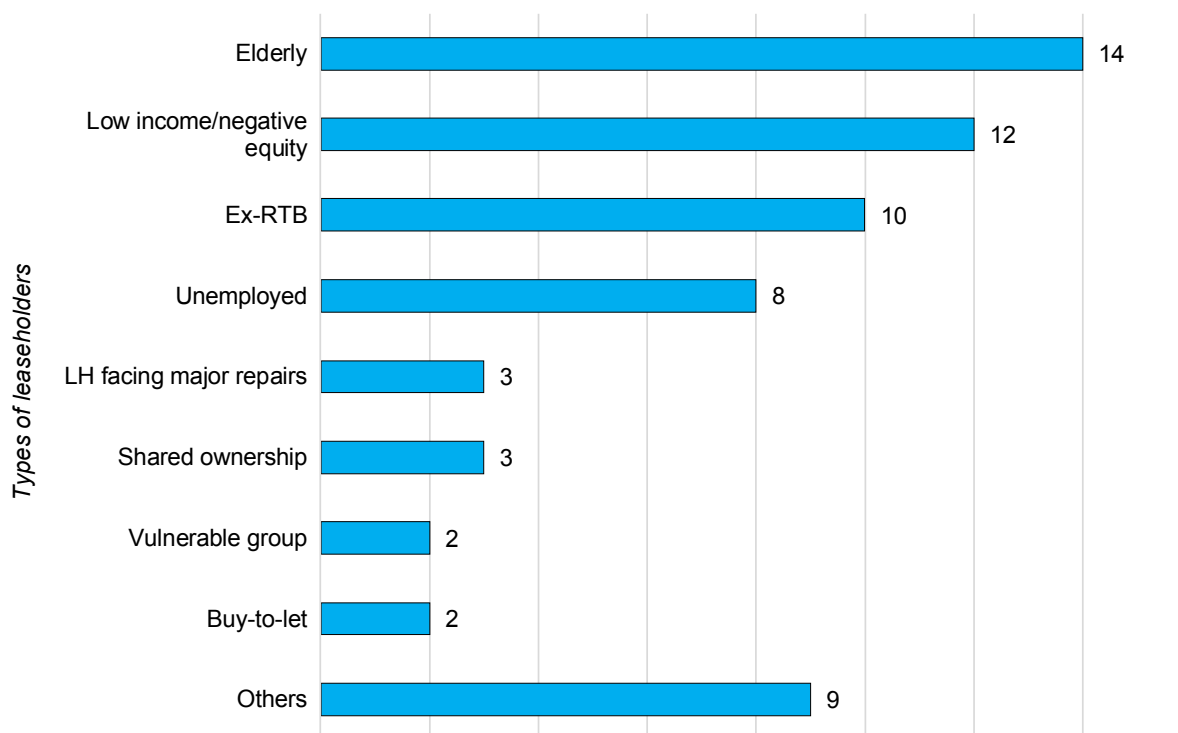
49. We asked respondents the frequency with which they supply information relating to service charges, budgets and end-of-year service charges accounts were commonly provided in accordance with legislation (41 out of 52 and 50 out of 53 respectively) although seven respondents said budget information was not supplied. Copies of invoices for specific items of work was provided if the leaseholder requested it in 42 out of 50 of cases, but were less often provided due to requests made under statutory notice (half of times). Both copies of bids for major repairs or explanations of the choice of a particular contractor were in many cases provided in accordance with the legislation (39 out of 53 and 41 out of 52 respectively) and also upon request (29 out of 53 and 31 out of 52 respectively). Finally, the provision of other financial information was provided in a similar proportion in accordance with legislation and upon request.
50. We also asked respondents the extent that, in their opinion, leaseholders understand the information sent to them about service charges and the operation of reserve funds. Forty-nine responded with respect to service charges and 37 responded with respect to reserve funds. There were very few respondents who thought leaseholders had a poor understanding of service charges (6 out of 49) but over a third thought they had a poor understanding of reserve funds (13 out of 37). However, it is important to note that most local authority property managers do not have a reserve fund and this may be reflected in that most (9 out of 13) of the respondents that said leaseholders did not understand sinking funds were local authority property managers.
51. We also asked property managers in the social housing sector what information they supplied when consulting leaseholders about proposed long-term agreements or major works. There were 39 responses to this question and all of them said that they did send the statutory notices (section 20 consultation) to consult leaseholders about major works.
52. Another question related to the circumstances that can make it difficult for local authority/housing association property managers to communicate with leaseholders. There were 40 responses to this question, with eight of the respondents saying there were no difficulties at all. Of those that responded that they had difficulties, the main reason was that the leaseholder was absent, in particular because the leaseholder was subletting or living abroad and did not provide the property manager with contact details. Also, the majority (27/30) of respondents told us they used alternative means to communicate with the leaseholder in case there were difficulties. These other means included the following: sending additional letters, using emails or

searching the leaseholder's contact details online, making phone calls, arranging meetings or visiting the leaseholder, and checking the leaseholder's address with the Land Registry or the council.

53. We asked respondents how frequently they appointed a contractor nominated by a leaseholder. Almost all local authority respondents said either that a contractor nominated by a leaseholder was never (16 out of 26) or rarely appointed (9 out of 26). Almost all housing association property managers (7 out of 8) said also rarely. However, almost half (6 out of 13) of property managers giving services to housing association and private and/or retirement properties said they were appointed occasionally.
54. The questionnaire asked local authority/housing association property managers whether there are certain types of leaseholders that are likely to encounter difficulties in paying service charges. More than a half of all respondents (27 out of 50) agreed that there were some particular type of leaseholders that were more likely to encounter difficulties in paying their service charges.
55. Some respondents (36) identified specific types of leaseholders who may encounter difficulties in paying the service charges. These included the following categories:
  - The elderly were the most mentioned (14 times), followed by low-income leaseholders or those that simply suffered financial distress (12).
  - Ex-RTB leaseholder were mentioned 10 times. Specifically they encountered problems paying service charges was that they usually did not expect, service charges and/or reserve fund provisions or that they found themselves with limited income to pay service charges after exercising RTB.
  - The categories under ex-RTB were mentioned fewer than 10 times, these were: 'unemployed' (8); 'leaseholders facing major repairs' (4); 'shared ownership' (4); 'vulnerable group' (2) and 'buy to let' (2).
  - The 'others' category includes reasons mentioned only once, such as: leaseholders being persuaded to buy by others, accounts where the leaseholder was deceased, problems understanding financial planning, those that had purchased through the private market, those refusing high service charges, first-time buyers and those who inherited the leasehold.

FIGURE 4

**Types of leaseholders having difficulties in paying their service charges**



Source: CMA local authority and housing association questionnaire.  
 Base size: 36 respondents.

- 56. We asked about the debt recovery process for leaseholders that did not pay service charges. We had 41 responses to this question. The local authority/housing association property managers may use a combination of ways to contact with the leaseholder. From the responses we got, by post was the most mentioned with 35 out of the 41 responses, followed by telephone calls (13), arrangement of a visit (11), email (7) and sending text messages (6).

**Complaints and redress**

- 57. We also explored how often non-payment cases were taken to the county court in the last financial year. On average, local authority and housing association property managers referred 80 cases to the county court and on average these represented 7% of the total number of non-payment cases. Responses show that property managers covering both housing associations and private/retirement properties take significantly more cases to court than local authorities and dedicated housing associations do. The former took on average 11% of their non-payment cases to court, whilst the latter took about 6%.

58. In the questionnaire we asked respondents whether they have a standard set time within which to respond to complaints received. We had 45 responses to this question and all of them were affirmative.
59. We asked respondents about the way they inform leaseholders of CHPs. Forty-two local authority/housing association property managers responded to this question. There were multiple responses to this question but publicising the content of the CHP on the local authority/housing association property manager's website was the most mentioned (37/43), followed by publicising the existence of the CHP to landlords/leaseholders (31/43). Respondents saying they provided a copy of the CHP to landlords/leaseholders only when required was ticked in 29 of the cases. Finally, publishing an internal CHP was chosen by 24 of the respondents.
60. We asked respondents to indicate how many times in the past financial year a leaseholder took a complaint to a trade organisation, ombudsmen and FTT. The number of responses to each type of body varied from 18 (to local councillors/MPs) to 30 (to FTT). On average there were ten complaints to local councillors/MPs in a year, followed by four to ombudsmen, two to FTT and almost none to a trade organisation.
61. We also sought views on the effectiveness of the redress system available to customers. The majority of respondents (32 out of 39) agreed that the avenues of redress available to leaseholders were effective. A few (three out of the 39) said that avenues were effective but also agreed that the FTT was time-consuming and costly. One housing association and private property manager said that avenues of redress were effective for social housing but they were questionable for the private sector. Of the three that said the avenues of redress were not effective, a local authority said that the FTT was not aware of issues faced by ALMOs and local authorities and also said that the FTT did not make consistent decisions; a property manager giving services to housing association and private properties said that the FTT was complex, legalistic and adversarial and it would be useful if a mediation service existed. Finally a housing association and private property manager said it was very difficult to prove insurance premiums were reasonable, particularly in the private sector.

### **Areas for improvement and ways to make changes**

62. We also asked respondents to indicate any particular areas for improvement in the residential property management market. Only 28 responses were received to this question but some respondents indicated several areas for improvement. Fifteen responses related to the lack of information provided to leaseholders. Specifically, there were ten respondents who said that leaseholders usually did not fully understand the implications of being a leaseholder



and proposed that there should be better guidance to customers and potential purchasers on what leasehold entailed. One of these respondents suggested the creation of a standard form of information that must be included in the sales particulars of properties which were subject to a property management regime. Also regarding the transparency of information provided, two respondents said that leaseholders should have better information about what was included in the management fee, two respondents said they should have more information on service charges and another respondent said that there should be more clarity on insurance premiums. One solution mentioned to this concern was to develop a standard template across all providers that clearly set out charges payable.

63. There were eight respondents that mentioned greater regulation at industry level or self-regulation by property management companies, some of these eight respondents said that property managers should be required to belong to a trade association. Three respondents mentioned improvements regarding the redress mechanisms; two of these respondents said that the FTT needed to understand better the social housing sector and the second said that the FTT was not always consistent. The third respondent said that decisions on debt should be made in the county court. Some respondents mentioned that legislation should be simplified in general and some specifically mentioned simplifying section 20.
64. Two responses related to improvements in the qualifications required to be a property manager. Also, two respondents were concerned about the lack of competition in the social housing property management sector. One said that local authorities should be able to compete with private managing agents without the need to set up a separate legal entity to do so. This respondent suggested that a change in the legislation was required to do this. Another said the appointment of new property managers should be easier to avoid the same firms being appointed time after time and the same management problems being experienced. Regarding this a respondent mentioned conducting some form of tendering for contracts on new schemes to show fairness and best value for site management. Another respondent recommended standardising the approach by which landlords set and managed annual contributions to the reserve/sink funds. Finally, one commented that the market seemed to be working well for the majority of customers and businesses.

**Copy of questionnaire sent to local authorities and  
housing associations**

## Introduction

Our market study aims to gain a better understanding of the residential property management services provided to leaseholders in apartments, flats and maisonettes ('Property Units') across the private sector, local authorities and housing association sectors. We need to be able to understand how leaseholder experiences differ across these sectors and whether the market is working well. We are therefore seeking information from businesses like yours who offer residential property management services, as well as leaseholders who have used such services.

The questions are arranged under 5 themes:

- The size and scope of your business,
- Communication with leaseholders,
- Complaints and redress mechanisms,
- Competition in the market,
- Areas for improvement and ways to make change

## A: Tell us about your business

We would like to understand how your business operates so that we can build up a picture of what constitutes the activities of property management organisations across the different segments of the market.

### 1. Your Name

### 2. Name of your Organisation

### 3. Position in Organisation

### 4. Email address:

### 5. Please tick the types of residential blocks or developments ('Developments') you manage:

Your Organisation

Private residential Developments (excluding retirement)

Private residential Retirement Developments

Local Authority Developments

Housing Association Developments

### 6. For those ticked in the previous question, please provide names of any Related Organisation (such as a parent company, subsidiary or other companies in a group) that provide property management services to these types of Developments

Private residential Developments (excluding retirement)

Private residential Retirement Developments

Local Authority Developments

Housing Association Developments

## A: Tell us about your business

### 7. For the most recent financial year available, please indicate an estimate of how many Developments you manage in each group

Private residential Developments (excluding retirement)	<input type="text"/>
Private residential Retirement Developments	<input type="text"/>
Local Authority Developments	<input type="text"/>
Housing Association Developments	<input type="text"/>

### 8. For the most recent financial year available, please indicate an estimate of how many apartments, flats and maisonettes ('Property Units') you manage in each group

Private residential Developments (excluding retirement)	<input type="text"/>
Private residential Retirement Developments	<input type="text"/>
Local Authority Developments	<input type="text"/>
Housing Association Developments	<input type="text"/>

### 9. Please indicate for your Organisation total revenues derived from property management services during the last financial year

- under £3m
- between £3m - £11m
- between £12m - £50m
- above £50m

### 10. Please indicate the region(s) where your business is active

- North East
- North West
- Yorkshire and the Humber
- East Midlands
- West Midlands
- East of England
- London
- South East
- South West
- Wales

## A: Tell us about your business

### 11. Please indicate which of the following apply to your organisation:

- arm's length local authority organisation (ALMO)
- local authority – managing own housing stock
- housing association – managing own housing stock
- private sector property manager appointed by housing association
- private sector property manager appointed by local authority

### 12. Please provide an estimate of the percentage of leaseholders in the developments you manage.

Percentage (%)

To nearest whole number

### 13. Of the leasehold properties in development you manage, please estimate the percentage that continue to be owned by those that have exercised right to buy

Percentage (%)

To nearest whole number

### 14. Of the leasehold properties in the development you manage, please estimate the percentage that are shared ownership leases (leases where the leaseholder purchase a share of a property (house or flat) and pay rent on that part of the property retained by the landlord).

Percentage (%)

To nearest whole number

### 15. In the developments you manage can you provide an estimate of the percentage of leaseholders that have sublet to tenants?

Percentage (%)

To nearest whole number

### 16. Please indicate below, the ways that you acquired the properties you manage

- Existing Local Authority stock
- Stock transfer from a Local Authority
- Private purchase
- New build
- Other (please specify)

## A: Tell us about your business

In respect to any building insurance that you provide:

### 17. At what percentage of the Developments you manage do you arrange insurance?

Percentage (%)

To nearest whole number

### 18. How do you determine what level of cover is appropriate?

### 19. Are you taking a commission/fee?

Yes

No

Don't know

## A: Tell us about your business

**20. You indicated in the previous question that you do take a commission/fee. How is the level of commission/fee typically determined?**

**21. For this fee/commission what services do you supply? e.g. do you administer claims or deal with queries relating to level of cover?**



## A: Tell us about your business

**22. Please list the names of any trade associations or professional bodies of which you are a member**

**23. Please indicate what professional qualifications, if any, you require your senior operational staff to have**

## B: Tell us about how you communicate with leaseholders

Communication with leaseholders we understand is an important part of your business and we would like to know how it works in practice and how effective you consider it to be.

### 24. Please indicate the frequency with which you supply information relating to Service Charges to leaseholders.

	In accordance with lease/legislation	If requested	When requested under a statutory notice	Not supplied
Budget	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
End year service charge accounts	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Copies of invoices for specific items of work	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Copies of bids for major repairs or improvements	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
An explanation of your choice of a particular contractor, including an explanation of any links with the contractor	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Any other financial information (give details below)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

### 25. Please specify the 'other financial information' if in the previous question you indicated that you supply such information

### 26. Please send by e-mail ([propertymanagers.study@cma.gsi.gov.uk](mailto:propertymanagers.study@cma.gsi.gov.uk)) an example of the Budget and end year Service Charge accounts type of information you supply to leaseholders. If these differ greatly between different developments please provide several examples. Please indicate below what you will be sending us

### 27. Please can you indicate how one could best describe the extent that leaseholders understand the information that is sent to them about Service Charges and the operation of Reserve Funds:

	Fully understand	Partially understand	Understand	Poor understanding
Service charges	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The operation of Reserve Funds	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

## B: Tell us about how you communicate with leaseholders

**28. What information do you supply to leaseholders when consulting them about proposals to award long term agreements or major works? Please send us an example of the type of information you supply and indicate below what you will be sending us.**

**29. Are there any circumstances where it is more difficult to communicate with leaseholders (for example, because they are not resident in the property)?**

**30. If so, what other steps does this require you to take?**

**31. Please indicate below, in your view, the frequency that a contractor nominated by leaseholders is appointed**

- Never
- Rarely
- Occassionally
- Often
- All the time

**32. In your view, are there particular types of leaseholders that are more likely to encounter difficulties in paying their Service Charges?**

- Yes
- No
- Don't know

## **B. Tell us about how you communicate with leaseholders**

**33. Which types of leaseholders do you think are more likely to encounter difficulties in paying their Service Charges?**

## B. Tell us about how you communicate with leaseholders

**34. In circumstances when a leaseholder is unable to pay the Services Charge how do you communicate your debt recovery process?**

**35. What is your debt recovery process? Please include details of indicative timings related to the process**

**36. How many cases as a proportion of your total late payment cases did you refer to the County Court for non payment in the last financial year? And how many cases was this?**

Total number of cases

As a percentage of your  
total late payment cases  
(%)

To nearest whole number

## C. Tell us about how you deal with complaints and what redress schemes are ...

We want to understand what happens in circumstances where a leaseholder complains about the services they receive and what avenues of redress they use.

### 37. Do you have a standard set time within which to respond to complaints received?

- Yes  
 No  
 Don't know

### 38. Please indicate which of the following in respect to complaints handling procedures (CHP) applies to your business

- Publish internal CHP  
 Publicise existence of CHP to Landlords/Leaseholders  
 When requested provide a copy of CHP to Landlords/Leaseholders  
 Publicise contents of your CHP on your website  
 None of the above

### 39. Please send by e mail ([propertymanagers.study@cma.gsi.gov.uk](mailto:propertymanagers.study@cma.gsi.gov.uk)) a copy of any published internal CHP and indicate below what you will be sending us

### 40. How many times in the past financial year has a leaseholder taken a complaint that have already been through internal CHP to the following:

Local councillor/MP	<input type="text"/>
Trade organisation	<input type="text"/>
RICS	<input type="text"/>
Ombudsmen	<input type="text"/>
First-tier tribunal/LVT	<input type="text"/>

### 41. In your view, are the avenues of redress available to customers and leaseholders effective?

## D. Areas for Improvement and ways to make changes

We are interested in your views as to what can be done to improve how the market operates. This relates to the actions of business or trade bodies; actions related to other third parties that advise leaseholders; and changes to the regulatory or legislative landscape.

### **42. Please indicate any particular areas for improvement in the residential property management market that would help the market to work better for consumers and businesses**

### **43. How do you think these improvements might be made? Do you think any of these should be addressed by changes to the legislation or could they be addressed through regulation or at an industry level?**

### **44. Finally, please provide any further information that you consider is relevant to the OFT in considering whether this market is working well for consumers and businesses**

## **Remedies we considered but did not recommend**

### **Information from property managers about leaseholder rights and benefits of working collectively**

1. Originally the CMA was considering a remedy that would help address the concern that leaseholders were not always aware of the benefits of acting collectively, caused by the problem of coordination between leaseholders. Property managers appeared to be in a potentially strong position to educate the leaseholders, explaining the options, rights and benefits open to them to collectively have greater impact, in addition to providing information.
2. Following responses, we no longer consider that this is proportionate. Evidence from leaseholders did not suggest a widespread perception of problems in coordinating among themselves. Also, a number of property managers have a good practice in sharing information with leaseholders and setting up meetings at key times to explain new work. This good practice should be encouraged. However, interest in and attendance at meetings can vary considerably. Given that a number of leaseholders would be likely to be too busy or have limited interest in finding out more, imposing an obligation to hold meetings and educate leaseholders would impose cost without assured return and not seem proportionate.
3. As an alternative, our proposed remedies have focused more heavily on providing information and increasing the leaseholders' awareness of their responsibilities.

### **Re-tendering of property management contracts every three to five years**

4. A consequence of the separation of control and misaligned incentives between property managers and leaseholders can be that there is little pressure to change property managers, resulting in the same company managing a property for an extended period, without any opportunity to consider change. One remedy that was considered was to require property management services contracts to be put out tender every three or five years.
5. This would have the benefit that the market could be tested and alternatives considered on a regular basis.
6. However, responses to our update paper suggested that this could be expensive, without any guarantee that the quality of services would be improved. It usually takes a number of years for a property manager to fully understand



the property managed, to remedy existing problems and develop a programme for future work. This means that the initial few years of property management involve greater management time and cost, followed by a less expensive period once the necessary understanding is developed and plans are put in place.

7. It is also expensive to submit a tender, requiring research over work required and an estimate of cost to be made, by a number of companies, to prepare for a bid. Consequently it seemed that regular enforced tendering would increase costs both because of the cost of preparing for the tender and the higher initial costs in the early years of property management.
8. The CMA is not including this remedy. In preference it is favouring providing leaseholders with the rights to require a tender to be held or to veto appointment of a property manager, if over 50% of leaseholders support that approach.

#### **Reduce 50% of vote for RTM and reduce block to RTM from 25% retail space**

9. A number of obstacles were suggested that made it difficult for RTM to be exercised due to the requirement for 50% of leaseholders to support formation of a RTM company (see Appendix A, paragraph 46(d)). This could be difficult to achieve, possibly because some leaseholders would not bother to respond or others (absentee, non-resident leaseholders) may be difficult to reach even when sent notice to their registered address. In addition RTM could not be achieved in a mixed development when more than 25% of the space was taken up with retail development.
10. The CMA considered a remedy that would reduce the proportion of leaseholders who would need to support a RTM company. After responses to our update paper, we do not consider that such changes would be proportionate. The prospect of a minority being able to decide to take on RTM responsibilities that would affect all leaseholders in a property was felt to be undemocratic. Although some leaseholders may be absent, it should be possible to find their contact details, which would enable them to consider whether an RTM company was in their own and all leaseholders' interests. The rights of absent leaseholders should also be considered. We note that DCLG is considering measures to facilitate contacting absent leaseholders.
11. In a mixed development, the rights of retail leaseholders should also be considered. The possibility of different property management services being provided to residential and retail leaseholders was not considered to be efficient. Some comments were also made that the existence of the retail ownership could have a strong interest in maintaining a high quality of services.

## Glossary

<b>The 1985 Act</b>	Landlord and Tenant Act 1985.
<b>The 1987 Act</b>	Landlord and Tenant Act 1987.
<b>The 1993 Act</b>	Leasehold Reform, Housing and Urban Development Act 1993.
<b>The 2002 Act</b>	Commonhold and Leasehold Reform Act 2002.
<b>The 2013 Act</b>	Enterprise and Regulatory Reform Act 2013.
<b>Administration charges</b>	Administration charges are an amount payable by a leaseholder, normally in addition to the service charge, which are payable directly or indirectly for services provided by the landlord/property manager, including the grant of approvals under the lease (for example, to keep a pet or undertake work to the property) and the provision of documents by the landlord.
<b>ALMO</b>	Arm's length management organisation. Not-for-profit companies that provides housing services on behalf of a local authority. Usually an ALMO is set up by the authority to manage and improve all or part of its housing stock. Ownership of the housing stock itself normally stays with the local authority.
<b>Appointment of a manager</b>	This is a remedy available under the 1987 Act. It allows leaseholders of flats, under certain circumstances, to apply to the FTT for the appointment of a new property manager. This means the landlord remains the same but the property manager will be different. The new property manager will be accountable to the FTT. The right to seek the appointment of a manager from the FTT is not available where the landlord is, for example, a local authority or housing association.
<b>ARCO</b>	The Associated Retirement Community Operators is the main trade body representing the retirement community sector in the UK. There are currently 23 ARCO members, representing more than 250 retirement communities in the UK.
<b>ARHM</b>	Association of Retirement Housing Managers. The ARHM was founded in 1991 and has developed a role in the

management of leasehold retirement housing. The ARHM now represents 55 member organisations who manage 105,000 retirement properties in the UK. It claims to be the only body that jointly represents both the private sector and registered social landlords.

<b>ARLA</b>	Association of Residential Lettings Agents. ARLA is a professional body for letting agents.
<b>ARMA</b>	Association of Residential Managing Agents. ARMA is a trade association for residential leasehold management. It has over 300 members who manage more than 34,000 blocks of flats in England and Wales.
<b>ARMA-Q</b>	ARMA-Q is the new self-regulatory regime for ARMA managing agents, to apply from January 2015. It features an independent Regulatory Panel, a Consumer Charter and standards which are specific to managing agents.
<b>CMA</b>	The Competition and Markets Authority, a non-ministerial department. It works to promote competition for the benefit of consumers, both within and outside the UK. Its aim is to make markets work well for consumers, businesses and the economy.
<b>Collective enfranchisement</b>	The collective purchase of the freehold by leaseholders in a building containing flats in accordance with the 1993 Act, as amended by the 2002 Act.
<b>Commonhold</b>	An alternative form of ownership to leasehold and freehold, where the freehold in the land is registered as commonhold. The commonhold is owned by unit holders and it is governed by a commonhold community statement. It was first established by the 2002 Act.
<b>Consumer codes</b>	A consumer code is a self-regulatory code of practice put together by industry or a trade body. It may contain rules regarding complaint handling and deposit taking. The Trading Standards Institute runs the Consumer Codes Approval Scheme which sets out certain minimum criteria for consumer codes.

<b>DCLG</b>	The Department for Communities and Local Government, the ministerial department responsible for housing, among other things.
<b>FCA</b>	Financial Conduct Authority. The FCA regulates the financial services industry in the UK. It has rule-making, investigative and enforcement powers that it uses to protect and regulate the financial services industry.
<b>Forfeiture</b>	Forfeiture means the lease can be terminated and the property revert to the freeholder. This could arise if the leaseholder were to breach the terms of the lease. The law restricts the use of forfeiture, and so if an alleged breach is not admitted or agreed by the leaseholder the landlord will have to apply to the FTT or a court for a determination of the breach before they can start any forfeiture action.
<b>Freehold/freeholder</b>	Owns the freehold of a property which can include a building and other property or land. In a block of flats, for example, the freeholder would own the land and the actual building. A leaseholder will own a flat within that property on a lease for a fixed length of time, but the freeholder will own the property outright. The freeholder is usually responsible for the repair and maintenance of the exterior and common parts of the building, the cost of which is normally charged to leaseholders through a service charge. At the end of the lease, the flat ownership reverts to the freeholder. A freeholder may or may not be the landlord (see definition of <b>landlord</b> ).
<b>FTT</b>	The First-tier Tribunal (Property Chamber) has five regional offices throughout England that deal with settling of disputes in relation to leasehold property and the private rented sector. They deal with various matters including service charge disputes, lease variations and the determination of premiums for freehold purchase and lease extensions. This tribunal covers matters previously heard by the LVT in England. For the purposes of our report, references to the FTT include the LVT in Wales.
<b>Ground rent</b>	A rent payable to the landlord by the leaseholder on a specified date as required by the lease, subject to a notice in

a prescribed form being served by or on behalf of the landlord.

**Housing association**

Housing associations provide low-cost housing for rent to tenants who are eligible for social housing, and also provide properties to leaseholders, sometimes on a shared-ownership basis. They are normally set up as social enterprises or charities.

**Housing Ombudsman**

The Housing Ombudsman is set up by law to look at complaints about the housing organisations that are registered with it. On 1 April 2013 the new Housing Ombudsman Service was launched with an extended jurisdiction covering all housing associations and local housing authorities. Some managing agents and private landlords are also members of its scheme.

**Landlord**

For the purposes of this report we have defined the landlord as the party responsible for the appointment of property managers. Generally, the landlord is the party who grants the lease. There may be layers of landlords. For example, the freeholder (who owns the building forever) may grant a lease of the whole building to a leaseholder who may then grant further subleases of the individual flats (and so become landlords themselves). For the purposes of this report, the landlord is whichever party has responsibility for organising residential property management and so will appoint the property manager. This will normally be the freeholder, or where applicable, the RTMCo or RMC. It can include cases where the freehold is collectively owned by the leaseholders where they have been collectively enfranchised (that is, purchased shares of the company which owns the freehold) and it might occasionally be a leaseholder if they have granted an underlease to the residents.

**LEASE**

The Leasehold Advisory Service, a non-departmental public body funded by Government to provide free legal advice to leaseholders, landlords, professional advisers, managers and others on the law affecting residential leasehold in England and Wales. LEASE is funded by DCLG and the Welsh Government.

<b>Lease</b>	The lease is the legal document that allows the holder to occupy a property for a specific period of time. It contains the terms of the contractual arrangement, such as what landlord costs can be recharged to leaseholders through a service charge, any restrictions on the leaseholder's ability to sublet or make alterations. A type of lease is a headlease, which is usually a superior lease over a building. Out of this headlease subleases are granted. The common scenario is a headlease over a building containing flats, which in turn grants subleases to individual flats in a building.
<b>Leasehold</b>	Where there is a lease of the property it is called leasehold property. This means that the property is owned for a set period of time.
<b>Leaseholder</b>	A leaseholder is someone who owns a property on a lease, typically for 99, 125 or 999 years. The length of the lease decreases year by year until it eventually runs out. They are liable to pay the service charge and ground rent under the lease. A leaseholder can sell the remaining portion of the lease. A leaseholder is also called a tenant, for example in statute, but this should not be confused with short-term agreements. A long lease is a lease that was originally granted for a term of more than 21 years.
<b>The leaseholder survey</b>	A survey of leaseholders undertaken for the CMA by Ipsos MORI.
<b>LKP/Carlex</b>	The Leasehold Knowledge Partnership, and the Campaign Against Retirement Leasehold Exploitation are groups aiming to protect ordinary leaseholders, and the old and vulnerable respectively, from being cheated by landlords and their agents.
<b>LVT</b>	Leasehold Valuation Tribunal. Previously in England, and currently in Wales, the tribunal that hears matters that include service charge disputes and applications arising out of the enfranchisement legislation.
<b>Management fee</b>	Property managers will receive a fee for day-to-day management which will usually be paid by leaseholders as part of the service charges. Where major works are

involved, the agent may charge an additional fee, which will often be a percentage of the total cost of such works.

<b>Managing agent</b>	See <b>property manager</b> .
<b>Mediation</b>	A way of resolving disputes through effective communication and compromise. Mediation involves a third party acting as a go-between to ensure the parties are able to communicate with one another.
<b>NHBC</b>	The National Home Building Council is a standard-setting body and provider of warranty and insurance for new homes.
<b>Ombudsman Services: Property scheme</b>	The Ombudsman Services: Property scheme is part of Ombudsman Services, an ombudsman service that provides dispute resolution for the communications, energy, property and copyright licensing industries. Ombudsman Services was founded in 2002 and is a not-for-profit private company.
<b>Property manager</b>	For the purposes of this report, a property manager provides RPMS to leaseholders on behalf of the freeholder, superior landlord, RMC or RTMCo. Service charges will normally be paid to this agent. In return, the property manager will normally provide services such as the maintenance and upkeep of the building, and procuring insurance. We include those blocks where responsibility for property management rests with an RTMCo or resident management company. Property managers are also commonly known as managing agents.
<b>Registered providers of social housing</b>	The Homes and Communities Agency maintains a statutory register of social housing providers, which lists private providers (not-for-profit and for-profit) and local authority providers. Most not-for-profit providers are housing associations.
<b>RICS</b>	The Royal Institution of Chartered Surveyors accredits 118,000 professionals and any individual or firm registered with RICS is subject to its quality assurance. Its members are recognised by the designation after their name: MRICS (Member), FRICS (Fellow) and AssocRICS (Associate). Members with the designation MRICS or FRICS are known

as chartered surveyors. It publishes a code of conduct which is approved by the Secretary of State.

<b>RMC</b>	Residents' Management Company. An organisation which may be referred to in the lease, which is responsible for the provision of services and manages and arranges for maintenance of the property to be carried out, but which does not necessarily have any legal interest in the property. An RMC may instruct a property manager to carry out these duties on its behalf.
<b>RPMS</b>	Residential property management services.
<b>RTA</b>	Recognised tenants' association. A tenants' association is a group of tenants (normally leaseholders) who hold houses or flats on leases/tenancies from the same landlord on similar terms, which contain provisions for the payment of service charges etc. An RTA is one where the members have come together to represent their common interests so that the association can act on the tenants' behalf, and which has been recognised for the purposes of section 29 of the 1985 Act.
<b>RTB</b>	Right to buy. A right granted to tenants in local-authority-owned property to buy a lease of their flat or the freehold of their house. If the tenant has bought the lease, the local authority will still own the freehold of the property. It may manage the property directly or employ an organisation to do so (ALMO).
<b>RTM</b>	Right to manage. A collective right which leaseholders in a building containing flats have the right to exercise, allowing them to take over management of their building.
<b>RTMCo</b>	Right-to-manage company. A specific company created by the 2002 Act enabling qualifying leaseholders of the building to take on the management without proving their existing manager is at fault. RTM is restricted to leasehold flats and maisonettes, and does not apply to individual leasehold houses or estates.
<b>Section 20</b>	Section 20 of the 1985 Act covers the requirement for landlords or their agents to consult with leaseholders before



going ahead with major maintenance or repair works that will be paid for through the service charge.

**Service charge**

Service charges are levied by landlords to recover the costs they incur in providing services to a dwelling. The way in which the service charge is organised is set out in the tenant's lease or tenancy agreement. The charge normally covers the cost of such matters as general maintenance and repairs, insurance of the building and, where the services are provided, central heating, lifts, porterage, lighting and cleaning of common areas etc. The charges may also include the costs of management by the landlord or by a professional managing agent and for contributions to a reserve fund. Details of what can and cannot be charged by the landlord and the proportion of the charge to be paid by the individual leaseholder will be set out in the lease. The landlord or sometimes a management company that is party to the lease provides the services, while the leaseholders pay for them. The landlord will generally make no financial contribution for the services, but sometimes may pay for the services before their cost can be recovered.

**Shared ownership**

Shared ownership is a hybrid between renting and owning property. A shared ownership leaseholder buys less than 100% of the equity in a property and pays rent on the rest. It is usually possible for the leaseholder to staircase their ownership to 100% by buying additional shares. This form of tenure is often provided by housing associations.

**Sinking fund/  
reserve fund**

A sum of money collected from leaseholders as part of their service charge contribution to meet expenditure on the building in future accounting years. This will often be set up to cover the future cost of major repairs, for example, a new roof. The property manager or landlord will hold it on trust on behalf of the leaseholders. Local authorities are not permitted to hold sinking funds.

**Tenant**

Tenant is the technical term for anyone who holds an interest in property from a landlord, and is the term used in statute for both leaseholders and those who rent their properties.

**The Property  
Ombudsman**

The Property Ombudsman came into being on 1 May 2009. It was formerly the Ombudsman for Estate Agents Scheme, which was established in 1998. The scheme is open to all those firms of estate agents which fulfil certain criteria, and, since 2006, to lettings and property management agents.

**TMO**

Tenant management organisations are set up to allow residents of council housing or housing association homes in the UK to take over responsibility for the running of some or all aspects of their homes on behalf of the landlord.

**Upper Tribunal**

The tribunal that, in addition to other matters, hears appeals from the FTT. Decisions of the Upper Tribunal are binding on the FTT.