Leasehold and Rentcharges Team
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BY EMAIL ONLY

21 September 2017

Dear Sirs

Leasehold Advisory Service (LEASE) response to the English Government's consultation paper 'Tackling unfair practices in the leasehold market'

LEASE supports the government's vision to grow home ownership and increase transparency and fairness for leaseholders. Through our work we also encourage best practice and improvements in the management of residential leasehold property.

We welcome the opportunity to provide views on the matters set out in the consultation paper. As the leading source of independent leasehold advice to leaseholders in England and Wales, providing that advice across both the public and private sectors, we are well placed to comment; and keen to help DCLG as it moves forward its transparency and fairness agenda for residential leasehold.

Q1: Are you responding as (please tick one): ☐ **A private individual?** ☒ **On behalf of an organisation?**	On behalf of an organisation serving leaseholders.
Q3: If you are responding on behalf of an organisation, is the interest of your organisation as (tick all that apply): ☒ **Other (please specify)?**	LEASE is an Executive Non-Departmental Public Body sponsored by DCLG to provide initial advice on leasehold law to leaseholders in England.
Q4: Please enter the first part of the postcode in England in which your activities (or your members' activities) are principally located (or specify areas in the box provided)	Our activities extend all across England and Wales.
Q5: What steps should the Government take to limit the sale of new build leasehold houses?	Houses should be freehold unless: 1. Shared ownership is part of the development; 2. Where the developer only holds a leasehold interest over the land to be developed. Nevertheless, restrictions are necessary to prevent the generation of loopholes; and

	3. Community Land Trusts. Alongside this, the reliance on an estate rentcharge approach to recovering service charge payments for estate costs seems outmoded now that we have Commonhold. On estates of freehold houses, as opposed to leasehold houses, the common areas should be transferred to a Residents Management Company, compulsorily, with all the freeholders as members. Nevertheless, if banning the sale of new build leasehold houses is not part of the government's intentions we would suggest that sales could be limited through one or more of the following: 1. Amend section 23 of the Leasehold Reform Act 1967 (Agreements excluding or modifying rights of tenant) to the effect that any amount of ground rent that makes it onerous is a "penalty" for the purposes of section 23 and that amount is therefore void. 2. Ensuring that Local Plans contain a presumption against leasehold houses; and that planning applications proceed with freehold houses as a priority. 3. Limiting ground rent to 0.1% of the sale price, or £500, whichever is greater; and banning any subsequent increases in ground rent under the powers available to the Secretary of State in section 31 of the Landlord and Tenant Act 1985. 4. A 'leasehold levy' is paid to HM Treasury by developers selling new build leasehold houses. The levy would be based on a percentage of the income from these sales. That income would be the sale price, ground rent and revenue from the sale of an estate of leasehold houses to a third party other than the leaseholders. 5. Introduce a 'right of first refusal' for estates of leasehold houses; and

	ensure that it requires landlords to disclose agreements with third parties, entered into prior to the grant of the first lease, for the subsequent sale of the 'relevant premises'.
Q6: What reasons are there that houses should be sold as leasehold other than under the exceptions set out in paragraph 3.2?	We have not explored every possible avenue that could exist for an exemption, and there may be others who can suggest there is merit in more than the following: 1. Shared ownership: We continue to see the scenario where affordable home ownership includes a shared ownership by leasehold; and 2. Where the developer only holds a leasehold interest over the land to be developed. In such circumstances, he can grant to purchasers no more than he has. Nevertheless, care must be taken to ensure that the generation of loopholes is considered and addressed; and 3. Community Land Trusts: Where the community has an opportunity to buy development land that is leasehold, or has been gifted leasehold land, it should be able to continue to provide affordable homes through the vehicle of leasehold tenure.
Q7: Are any of the exceptions listed in 3.2 not justified? Please explain. **[X] Yes**	They are justified.
Q8: Would limiting the sale of new build leasehold houses affect the supply of new build homes? **Please explain.** **[X] No**	Indications are that the policy environment and its move, since the end of 2016 at least, towards reform is not viewed by developers as a significant risk to their pipeline. In the Annex to this response we summarise their commentary on risks. These are taken from annual and other reports of five top housebuilders. None suggest that there are issues with the pipeline arising from leasehold policy. We are aware of the argument that marginal sites require ground rents to be framed as investment in order to make them viable developments. However, the need for consumer-friendly controls and restrictions remains in order that those who frame development, with an investment model in mind, do not lose sight of the consumer's interests i.e. these are homes.

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? **[X] Yes**	Yes, we agree.
Q10: In what circumstances do you consider that leasehold houses supported by Help to Buy Equity Loan could be justified?	None, save where the developer's interest in the land is leasehold only.
Q11: Is there anything further the Government could do through Help to Buy Equity Loan to discourage the sale of leasehold houses? **[X] Yes**	With the government reviewing the Help to Buy Equity Loan scheme, but also confirming that it will continue until at least 2021, that review should consider broadening the use of the scheme to include the second hand market. This way buyers would have more choice and it would address affordability of home ownership further, specifically the 'new build premium' (17%) ('What price a new home?' Countrywide Research 2017).
Q12: What measures, if any, should be considered to minimise the impact on the pipeline of existing developments?	See response to question 8.
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.	The Secretary of State, and the All Party Parliamentary Group on Leasehold and Commonhold Reform, has highlighted the recent strategy of developers to sell leasehold property with onerous ground rents. This has been the case particularly in the North West of England. However, we are aware that such rents are not uncommon elsewhere and also appear in leases granted some time ago. For example: 1. Leasehold flat in London SE26 in 2014 with 48 years remaining. Ground rent at that time £150, but will rise to £1,365 in 2027. 2. Leasehold flat in Surrey KT9 1 QE in 2015 with 64 years remaining. Ground rent at date of grant in 1980 was £55, but it will rise to £422, £775, £1,412 and £2,079 in 2022, 2043, 2064 and 2079 respectively.

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.**	If the intention is for ground rent on new build to continue, then we say: 1. Initial annual ground rent: no more than 0.1% of the property's value and capped at £500. What is a tolerable/reasonable ground rent now, as compared to an onerous one, has changed markedly in less than 10 years. The RICS's research paper, 'Leasehold Reform: Graphs of Relativity (October, 2009)' stated: "Where there is a high ground rent in fact or in prospect (i.e. after a forthcoming review) this has the effect of depressing the value of the existing lease interest and thus the relativity. This is known as an onerous ground rent. The level of rent which has no effect on value is generally accepted to be in the range 0.05% to 0.25% of the freehold vacant possession value." In May 2017, the Nationwide Building Society published its new lending policy for new build. The policy provides that lending on new build leasehold is subject to, amongst other things, the initial ground rent being no more than 0.1% of the property's value. We feel that in 2017 an initial ground rent, if there is to be ground rent at all, can be no more than 0.1% of the property's value or £500, whichever is greater. 2. Maximum rate of increase in annual ground rent: only increase by RPI. 3. How often the rate of increase could be applied to an annual ground rent: no less than 25 years.
Q15: Should exemptions apply to Right to Buy, shared ownership or other leases? If so, please explain. [X] **NO**	Right to Buy (RTB) ground rent is fixed at £10. Most RTB leases are granted for 125 years. As the law has developed since the inception of RTB to require ground rent to be demanded by written notice in accordance with section 166 of the Commonhold and Leasehold Reform Act 2002, it will soon become uneconomic to collect £10. Hence, we suggest RTB leases should in future make no provision for ground rent.

	In the event that it is felt that ground rent is a necessary ingredient to the creation of a long lease, then we submit it should be a peppercorn.
Q16: Would restrictions on ground rent levels affect the supply of new build homes? Please explain. **[X] No**	No, we do not believe so. See response to question 8.
Q17: How could the Government support existing leaseholders with onerous ground rents?	We would suggest that when an existing leaseholder seeks to enfranchise under the Leasehold Reform Act 1967 (1967 Act) then the ground rent to be capitalised, as part of the calculation of the freehold value, should be capped. Government could consider capping ground rent at 0.1% of the property value. That is the ceiling that now forms part of the lending policy of the Nationwide Building Society on leasehold property. In addition, we suggest that an upper limit of £500 is also set. In this way, whilst there is value in the ground rent to the reversioner, the mischief of onerous future ground rent affecting the enfranchisement price is addressed. We submit that amongst the options for existing leaseholders, the comments above should be considered for retrospective application. We appreciate that such action is rare, particularly in civil matters. However, recent action by some builders, in trying to remedy this market malpractice, suggests that retrospective action would be justified and within the government's area of appreciation and discretionary judgment in economic and social matters.
Q18: In addition to legislation what voluntary routes might exist for tackling ground rents in new leases?	The Competition and Market Authority's published guidance highlights that government intervenes in markets to make them work more effectively through: 1. Setting the market framework 2. Protecting competition in markets 3. Ensuring that consumers are able to exercise choice, and are not coerced or defrauded. It is arguable that the consumer protection law framework, as part of the market

	framework, has failed. Moreover, the industry has not stepped forward to self-regulate, notwithstanding the widely accepted poor practice that has occurred. We do not believe that there are voluntary routes available or that there is an appetite for them. Interest rates are currently at a level where there is a commercial incentive to continue to monetise ground rent. It follows that in the absence of transparent and robust self-regulation by the housebuilding industry government will need to intervene.
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, this is another unfortunate consequence of the hyper-escalations in ground rent and should be addressed as quickly as possible. In addition, Schedule 10 to the Local Government and Housing Act 1989 (1989 Act) will need to be addressed in the same way. Under Schedule 10 security of tenure applies at eth expiry of a long lease where, amongst other things, it is a "long tenancy of a dwelling-house at a low rent". Low rent is currently defined in Schedule 10 as follows: 1. where no rent is payable; 2. where the tenancy is entered into on or after 1 April 1990, (otherwise than, where the dwelling-house had a rateable value on 31 March 1990, in pursuance of a contract made before 1 April 1990), the maximum rental payable at any time is payable at a rate of (1) £1000 or less a year if the dwelling-house is in Greater London and, (2) £250 or less a year if the dwelling-house is elsewhere; or 3. where the tenancy was entered into before 1 April 1990 or, (where the dwelling-house had a rateable value on 31 March 1990), is entered into on or after 1 April 1990 in pursuance of a contract made before that date, and the maximum rent payable at any time under the tenancy is less than two thirds of the rateable value of the dwelling-house on 31 March 1990. It follows that, as regards paragraph 2

	above, the rent limit at the expiration of the lease in both Greater London and elsewhere will need to be raised. Paragraph 3 will also need to be addressed, as regards leases granted before 1990, because of the increasing absence of rateable value data held by public authorities. A simple maximum rent will be needed, both for Greater London and elsewhere.
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?	Freeholders of houses, subject to an Estate Management Scheme (granted under the 1967 or 1993 Acts), or who have purchased the freehold of their house from a public sector authority, have rights regarding the reasonableness of the charges they are asked to pay. It is plainly inconsistent that freeholders, not falling into one or other of the categories above, are left without rights. Hence, the framework of rights as regards service charges for leaseholders, and for their resolution in Tribunal, should be mirrored for freehold houses.
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?	**1. Regulation of leasehold property management:** Our experience and we are confident it is broader too, is that the patchwork quilt of legislation only deals with problems after the fact. The management of a building containing an individual's home is simply too important a responsibility to be left to such remedies. The management profession as a whole needs licensing alongside formal entry requirements. This would give assurance to leasehold customers and kudos to those who meet licensing criterion. Continuous professional development ought to also be a requirement to maintain a license. **2. Abolition of forfeiture for residential property:** The doctrine of forfeiture is outmoded for residential property. Forfeiture, if completed, provides a windfall to the landlord in that the flat the leasehold title is closed. Not surprisingly its mere mention in a dispute is a great concern to leaseholders and their mortgage lenders. Whilst there have been reforms in the last 10 years, its continuing existence, where so much else is being done to address flat ownership positively, is anomalous.

	There may be circumstances where an owner's conduct merits termination of their ownership, but this cannot lead to a windfall. Instead, a court order for sale of the property is a better approach. An order for sale a tried and accepted approach in other jurisdictions with Strata and Condominium type tenure for home ownership. Hence, it is keeping with aspirations for home ownership through Commonhold. Finally, the abolition of forfeiture should be part of a bigger vision of improving home ownership (particularly for flats) that includes the regulation of leasehold management, consolidation of the law, reforming Commonhold and a sunset provision for the creation of new leasehold titles. **3. Consolidation of residential leasehold law:** The piecemeal reform of leasehold over many years has led to several pieces of prime and secondary legislation making up the residential leasehold framework with the common law. The sheer number makes the law unclear, the legislation itself lengthy and thus inaccessible to citizens. It is leasehold's Gordian Knot. **4. Commonhold** a) Amend Commonhold to aid the conversion of leasehold flats to Commonhold and modernise flat ownership and community living in England. b) The improvement of Commonhold must be part of a larger piece of work that includes 'sunset' provision for residential leasehold and the regulation of residential leasehold management (as per 1 above). c) Create a compulsory ADR system for disputes in a Commonhold community. Keep such disputes online and out of the court system. An example where Commonhold-like disputes are already addressed online is British Columbia's Civil Resolution Tribunal

	5. Model residential long lease The propensity for complexity arising from bespoke leases, and that complexity slowing the conveyancing of leasehold, needs to be addressed. It is inconsistent to have model commercial leases and also a model shared ownership leases for houses and flats yet the residential sector is otherwise left to itself. **6. Reform Section 20 consultation** a) Raise the current threshold and introduce an annual index for reference, eg RPI. b) Make the QLTA process, as regards framework agreements, more meaningful. c) Provide for the head landlord to disclose to the freeholder as superior landlord the details of the underlessees to facilitate compliance with the requirements of Section 20. **7. Collective Enfranchisement and Lease extension reform** a) Require landlord's price in counter-notice for collective enfranchisement and lease extension under the Leasehold Reform, Housing and Urban Development Act 1993 (1993 Act) to be in good faith i.e. realistic. Ends the tactic of landlords submitting unrealistically high prices to discourage those seeking to enfranchise or extend their lease under the 1993 Act; and removes inconsistency that prices submitted by leaseholders must be realistic, in order for their notice to be valid, but landlords counter-offer need not be realistic. b) Require a deposit to be paid for a lease extension under the 1993 Act only after the terms of acquisition are agreed by the parties or determined by the appropriate tribunal. Removes inconsistency between collective enfranchisement and lease extension where, in the former, deposit

	only liable to be paid on exchange of contracts whilst it is potentially payable as regards a lease extension as soon as notice is served. c) Require the freeholder to make application to the County Court for a declaration that that the nominee purchaser has no right to acquire the freehold under the 1993 Act. Removes inconsistency. Currently, the 1993 Act provides that where the entitlement to a lease extension is disputed the freeholder makes the application to the county court for a declaration that that the tenant had no right to acquire a new lease of the flat on the date the notice of claim was served-Section 46(1). However, where the entitlement to collective enfranchisement is disputed it is the nominee purchaser who makes the application to the county court for a declaration that it was so entitled. The position should be the same for both situations. d) Allow, where the landlord is missing, half the tenants to participate in the application to acquire the freehold. Remove inconsistency. Currently, where the landlord is missing, the right to acquire the freehold can only be exercised by not less than two-thirds of the flats contained in the premises (Section 26). However in the situation of a normal claim only half the tenants need to participate. This should be the same for missing landlord claims. **8. Conveyancing improvements – leasehold** a) Compel landlords or managing agents to respond to conveyancing enquiries (eg Form LPE1) within 20 days of the payment of the administration fee; and to provide additional information. b) Answers to leasehold enquiries in conveyancing to be explicitly an administration charge under Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (2002 Act).

	c) Consumer protection legislation should provide unequivocally that estate agents must supply information on leasehold property. This includes: i) Tenure, ii) Ground rent, iii) Service charge, iv) Amenities Templates of the required information could be prescribed (eg as per section 166 2002 Act)

We hope that these comments prove helpful, but if you have any questions please feel free to contact me.

Yours faithfully

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Chief Executive

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ANNEX

Company	Information source (publication date)	Comment
Barratt Homes	1. Annual Report 2016 (September 2016) 2. Half Year results for the six month period ended 31 December 2016 (February 2017)	1. No comment on implications of leasehold reform to pipeline or in any other respects to the business and its objectives. 2. No comment on implications of leasehold reform to pipeline or in any other respects to the business and its objectives; and in addition, Director's statement on 'Principal Risk and Uncertainties': "The Directors do not consider that the process of risk management and the principal risks and uncertainties to have changed since the publication of the Annual Report and Accounts for the year ended 30 June 2016."
Redrow	Half yearly Report (February 2017)	No comment on implications of leasehold reform to pipeline or in any other respects to the business and its objectives. Directors' statement on risks: "We have reviewed the risks pertinent to our business in the six months to 31 December 2016 and which we believe to be relevant for the remaining six months to 30 June 2017. These have not changed materially from those outlined in our 2016 Annual Report.**"**
Persimmon	Annual Report (February 2017)	No comment on implications of leasehold reform to pipeline or in any other respects to the business and its objectives. Director's statement on managing Regulatory Compliance: "We operate comprehensive management systems to ensure regulatory compliance. **We hold a landbank sufficient to provide security of supply for short to medium term requirements** and engage extensively with planning stakeholders."
Bellway	Annual Report (November 2016)	Government housing policy is recognised as a risk, but leasehold reform is not highlighted for mitigation. Indeed, the heightened risk it notes is Brexit and its effect on sales.
Taylor Wimpey	Annual Report (February 2017)	Taylor Wimpey's Annual Report recognises the risk of Government policy and planning

		regulations, this includes: "The new Administration has published a Housing White Paper in February 2017, with several months of consultation to follow. Both the Housing White Paper and the Neighbourhood Planning Bill could have a disruptive effect on the planning system, sales rates, site mixes and customer behaviour." No explicit reference is made to the White Paper as impacting on the development pipeline line. However, more general comment is made: "Unforeseen delays or our inability to obtain suitable consents, could impact on the number or type of homes that we build." In a statement issued at its AGM in April 2017, Taylor Wimpey said it would make a provision of £130m: “to alter the terms of the doubling lease to materially less expensive ground rent review terms, with the group bearing the financial cost of doing so”. There was no mention of pipeline risk accompanying the April announcement.