

NLC Response to Government's Leasehold Reform Consultation

Q1: Are you responding as (please tick one):

A1: On behalf of an organisation

Q2: If you are responding as a private individual....

A2: N/A

Q3: If you are responding on behalf of an organisation, is the interest of your organisation as (tick all that apply):

A3: An organisation representing leaseholders (over 7,500 members since inception in January 2017 with more members joining every day)

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):

A4: Predominately North-West England, where leasehold is a particular problem, but we have members across England and Wales.

Limiting the sale of new leasehold houses

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

A5: The Government should prohibit the sale of new build leasehold houses and flats. They must also prohibit the sale of what our organisation has termed "fleecehold" homes – Homes advertised as "freehold" where ownership of the land is transferred in part to the purchaser but the conditions of the transfer include onerous permission fees that need to be paid to the transferor on similar terms to a lease (e.g. permission fees for home alterations, change of mortgage lender, etc.). So, whilst they may be termed "freehold" these homes have almost all the modern-day leasehold abuses, just no ground rent.

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

None. This is an antiquated, feudal, system that is in existence in very few countries in the world and has already been abolished successfully in Scotland.

Developers and others in the market who have financially benefited from the recent abuses of leasehold law will attempt to justify leasehold from a number of angles; none of which we believe are justified. For example:

- *Myth: Leasehold is needed to ensure to avoid untidy estates and unruly tenants.* This is not true – commonhold provides a model that will achieve the same results and covenants can be built into the transfer of the land (as can be seen in the transfer of land of "fleecehold" homes.
- *Myth: Pension funds will fail.* Ground rent portfolios form just part of a diverse mix of investments that pension funds use. We believe that once pension fund trustees are aware of the human cost of these leases we can turn these assets into a toxic asset in much the same way many pension funds will not invest in arms or tobacco.

- *Myth: Buyers will not understand commonhold.* They are unlikely to understand the intricacies of commonhold in exactly the same way thousands of purchasers clearly do not understand leasehold. That's why we all employ experts in their field to advise us. It will be no more difficult to explain commonhold to people than it is to explain leasehold.
- *Myth: Developers will self-regulate and ensure fairness.* There is no evidence to suggest, in fact quite the opposite, that developers can be trusted to self-regulate. The recent move to "fleecehold" homes is a fantastic example of this. The failure of the developers to fix what is clearly a total market failure demonstrates that they can't be trusted to do the right thing. Leasehold law is complex. It is the belief of the NLC that any change in leasehold law will be studied and loopholes found to continue to exploit customers. In the face of this scandal – onerous ground rents; onward sale of freeholds with no regard for customer detriment, permission fees, informal lease extensions, etc. no developer has yet come forwards to do the right thing and ensure that none of their customers are financially disadvantaged as a result of their actions.
- *Myth: Leaseholders are happy.* Thousands of NLC members will be happy to tell you that they are not "happy" in their leasehold home and regret their decision to purchase. Many so not realise that they do not own their own home; merely the right to live in it for the term of the lease.

In cases where the developer does not own the land (e.g. land is owned by Local Authority, etc.) the abolishment of leasehold would ensure that land is sold before development takes place.

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

These kinds of exceptions must exist in countries where leasehold does not exist – how do they deal with them? We would also draw your attention to recent press articles regarding the outrageous treatment of leaseholders on National Trust land:

<http://www.telegraph.co.uk/news/2017/08/24/national-trust-accused-trying-make-quick-buck-tenants-ground/>

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

No. The basic economics of supply and demand apply. There is substantial demand for new build homes in the UK. Limiting the sale of new build leasehold homes may impact on the developer's profit margins, as they will have no freeholds to sell on to investment companies, but is more likely to result in developers simply increasing the prices of new build homes to maintain margin. There is little evidence to suggest that building homes as leasehold helps to make new homes more affordable. The vast majority of our members who could have bought their freehold at the point of sale, had they been properly informed and advised, could have done so for a relatively small amount (typically 10 to 20 x annual ground rent) and this would not have affected their ability to purchase their home. We have numerous examples of members who are seeing new "freehold"/"fleecehold" homes, identical to theirs in size and specification, being offered for sale at the same or similar prices to their home that was purchased leasehold. We have also seen many examples where purchase of the freehold has been used as an incentive to purchase in just the same way as payment of solicitor's fees, stamp duty or other sales incentives. The continuing

efforts of our organisation, the National Leasehold Campaign, and recent adverse press coverage is, and will continue to, reduce demand for leasehold new homes, forcing either a change in approach or reduced profit margins. Most of the big development companies make huge profits for their shareholders and pay their top executives salaries that some would consider to be obscene. Removing leasehold will impact their profit margins. Those that persist with leasehold or “fleecehold” will also see reduced profit margins as public education continues and market forces take over with consumers moving away from buying depreciating assets from reputationally damaged developers.

On Monday 11th September 2017, the CEO of Gleeson homes, Jolyon Harrison, explained to the All Party Parliamentary Group on leasehold reform that his company builds new homes, particularly in economically challenging areas, and never sells these homes as leasehold or “fleecehold”. When asked if leasehold was necessary to enable sites to be economically developed for new housing he was categorically clear that this is not the case, it’s just about making higher profit.

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?

Yes. Help to Buy scheme has been abused by developers enticing thousands of people into buying new leasehold homes. Government now has a huge stake in depreciating assets.

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

None.

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

The Government must also ensure that the Help to Buy scheme does not support the sale of what our organisation has termed “fleecehold” homes – Homes advertised as “freehold” where ownership of the land is transferred in part to the purchaser but the conditions of the transfer include onerous permission fees that need to be paid to the transferor on similar terms to a lease (e.g. permission fees for home alterations, change of mortgage lender, etc.). So, whilst they may be termed “freehold” these homes have almost all the modern-day leasehold abuses, just no ground rent.

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

None. The continuing efforts of our organisation, the National Leasehold Campaign, and recent adverse press coverage is, and will continue to, reduce demand for leasehold new homes resulting in developers pro-actively changing new homes to “fleecehold”, with just a couple of developers moving to offer true freehold properties. Most of the big development companies make huge profits for their shareholders and pay their top executives salaries that some would consider to be obscene. Removing leasehold will impact their profit margins. Those that persist with leasehold or “fleecehold” will also see reduced profit margins as public education continues and market forces take over with

consumers moving away from buying depreciating assets from developers with reputational damage.

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 have over 7,500 members of the National Leasehold Campaign, many who have been sold properties with onerous ground rents (e.g. doubling ground rents from Taylor Wimpey or Countryside). Many have had their freeholds sold on to investment companies, some with holding companies offshore. Where freeholds have been sold on, the cost to purchase them is many multiples of ground rent – we have examples where the cost of buying freeholds has increased from £4-5k to over £50k. The enfranchisement route to buy freeholds is long, complex and expensive. The management companies that operate on behalf of the freeholders charge exorbitant fees for quotes to purchase freeholds, change mortgage lenders, make home alterations, etc. Some freeholders insist on purchasing the buildings insurance for properties or force leaseholders to include the freeholder on their private buildings insurance to name the freeholder as having an interest in the buildings. Many management companies charge unreasonable fees for communal repairs with seemingly no simple way for leaseholders to challenge them. We find it abhorrent that the developers responsible for onerous ground rents refuse to disclose the numbers of properties involved.

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.

Given the systematic abuse of leasehold that our members have experienced we do not believe that there is any level of reasonable ground rent. Leasehold is a feudal system and should be abolished. We would strongly urge you to consider the considerable secondary income that freeholders can generate by including permission fees within the terms of the lease. A lease with what might look like a reasonable ground rent could have onerous permission fees and the costs to buy the freehold, once sold on to investment companies, is highly likely to be prohibitively expensive.

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

No

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

No. The basic economics of supply and demand apply. There is substantial demand for new build homes in the UK. Restrictions on ground rent levels may impact on the developer's profit margins, as they will price they can sell the freeholds on to investment companies will fall, but is more likely to result in developers simply increasing the prices of new build

homes to maintain margin. There is little evidence to suggest that building homes as leasehold helps to make new homes more affordable. The vast majority of our members who could have bought their freehold at the point of sale, had they been properly informed and advised, could have done so for a relatively small amount (typically 10 to 20 x annual ground rent) and this would not have affected their ability to purchase their home. We have numerous examples of members who are seeing new “freehold”/“fleecehold” homes, identical to theirs in size and specification, being offered for sale at the same or similar prices to their home that was purchased leasehold. We have also seen many examples where purchase of the freehold has been used as an incentive to purchase in just the same way as payment of solicitor’s fees, stamp duty or other sales incentives. The continuing efforts of our organisation, the National Leasehold Campaign, and recent adverse press coverage is, and will continue to, reduce demand for leasehold new homes, forcing either a change in approach or reduced profit margins. Most of the big development companies make huge profits for their shareholders and pay their top executives salaries that some would consider to be obscene. Removing leasehold will impact their profit margins. Those that persist with leasehold or “fleecehold” will also see reduced profit margins as public education continues and market forces take over with consumers moving away from buying depreciating assets from reputationally damaged developers.

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

The Government can support existing leaseholders by introducing a full review of the mis-selling of new build homes in England and Wales. This review should be similar in nature to those implemented to address the mis-selling of pensions, endowment mortgages and PPI. Each case should be reviewed individually and each leaseholder should receive redress that places them back in the position that they would have been in had they not been mis-sold and/or not fully informed at the time they purchased their home. In many cases, particularly those of leasehold houses, we believe that these houses should never have been sold as leasehold. Therefore, the review should aim to deliver a full freehold home together with full financial redress for those involved. The amount that is considered reasonable to purchase the freehold should be clearly defined (e.g. maximum of 9x annual ground rent) to prevent further exploitation of leaseholders. Any ground rent paid to date should be taken into account and offset against the agreed cost of buying the freehold. The leasehold abuses have, for many families, caused emotional distress and this should also be taken in account. Some families are trapped in homes they are outgrowing but can’t sell.

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

This organisation is hugely sceptical about the introduction of voluntary routes for tackling the systematic leasehold abuses. We have seen NO evidence that those involved in building new homes in England and Wales are willing to do the right thing for their customers. Freeholds were sold to investment companies with complete disregard for customer

detriment. Although it may seem that developers are pro-actively moving to offer “freehold” properties to customers, they are in reality “fleecehold” - Homes advertised as “freehold” where ownership of the land is transferred in part to the purchaser but the conditions of the transfer include onerous permission fees that need to be paid to the transferor on similar terms to a lease (e.g. permission fees for home alterations, change of mortgage lender, etc.). So, whilst they may be termed “freehold” these homes have almost all the modern-day leasehold abuses, just no ground rent. In many cases, developers then introduce a “management or service charge” for common areas - and these are even less tightly regulated than leasehold! Whilst there is some argument for management charges on estates where local authorities will not adopt roads and such like, this is yet another revenue stream that developers (and the management companies that they sell the management contracts to) are learning to exploit whilst providing little or no service. For customers already trapped in this leasehold scandal we are aware of two developers who have currently pro-actively announced that they are taking action: Taylor Wimpey have set aside £130m for their Ground Rent Assistance Scheme, which appears to be positive, but on further investigation we find:

- The £130m has been set aside to compensate freeholders, not TW customers
- TW are suggesting that the best way forwards is to change customers who have a doubling ground rent to a lease where ground rent increases by RPI. This is clearly not the best way forwards, as that would be to make these properties freehold.
- RPI increases will apply every 10 years for the term of the lease (typically 250 years); doubling ground rents increased every 10 years for the first 50 years then remained flat.
- The scheme does not assist TW customers who have leases where ground rent increases by RPI and whose freehold has been sold on. They now face a long and expensive process to buy their freehold via enfranchisement or pay exorbitant permission fees to freeholders
- The scheme is voluntary – there are thousands of customers who will be unaware of the scheme and have not applied. This is scandalous – Taylor Wimpey know exactly where these homes are and are unwilling to alert customers of the issues they have created
- Many TW customers have ground rent that has already doubled – a change to RPI increasing ground rent will not help at all. Costs to pay the freehold via enfranchisement will be considerable.

Countryside have started to buy back the freeholds from the investment companies that they were sold to and are offering them for sale to the leaseholders. Again, this initially appears positive but:

- The offer to customers is not freehold; it’s fleecehold
- The cost to buy is a considerable multiple of ground rent

Exempting leaseholders potentially subject to ‘Ground 8’ possession orders due to their level of ground rent

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

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?

Yes. The system to challenge needs to be simple and accessible, unlike the current leasehold system. This organisation believes that legislation is also required to prevent the systematic abuse of purchasers of new build homes where developers introduce a “management or service charge” for common areas. Whilst there is some argument for management charges on estates where local authorities will not adopt roads and such like, this is yet another revenue stream that developers (and the management companies that they sell the management contracts to) are learning to exploit whilst providing little or no service.

The Government must also consider the impact of private estates. Many local authorities are now refusing to adopt services such as roads, etc. Purchasers of new build properties on such estates must be fully informed where the council has no intention of adopting what are typically public services funded by council tax, so that there are no future surprise costs. They must be made aware what the implications of non-adoption are so that they make a fully informed choice at the point of sale (by developers and conveyancing solicitors). Failure to do this may lead to a further consultation in a number of years’ time on the mis-selling of new build homes on private estates.

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 organisation believes that there are a number of further areas of leasehold reform that should be prioritised, including:

- Developers should not be allowed to recommend conveyancing solicitors in what is a clear conflict of interest. This should include no sales incentives that offer discounts on legal fees if one of a chosen panel of solicitors is chosen. Customer must choose a solicitor that is independent of the developer.

- Influence conveyancing associations and organisations to educate their members further on leasehold issues and “fleecehold”. There are still too many examples of customers being advised that leasehold is “normal” or leaving permission fees in the transfer of land is “normal”.
- Ownership of leases with onerous ground rents should be considered a toxic asset and pension funds should be advised to avoid investing in them in the same way that those with ethical investment policies avoid investing in arms and tobacco companies. Real people are suffering as a result of the creation of these asset classes.
- Full investigation into any conflict of interest or unprofessional behaviour by senior executives of the big developers. There are clear connections between the senior executives of the big development companies, the investment companies created to purchase the freeholds that they created and management companies.
- Transparency of the companies investing in freeholds and management/service charges. Many of these companies have holding companies offshore.
- The regulation of managing agents – the fees charged by management companies are scandalous with seemingly little recourse for customers to challenge them.
- Other abuses of leasehold law – freeholds sold without right of first refusal on technicalities; informal offers for lease extensions
- A full review of the retirement homes market, where older and potentially vulnerable customers and their families are subject to huge fees and the loss of a sizeable proportion of the property value when they come to sell