



Leasehold home ownership: exercising the right to manage

Law Commission Consultation
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Right to Manage Consultation

- Q 1 Should RTM be exercisable for houses as well as flats? [para 2.10]
Yes, especially where subject to a common service charge
- Q2.1 Would including houses raise the number of RTMs? [para 2.11]
Yes, we would assume so
- Q2.2 Would this be used to acquire single building RTMs by house owners? [para 2.11]
No. We are unsure of where a single building owner would wish to acquire an RTM
- Q2.3 Would this be used to join a multi-building RTM? [para 2.11]
Yes
- Q3 Should house owners follow the same process as flat owners to acquire RTM? [para 2.17]
Yes, to do otherwise will create much confusion.
- Q4 Should the same approach be used as per Enfranchisement with “Residential units”? [para 2.37]
Yes, we believe so
- Q5 Should there be a different set of qualifying criteria for RTM from Enfranchisement? [para 2.95]
No, otherwise the answer to Q 4 is wrong.
- Q6 Should there be a broader definition of “Building” for RTM? [para 2.96]
Yes, to include all parts used for the particular unit unless shared with other units.
- Q7 As an alternative to Q6, should a discretion be given to the Tribunal to apply “common sense”? [para 2.97]
No, but as a general point, the Tribunal should be given a general jurisdiction in RTM matters.
- Q8 Have consultees experience of failures due to building definition? [para 2.98]
We have no experience of failures arising from building definition.
- Q9 Should one qualifying tenant get RTM if [para 2.108]
9.1 there are no other residential units?
No
9.2 there are no other qualifying tenants in the building?
Yes.
- Q10 Change the number of qualifying flats from 66% to 50% [para 2.115]

- Yes
- Q11 If only 2 qualifying flats, both must participate in RTM [para 2.125]
- Agreed
- Q12 Buildings containing >25% non-residential use should be covered by RTM [para 2.148]
- No, as the complexities of different lease maintenance standards are beyond the capabilities of the average lay-person to both understand and manage without litigation.
- Q13 If answer to Q12 is yes, then RTM co must instruct professional managing agents for any building exceeding the 25% threshold [para 2.149]
- Yes, but the same regulations requiring this should provide for the costs of such professional agents to be a burden on the non-residential units alone.
- Q14 Have consultees experience of failures to secure RTM due to exceeding the 25% threshold [para 2.150]
- We have no such experience.
- Q15 Should Shared Ownership long leases be qualifying, regardless of staircasing status [para 3.25]
- Yes
- Q16 Should leaseholders qualify for RTM if the landlord lives in the premises? [para 3.53]
- Yes, if the landlord occupies less than 25% of the premises for his/her own use.
- Q17 Have consultees experience of failures to secure RTM due to a resident landlord? [para 3.54]
- We have no such experience.
- Q18 If leaseholders with a resident landlord can qualify, would this stop home owners converting part of their property into a flat? [para 3.55]
- Yes
- Q19 Should RTM still be possible if the freehold is held in more than 1 ownership? [para 3.61]
- Yes
- Q20 if the answer to Q19 is yes, should the Tribunal have power to reconcile conflicting covenants in leases? [para 3.62]
- Yes
- Q21 Have consultees experience of RTM over a building owned by different freeholders? [para 3.63]
- Consultees have no such experience
- Q22 National Trust properties should be excluded from RTM due to higher standards and historic issues. [para 3.73]
- Yes, with other institutions able to petition the Secretary of State for similar exemption using the same criteria.

Q23.1 The current exclusion for leases **allowing** non-residential use should be replaced by leases **prohibiting** residential use [para 3.83]

Agreed

Q23.2 if not, why should this be different from enfranchisement [para 3.83]

In such circumstances, appropriate consideration should be given to the nature, identity and ethos of the organisation in question, for example, those of the National Trust to preserve their historical purposes would be somewhat different from a multi block of residential flats.

Q24 Have consultees experience of leaseholder being prevented from RTM due to exclusion of leases which allow any non-residential use? [para 3.84]

We have no such experience.

Q25 Should qualifying tenants of a single building on an estate retain existing right to claim RTM over that building? [para 4.13]

Yes

Q26 Should a single RTM Company be able to claim RTM over more than 1 building on the same estate in a single claim? [para 4.49]

Yes

Q27 Would it be cheaper to have a multi-building RTM rather than multiple single building RTMs? [para 4.50]

Yes, if the buildings are of similar structure and lease terms. If different leases or different use mix, then no.

Q28 Should a single RTM claim cover multiple buildings if [para 4.57]

1. The buildings share some appurtenant property -- yes
2. The qualifying tenants in each building contribute to a common service charge—yes

Q29 Should each building need to qualify to be included in a multi-building RTM [para 4.7]

Yes

Q30 Should qualifying tenants of a building not originally included in a multi-building RTM be allowed to join an existing multi-building RTM automatically? [para 4.77]

No, but a route for joining on terms must be available.

Q31 Should qualifying tenants in a multi-building RTM be allowed to break away and form their own stand-alone RTM? [para 4.87]

Yes, subject to the Tribunal agreeing any disputed terms of separation.

Q32 Should the restriction on successive RTM claims apply to break-away claims? [para 4.88]

Yes, unless for accountancy reasons an immediate break away would be financially easier to manage and on all occasions break away should take effect at the end of a service charge year.

- Q33 Should members of a multi-building RTM have different voting rights to those of a single building RTM? [para4.94]
- No
- Q34 There should be a presumption that management of appurtenant property not belonging to or usually used exclusively with the qualifying buildings does not transfer to the RTB Company. [para 4.116]
- No. The Tribunal should rule on the most cost-effective responsibility for the management of appurtenant property.
- Q35 Should RTM companies be limited by guarantee? [para 5.16]
- Yes
- Q36 Should RTM companies be permitted to be nominee companies (for enfranchisement) or the two be kept separate? [para 5.24]
- They should be permitted to be nominee companies as this will unify the role of owner and manager in the ownership of the qualifying tenants.
- Q37 Should only one RTM company exist for each building until the RTM claim is withdrawn or rejected or the RTM Company ceases to exist? [para 5.39]
- Yes
- Q38 Have consultees experience of freeholders setting up RTM companies to frustrate tenants acquiring RTM? [para 5.40]
- We have no such experience.
- Q39 Have consultees experience of managing agents setting up RTM companies to gain some advantage? [para 5.41]
- We have no such experience but the very import of an RTM must by definition be of tenant origins to make any sense of the legislation.
- Q40 Should any requirements of Company Law be relaxed for RTM companies? [para 5.58]
- No as many of the requirements exist to protect small shareholders.
- Q41 Should RTM directors be required to hold an AGM? [para5.111]
- Yes. They should also be required to prepare and lay annual accounts.
- Q42 Should training for RTM Directors be mandatory or merely encouraged and well-publicised? [para 5.126]
- Not mandatory but it should be for them to ensure that they take appropriate advice from professionals before agreeing a position and not to exercise an afterthought in providing training for those who discover that they do not know what they are doing.
- Q43 The Government should provide free training for RTM Directors. Do you agree? [para 5.130]

No. The RTM legislation is tenant focused and in making their application it is for the Tenants to ensure that they appoint appropriate individuals/organisations. It is for the Tenants to ensure that they take appropriate advice from professionals before doing so and not to exercise an afterthought in providing training for those who discover that they do not know what they are doing.

Q44 Do most RTM appoint managing agents? [para 5.151]

In our experience it is common that RTMs do not initially appoint managing agents until or unless the realisation of the intricacies of RTMs impacts upon them.

Q45 Should it be mandatory to use managing agents to meet regulatory standards to be set by MCHLG?

Yes, if there is an obligation imposed by law to pay for such agents and their fees are capped by the regulatory standards.

Q46 Should managing agents be mandatory if [para 5.153]

1. > 25% internal floor space is commercial use---yes
2. The building has more than x units --- no
3. Where the building has special characteristics such as Listed Building -----yes
4. Where the building has special characteristics such as retirement property -----yes

Q47 If the answer to Q 46.2 is yes, should the number be > 9 or what? [para 5.154]

10 is too low, 20 or more than 4 levels including basements due to the structural complexity.

Q48 What other circumstances should require the mandatory use of managing agents? [para 5.155]

Where there are known structural issues with the building or more than 4 floors / levels including basements.

Q49 Should RTM companies be entitled to recover management costs including administration costs as if the leases specifically authorised this? [para 5.165]

Yes, subject to proscribed limits compatible with the Tenants Fees Act 2019

Q50 Would allowing RTM Companies to recover costs as per Q49 reduce litigation? If by how much [para 5.166]

We have no comment to add regarding this question.

Q51 Should the requirement to serve notice to invite participation in RTM be abolished? [para 6.26]

Yes

Q52 If the answer to question 51 is yes, would this shorten the acquisition process and / or save money (by how much)? [para 6.27]

Yes, and save money (no quantum)

Q53 Should qualifying tenants be entitled to join the RTM company at any time? [para 6.28]

- Yes
- Q54 Should the deemed withdrawal provisions for RTM be changed to mirror those applicable to enfranchisement? [para 6.49]
- Yes, to provide a common understanding of the deemed withdrawal provisions.
- Q55 Should a landlord be required to raise all possible relevant objections to claim notice and have no right to later amendments? [para 6.61]
- Yes, save where the counter-notice is disputed and a later amendment by the landlord speaks to the RTM Company defence to the counter-notice.
- Q56 Where no counter-notice is served, should the RTM Company be entitled to apply to the Tribunal, its entitlement to acquire RTM, the relevant date and the issues concerning nonexclusive appurtenant property? [para 6.77]
- Yes, on all counts.
- Q57 Should a landlord who has not served a counter-notice be entitled to participate in proceedings before the Tribunal without leave of the Tribunal? If so, should this be on terms required by the Tribunal? [para 6.78]
- Yes, and with full discretion to the Tribunal.
- Q58 Will using the answer to Question 56 reduce litigation as to the validity of the RTM? [para 6.79]
- Yes, as it is a judicial decision. We are not able to estimate the reduction in the number of cases.
- Q59 Should the Tribunal have jurisdiction to waive defects or allow amendments of the claim. [para 6.96]
- The Tribunal should have full unfettered discretion.
- Q 60 Should the Tribunal have jurisdiction to waive defects or allow amendments of the counterclaim subject to a higher standard of “genuine mistake” or “exceptional circumstances” in its discretion? [para 6.97]
- Yes, in the interests of natural justice, subject to clear reasoning in any such judgement.
- Q61 Would giving the Tribunal such powers over amendments reduce litigation and reduce costs? [para 6.98]
- Yes, but it should be remembered that proceedings before the Tribunal are litigation. No comment on quantum of savings.
- Q62 Should the requirement for the Claim Notice to be signed on behalf of the RTM Company be continued? [para 6.104]
- Yes, to ensure that it is the authorised action of the RTM company.
- Q63 If the requirement for signature remaining, should this be by an officer of the RTM Company or a person authorised by such officer? [para 6.105]

A single officer.

Q64 should the RTM Claim Notice be validly served at [para 6.116]

1. An email address given by the landlord for service of FRTM Notices --- yes
2. An address given for the service of notices including proceedings ---- yes
3. An address at HM Land Registry form the service of notices on the registered proprietor --- yes but only as a last resort when no other method is available.

Q65 Should the RTM company be entitled to serve a copy of the claim notice at an email address provided by a qualifying tenant as an address for service for RTM matters? [para 6.118]

Yes

Q66 Are these valid addresses for service if hand delivered, posted or emailed to [para 6.125]

1. Group A An email address provided by the landlord for service for RTM ----yes
2. Group A The landlord's current address ---- yes in the absence of a specific "address for service"
3. Group B The landlord's last known address ---- yes with the onus on the RTM company to show due diligence in identifying the address
4. Group B The last address given by the landlord for the purposes of sections 47 and / or 48 Landlord and Tenant Act 1987 ---- yes
5. Group B The latest email address given by the landlord for the service of notices including proceedings --- yes

Q67.1 Should the RTM company be required to check the landlord's address at H M Land Registry before service of claim notice [para 6.136]

yes

Q67.2 before service on a Group B address, should the RTB Company be required to search

1. The Probate Register --- yes in respect of a human from whom there has been no contact for > 12 months.
2. The Insolvency Register --- no as it is the responsibility of an Insolvency Practitioner to contact all known debtors which will include tenants owing ground rent or service charge.
3. Companies House in respect of a body corporate. --- yes, as this will also reveal the address of the Registered Office at which proceedings can be served.

Q68 Should the claim Notice contain a statement of truth confirming all relevant checks have been carried out. [para 6.139]

Yes, as would be in any Court action and to save any deficiency being revealed in any Tribunal proceedings.

- Q69 If the RTM company does not have an address falling in group A or B for the landlord, then they should undertake the Group B checks. In the absence of an address so revealed, should an advertisement be placed in the London Gazette? [para 6.140]
- No. For a corporate landlord the Claim Notice should be served at its Registered Office as revealed by Companies House: for a human, the Claim Notice should be served on the President of the Tribunal and advertisements placed as the Tribunal shall direct.
- Q70 Should the procedure for a missing landlord be the same as for enfranchisement (in similar circumstances) [para 6.147]
- Yes
- Q71 Should the RTM company be able to specify a different address for service of notices to its registered Office? [para 6.151]
- Yes
- Q72 Should the minimum period between withdrawal of the counter notice or determination by the Tribunal of entitlement to FRTM should be three months? [para 7.19]
- Yes
- Q73 if the claim notice does not specify an acquisition date this should be set by the Tribunal on application of either party. [para 7.20]
- Agreed
- Q74 Should the acquisition date be changeable by the Tribunal on application of the RTM company? [para 7.21]
- Only with the consent of the landlord (if engaged in the process) / absent such engagement where the Tribunal considers the change will not cause detriment to the landlord.
- Q75 Should there be a proscribed form of the Information Notice with essential information and desirable information? [para 7.58]
- Yes, with flexibility to request extra information based on the circumstances and the conduct of the previous service charge.
- Q76 Should landlords be exempt from providing information which they cannot reasonably provide without disproportionate expense? [para 7.59]
- No, but the Tribunal should be the final arbiter of the disproportionality.
- Q77 Should the RTM company be entitled to request information before the service of the claim notice (option 2) and within what time frame or at the time of the service of the claim notice (option1) [para 7.87]
- If option 2 within 28 days of the service and at the cost of the RTM company. If option 1 then within 28 days at the landlord's cost.
- Q78 Should the landlord have 28 day with a possible extension of time or a fixed 60 days? [para 7.95]

Agreed at the Tribunals discretion.

Q79 If there are changes known to the landlord (after information has been supplied) the landlord should update it and confirm on the acquisition date that the information supplied is up-to-date and correct. [para 7.106]

Agreed

Q80.1 Do the RTM company need a copy of every lease? [para 7.118]

This should be the case as all the tenants of the properties should have their own Lease (the Landlord would have the counterpart). There could be lease extensions or Deeds of Variations which could mean that all the Leases are not in the same format even if they were initially. The RTM need to understand the requirements necessitated by their obligations and these should in reality form part of their setting up of the RTM to enable them to carry out their obligations.

Q80.2 Are leases provided now? [para 7.118]

We have no experience of this at present.

Q81 Does the benefit of RTM company reviewing every lease outweigh the cost and time spent in so doing? [para 7.119]

It is not a question of the cost benefit analysis. Whilst leases should be in the standard format events can happen over years that make them different as referred to in Q80.1 above.

Q82 It is intended to require the landlord, RTM Company and contractor parties to communicate within set time limits as to current and future contractual arrangements. Is this good enough? [para 7.162]

Yes, but no comment has been made about possible claims for loss of profit and other attendant losses resulting from the termination of the contracts.

Q83 What are the consultees' experience of the effect of TUPE on RTM? [para 7.180]

We have no such experience.

Q84 What experience of a caretaker or landlord's employee rights to occupy a flat in the Building? What happened? [para 7.181]

We have no such experience.

Q85 Should the definition of "management functions" be amended to cover what is transferred by RTM? [para 8.32]

No, the current definition is suitable.

Q86 Do consultees have experience of the transfer back by agreement of certain management functions, if so which and did this cause a dispute? [para 8.33]

We have no such experience.

Q87 Should regulated activities such as the provision of personal care (regulated by CQC) be excluded from "management functions 2 and not transfer? [par 8.46]

- Yes, provided that it is not the majority of tenants in the block who are subject to CQC.
- Q88 If the answer to Q87 is no, should the law be changed as the RTM will acquire the obligations to carry out the regulated activity specified in the lease? [para 8.47]
- Yes, to require the RTM company to hive off the obligations for regulated activity retaining oversight of the provision.
- Q89 Are there other “regulated activity” which the RTM company should not, or might not want to acquire? [para 8.48]
- No, as the RTM company should be aware of what they are undertaking so far as their management functions before applying for RTM.
- Q90 Should the landlord be required to hand over a copy of the current insurance policy, the claims history and the last reinstatement valuation before the acquisition date? [para 8.73]
- Yes, with all policy schedules for the last 7 years (if the policy has been with the same provider for this period).
- Q91 Would handing over the information in Q90 lower the cost of securing insurance for the RTM company and if so by how much? [para 8.74]
- It should. We are not able to estimate the likely amount of the reduction.
- Q92 Should it be made clear that the RTM company has an insurable interest? [para 8.86]
- Yes, for so long as it undertakes the management functions.
- Q93 If the leases require the landlord to reinstate the building following an insurable loss, should this obligation transfer to the RTM company? [para 8.87]
- Yes, but as the RTM company does not have a beneficial interest in the building, it should have the right to call on the landlord to make good any shortfall in rebuilding costs (on the basis that the RTM company has applied all the proceeds of its insurance to the rebuilding).
- Note. Split insurance between landlord and RTM company is likely to create litigation between insurance companies seeking to avoid liability.
- Q94 Should the RTM company provide the landlord with a copy of the insurance contract within 21 days of request? [para 8.91]
- Yes, and with any future amendments or changes.
- Q95 Have consultees experience of landlord buying additional insurance to cover under-insurance by the RTM company? [para 8.96]
- We have no such experience.
- Q96 Should the landlord be able to apply to the Tribunal for a determination that the RTM company has under-insured the building? [para 8.97]
- Yes, at its risk on the costs of the application.
- Q97 If the Tribunal decides that there is an under-insurance, should it be able to direct that the Top-up costs are recoverable and make a direction about future insurance? [para 8.98]

Yes, on both counts.

Q98 Should RTM companies be required to get re-instatement valuations periodically? [para 8.99]

Yes

Q99 What is the likely costs of a re-instatement valuation? [para 8.100]

We have no such experience.

Q100.1 How common is it for accrued service charge arrears to be recovered from landlords? [para 8.113]

We have no such experience.

Q100.2 What is the financial consequences for the RTM company if arrears are not recovered? [para 8.113]

The normal rules to unpaid debts apply for recovery in Court but if it is a case that they cannot be recovered due to someone/something not being solvent then there would presumably be an increase in service charges to cover any excess.

Q101 Should the landlord pay to the RTM company 50% of the estimated uncommitted service charges no later than the acquisition date and the balance within 6 months. [para 8.114]

Yes, with the emphasis that the balance should be paid over as soon as available and with appropriate interest.

Q102 Should landlord be required to use "reasonable endeavours" to recover service charges accrued at the date of acquisition and to pay over recovered sums to the RTM Company? [para 8.112]

Yes, with a monthly accounting for sums recovered net of reasonable costs of such recovery. The landlord and the RTM company should agree what is irrecoverable and assign such debts to the RTM company for such further action as it considers appropriate.

Q103.1 Is there a practical solution to the issue of duplicate lease consents? [para 8.41]

Yes, make this the responsibility of the RTM company.

Q103.2 Should the landlord and the RTM Company appoint joint agents (chosen by the latter) to reduce costs?

No agents will have conflict of duties.

Q103.3 Should the leaseholder apply for consent to both landlord and RTM company at the same time?

Yes but 2 fees are payable immediately when one party might refuse consent.

Q103.4 Any other suggestions?

No other comments.

Q103.5 Should the parties have a limited time to respond, say 30 days? [para 9.41]

Yes, Tenant Fees Act 2019 will assist in reduction of costs.

Q104. What experiences of delays and/or duplication of costs have consultees experience in relation to lease consents under the RTM regime?

Consultees have experienced delays with the RTM regime where RTM group (RTMG) who have been inexperienced with legal and/or or accounting issues, will not in the first instance take legal advice or act responsibly or alternatively be non-co-operative possibly due to not understanding what is required of them. Issues have arisen where concise statements of account have not been available, ground rent being collected (not authorised to do so) but utilising this for Companies House requirements but then when lawyers ask what ground rent has been paid, the RTMG stated that no ground rent was collected due to the fact that they believed the payment was not ground rent but expenses. Another lawyer had many issues with a defective lease and a Deed of Rectification of Lease was required but the RTMG were uncooperative in the first instance. The costs of the works compounded to the buyers due to the lack of co-operation and their lawyers having to carry out more work than necessary to convince the RTMG. This is as well as the cost then involved to have the work carried out to rectify matters such as up to date statements or audited statements to be dealt with etc.

Q105 Do Consultees consider that the law should be clarified to make clear that the RTM company is not entitled to grant retrospective consent or consents in respect of absolute covenants?

Yes, the law should be clarified. To do otherwise would be akin to allowing the RTM to exercise a quasi-judicial function

Q106 Proposal that the law should require the RTM company to include its own name and address for service on service charge demands but not those of the landlord. Do consultees agree?

No. Although the RTM would have obligations it would remain the case that the Landlord would also have retained rights which could only be gained as a result of their name also being on the demand to ensure the Landlord is fully appraised of relevant matters.

Q107 Provisional proposal that the tribunal should have exclusive jurisdiction over disputes between the RTM company and Landlord arising from the RTM provisions. Do consultees agree?

Yes, to do otherwise over complicates as indicated.

Q108 Do consultees consider the tribunal having exclusive jurisdiction over disputes between the RTM company and landlord over RTM provisions would save time and lower costs?

Yes, it should.

Q109 If consultees do not agree that the tribunal should have exclusive jurisdiction over disputes between the RTM company and the Landlord arising from the RTM provisions over which disputes should the County Court retain jurisdiction?

N/a

Q110 We propose enforcement of the requirements in the 2002 Act should be the exclusive preserve of the Tribunal. Do Consultees agree?

Confirmed, we agree.

Q111 a) Do consultees agree that the Tribunal should not be given exclusive jurisdiction to deal with disputes between the RTM company and a third party? We agree this should remain as it stands pursuant to the rationale provided

b) Do consultees agree that the tribunal should not be given exclusive jurisdiction to deal with disputes between the RTM company and a leasehold?

As above.

Q112 We invite consultees views as to whether there is any stage of the TRM process or any issue (pre or post acquisition of the RTM) in which mediation or arbitration might play a helpful role?

Mediation and Arbitration form part of the modern Alternative Dispute Regime in litigation matters and it should likewise be the case for RTM's as to do otherwise would be to take them outside the normal litigation regime, although we do take on board that the drawbacks to both the timescale and cost involved raise doubt as to whether there is any real benefit. Most Landlords, RTM and Leaseholder would prefer to have matters resolved in a timely and cost-effective way.

Q113 We invite consultees views as to whether the RTM company should be required to make any contribution to the landlords non litigation costs.

It is felt that some contribution should be made as it would be inequitable to do otherwise. An RTM who do not have to concern themselves with the obligation to meet costs could/would be able to approach matters irresponsibly. It must be remembered that this is a direct interference with the Landlords proprietary rights which the RTM have to deal with responsibly.

Q114. Q115, Q116, Q117, Q118 Q.119,120 and Q121

We invite consultees views as to how any contribution that is to be made by the RTM company to the landlords non litigation costs could be calculated. Should the consultation be based on fixed costs, capped costs, fixed costs subject to a cap on the total costs payable or the landlord's response (the counter notice) to the claim notice and/or whether the landlord succeeds in relation to any points raised in his or her counter notice and other queries regarding the costs issue:

What the consultation appears to overlook or ignore is the fact that the matters that are being dealt with have a direct effect on the Landlord's proprietary rights which are being interfered with. It must surely therefore be an overriding consideration that the RTM (who are acting on behalf of the tenants) must act reasonably and responsibly as must the Landlord. Those are matters are routinely considered by a Court or Tribunal with costs then being measured alongside the manner in which the party(ies) have dealt with the same. Accordingly, we can see no justification whatsoever why, even with the matter being dealt with by a Tribunal, the normal costs rules should not apply. The rules should be extended to automatically include costs incurred pre-action whether proceedings were issued or not and moving one further by requiring that an initial deposit to be paid at the onset which focuses minds.

Q122 Do consultees have experience of the RTM ceasing to be exercisable by an RTM Company

No experience by Consultees of a failed or failing RTM

- Q123 We provisionally propose that when evaluating an application to appoint a Manager under Part 2 of the Landlord and Tenant Act 1987 or for management to revert to the Landlord, the tribunal should consider whether the RTM company membership satisfied the RTM participation requirements. Do you agree?

Consultees agree. Indeed, the very import of this question goes back to the importance of ascertaining the RTM in the first instance and the importance of the Landlord to be able to properly question and scrutinise such because the fallout will have a direct financial consequence on the Landlord's proprietary rights

- Q124 We provisionally propose that on termination of the RTM the functions of the RTM should be default revert to the party who is responsible for the management functions in the ordinary course of events under the leases or if that person no longer exists the landlord. Do you agree?

Yes, we agree. However, we would comment this does nothing more than peruse a proper and equitable manner of dealing with the situation.

- Q.125 We propose that the default position should not, however, apply where the tribunal has made an alternative determinate or order or the issue has been otherwise agreed between the RTM and every Landlord. Do you agree?

Agreed

- Q.126 It is proposed that where an agreement between the RTM and the Landlord to terminate the RTM does not have the support of all qualifying tenants that agreement should have to be approved by the tribunal. The Tribunal should approve the agreement if it is satisfied that the leasehold will be able to enforce performance of the management functions in the leases against the party proposed to be responsible for management. Do you agree?

Yes, we agree.

- Q.127 It is proposed that where RTM which has been struck off is restored to the Register of Companies relatively quickly the tribunal should have the ability to declare the RTM is restored to the RTM company Do consultees agree?

Yes, we agree.

- Q128 Do Consultees consider than an application to restore the company to the register should have to be made within 30 days of the strike off taking effect? If not how long?

This may not be feasible. It should state a reasonable period of time. This of itself requires the parties to act properly and promptly and as ever the ultimate decision should lie with the Tribunal being the arbiter to decide upon the point of the proper and promptness of the application with the 30-day period giving some assistance as to timing due to circumstances of each case.

- Q.129 Proposal that interim management should revert to the landlord or other responsibly party under the lease unless the leaseholders apply to the tribunal for a manager to be appointed on an interim basis. Do consultees agree?

We agree but, and once again, the impact on the landlord could be quite extensive and expensive and therefore the matter of reasonable costs must be a matter to be properly considered.

Q130 We provisionally propose that the tribunal should have the power to reinstate the RTM even if the RTM has been terminated, if termination has occurred as a result of a clerical or administrative error which does not cause loss or prejudice to any party

Yes, we agree.

Q.131 Proposal that regulations should set out a non-exhaustive list of circumstances in which an RTM ceases to be an RTM in respect of the premises. Do consultees agree?

Yes, but for clarity it should be prefaced with the provision that they are examples only and not exclusive.

Q132 Proposals that those grounds on which an RTM ceases to be an RTM company should include, where the freehold of any premises over which RTM is exercised is transferred to the RTM, where the articles of the company are changed so no longer provide the purpose of the company is to manage and where the RTM is a commonhold association.

We agree.

Q.133 Proposal that the appointment of a manager provisions in Part 2 of the Landlord and Tenant Act 1987 should be extended to apply to any premises which are being managed by an RTM/ Do you agree?

We agree

Q.134,5,and 6. Do you agree that an RTM should be able to apply to a tribunal at any time whether it is solvent or not, and for an order that a manager is appointed or management functions revert to the landlord or other person in the lease with management functions, is there a time and or financial saving and how often would this be used and the landlord should be able to object to an RTM application to give up the RTM only in exceptional cases

In principal we agree as it is better for an RTM to be able to cease if it is unable to manage properly. However, it should be against the background that the RTM should be encouraged to seek to appoint a Manager or another Management company to take over the management where it is known the Landlord would be reluctant to manage. Any such provision must of necessity include a provision that the Landlord's reasonable costs be protected because and once again these matters would through no fault of the Landlord be affecting the Landlord's proprietary rights. Those costs could and should then form part of subsequent service charge accounts.

Q.137 Proposal that while the RTM is continuing the landlord should have the right to apply to the tribunal for the management functions to be transferred back to the party under the lease, failing which the landlord or if the default party is not best placed to manage the premises for the appointment of a manager on the basis that the fault based grounds for appointment of a manager under the Landlord and Tenant Act 1987 are made out. Do you agree?

We agree.

Q.138 Proposal that after the RTM has ceased the landlord should be able to apply to the Tribunal to appoint a manager instead of management reverting to the landlord or other party under the lease. Do you agree?

Yes, but with the proviso that the Landlords costs are protected.

Q.139 We propose that the application to appoint a manager instead of management reverting to the landlord or other party under the lease should have to be made within 30 days of the RTM ending. Do you agree?

Yes, we agree but with the proviso of Q 128.

Q.140 Proposal to clarify that the uncommitted service charges held by a solvent RTM company when the RTM ceases should be transferred to the party who takes over management. Do you agree?

This would appear to be a sensible situation.

Q.141 Proposal that there should be a statutory assignment from the RTM to the new manage of the right to collect service charge debts when the RTM ceases. Do you agree?

Again, we agree that this would be a sensible situation otherwise the new Manager would face the task of having to prove the debt from scratch which may lead to arbitrary problems.

Q.142 Proposal that the existing four-year restriction on successive RTM companies should be reduced. Do you agree?

We agree. The four-year period is arbitrary and to some extent is not a period that is known to the law. It tends to lead away from the ethos of the RTM process and reduction to 12 months would be a welcome provision.

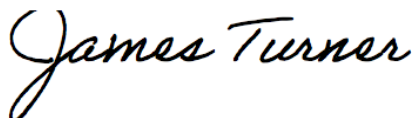
Q.143 What period of time do consultees think is appropriate for a restriction on successive RTM companies and why?

As above.

Q.144 Do Consultees have experience of cases where the tribunal has disapplied the four-year ban?

Consultees have no such experience.

30 April 2019



James Turner
President
Birmingham Law Society