



September 2017

**CJC response to the DCLG consultation on:
TACKLING UNFAIR PRACTICES IN THE LEASEHOLD MARKET**

General remarks:

There has been widespread support for the Government's move to reform leasehold properties, and the Council welcomes the intention to offer consumers greater protection.

The consultation paper illustrates the problem with the existing system, and that it is growing - Land Registry figures recently revealed that leasehold properties made up 43% of all new-build registrations in England and Wales in 2015, a significant rise from 22% in 1996.

Concerns centre on consumers not understanding the differences between freehold and leasehold property purchases, and opting for leasehold as there is a discount on purchase. However, the drawbacks – graphically illustrated in the examples given in the consultation paper* - include paying a ground rent which can increase dramatically (including where a developer sells the freehold to a third party, without having to give notice to the leaseholder), very high prices when leaseholders seek to buy the freehold, and fees for alterations to the home

*Examples given in the consultation paper of unfair practices include:

- a homeowner being charged £1,500 by the company to make a small alteration to their home;
- a family house that is now unsaleable because the ground rent is expected to hit £10,000 a year by 2060; and
- a homeowner who was told buying the lease would cost £2,000 but the bill came to £40,000.

The lack of restraint in the property market has led the Government to put forward proposals on limiting the sale of new build leasehold homes and imposing greater controls of ground rents for new homes. Options to assist existing leaseholders are also discussed with views invited. It is instructive that in the National Leasehold Survey of 2016, 57% of respondents said they regretted having bought a leasehold property, with two thirds expressing dissatisfaction with their managing agent.

The CJC is very supportive of steps to increase the protection of homebuyers and to assist existing leaseholders. The reforms are welcomed, and more detailed responses are set out below in the answers to individual questions in the consultation paper.

Answers to specific questions

Limiting the sale of new build leasehold houses:

Q5: What steps should the Government take to limit the sale of new build leasehold houses?

Prohibiting the sale of leasehold homes should be a last resort, and it would be preferable to tackle the abuses currently experienced. This set of proposals set out some reforms that will help to achieve this.

Q6: What reasons are there that houses should be sold as leasehold other than under the exceptions set out in paragraph 3.2?

If, contrary to our view, there is to be a prohibition, the CJC is not able to suggest any other reasons. Commonhold offers developers another option to freehold sales.

Q7: Are any of the exceptions listed in 3.2 not justified? Please explain.

The CJC is supportive of the exceptions given in paragraph 3.2.

What is unclear is whether the Government wishes to also allow the additional exceptions suggested in paras 3.3 and 3.4 – namely Garden Villages or Retirement Properties.

As described, Garden Villages could provide an exception, although the management boards should be subject to regulations to ensure those on the board are making decisions on behalf of the best interests of the community, with representatives of residents on that board.

Retirement properties offer a different model – ‘event fees’ are provisions in the lease that allow managing companies to charge homeowners an exit or transfer fee when they sell or rent out their homes. The Law Commission in a report published in March 2017¹ was very critical of such fees, which they said could represent 30% of a resale price, and advocated regulation. The Government may wish to take a separate look at this category of homes.

Q8: Would limiting the sale of new build leasehold houses affect the supply of new build homes? Please explain.

The CJC is not qualified to answer this.

Reducing Help to Buy Equity Loan support for leasehold houses

Q9: Should the Government move towards removing support for the sale of new build leasehold houses through Help to Buy Equity Loan, unless leasehold can be justified and where ground rents are reasonable (which could be a nominal or peppercorn ground rent), and if not, why not?

¹ <https://www.lawcom.gov.uk/project/event-fees-in-retirement-properties/>

The CJC supports this proposal. The Help to Buy Equity Loan scheme has helped more than 100,000 households purchase a new property and had contributed 14% to total new build housing output since its introduction. It is important to protect the success of the scheme by ensuring homebuyers do not enter into unfair conditions.

The terms of the proposal also incentivise developers to charge reasonable ground rents.

Q10: In what circumstances do you consider that leasehold houses supported by Help to Buy Equity Loan could be justified?

This is difficult to answer without the Government setting out what they would regard as the 'specific circumstances' mentioned in paragraph 3.16. The CJC agrees with the proposal that Help to Buy Equity Loan support to leasehold properties would only be available if the ground rent terms are reasonable – at a nominal or 'peppercorn' rate.

Q11: Is there anything further the Government could do through Help to Buy Equity Loan to discourage the sale of leasehold houses?

See answer to question 5.

Q12: What measures, if any, should be considered to minimise the impact on the pipeline of existing developments?

This is an issue for the Government to discuss with developers, and in determining what the transitional provisions will be for any reforms implemented.

Limiting the reservation and increase of ground rents on all new residential leases over 21 years

Q13: What information can you provide on the prevalence of onerous ground rents? We are keen to receive information on the number and type of onerous ground rents (i.e. doubling, or other methods) and whether new leases are still being sold with such terms.

We do not hold such information.

Q14: What would a reasonable ground rent look like, in terms of i) the initial annual ground rent, ii) the maximum rate of increase in annual ground rent, and iii) how often the rate of increase could be applied to an annual ground rent? Please explain your reasons.

There is no simple answer to this question. If leasehold properties are sold at a freehold value, then ground rents should stand at a peppercorn or nominal rate. However if the price has been significantly reduced to reflect its leasehold status, there is nothing in principle to stop a developer charging a ground rent provided that this is not open to abuse and the property does not become unsaleable in the future.

With regards to increasing ground rents, as detailed in the paper, Nationwide recently removed lending on properties with ground rents that double every 15 years or less. Their view is that ground rent increases should be linked to the Retail Price Index or that the maximum ground rent set for new build properties could be 0.1% the property value. This approach is endorsed by the CJC.

If enforcing the proposed ban, the government will need to consider other ways that developers may attempt to recoup the lost income from ground rent. For instance, some developers currently include a provision where leaseholders pay the landlord 1% of the value of the property on sale.

Q15: Should exemptions apply to Right to Buy, shared ownership or other leases? If so, please explain.

The £10 annual ground rent set for Right to Buy properties appears reasonable to the CJC. The same rate could also be applicable in cases of shared ownership where this is payable to the Housing Association.

Q16: Would restrictions on ground rent levels affect the supply of new build homes? Please explain.

See answer to question 8.

Q17: How could the Government support existing leaseholders with onerous ground rents?

The difficulty of this issue is illustrated by the Westminster Hall debate in December 2016 when the Government referred to the freeholder's property rights. For some leaseholders the answer may be to purchase their freehold.

Existing leaseholders could be provided with the assistance of a government funded advice agency.

Taylor-Wimpey have set aside £130 million to help support homeowners with increasing ground rents - although this is not to be regarded as 'compensation'. There have been criticisms of this scheme, with many believing the company could go further, however it is an important step and the government could press other developers to follow suit.

Q18: In addition to legislation what voluntary routes might exist for tackling ground rents in new leases?

As mentioned above, more developers could be encouraged to provide financial support to those with increasing ground rent payments. It will need to be decided whether these are awarded as lump sum payments, or annual periodical payments.

Exempting leaseholders potentially subject to 'Ground 8' possession orders

Q19: Should the Government amend the Housing Act 1988 (as amended by the Housing Act 1996) to ensure a leaseholder paying annual ground rent over £1,000 in London or over £250 in the rest of England is not classed as an assured tenant, and therefore cannot be issued with a Ground 8 mandatory possession order for ground rent arrears? If not, why not?

Yes – as detailed in the consultation paper this is an unintended consequence of the legislative changes, which place leaseholders at risk of possession as they are classed as assured tenants under the Housing Act 1988. A judge would be unable to refuse to grant a possession order where 3 months' ground rent was at least 3 months in arrears.

A reform of the primary legislation, moreover, would not affect a landlord's ability to take legal action where a leaseholder had breached the terms of their lease, but it would give greater protection to those who already own a leasehold property.

Service charges for maintaining communal areas and facilities on freehold and mixed tenure estates

Q20: Should the Government promote solutions to provide freeholders equivalent rights to leaseholders to challenge the reasonableness of service charges for the maintenance of communal areas and facilities on a private estate? If not, what management arrangements on private estates should not apply?

The CJC agrees that the government should allow freeholders living on private estates the right to challenge the reasonableness of service charges in the same way that qualifying leaseholders can do. If paying for the same services as leaseholders (such as the maintenance of communal areas), it is only fair that they enjoy similar rights of challenge.

Future issues

Q21: The Housing White Paper highlights that the Government will consult on a range of measures to tackle abuse of leasehold. What further areas of leasehold reform should be prioritised and why?

This will be a large programme of necessary reform, and the Government will clearly wish to prioritise its proposals, and tackling new leasehold homes would seem a priority given the growth in such properties.

The CJC would be supportive of reforms in the following areas:

- Commonhold – reviewing the existing legislation to encourage greater use of commonhold tenures, which were seen as having advantages over leasehold properties. The existing legislation requires all residents in a block to consent before a commonhold agreement can be achieved, which sets a very high bar, and developers have been unenthusiastic despite its popularity internationally.
- Right of first refusal – where long leaseholders are given first refusal when a freeholder wishes to sell the freehold of their home to a third party.
- Removing moratorium – allowing leaseholders to buy the freehold of their home before the two year moratorium which currently applies.
- Right to manage – commentators regard the current process for long lease tenants to take over management of their tenancy block as overly cumbersome. The All Party Parliamentary Group on Leasehold Reform have explored this topic².

²<http://www.leaseholdknowledge.com/wp-content/uploads/2017/04/AllPartyParliamentaryGroupLeaseholdReportApril27.pdf>

- Operation of management agents - CJC would be interested in seeing regulation for managing agents, who are currently only subject to self-regulatory regimes. Tenants complain of high service charges being applied (in 2012 *Which?* estimated overcharging as being at £700million per annum for service charges).
- Wales – the consultation paper says that the reforms will only apply in England. Clearly housing is a devolved function of the Welsh Government, but it would be most unfortunate if Welsh leaseholders were not afforded the same enhanced protections as their English counterparts.