

Central London Estates

Newsletter



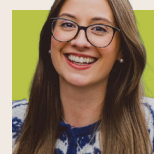
The Central London Estates team



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Welcome to the second edition of our Central London Estates Quarterly Newsletter

We hope you enjoyed the first edition of our bespoke newsletter and found the updates pinpointed what truly matters to you. We've crafted each legal update and insight with our estates' clients in mind, so that you can keep abreast of any pertinent legal updates with ease. Our goal is to provide you with the clarity and focus you need to navigate the ever-evolving legal landscape.

We look forward to bringing you the essential legal knowledge you need, every quarter.

We'd love to hear your feedback.

New JCT Contract Suite

Since April 2024, the Joint Contracts Tribunal (JCT) has been releasing the 2024 editions of its suite of building contracts on a staggered basis, beginning with the Design and Build Contract in 2024 and concluding this summer with its newest addition to the suite, the JCT Target Cost Contract, being released on 13 June 2025. The JCT has also separately announced that it is withdrawing its 2016 versions of the contracts on 31 March 2026, and it is therefore sensible for Estates to start to adopt and familiarise themselves with the new forms of contracts when constructing refurbishments or renovations of their properties.

Sustainability

Some of the key changes in the 2024 versions include moving some provisions related to working collaboratively with project team members and to suggesting economically viable amendments to the works that may result in an improvement in environmental performance, which were previously optional “Supplemental Provisions” into the main clauses in the contracts. The intention is to align

the contracts with some of the cultural and governmental policy changes towards reducing adversity in construction and sustainability/ achieving net zero, and so Estates may also wish to consider to what extent they can also adopt some of these practices when carrying out works.

Legislation

Legislative changes, as you would expect, have also been picked up with new provisions dealing with the expanded Building Regulations 2010 (which, following amendments introduced by the Building Safety Act 2022 now require for a “Building Regulations Principal Designer” and “Building Regulations Principal Contractor” to be appointed as well as the existing CDM Regulations Principal Designer and Principal Contractor), the Corporate Insolvency and Governance Act 2020 and the revocation of some parts of the Public Contracts Regulations 2015, as well as some updates as a result of some construction cases, particularly around payments on termination.

Contract amendments

The JCT Contracts still favour the Contractor more than the Employer and thus, employers like Estates have done and will continue to routinely amend the terms of the contracts to alter the risk profile under the Contracts in their favour. A couple of particular changes in the 2024 versions which may ring some alarm bells (and thus it is suggested these are amended) are clauses which effectively reverse the common law position on who takes responsibility for existing ground conditions from the Contractor to the Employer, and provisions granting both additional time and also reimbursement of loss and expense for delays and costs arising from “epidemics” (in light of COVID-19 when the JCT 2016 contracts offered very little relief to Contractors) and changes in law – including particularly issuing of “guidance” by governmental bodies as well as the Construction Leadership Council. There are however some other changes, such as the introduction of a carve out of the Contractor’s liability for fitness for purpose

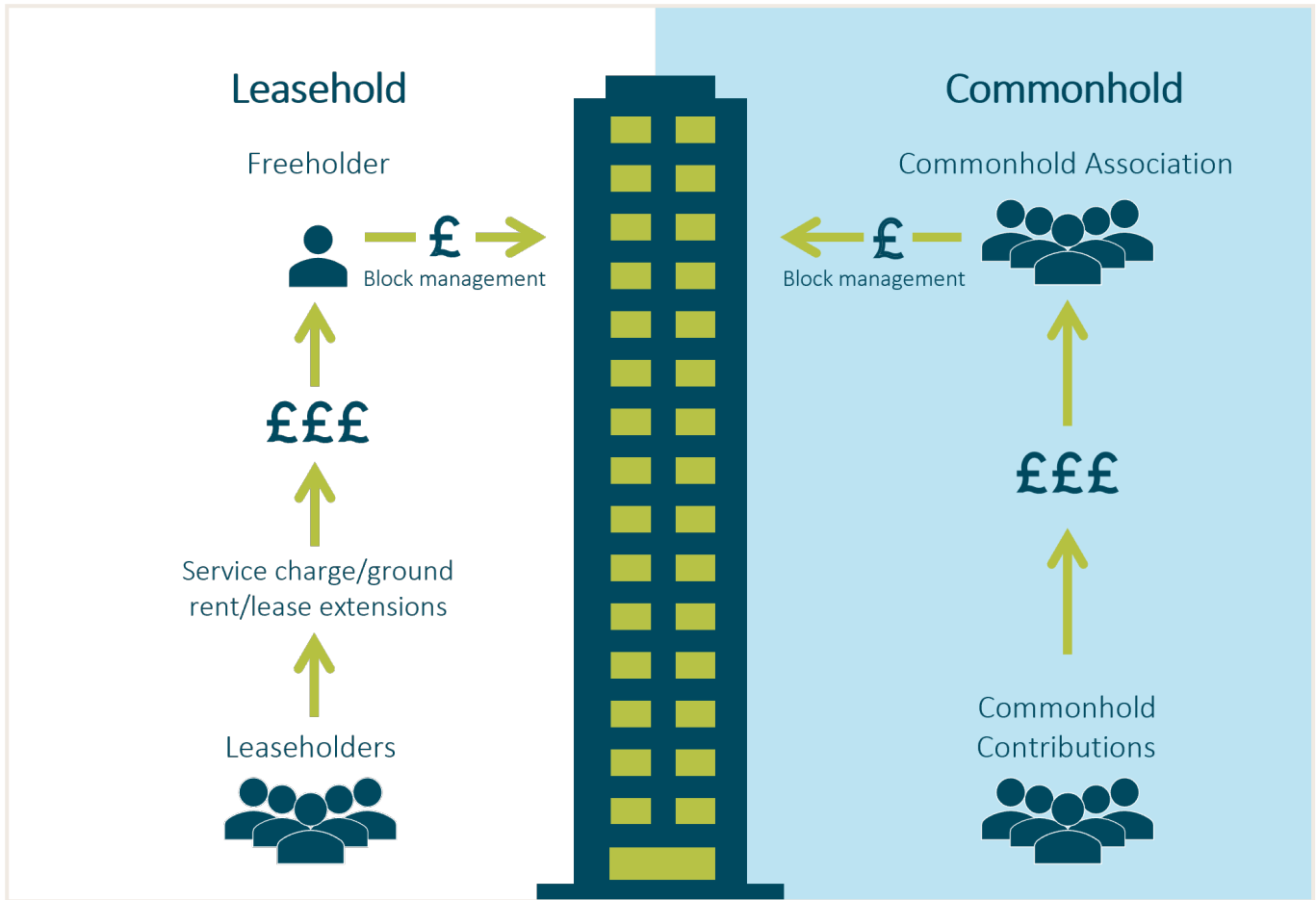
and changes to the professional indemnity insurance provisions in the Contract Particulars that are sensible and reflect the commercial reality of the market.

The particular terms and risk profile for the Works will ultimately still need to be negotiated on a specific project by project basis between the Estates and their selected Building Contractors, but in the meantime, Estates should begin to familiarise themselves with the new contracts and start to update any in-house 2016 standard amendments that they have in advance of the withdrawal of these versions in March 2026.



Jamie Olsen Ferreira
Knowledge Development Lawyer,
Construction

White Paper on Commonhold published 3 March 2025



The government published its much anticipated White Paper on commonhold on 3 March 2025, detailing its plans for commonhold to become the “default tenure” of ownership in England and Wales.

The White Paper is the precursor to a draft Commonhold Bill, which the government intends to introduce in the second half of this year.

The White Paper introduces a new framework for commonhold which is based upon the Law Commission’s 2020 report – all of the Law Commission’s 121 recommendations for reform have been accepted, bar one. It is designed to generate a better understanding of how a new commonhold system might operate and importantly, it explains how the new system is likely to benefit consumers and property owners across a range of industries.

What is commonhold?

Commonhold is a form of freehold ownership. Individual property owners will own the freehold of their unit (i.e. a flat), and a share in the freehold of the communal areas of the whole property along with the other unit owners in the property. There are no landlords or leases. Instead, the collective ownership functions through a commonhold association, which is a company jointly owned and controlled by the commonhold unit owners. The unit owners’ rights and responsibilities are governed by the Commonhold Community Statement (which will be fixed by law) and ‘local rules’ (which can be set by each property’s commonhold association). In this way, the government hopes that commonhold will create a “democratic framework for shared living” without the unfairness often associated with the landlord and tenant relationship. This will no doubt apply to a number of assets across the Central London Estates.

What reforms are being proposed?

Commonhold was first introduced in 2004 but to date, has been adopted by less than 20 developments in the country. The White Paper is designed to reinvigorate commonhold by fixing the legal and practical issues which have limited its uptake. Those reforms can be split into the following categories:

Flexibility in commonholds

- Commonhold developments will be capable of division into separate ‘sections’ to separate out the management of different areas or groups of units. This will enable more flexibility in larger developments where services and costs are allocated differently across separate buildings

- Commonhold will be opened up to key homeownership products, including shared ownership and home purchase plans. It is intended that this will expand commonhold to a wider range of consumers.
- Developers will be permitted to reserve key development rights throughout the lifecycle of a development, adding greater flexibility to phased commonhold developments.

Living in commonholds

- The voting threshold required to change the local rules of a commonhold will be increased to 75% of unit owners, up from 50%. This increased voting threshold is intended to avoid dissatisfaction and disputes amongst commonhold owners.
- Commonhold associations will have the right to create rules to restrict certain short-term uses of properties, such as Airbnb.
- Commonhold budgets will be subject to a yearly vote, requiring a majority of unit owners to support a budget before it can be passed. In the event that it is not passed, the previous budget will roll over.
- Commonhold associations will be able to vote on the standard of repair expected from individual unit owners.
- All commonholds are required to have at least two directors, who will be elected annually. It will be possible for the commonhold association to appoint professional directors.
- Commonhold associations will be able to take out loans where extra funds are needed for the commonhold, such as for urgent repair works. Commonhold associations will also be able to sell parts of the building to raise those funds, if necessary. Both measures will require the unanimous support of the unit owners.

Social

Resolving disputes and recovering debts in commonholds

- The government will remove unnecessary barriers to resolving disputes between commonhold owners and will promote mediation and other out-of-court methods to resolve disputes. The government will also consider the possibility of introducing an ombudsman for commonhold.
- Commonhold associations will be given greater powers to enforce any unpaid debts owing from unit owners, including the ability to apply to the court for an order to sell a unit if the owner repeatedly fails to pay their bill. This ability will be subject to a minimum arrears threshold.

What further reforms are needed?

The government has acknowledged that further attention needs to be given to the following key areas before the draft Bill is published:

Converting existing leaseholds to commonhold

- At present, full consent is required from all parties (freeholder, leaseholder(s), and lender(s)) for a leasehold to be converted to commonhold. This can be very difficult to achieve in practice and will likely act as a barrier to conversion to commonhold.
- The government intends to reduce the consent threshold for commonhold conversion to 50%, mirroring the consent threshold required for enfranchisement. However, it acknowledges that this lower threshold may negatively impact non-consenting leaseholders. To alleviate that impact, the government is considering whether to introduce a mandatory

leaseback arrangement for non-consenting leaseholders.

- The government intends to provide further detail of its proposals for converting from leasehold to commonhold in its draft Commonhold Bill later this year.

Making commonhold work for properties of all sizes

- The government has suggested that less onerous requirements may be used for smaller commonholds comprising only 2 or 3 units. Equally, it has been indicated that extra requirements may be imposed for commonhold buildings which are taller than 11 metres.

Banning the sale of new leasehold flats

- One of the government's flagship manifesto policies was a ban on the sale of new leasehold flats. The ban is closely linked to the implementation of commonhold, and the government plans to consult on the ban later this year.

To achieve these additional reforms, the government plans to consult with industry and consumer groups to understand their concerns around commonhold. Whilst all interested parties should be encouraged to engage in this process, it remains to be seen whether the government will be able to produce a system that satisfies the concerns of consumers, developers and lenders.



Caroline Wild
Counsel, Real Estate Disputes

WPA and CPA

Our Central London Estates team attended the City Property Association (CPA) lunch on Thursday 15th May with long-standing clients including The Corporation of Trinity House where CPA Chair Ross Sayers celebrated the resurgence of the City of London and its critical contribution to the UK economy. As well as hearing from clients on their own exciting plans for the future, the team heard from keynote speaker Janan Ganesh, the renowned columnist and associate editor for the Financial Times and former The Economist political correspondent, who reflected on the geopolitical trends that are continuing to shape the world and what we in the real estate industries should expect to see in the next 10 years on a global scale.

The team was also delighted to host a table at the Westminster Property Association (WPA) Annual Dinner on 1st May, celebrating Westminster and its built environment. The team were joined by clients and contacts across the Central London Estates, including Cadogan, Sloane Stanley, The Portman Estate, Miles Commercial and Grosvenor and were also able to catch up with contacts at Howard de Walden during the event. We heard from Susie Dent the renowned lexicographer and etymologist, who explored the origins of some of the real estate industry's favourite terms and linguistic quirks, which the team here at Forsters are very familiar with!



Sustainability

“Sustainable is just another word for quality”

These are the words of Simon Tranter, Head of Sustainability at The Howard de Walden Estate, at the recent Westminster Property Association panel discussion – “Net zero workspaces in Westminster: Closing the carbon performance gap”. Surely no debate there? Quality and sustainable now go hand in hand.

Yet the discussion was also a helpful reminder of the challenges in taking that “sustainable” asset and ensuring it is occupied in the most sustainable way. In particular, Jason Smallwood (Technical Director, WSP) shared some findings from signatories to the [Sustainable City Charter](#), the climate action pledge for Westminster businesses. Some familiar talking points:

- The crucial role of occupier actions and decisions in determining building emissions performance



Louise Irvine
Senior Knowledge Development Lawyer,
Commercial Real Estate

- The lack of comprehensive data on operational performance
- The struggle for buildings to meet design performance standards because of variations due to occupancy, usage patterns and maintenance practices

Yet, on a positive note, it was clear that in tackling this performance gap you uncover most progress in **small, affordable and practical interventions** coupled with **consistent measurement and collaborative efforts**. These trump broad, high-level commitments. It reminded us of green leasing – sweeping statements to collaborate are all well and good, but progress is about the “nitty gritty” – interventions such as meter installation, sharing of data etc – where more focused commitments in the drafting are key. For more, check out the excellent BBP [Green Lease Toolkit](#).



Edward Glass
Counsel,
Commercial Real Estate

Model Commercial Lease (“MCL”)

A new version of the MCL has been published, with a number of sustainability provisions having been added:

- Tenants must not unreasonably withhold or delay consent to landlord’s green improvement works (so consent is no longer at tenant’s absolute discretion), but that any works carried out must be at the landlord’s cost.
- Landlords will not be responsible for any interruption in supplying building services where the landlord is carrying out works to improve the environmental performance or EPC rating of the building. This change is welcomed by landlords as it helps them to comply with the MEES Regulations, and tenants can be reassured that they will not be responsible for meeting the cost of these works via the service charge.
- Tenants must provide landlords with sufficient information about proposed works to allow the landlord to assess the impact of the works on the EPC rating and environmental performance of the building/premises. The MCL isn’t as onerous as the green lease toolkit, which suggests that the information must be provided before the works commence. However, tenants would usually provide details of works as part of any application for landlord’s consent under a lease, so this drafting is unlikely to have an impact except where works are sufficiently minor to fall outside of a landlord’s consent requirements.
- Both parties are expected, where reasonably practicable, to promote and improve the environmental performance of the premises and (where applicable) the building, and to nominate individuals to attend any environmental or sustainability forums that might run by the landlord.