



Internal review of the advice and support to leaseholders: Final Report

Annex A - Terms of reference

Annex B - Methodology

1. Introduction and background

1.1 Alongside the 21 December response to the consultation on *'Tackling unfair practices in the leasehold market'*, government committed to "a wider internal review of the support and advice to leaseholders to make sure it is fit for purpose in [the] new legislative and regulatory environment".

1.2 Although the review took a holistic approach to the provision of advice to leaseholders, inevitably, the role and performance of the Leasehold Advisory Service (LEASE) was a primary focus.

1.3 LEASE was set up in 1994 as a public company limited by guarantee, and became an Executive Non Departmental Public Body (NDPB) in 2005. LEASE provides independent, impartial, initial legal advice on the complex area of residential leasehold law which includes advising park home owners. The majority of funding is grant in aid from MHCLG with smaller funding provided by the Welsh Government. The MHCLG funding includes up to £465k extra funding over two years for LEASE to provide an additional service to support leaseholders on building safety and fire safety related issues.

1.4 There are currently 25 members of staff, 18 of whom are advisers. The board is made up of six members, although there are currently three vacancies including the Chair. This reflects recent changes to the membership of the LEASE board. In April, to avoid any perception of a conflict of interest between his role as Chair of Lease and his personal business interests, Roger Southam decided to step down as Chair. In May, Nicola Mullany resigned from her position as a board member.

1.5 Although this review is entirely separate to the issues surrounding, in particular Roger Southam's position, stakeholders have commented on these matters in the context of seeking to improve the provision of advice and support to leaseholders. To the extent that it seems to us to have fitted within the terms of reference, we have considered the implications of the stakeholder perceptions of LEASE within the final recommendations.

1.6 Although the review was announced as part of the wider commitment to leasehold reform and, therefore, leaseholders in the most common sense of the term are the focus of the report, we recognise that LEASE also provides a valuable service to park home owners. Where the report talks about the future of LEASE and the advice they provide this should be read as covering all of the advice they provide including to park home owners.

2. Detailed findings and proposed recommendations

Headline conclusion

2.1 The review found that leasehold continues to be a complex tenure and many leaseholders and potential leaseholders do not understand the terms of their lease. The review found that, where received, LEASE advice was well regarded and helped

leaseholders to understand the service they should expect which meant they were in a better position to make informed decisions.

What do leaseholders need?

2.2 In terms of what leaseholders need, the headline finding of the review is that there continues to be a real need for the provision of free, initial, impartial advice to leaseholders and park home owners. Other points raised included;

- The need for more education of leaseholders and potential leaseholders and more information available pre point of purchase.
- The provision of better signposting to more formal legal advice suppliers including pro bono advice.
- The requirement for a consumer champion or national voice for leaseholders. When pressed it was generally agreed that this point was not about direct lobbying or criticising government which may be inappropriate. It was more about clarifying the purpose and empowering any organisation that provides advice to make better use of internal data, information and intelligence to identify abuses or anomalies and raise them with government to inform policy making.

Provision and quality of LEASE advice

2.3 LEASE described their role as helping the leaseholder by explaining how the law applies to them so that they become empowered and can engage with third parties in an informed way. Generally, interviewees were positive about the advice given by LEASE. The information contained on the website was well received and provided good basic advice on the most common leasehold queries.

2.4 We heard less direct experience of the other information and advice channels used by LEASE, their telephone helplines, email/letters and outreach programmes. Some concerns were raised that 'phone advice could be overly complex and legalistic when the advice really needed to be simple, practical and easy for non lawyers to consume.

Gaps in provision and what needs to be done better

2.5 Alongside the gap in early advice at point of purchase and the need for increased signposting, we were also told that there needed to be more collaboration across the housing sector. LEASE should use their position to bring together experts across the housing and advice sector, co-ordinating advice and information so that it was consistent and easy for leaseholders to find. For example, it was argued that LEASE could learn lessons from existing legal advice organisations that had expertise in translating difficult legal issues into plain English.

2.6 There were big concerns about LEASE's profile and reach and a sense that LEASE needed to do more to get documents and advice into the hands of leaseholders at the right time. Colleagues representing the ombudsmen sector explained that, on many occasions, they had to signpost to LEASE advice at the point of redress rather than a leaseholder having received their advice either to inform their position or, potentially, to prevent the dispute from escalating.

2.7. Evidence we received suggested that LEASE could use their expertise to help or train colleagues in other parts of the advice sector, in particular other bodies where leaseholders may go to resolve other issues or disputes. This would ensure that leasehold advice could be more easily accessible. Other suggestions included prioritising the face to face work by undertaking more outreach events and ensuring that the LEASE 'offer' and contact details

were included in the increasingly numerous media reports on leasehold. This would ensure that leaseholders knew where they could get advice when unfair practices hit the public consciousness. A key theme was the need to be more innovative in the provision of advice, considering whether the current approach and existing channels were the right ones, it was suggested that this could include whether more could be done to support leaseholders at the tribunal itself.

2.8. On building and fire safety it is acknowledged that LEASE has a difficult role. We heard some concerns about the quality of advice and customer service alongside concerns about the speed of response and the capacity and capability of the body to source and then meet demand. There was also a general sense that not enough was being done to engage the huge numbers of leaseholders who may be affected by fire safety issues and who could, potentially, benefit from LEASE's advice and support.

LEASE the brand

2.9 A small minority felt that the LEASE brand had become 'polluted' by the perceived commercialisation of the organisation and that it should not continue in its current form.

2.10 Others felt that the perceived politicisation of LEASE, which had led to criticism of their role and performance in parliament and beyond, had been a distraction and was regrettable. However, it should not detract from the need for the continuation of its advice giving functions. This view was supported by a distinct call for the provision of advice to be more representative of leaseholders.

2.11 LEASE themselves were clear that they were "unashamedly" on the side of leaseholders. They have stopped advising professions – e.g. managing agents and ceased all commercial activity, being funded entirely by MHCLG and the Welsh Government. They were clear that they acted in the exclusive interest of leaseholders, following Gavin Barwell's speech as Housing Minister which confirmed that this was their principal role. There do remain some residual concerns, expressed by some stakeholders, that this change in objective has not been made completely clear.

Could the functions be delivered differently in future?

2.12 It was conceded by the majority of interviewees that, outside of LEASE, there was little other specialist, impartial assistance available to leaseholders free of charge. As a result, there was overwhelming support for continuing the advice functions of LEASE.

2.13 Concerns were expressed that if the functions were not government funded then it was unlikely that anyone would deliver this service as there was no market for the provision of these functions. On the face of it these responses reflect the findings of the most recent triennial review of LEASE which ran an exploratory market testing exercise to see whether there were any other organisations with the capability or willingness to provide these services. At that time no organisation expressed an interest and no other obvious candidates were identified.

2.14 The Welsh Government (WG) supports the continued role of the advice functions provided by LEASE. WG signpost to LEASE as the main source of information for leaseholders in Wales and there were no other organisations in Wales who could fulfil function.

LEASE data

2.15 A snapshot of the latest annual performance information for 17/18 up to February 2018 is set out below.

- Individual website visits 1.4m;
- 773k advice guides and 734k FAQ fact sheets downloaded. These are above target for this financial year;
- Total advice enquiries (incl telephone and written enquires) 20,468 – a reduction from the previous year of 5%. They are currently at 74% of the pro rata target of 30,000.
- Customer satisfaction ratings are, on average, 4.4 out of 5 across all advice channels.

2.16 The data has obvious limitations given the focus on process and volumes rather than outcomes. On the face of it the volumes show a demand for this advice which supports the views we have received about the necessity of maintaining this provision for leaseholders.

3. Recommendations for consideration

Recommendation 1: maintain the delivery of advice to leaseholders and park home owners

3.1 The main conclusion of this review is that there continues to be a need for free, initial and independent advice for leaseholders and park home owners. Evidence continues to suggest that leasehold is a complex tenure and that leaseholders still require bespoke advice and support to understand both their rights and obligations. This is supported by the raw numbers of leaseholders seeking LEASE advice through the website and via other channels. There remains, therefore, a demand for support and advice which is free and impartial. This conclusion is reinforced by the government's current focus on addressing unfair practices in the leasehold system and supporting leaseholders in buildings where there are fire safety concerns.

Recommendation 2: refresh and clarify the aims and activities

3.2 The second recommendation is that there should be a refresh of the overarching purpose/aim of the delivery of leasehold advice so that there is clarity about what the advice should achieve and who it is for. This responds to the evidence we received that there was real confusion about the LEASE role. This includes from within the organisation itself. In particular there was debate about whether LEASE should be acting as a consumer champion or national voice with a number of stakeholders taking the view that given their role in providing advice they should make better use of their data to highlight potential abuses to government. Elsewhere there remained confusion about LEASE's commercial activities and whether they should be diversifying their offer to leaseholders by, for example, providing mediation services. On the latter point evidence we received was clear that LEASE should concentrate their resources on improving the provision of advice and support to leaseholders and resist the temptation to diversify into other activities.

3.3 Any refresh should also include minimum standards regarding the quality of advice provision so that there is clarity and transparency about the level of service that leaseholders can expect to receive. All activities should support the delivery of the overarching aim and purpose. These should all apply however the functions are delivered in future. An initial draft informed by this review is set out below. This is by no means a definitive list and will require further work with, and the agreement of, any future delivery organisation including LEASE.

Overarching aim and purpose for the delivery of leasehold advice

- To be the first port of call for leaseholders, potential leaseholders and park home owners in England [and Wales] and to provide high quality information and initial advice to the sector. To provide timely, accurate and accessible advice tailored to lay people.

Core activities to achieve the aim.

- The provision of high quality information, initial advice and guidance to leaseholders, potential leaseholders and park home owners is paramount. All other discretionary activities which do not relate to the provision of advice should cease (i.e. mediation).
- Continue to develop the offer to leaseholders affected by building safety issues and increase the number of leaseholders accessing building safety advice.
- The continued development and optimisation of all advice channels and consideration of new ones, for example tribunal based advice and support.
- Minimum quality standards for the provision of initial advice should be devised. This should emphasise accuracy, clarity and plain English. Steps should be taken to learn lessons from the advice sector about how to tailor legal advice to lay people.
- In pursuit of these aims, to collaborate with experts across the housing sector and to provide clear signposting to other forms of advice and guidance, including formal legal advice.
- To raise the profile of the advice functions so that all leaseholders, potential leaseholders and park home owners are aware of the support that can be accessed.
- To be unambiguously on the side of leaseholders, making this clear in any business or corporate plans.
- To make best use of data and expertise and advise government on leasehold trends, areas of interest and where changes may be required.

Recommendation 3: The future of LEASE.

3.4 Examining opportunities for improving the provision of advice to leaseholders was included in the review's terms of reference. The future of LEASE was, therefore, a major subject of discussion within this context. There remains a small body of stakeholder opinion which takes the view that LEASE cannot be reformed and that no tinkering with the existing structure or personnel will retrieve its credibility. The overall conclusion of this review would not go so far as to say that the organisation is broken beyond repair or so tainted that it can no longer function. In fact there remains a groundswell of opinion which supports the continued delivery of advice to leaseholders provided by LEASE.

3.5 However, it is right, given the terms of reference, that we take the opportunity to consider the full range of options for the continued delivery of advice to leaseholders. This builds on the work undertaken as part of the most recent triennial review of LEASE. The starting point is that there is no inherent requirement for LEASE to continue operating as an NDPB. Their current status requires board members and separate back office functions which, it was argued by some stakeholders, is inefficient for an organisation of this size and budget. Some evidence we received suggested that it has been difficult to establish the added value of the board and this has added to the perception that LEASE as an organisation have struggled to keep track with recent developments in leasehold reform. This it was argued, fed the criticism that the organisation is not completely on the side of leaseholders.

3.6 On the other hand a decision to discontinue LEASE and deliver its functions differently – at this time - is a risk both in terms of the provision of support for leaseholders

and the perception that government is no longer interested in helping leaseholders and is, potentially, backing away from the commitment to leasehold reform. Many responses emphasised that any potential disruption to a service that is well regarded and important to leaseholders should be avoided. This is especially true in the context of the important role that LEASE is being funded to provide advising leaseholders on building safety.

3.7 We have, therefore, considered a full range of options for the continued delivery of advice to leaseholders. Although we have given this considerable thought we believe that there is more work that needs to be done to explore (1) whether there are benefits to delivering advice to leaseholders differently and (2) if that is the case, whether there are viable alternatives to LEASE. These points are interconnected and, at this stage, we do not feel that we are in a position to make a proper evidence based recommendation to Ministers.

3.8 This being the case the recommendation is that LEASE continues to deliver advice to leaseholders and park home owners in the short term while further work is undertaken to look at options for longer term delivery. This work can be informed by the current list of options considered by this review, as follows;

(1) Maintain LEASE as an NDPB:

3.9 We could retain LEASE as an NDPB. We could take the view that the recent resignation of the Chair and changes to the board are enough to provide a fresh start for the organisation and continue to work with LEASE as they are currently, having appointed a new Chair either permanently or on an interim basis. Alternatively we could take the opportunity to reinvigorate the organisation by filling existing board vacancies with new members. The current vacancy of Chair offers us an opportunity to strengthen the leadership of the organisation. The right person could help to lead the necessary reforms and reshape the organisation, potentially refreshing and clarifying the purpose as set out at para 3.3 of this report. At its most radical, this option could involve a complete rebranding of the organisation. This option would minimise any disruption to staff and to leaseholders while helping to mitigate current criticisms surrounding the organisation.

3.10 We have considered whether a board is necessary to oversee LEASE or whether it can be led by the Chief Executive. This does not reflect on current or former board members but is an exercise in considering options for how the organisation could be run. There is no requirement for a board to be in place for LEASE to deliver its functions in the short term. As long as the CEO remains in post (Companies Act requires a director to be in post - for this purpose the CEO would fulfil this function). As set out in the Governance & Delegation Authority Framework - the board is ultimately responsible for all that LEASE does but in order for it to discharge its responsibilities appropriately and effectively day-to-day management is delegated to the CEO. If there was no board in place LEASE could continue to deliver its front line service but there could not be any major decisions made until a new board was appointed. The current number of board members (3) are enough to keep the board quorate.

3.11 LEASE could, therefore, continue in its current position or indeed function without a board for an interim period should a decision be made to explore alternative delivery options. Ultimately, we take the view that such an approach is not a long term solution and is potentially disruptive to the effective working of LEASE. Other interim solutions such as the appointment of an interim chair are likely to be better options if such an approach is pursued.

(2) A competitive tender for the advice functions:

3.12 We could put the functions out to the market via a competitive tender. The general view, as evidenced by the 2016 triennial review, was that there is no market waiting to deliver these functions and that without government funding the delivery of initial advice to leaseholders would cease to continue. It was argued that there are no major bodies in the private sector or Voluntary and Community Sector (VCS) ready and willing to take on the full range of services currently delivered by LEASE to the same level of expertise. Where there are existing bodies there were concerns about their capacity to meet the volume of demand, at least in the short term. It was conceded that giving these functions to the private sector would raise formidable issues in respect of impartiality and commercial self interest which were not compatible with the provision of free advice in this area. Others expressed real concerns that, in any event, an alternative body would have to build its capability from nothing which would provide very real risks around quality and timing of advice and could be detrimental to leaseholders.

3.13 However, we could take a more optimistic view about the capacity and capability of the VCS and advice sector to deliver advice to leaseholders than some of the stakeholders we spoke to. It is entirely possible, for example, that the reason other VCS or advice organisations have been less involved in this area is simply because LEASE occupies the field. We know of other advice bodies who do provide advice and others who simply signpost to LEASE rather than provide advice directly themselves.

3.14 We are aware of some voluntary and private sector organisations within the leasehold and housing sector that may be willing to take on this role. There are also legal advice organisations who, arguably, already provide similar functions in terms of helping people solve legal issues or enforce a civil right in the justice sector.

(3) Deliver the functions inside Government

3.15. In this section we set out some of the options for delivering LEASE functions elsewhere in Government. However, there is more work to be done to understand opportunities and risks and, consequently, these are high level options only and require much more detailed work on feasibility. Broadly speaking the options are as follows;

- (a) Delivering leaseholder advice and support through a consumer redress body or new managing agent regulator This option depends on decisions regarding the future of housing redress following the recent consultation on the subject;
- (b) Explore any analogous bodies who could deliver these functions in Government;
- (c) Deliver the functions from within the Department or via an existing ALB.

4. Conclusion

4.1 Any decision to deliver the functions differently carries a risk of disruption to leaseholders and uncertainty for LEASE staff, although some options are likely to be better at minimising these risks than others.

4.2 We should only consider changing the current approach if it will improve the service delivered to leaseholders. Any departure from the current approach will require further detailed work on practicalities and careful handling. We do not believe that we have the right information on which to make an informed recommendation to Ministers. On the one hand we

cannot wholeheartedly endorse the open ended continuation of LEASE in the longer term. While on the other neither do we properly appreciate the risks and opportunities represented by alternative means of delivering advice to leaseholders.

4.3 That is why, having considered all of these options we take the view that more work is required to explore the alternative options in more detail in order to inform more considered advice on the future long term structure of leasehold advice. On that basis we recommend retaining LEASE in the short term and taking the immediate opportunity to refresh the leadership of the organisation through the appointment of an interim chair. Consequently we recommend retaining and reforming the organisation which would mean keeping it as an NDPB, at least in the short term thereby ensuring that there is no disruption to the services provided to leaseholders. The recent resignation of the Chair and board level vacancies provides an opportunity to refresh the leadership of the organisation. This could complement a programme of reforms which should include a new primary purpose or overarching aim and objectives and new corporate and business plans which will improve the quality of service provided to leaseholders.

5. Proposed work to implement the recommendations of the Review

5.1 We propose a body of work to implement the key recommendations of the Review. This will be refined over time and, in most cases, will require close working with LEASE. We will consider options for brigading this work together to provide more coherence and oversight to minimise the 'ask' on LEASE staff and to provide Ministers with confidence that their decisions are being implemented. The work will include:

- Recruitment of an interim chair and other board appointments;
- Work with LEASE on future business planning, organisational objectives and improving and measuring performance;
- Improving the profile and reach of LEASE and LEASE advice including for park homes and building safety;
- Undertaking a project to investigate alternative options for delivering leasehold advice in the longer term.

Annex A

Review of advice and support to leaseholders – Terms of Reference

Context

Leasehold reform is a top priority for government, and it is clear that the current leasehold market has not always offered consumers a fair or transparent deal.

Recent government action includes:

- consultation on unfair practices and government response;
- call for evidence on regulation of letting and managing agents;
- publication of the Law Commission's 13th programme; and
- additional resources for the Leasehold Advisory Service (LEASE) to provide support to leaseholders on fire safety and building safety issues.

This begins a significant programme of work to reform leasehold.

At the same time, and as part of this work, it is right that we review the wider landscape of support and advice to leaseholders and how that can best fit with the evolving legislative and regulatory environment.

Objectives

To consider how successfully the existing landscape of support, advice and dispute resolution delivers for current and prospective leaseholders, and determine any changes necessary to ensure the needs of consumers are met in the evolving legislative and regulatory environment. To do this by:

1. Establishing the advice, support, dispute resolution and consumer championing needed by current and prospective leaseholders.
2. Establishing the current provision for leaseholders.
3. Identifying gaps and shortfalls in current provision and opportunities for improvement or streamlining.
4. Making recommendations to Ministers on how to fill identified gaps or make improvements.

Methodology

Evidence gathering will include a literature review and interviews with key stakeholders. Proposed interviewees include: LEASE chief exec and chair; redress schemes; trade bodies; LKP; APPG chairs; Citizens Advice; Which?; Shelter; Homeowners Alliance; Welsh Assembly Government.

Key interdependencies

The landscape of regulation, redress, advice and mediation is in a period of significant change. The recommendations of this review will inform, and be informed by, wider policy development on regulation and redress across housing, following announcements over the autumn.

Literature review informing this project will include review of responses to *Protecting consumers in the letting and managing agent market: call for evidence* (published 18 October 2017) and *Improving the home buying and selling process: call for evidence* (published 22 October 2017). A consultation on redress and a single housing ombudsman was published this year [15 February] and relevant responses will be considered as they come in.

Annex B

Methodology: List of interviews and other sources of information used to inform the Review:
External interviews

- All Party Parliamentary Group on leasehold (Peter Bottomley MP & Jim Fitzpatrick MP)
- Leasehold Knowledge Partnership
- Association of Legal Enfranchisement Practitioners
- Welsh Government
- British Property Federation
- Association of Retirement Home Managers
- The Property Ombudsmen Service
- Ombudsmen Services
- Associated Retirement Community Operators
- Royal Institute of Chartered Surveyors
- The Association of Residential Management Agents
- The Home Owners Alliance
- 3 separate meetings with the Leasehold Advisory Service

Internal interviews

- Social Housing Team incl the Housing Redress Team
- Building Safety Team and Hackitt Review Team
- Arms Length Body Team
- Housing Strategy Team

Visits and events

- Strengthening consumer redress stakeholder roundtable event
- Leasehold Advisory Service, Fleetbank House
- Leasehold Advisory Service/MHCLG monthly meetings

Other sources of information

- Literature Review & analysis of relevant MHCLG consultations and calls for evidence.
- Leasehold Advisory Service: Triennial Review final report 2016
- Leasehold Advisory Service key performance data
- Competition and Markets Authority: Property Management Market Study December 2014
- Overview of advice websites including Lease, CAB, Which, Homeowners Alliance, Advice Now.
- MoJ '*litigants in person support strategy*' business case and updates.