18 September 2017

Response:

Tackling unfair practices in the leasehold market

Summary of key points:

- The consultation paper addresses some important abuses in the property market, specifically in terms of inflated ground rents and onerous conditions
- The underlying problem is that intention of some developers to exploit home owners as a continuing source of profit for an indefinite period after the initial sale.
- The Government's focus should be on closing off these sources of profit by limiting ground rents and giving powers to the Lower-tier tribunal to prevent exploitation of onerous conditions
- While most houses should be sold on freehold terms, there are important exceptions where leasehold sale serves a legitimate purpose; consequently it should not be banned outright.

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NATIONAL HOUSING FEDERATION

1. Introduction

This is the formal response of the National Housing Federation to the Government's consultation paper addressing unfair practices in the leasehold market.

The NHF is the trade body representing housing associations. Our members, in addition to their most familiar role of letting property according to need on periodic tenancies, also own the freehold of a large number of residential properties subject to long leases. Our approach, in responding to the consultation, is to ensure that the abuses identified by the consultation paper can be addressed without impeding the legitimate operation of housing associations and other bodies that manage their relationship with leaseholders in a responsible way.

2. Executive Summary

Although the title of the consultation suggests that it is concerned with leasehold tenure exclusively, it actually addresses a range of abuses some of which can apply in freehold properties as well. Moreover, even if the use of leasehold were to be banned for most new houses as the Government suggests, it is inevitable (as the consultation accepts) that there will be many other types of property, most obviously flats, for which leasehold will continue to be used.

We therefore suggest that the focus of the reforms should be on restricting or probiting the practices that have led some commercial freeholders to seek to derive a substantial source of continuing profit from their leaseholders. This approach will remove the profiteering motive that leads some developers to retain the freehold; while at the same time, it will accommodate the relatively uncommon, but important, circumstances in which there are legitimate reasons for freeholds to be retained.

There are two main mechanisms that are used to exploit home owners for profit.

The first, which applies to leaseholds only, is the charging of excessive ground rents and in particular, the 'back-loading' of ground rent so that it rises steeply in the later stages of a lease. Accordingly, we agree that on new residential leases, whether of houses or flats, there should be a statutory limit on ground rent. While this limit could be set at an entirely notional level (a 'peppercorn'), we have identified cases where there are legitimate reasons for recovering ground rent at a modest level. We therefore tentatively suggest a ceiling of £200 *per annum* as a figure that will be easily met by the leaseholder and will allow the freeholder to derive a small income, but not the kind of substantial return that will attract aggressive profit-seekers.

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The second area of exploitation is the practice of imposing burdensome and restrictive conditions on property owners, for no other reason than to be able to charge handsomely for waiving them. This is not confined to leasehold property; there is increasing evidence that some developers are selling freeholds subject to similar conditions. We propose that any charges made in relation to requests to waive conditions should be statutorily limited to the costs reasonably and necessarily incurred by the freeholder in dealing with the matter; and all residential property owners, whether leasehold or freehold, should have access to the First-tier tribunal to challenge any charges either on the ground either that they are excessive or that the prohibition itself does not serve any useful or legitimate purpose.

It is on these abuses that the Government should focus its attention rather than on trying to reduce the use of leasehold tenure as such, especially since virtually all flats and a small but significant minority of houses will continue to be sold on leasehold terms.

Finally, we also take the opportunity to address a number of more technical points related to issues raised in the consultation paper.

3. Background

In recent years growing evidence has emerged of abuses in the property market as some commercial developers have become increasingly inventive in devising mechanisms that allow substantial ongoing profits to be extracted from owners for an indefinite period after the initial sale. The abuse that has received most attention is the 'back-loading' of ground rents, so that they rise dramatically in the later stages of the lease. In addition, the imposition of burdensome conditions has also proved an important source of profit because of the hefty charges that can be levied for waivers.

Government has published a paper on tackling these abuses. It proposes to ban (with very limited exceptions) the leasehold sale of new houses, in addition to restricting ground rent on new leases to a peppercorn and several other more technical measures.

4. Main text

The Federation shares the Government's concern about the serious abuses that have emerged in the leasehold sector, particularly in the last few years, and we agree that a legislative solution is necessary.

We also agree that for newly built houses (as opposed to flats), freehold sale should be the norm and exceptions to this ought to be rare. In particular, we think it is a grave abuse to retain the freehold in order to maintain a source of future profit and an asset that can be traded. We therefore have considerable sympathy with the Government's proposal to prohibit (with certain exceptions) the leasehold sale of new houses.

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However, we advise caution. Since the consultation was launched on 25 July we have engaged in discussions with our members that have disclosed a number of cases where there is a strong case for selling new houses on leasehold terms (we set these out farther on). Moreover, we anticipate that further consultations will bring to light other instances – both in our sector and in the commercial housing sector – where there may be a legitimate case for the retention of the freehold. We therefore fear that an outright ban might lead to a requirement for a very lengthy list of exclusions – and even then, there would be every chance that a legitimate case will be overlooked.

Therefore, on balance, we suggest that the Government should aim not for an outright ban (even with exceptions) but instead for an approach of removing the scope for profiteering from the leasehold relationship. Such an approach will be necessary in any event (as the consultation acknowledges) in order to protect owners of types of property (chiefly flats) that will continue to be sold on leasehold terms. If leases can no longer be exploited, then there will no longer be any reason to retain the freehold for the purposes of unfair gain and the sale of leases for this purpose will accordingly dry up. However, the avoidance of a complete ban will mean that it will still be possible for developers to retain the freehold in the small but important proportion of cases where there is a legitimate reason to do so.

There is another reason that we believe that the issue is not a simple one of 'freehold, good; leasehold, bad'. This is the increasing evidence that some developers are selling homes on terms that are freehold in a formal sense, but that nevertheless maintain many of the profiteering mechanisms that are associated with the more exploitative types of lease. Therefore, even if the leasehold sale of new houses were to be banned, it would still be necessary to legislate to prevent these abuses.

To sum up, it is our view that the underlying problem is not the leasehold sale of houses as such but the growing practice, in some parts of the property market, of devising mechanisms that exploit home owners as a source of continuing profit. These mechanisms relate both the houses and flats, and not only to leasehold property but increasingly to freehold as well. The focus should therefore be not so much on the exact form of tenure but on shutting off these sources of profit, thereby also killing off the market that has developed in trading them.

Ground rents

As the consultation acknowledges, the issue of leasehold abuses is by no means confined to rapidly escalating ground rents, but it is this aspect that has attracted most attention so we address it first.

We are quite clear that ground rent should be set at a low level and that excessive ground rents are an abuse. This applies particularly to the practice of 'back-loading' ground rent so that it may be relatively modest in the early stages of the lease but escalates rapidly over time. The effect is likely to be to lure unwary purchasers, unversed in property law and inadequately advised, into acquiring a lease that will involve rapidly increasing costs over time and is likely to

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become unsalable. Moreover, even though the leaseholder will normally have a statutory right to enfranchise, the cost will be far higher than usual and is likely to be beyond the means of many leaseholders.

The fact that that certain developers have been successful in selling leases on such onerous terms suggests that buyers' solicitors and mortgagees have failed to apply proper scrutiny to the transaction. We hope that the attention that this issue has now received will lead them to be much more attentive to detail; if so, it will become much more difficult to find a buyer for a lease of this type. This would be a most welcome development, although of course it will do nothing to assist existing purchasers.

We therefore agree that Government should legislate to limit residential ground rents on future leases to a modest amount. This should apply across the board, to leases of flats as well as houses, and it should apply not only to leases of new properties but also to new or extended leases in respect of existing properties (whether the extension is effected through the statutory mechanism or by voluntary negotiation between the freeholder and leaseholder).

Regarding the amount to which the ground rent should be limited, we are aware of a number of cases where the freeholder is a charity or a community-benefit organization of some kind (such a CLT) and the ground rent, although set at a modest level, is applied to some useful function such as meeting running costs or providing some kind of community facility such as a meeting-room. In order to allow this kind of legitimate function to be funded, we suggest that ground rent for a residential leasehold should be limited to an amount that will not embarrass any leaseholder but will nevertheless provide the freeholder with a modest income. The exact figure would have to be determined but as an initial suggestion, we feel that £200 *per annum* might be a reasonable ceiling.

Some parts of the property industry may well protest that a ground rent at this level is too low to be of use to them. With respect, this is precisely the point. The aim should be to set the maximum ground rent at a level that allows the freeholder to derive a limited income for legitimate purposes, but is too low to offer prospects of a meaningful (and tradable) profit.

Prohibitions and permissions

It is clear that ground rents are not the only area of abuse. Some leases contain detailed and stringent prohibitions that the freeholder will, however, consider waiving on receipt of a fee. This has become a lucrative source of revenue for some exploitative freeholders. Although conditions are a reasonable and normal element within leases (and we discuss below the legitimate function of leases for this purpose), it is clear than in some cases the conditions have been written not in order to protect any reasonable interest of the freeholder or other occupiers but simply in order to generate waiver requests for which exorbitant fees can be charged.

To an extent, it can be argued that the issue here is not the prohibitions as such (for which there may be a legitimate function) but the practice of charging fees for waiving them. For instance,

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the freeholder of a 'model village' development might well wish to protect the distinctive character and appearance of the scheme by writing in some highly prescriptive prohibitions about such matters as the external décor of properties. But this is not being done in order to generate income, and indeed the freeholder is likely to refuse to waive these prohibitions even if the leaseholder offers to pay handsomely. This is quite different from the situation where the prohibitions are created purely so that fee-earning waivers will be sought, and indeed the prohibitions may well extend to matters such as remortgaging the property that in no way impinge on the interests of the freeholder or other residents.

It should not be assumed that this issue confined to leases. Even where a house is sold on freehold terms, there are reports that needlessly onerous conditions, with the same potential for fee-generating waivers, are beginning to appear in some freehold conveyances. This practice needs to be nipped in the bud.

We therefore propose a statutory requirement in respect of any condition in a lease, freehold conveyance, or similar instrument in relation to residential property:

- First, that such a condition should be open to challenge on the grounds that the condition does not protect the reasonable interests of the freeholder or of other occupiers or serve any legitimate aim;
- Second, that any permission or waiver should not be unreasonably withheld;
- Third, that the charge, if any, should be limited to any costs reasonably and necessarily incurred in deciding whether to grant the request.

Any challenge on any of the above points should be dealt with in the first instance by the First-tier Tribunal, which should have jurisdiction regardless of whether the property is held freehold or under a lease.

Reasons for retaining freeholds

Although it is, and should remain, the norm for new houses to be sold on freehold terms, we have identified, in the course of discussions with members and others, a number of cases where there is a legitimate case for a long lease to be used instead.

- Shared ownership houses are necessarily sold on long leases. This applies whether or not there are restrictions on staircasing. In virtually all cases, when the property is staircased to 100% freehold title is transferred at that point, and we anticipate that this will continue.
- Some local authorities are showing increasing reluctance to adopt common parts of new developments. This means that areas of grassed open space, and sometimes even drains, roads, and street lighting, do not become the responsibility of the local authority. In effect, the scheme is left with no option but to operate as s private estate even if this is not the preferred option of the developer or the residents. In this situation, the cost of maintaining these shared facilities has to be met by the home owners and as a means of achieving this, it may be appropriate for the freehold of the development to

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be retained and the homes, houses as well as flats, to be sold on long leases so that costs can be recouped through a service charge. (If houses were sold freehold in this situation, it would be necessary to seek recovery of costs through covenants or rentcharges, neither of which is very satisfactory.)

- CLTs use leasehold sale as a means of ensuring that properties are bought and sold in accordance with the aims of the trust. Without this, the danger is that properties would come to be sold on the open market to the highest bidder and the distinctive feature of the CLT would cease.
- There is a strong argument for the use of leases where there are special rules or restrictions relating to the properties or the way they should be used. Typically, in such a case, the freeholder would be an entity with a long-term commitment to the area or the development (thus in contrast to a commercial developer, which typically will acquire the freehold only for the purposes of the development and will have no continuing involvement once the properties have been sold). Examples might be 'model villages' or developments in areas of outstanding natural beauty, where it might be appropriate, in order to protect the character and appearance of the development, to impose unusually strict restrictions on, for instance, the colour scheme of properties, the types of windows or doors, the fitting of television aerials or satellite dishes, or the use of the properties for holiday lets or as *pieds-à-terre*.
- There will also be rare cases where the property, although clearly a house rather than a flat, does not rest on *terra ferma* in the normal sense. This will include houses built on bridges or other structures not resting directly on the ground. A similar case, reported by one Federation member, concerns houses built on a filled-in quarry where special restrictions are necessary owing to the nature of the ground.
- Finally, there will be cases where the developer does not itself own the freehold of the land and consequently cannot dispose of it. For housing associations, this normally arises where a local authority has granted the association a long lease (typically, 999 years) to allow it to develop the land, but has retained the freehold.

Bearing in mind the above examples, and because we are not in a position to state that this list is exhaustive, we suggest that leasehold sale should remain an option, even for houses. We agree entirely, however, with legislation to preclude the sharp practices currently being used by some freeholders to exploit leases as a source of profit.

Existing residential owners subject to onerous terms

The thrust of the Consultation paper is about avoiding the imposition of onerous terms in future sales, and we have reflected this in our response. However, we acknowledge that there are a substantial number of existing home owners subject to these terms. Moreover, they are likely to be trapped since lease enfranchisement will be very costly, while the attention the subject has now received means that the property will be virtually unsalable.

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We acknowledge the difficulties of retrospective legislation. They may, however, have a claim on the ground of misspelling (as with payment protection insurance); in some cases, too, they may have a claim if their solicitor failed to advise them of the implications of the purchase.

Commonhold

There have been suggestion that the use of commonhold offers a potential remedy for the abuses identified in the consultation paper. We do not recommend this approach at this stage.

Partly, this is because of the time factor. It is acknowledged, even by advocates of commonhold, that there are important defects in the Commonhold and Leasehold Reform Act 2002. Rectifying these shortcomings would be a significant undertaking in terms of time and resources. We argue that there is a pressing need to deal quickly with the serious abuses identified in the consultation, and we do not think the matter should await a full-blown review of commonhold.

A further point is that the issue not necessarily limited to leasehold property. Part 6 of the consultation addresses the need for freeholders to have access to the First-tier Tribunal in respect of estate charges. And we have also identified a growing concern about the inclusion of onerous conditions in freehold sales in order to generate a fee-earning need for waivers.

We accept that there may be a case for the use of commonhold either alongside, or instead of, traditional leasehold. However, this should be pursued on its merits as a separate issue, with careful consideration of the implications in order to avoid a repeat of the problems with the 2002 Act. It should not be seen as a remedy for the pressing problems identified in the current consultation and our response.

5. Federation's views

The Federation's view is set out in full in the previous section.

In summary, we agree that it is important to tackle serious abuses in the residential property market. While most of these are associated with leasehold tenure, freeholds are increasingly affected. We believe that the underlying problem is that some developers and property companies (by no means all) have come to see home owners as a continuing source of profit and the focus should therefore be on closing off the mechanisms by which this profit is extracted.

Focusing on reducing the number of leasehold sales is the wrong approach.

- First, because it is clearly not possible to abolish leasehold tenure, at least in the short term, because some properties, especially flats, will continue to be sold in this way. Therefore, even if leasehold sale of houses ceased completely, it would still be necessary to enact measures to prevent exploitation of leases.

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- Secondly, although most house sales should be on freehold terms, there are a large number of cases where leasehold sale serves a legitimate purpose. Any ban on selling houses on long leases would therefore have to be subject to a large number of exceptions.
- Third, some developers are beginning to attach onerous conditions to freehold sales in order to generate continuing profit after the sale. This practice would not be affected by banning leasehold sales; in fact, it would probably increase.

6. Response to consultation questions

Q1: Are you responding as :

- *A private individual?*
- *On behalf of an organisation?*

On behalf of an organization.

Q2: If you are responding as a private individual, is your main interest as:

- *An owner or tenant of a leasehold flat?*
- *An owner or tenant of a leasehold house?*
- *An owner of a freehold house?*
- *A private landlord?*
- *An individual with a portfolio of ground rents?*
- *Other? (Please specify)*

Not applicable.

Q3: If you are responding on behalf of an organisation, is the interest of your organisation as:

- *A residents' management company or right to manage company?*
- *A developer?*
- *An organisation representing leaseholders?*
- *An organisation representing freeholders?*
- *A lender?*
- *A solicitor / conveyancer?*
- *An estate agent?*
- *An organisation representing lenders?*
- *A supplier of management and/or other services to leaseholders?*
- *Other private landlord?*

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- *A social landlord (either Registered Provider or local authority)?*
- *A developer of other housing tenures besides leasehold houses?*
- *A company that buys and sells ground rents?*
- *An investment company or pension fund that has a portfolio of ground rents?*
- *A local authority?*
- *Other (please specify)?*

As the trade body representing housing associations.

Q4: Please enter the first part of the postcode in England in which your activities (or your members' activities) are principally located.

Our members operate in all parts of England.

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

The abuses identified in the Consultation result from increased profiteering on the part of certain developers and freeholders. The focus should be on closing off the mechanisms that allow this to happen. This approach will mean there will no longer be any incentive to create leases to be used in this way, but it will allow leases to continue to be used for legitimate purposes as outlined in our narrative response.

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

- *within a cathedral precinct;*
- *on National Trust or Crown land;*
- *on land owned by local authorities and university bodies with the right for future development;*
- *in shared ownership with a 'restricted staircasing' lease;*
- *of special architectural or historic interest or adjoining properties where it is important in safeguarding them and their surroundings.*

Yes; there are several additional reasons as set out in our narrative response.

- Shared ownership properties depend on a leasehold relationship between the purchaser and the landlord. This applies to all shared ownership, not only to cases where staircasing is restricted. However, we agree that when the owner staircases to 100% the freehold will normally be transferred at that point.
- Cases where the developer does not own the freehold
- Community Land Trusts

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- Where estate costs need to be recovered, a lease may be a more effective mechanism than a covenant or rentcharge (and this is becoming more important in view of the reluctance of some local authorities to adopt the common facilities of new developments)
- More generally, cases where the freehold is vested in an entity that has an enduring involvement in the area and special features of the development need to be protected
- Cases where the house does not stand on *terra firma* as usually understood.

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

We do not have a view on the subject of houses within a cathedral close. We think all the other exceptions in 3.2 are justified, although the exception for shared ownership should apply to all such schemes, not merely those where staircasing is restricted.

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

Yes. Some sites would become impossible to develop; notably, those where the developer owns only a long lease rather than the freehold.

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?

Help to Buy should not support sales on terms that leave the purchaser open to exploitation. But this should not prevent it from supporting leasehold purchases, whether of flats or houses, on terms that are fair and reasonable.

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

Please see our answers to questions 6 and 7 above. The objection should be to sales on exploitative terms, not to leasehold sales as such.

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

We repeat our answer to the previous question. It is exploitative terms that should be discouraged, not leasehold sales *per se*.

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

No special measures need be taken if legislation proceeds speedily (as we urge that it should).

The publicity now attaching to this issue will have done much to alert solicitors and lenders to it, and this in itself should make it much more difficult to sell property on onerous terms.

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 believe the practice is confined to commercial housing development; and even there, it is not the norm. Nevertheless, reports and anecdotal evidence strongly suggest that it is becoming more common, although we are not in a position to put a number on this.

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. i) initial annual ground rent - ii) maximum rate of increase in annual ground rent - iii) how often the rate of increase could be applied to an annual ground rent

We suggest that the focus should not be on the frequency of reviews but on the overall level of ground rent. In general, we feel that, for ordinary residential lease, a ground rent of £200 *per annum* is not excessive and would not be a difficulty for the leaseholder. We accept there may be a case for a somewhat larger figure for properties of exceptionally high value.

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

Assuming that, for residential leases in general, ground rent is permitted up to a modest amount – we tentatively suggest £200 per annum – we do not think there is a need for any further exemption (except, possibly, for exceptionally high-value properties).

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

We think it unlikely. In any case, there is little point in delivering new-build homes on terms that leave the purchaser exposed to serious financial abuses.

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

This is a serious problem given the obvious difficulties with retrospective legislation. It is likely, however, that some purchasers would have a claim on the grounds of misspelling (as with PPI), or of negligence by their professional advisors.

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

Given the nature of these abuses and their rapid growth, we think legislation is urgently necessary. We do not think a voluntary approach will be effective.

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. The term 'rent', for the purposes of deciding whether a tenancy is assured, should be defined to exclude ground rent.

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?

Yes. This should apply to all such charges whether expressed as an estate charge, a rentcharge, a covenant or in any other way.

Freeholders should also have the right to challenge the legitimacy or reasonableness of any charges made for permissions or waivers under the conveyance, &c.

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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?

It is not possible to answer this question in detail. However, we take the opportunity to highlight some specific concerns that have arisen from the operation of the current leasehold regime.

There are long-running concerns about the balance of powers and responsibilities between freeholders and leaseholders. Currently, the law is firmly on the side of leaseholders if they wish to deny landlords access to their property to carry out works for the benefit of the block as a whole; nor is it normally possible to recover the costs of improvements as opposed to repairs. The tragic circumstances of the Grenfell Tower fire have focused attention on this issue. For instance, if the current inquiry were to conclude, as recommended by several senior fire officers, that considerations of public safety make it imperative to retro-fit sprinklers not only in the common parts but within each individual dwelling, freeholders would have no legal basis to gain access for the purpose nor would they be able to recover the cost.

Turning to the extension and enfranchisement of leases, a number of loopholes and unintended consequences have emerged since the passage of the Leasehold Reform, Housing and Urban Development Act 1993. It would be useful to review the operation of this Act to ensure that it functions as originally intended and is fair to leaseholders using the mechanisms the Act provides, to other residents, and to freeholders. It would also be appropriate to review the 'Right to Manage' provisions, to consider whether they still fulfil a useful purpose and, if so, how they can be revised and updated.

The role of forfeiture in residential leases is also ripe for review. Currently, forfeiture is theoretically available but a court order is required and this is very seldom forthcoming because if the lease is forfeit then the former leaseholder gets nothing, whereas the freeholder gains unfettered control of the property, the value of which is likely hugely to outweigh the cause of the original dispute. Forfeiture is thus a 'nuclear option' that courts are understandably reluctant to grant; yet the consequence is that even where the leaseholder is clearly at fault, for instance when there are substantial arrears of legitimately-incurred service charges, the landlord can find itself struggling for a satisfactory remedy. There is a strong argument for allowing courts discretion to grant 'conditional forfeiture': typically, that the lease will be forfeited but only on the condition that the freeholder will reimburse the leaseholder for the net value of the property after sums due to the freeholder, plus reasonable expenses, have been deducted. In the case of a resident leaseholder there could be a further condition that the freeholder must ensure that the leaseholder is permitted to remain in residence as a full assured tenant, thus ensuring that no leaseholder need lose his or her home. A conditional forfeiture might be made subject to a six- or twelve-month stay, giving the leaseholder the opportunity to sell the property and settle the arrears.

Finally, there is the question of commonhold. Whatever the intrinsic value of this approach (concerning which the Federation retains an open mind), what is beyond doubt is that the 2002 Act has not been effective. We urge the Government to review the subject; clearly, it is unsatisfactory that the 2002 Act remains on the statute book as a virtual dead letter.

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7. Conclusion

The consultation paper is correct to identify growing abuses in the residential property market but of its two main proposed solutions – namely, banning leasehold sales of most new houses, and tackling abuses connected with excessive charges – the latter is much the more valuable and the paper's proposals in this area should be improved and extended.

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19 September 2017

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