



Government response to the Housing, Communities and Local Government Select Committee report on Leasehold Reform

Presented to Parliament
by the Secretary of State for
Housing, Communities and Local Government
by Command of Her Majesty

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Introduction

1. The Government welcomes the Housing, Communities and Local Government Committee's leasehold reform report following its recent inquiry.

2. We are committed to cracking down on unfair practices in the leasehold market, improving transparency for existing and prospective homeowners and ensuring that consumers are protected from abuse and poor service - delivering on a manifesto pledge. We have carefully considered the report's recommendations on these important matters and are pleased to provide a full response.

3. The Government is aware of and concerned by a range of unfair practices in the leasehold market that can turn people's home ownership dreams into a nightmare.

4. We have repeatedly made clear our commitment to end exploitative and unfair leasehold arrangements which have no place in a modern housing market – both for future and existing leaseholders. That is why the Government has embarked on a significant reform programme, so home ownership is fairer and more transparent for both leasehold and freehold home owners as well as supporting the greater use of commonhold.

5. We are bringing forward reforms to:

- **ensure that leasehold is only used for flatted developments in the future**, by banning the granting of new leases on houses other than in exceptional circumstances;
- **ensure that consumers only pay for the services they receive, and that people's homes are theirs to live in and enjoy, not designed as an income stream for third party investors**, by restricting ground rents on newly established leases to a peppercorn (zero financial value);
- **ensure that there is a greater choice of tenure for consumers and support for leaseholders who want to buy their freehold or have greater control of the management of their property**, by working with the Law Commission to look at ways to reinvigorate commonhold and improving the process for buying a freehold or extending a lease, or exercising the Right to Manage;
- **ensure that service charges and other charges are fair, information provided to home owners or prospective buyers is transparent and communicated effectively and property agents are up to scratch**, by reviewing charges faced by both leaseholders and freeholders and professionalising and regulating property agents; and
- **ensure that there is a clear route to challenge or redress if things go wrong**, by clamping down on unjustified legal costs for leaseholders, ensuring

all landlord freeholders belong to a redress scheme and giving freeholders on private or mixed-use estates equivalent rights to leaseholders to challenge communal costs.

6. For existing leaseholders with onerous ground rent terms, we have been working with industry to get terms changed to a better deal. In March we announced a new industry pledge – a “public pledge for leaseholders” – to help existing leaseholders trapped in unfair and costly agreements.¹

7. The Government is pleased to see that many of the recommendations made by the Committee align with the Government’s existing reform programme. We have taken into account the Committee’s recommendations in our response to our technical consultation on *Implementing reforms to the leasehold system in England*, which has been published alongside this response.²

8. Work is already underway in many other areas covered by the Committee, including reform of managing agents, service charges and permission fees which are being considered by the *Regulation of Property Agents* working group chaired by Lord Best.³ We have also recently published consumer guides to help inform leaseholders about buying or selling a leasehold property,⁴ and the Law Commission has completed consultations on each of their three major work programmes on Commonhold,⁵ Enfranchisement⁶ and Right to Manage.⁷

9. Leasehold reform is highly complex. The current enfranchisement regime alone is the product of 50 Acts of Parliament totalling over 450 pages of legislation. That is why we are working alongside specialist bodies such as the Law Commission, as well as working closely with partners from across the housing sector and consumer groups and their representatives.

10. It is important that we get the detail right. Careful attention is required as these necessary reforms could have implications for many current as well as future homeowners. We also need to ensure that changes made do not have an adverse impact upon the development of much needed new housing supply or the sustainability of shared facilities, structures and open spaces.

¹ MHCLG March 2019 announcement, <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2019-03-28/HCWS1466/>

² MHCLG, *Implementing reforms to the leasehold system in England: Summary of consultation responses and Government response*, <https://www.gov.uk/government/consultations/implementing-reforms-to-the-leasehold-system>

³ Regulation of Property Agents: Working Group, <https://www.gov.uk/government/groups/regulation-of-property-agents-working-group>

⁴ MHCLG, How to buy, How to sell and How to lease guides: <https://www.gov.uk/government/publications/how-to-buy-a-home>, [https://www.gov.uk/government/publications/how-to-sell-a-home and](https://www.gov.uk/government/publications/how-to-sell-a-home-and) <https://www.gov.uk/government/publications/how-to-lease>

⁵ Law Commission – Commonhold, <https://www.lawcom.gov.uk/project/commonhold/>

⁶ Law Commission – Enfranchisement, <https://www.lawcom.gov.uk/project/leasehold-enfranchisement/>

⁷ Law Commission – Right to Manage, <https://www.lawcom.gov.uk/project/right-to-manage/>

11. We remain committed to introducing legislation as soon as Parliamentary time allows and will continue to take an ambitious approach to reforming the leasehold tenure as part of wider efforts to fix the housing market to ensure that everyone, regardless of the tenure of their home, has an affordable, safe and good-quality place to live.

Summary of conclusions

12. The Government has considered each recommendation from the Committee in turn outlined on pages 8 to 36. As noted above, there are significant areas of overlap with our existing programme of reform. We agree with the following measures:

- a. give clearer information to consumers on how to buy and sell leasehold properties (paragraph 14);
- b. consider the Committee's views on commonhold in light of the Law Commission's report (paragraph 24);
- c. work with developers on a standardised 'key features' document so consumers have clear details on the lease before they buy (paragraph 25);
- d. remove any financial value from future ground rent (paragraph 60);
- e. ensure the Law Commission is able to fully consider the application of unfair terms (paragraph 67);
- f. update planning guidance to state there should be clear and transparent agreement between developers and local authorities on public areas and utilities to be adopted (paragraph 73);
- g. consider the Committee's recommendations on permission fees, major works (including a code of practice) and other charges in light of Lord Best's report (paragraph 78);
- h. explore further the best means to challenge unjustifiable legal costs, including what changes to legislation are needed (paragraph 83);
- i. explore legal changes to forfeiture by asking the Law Commission to update their work on forfeiture (paragraph 85);
- j. extend mandatory membership of a redress scheme to all freeholders of leasehold properties (paragraph 87);
- k. implement improvements to enfranchisement as soon as possible (paragraph 96).

Full conclusions to the recommendations

Future of leasehold tenure

The leasehold model

There are clearly very significant differences between the freehold and leasehold tenures, but these are not always apparent to prospective leaseholders at the point of interest/purchase. As we will come on to recommend, this should be made much clearer to prospective purchasers from the start of the sales process. *Our view is that it would be more appropriate to refer to this tenure as 'lease-rental'. The Government and others may wish to use this terminology in future publications and policy statements.* (Select Committee Report Paragraph 12)

13. The Government is clear that leasehold is a legitimate form of home ownership. While leaseholders own the right to occupy a property for a fixed number of years, as set out in the lease, they are homeowners and have different rights and obligations to those who rent. Alongside having a home to live in, leaseholders have bought an asset which they can sell on in future and using the term 'lease-rental' could risk perpetuating a misconception that they are not truly homeowners. It also risks undermining future sales of leasehold properties for existing owners.

14. We do, however, agree that clearer information should be provided to prospective buyers so that they can make an informed decision when buying a leasehold property. Last year the department published its 'How to Lease' guide to provide information to both existing and prospective leaseholders.⁸ Recently, the Government has published 'How to Buy' and 'How to Sell' guides which include specific information on buying and selling leasehold properties.⁹

Role of freeholders

We are unconvinced that professional freeholders provide a significantly higher level of service than that which could be provided by leaseholders themselves, although we recognise that there are complexities in larger, especially mixed-use developments. The high premiums leaseholders are required to pay—ground rents, permission fees and enfranchisement costs—are paid regardless of the level of oversight the freeholder provides, and do not provide an obvious financial incentive for freeholders to work in the interests of leaseholders or promote the long-term condition of a building. (Select Committee Report Paragraph 19)

15. The Government notes the conclusions of the Committee.

⁸ MHCLG, How to Lease guide, <https://www.gov.uk/government/publications/how-to-lease>

⁹ MHCLG, How to Buy and How to Sell guides, <https://www.gov.uk/government/publications/how-to-buy-a-home> and <https://www.gov.uk/government/publications/how-to-sell-a-home>

Dissatisfaction with the leasehold tenure

As we will go on to outline in this report, too often leaseholders, particularly in new-build properties, have been treated by developers, freeholders and managing agents, not as homeowners or customers, but as a source of steady profit. The balance of power in existing leases, legislation and public policy is too heavily weighted against leaseholders, and this must change. Our report sets out various recommendations for how this might happen. (Select Committee Report Paragraph 25)

16. The Government notes the conclusions of the Committee.

We believe that there is a clear distinction between flats sold on leasehold terms and houses. We recommend that the sale of houses under leasehold should cease, as the Government has proposed, and urgent action be taken to enable those leaseholders in houses to be given the right to enfranchisement under appropriate low cost arrangements. (Select Committee Report Paragraph 26)

17. The Government recognises that leasehold can be an effective tool for making multiple ownership more straightforward, such as in blocks of flats with shared fabric and common areas. The Government agrees with the Committee that, other than in exceptional circumstances, there is no good reason for houses to be sold on a leasehold basis.

18. The Government has already committed to bringing forward legislation to prohibit new residential long leases from being granted on houses, whether new-build or on existing freehold houses. Further details can be found in the response to the *Implementing reforms to the leasehold system in England* technical consultation.¹⁰

19. The Government has also said that it wants to make it easier, faster, fairer and cheaper for people to buy their freehold (either individually, such as for leasehold homeowners, or collectively, with other leaseholders in a block of flats) or to extend their lease. The Law Commission are reviewing the process for enfranchisement, including the qualifying criteria and how costs are determined, and they have recently consulted on a set of proposals and will report later this year.¹¹ They will also consider options for reducing the enfranchisement price that has to be paid by both existing and future leaseholders.

¹⁰ MHCLG, *Implementing reforms to the leasehold system in England: Summary of consultation responses and Government response*, <https://www.gov.uk/government/consultations/implementing-reforms-to-the-leasehold-system>

¹¹ Law Commission – *Enfranchisement*, <https://www.lawcom.gov.uk/project/leasehold-enfranchisement/>

Commonhold can be made to work

We urge the Government to ensure that commonhold becomes the primary model of ownership of flats in England and Wales, as it is in many other countries. The Government was right to have asked the Law Commission to review the legislation concerning commonhold, in particular to make it easier to convert leasehold properties to commonhold, and we urge the Government to act quickly once this review is completed to implement the Law Commission's recommendations. However, if the Government is serious about promoting commonhold as a viable alternative to leasehold, it must also ensure that the incentives to build leasehold properties—particularly, monetary ground rents and permission fees—are more limited. At the same time, the Government will need to ensure that concerns regarding commonhold properties are meaningfully addressed, including ensuring appropriate resident participation in the management of buildings. This might include the provision of training to residents in management roles and ensuring external expert support is made available in extreme circumstances. (Select Committee Report Paragraph 42)

Our expectation is that once commonhold legislation is reformed, leaseholds begin to convert, and more commonhold developments are brought forward, leasehold as a tenure will become increasingly redundant. While it may be the case that some retirement properties and the most complex, mixed-use developments would continue to require some form of leasehold ownership, there is no reason why the majority of residential buildings could not be held in commonhold; free from ground rents, lease extensions, and with much greater control for residents over service charges and major works. (Select Committee Report Paragraph 43)

20. The Government supports the increased use of commonhold and wants to see more commonhold developments. We know there are many advantages of commonhold over leasehold such as: a person can own their flat in perpetuity with no diminishing interest in their property; there is no landlord and so commonhold owners have greater control over the management of their property; and there is no risk of forfeiture.

21. The Government wants commonhold to be a viable alternative to leasehold and that is why we have asked the Law Commission to look at what is needed to reinvigorate commonhold.¹² Responses to the Law Commission's call for evidence highlighted a number of issues within the current law of commonhold which may be making it unattractive to homeowners, developers and mortgage lenders. The Law Commission have subsequently consulted on a range of proposals, such as expanding the potential use of commonhold for larger mixed-use developments and making it easier for existing leaseholders to convert to a commonhold structure. We look forward to seeing the Law Commission's recommendations.

¹² Law Commission – Commonhold, <https://www.lawcom.gov.uk/project/commonhold/>

22.The Law Commission's work will ensure that the legal structure for commonhold is more responsive to the needs of homeowners and developers. The priority is to ensure that we address the perceived shortcomings of commonhold so that developers, lenders and buyers all have confidence in the tenure and it can flourish as an alternative to leasehold.

23.However, leasehold for flats can work effectively in many circumstances and there may be homeowners who do not want the responsibilities that come with commonhold. It is important that people have the right home for them and therefore a choice of tenure that meets their needs. To make this choice meaningful, we need to address the shortcomings of commonhold, so people have the confidence to invest, and the confidence to buy, and in parallel we need to tackle the unfair practices in leasehold.

24.The Government is also aware that there is limited knowledge about commonhold, not only among consumers but also developers, lenders and property agents. Currently, not all lenders are willing to lend on commonhold units. The Government has asked UK Finance to ensure lenders start preparing for an increase in the use of commonhold. We accept there is more Government will need to do to increase awareness of commonhold and its advantages. We will consider what more we can do to support commonhold to get off the ground, working across the sector including with mortgage lenders.

Accusations of mis-selling

Lack of clarity in the sales process

It is clear that many of the leaseholders we heard from were not aware of the differences between freehold and leasehold at the point of purchase, in particular the additional costs and obligations that come with a leasehold property. *The Government should require the use of a standardised key features document, to be provided at the start of the sales process by a developer or estate agent, and which should very clearly outline the tenure of a property, the length of any lease, the ground rent and any permission fees.* (Select Committee Report Paragraph 51)

25.The Government agrees with the Committee that a standardised key features document which provides full lease details at the start of the sales process would be welcome. We will continue to work with major housebuilders to ensure that all purchasers of new-build leasehold homes have all of the pertinent information relating to the lease, and that this is set out clearly, before they make a decision to purchase.

26. The Government has already announced proposals to ensure that a New Homes Ombudsman is established, working with industry and others, and, when Parliamentary time allows, the Government intends to introduce legislation mandating developers of new-build homes to belong to it. On 27 June 2019 the Government published its consultation *Redress for Purchasers of New Build Homes and the New Homes Ombudsman* on the detail of the legislation and the design and delivery of a New Homes Ombudsman.¹³ The consultation seeks views on whether a Code of Practice for developers who build and sell new-build homes should be underpinned in statute. The Government will consider whether a standardised key features document and the information contained in it is set out in a Code of Practice.

27. The position is slightly different for the sales of second-hand homes. In order to provide a full suite of lease information, vendors will need to get the information from their freeholder or managing agent and they will be charged for this information. The current average cost to provide a leasehold pack is around £250. Freeholders and managing agents generally also charge an additional fee to update this information, if the sale period is longer than 12 weeks (it currently takes around 19 weeks to sell). Given this upfront cost, the Government will not require that all of this information is provided up front. The Government is mindful of the need to avoid financial barriers which could hinder homeowners putting their homes on the market for sale.

28. However, the Government does believe that all purchasers should be made aware of whether the house they want to buy is being sold on a leasehold or freehold basis and if it is leasehold, the length of the unexpired lease. Leaseholders can easily obtain this information from HM Land Registry for a small fee. Estate Agents should ensure that this information is provided before they market any leasehold property so that buyers know what they are buying before they make an offer. Vendors should provide the full suite of leasehold information to the purchaser's conveyancer before contracts are exchanged. The Government is taking action to ensure that this information is supplied by freeholders and managing agents to short timescale and at a reasonable cost and will set a maximum fee and number of days for providing this information. This is set out in the Government response to our recent consultation.¹⁴ The Government has also included specific information on buying and selling leasehold properties within its *How to Buy* and *How to Sell* guides which were published recently.¹⁵

¹³ MHCLG, Redress for Purchasers of New Build Homes and the New Homes Ombudsman Consultation,

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/812038/Redress_for_Purchasers_of_New_Build_Homes_and_the_New_Homes_Ombudsman_.pdf

¹⁴ MHCLG, Implementing reforms to the leasehold system in England: Summary of consultation responses and Government response, <https://www.gov.uk/government/consultations/implementing-reforms-to-the-leasehold-system>

¹⁵ MHCLG, How to Buy and How to Sell guides, <https://www.gov.uk/government/publications/how-to-buy-a-home> and <https://www.gov.uk/government/publications/how-to-sell-a-home>

Promises to purchase the freehold

The right of first refusal currently only applies to leasehold flat owners. The Government is right to seek to extend this right to leasehold houseowners. *The Government must also close the legal loophole allowing developers to sell freeholds to subsidiary companies, which means leaseholders lose out on the opportunity to purchase the freehold at whatever price it is offered to the new freeholder. This would benefit both new and existing properties.* (Select Committee Report Paragraph 56)

29. The Government has previously stated that it would consider introducing a Right of First Refusal for house lessees.¹⁶ We have announced in our response to the technical consultation on *Implementing reforms to the leasehold system in England* our commitment to bring forward legislation to introduce a Right of First Refusal for house lessees which will apply to any houses exempt from the forthcoming leasehold house ban, but will also apply to existing leasehold houses.¹⁷ This Government intervention will provide parity for leasehold houseowners with leasehold flat owners. As part of this work we will also consider the need to address legal loopholes within the existing Right of First refusal for flat lessees (and applicability for house lessees) as identified by the Committee.

The standardised key features document we recommend should also include, prominently, a price at which the developer is willing to sell the freehold within six months or, otherwise, a prescribed statement that the developer is not so willing, and that the purchaser would have to rely on their statutory rights. (Select Committee Report Paragraph 57)

30. The Government agrees with the Committee that consumers should be provided with clear information in order to make an informed decision. At this stage, prior to the completion of the Law Commission's work on enfranchisement, it is premature to conclude how this must be presented but we will consider this recommendation in light of the Law Commission's recommendations.

31. In addition to the measures to reform the building and selling process through a New Homes Ombudsman, the Government will continue to work with industry to improve the sales practices of developers, which includes the need to provide clear information in relation to a purchaser's rights and obligations.

¹⁶ MHCLG, Tackling unfair practices in the leasehold market: summary of consultation responses and Government response, <https://www.gov.uk/government/consultations/tackling-unfair-practices-in-the-leasehold-market>

¹⁷ MHCLG, Implementing reforms to the leasehold system in England: Summary of consultation responses and Government response, <https://www.gov.uk/government/consultations/implementing-reforms-to-the-leasehold-system>

Comparison with PPI mis-selling

Developers denied that their sales teams deliberately misled leaseholders with partial sales information and false promises of purchasing their freeholds at an agreed price. But the number of near-identical stories from leaseholders reflects a serious cross-market failure of oversight of sales practices. Some affected leaseholders may have a strong claim that their properties were mis-sold. *The Competition and Markets Authority should investigate mis-selling in the leasehold sector within the next six months and, where appropriate, make recommendations for appropriate compensation, with the option of enfranchisement.* (Select Committee Report Paragraph 61)

32.The Government shares the concerns of the Committee about evidence which suggests that developers' in-house sales teams deliberately misled leaseholders with partial sales information and false promises of being able to purchase the freeholds at an agreed price. As the Committee identifies, the Secretary of State wrote to the Competition and Markets Authority asking them to look into potential mis-selling of leasehold homes. The Secretary of State wrote again to the Competition and Markets Authority after the publication of the Committee's report requesting that they reconsider their original decision not to investigate mis-selling in the leasehold sector.

33.We are pleased that the Competition and Markets Authority has since announced that it will investigate the extent of any mis-selling and onerous leasehold terms, including whether they might constitute 'unfair terms' as legally defined, using its consumer protection law powers. This may result in them bringing enforcement proceedings if the evidence they uncover warrants it. We acknowledge that this work must be done thoroughly and will take time, and we look forward to the outcome of the investigation.

Relationship between developers and solicitors

Consumers must be able to access independent and reliable legal advice when purchasing a property. Their interests cannot be served where they are coerced into using developer-recommended conveyancing solicitors, who rely on repeat business from developers and may not be inclined to put their client's interests first. *The Government should prohibit the offering of financial incentives to persuade a customer to use a particular solicitor. Further, as outlined above, key sales information should be provided at the start of the sales process in a standardised key features document, so purchasers are in no doubt about the costs involved in purchasing a leasehold property.* (Select Committee Report Paragraph 67)

34.The Government agrees that consumers must be able to access independent and reliable legal advice when purchasing a property. There is no place for coercion or

deceptive practices within a modern housing market. We note that recommendations regarding firms providing particular services e.g. conveyancers can sometimes be helpful where consumers are unfamiliar with the legal process, however consumers must have confidence that advice provided is made in their best interest.

35. The National Trading Standards Estate Agency Team recently published guidance on transparency, highlighting agents' statutory duty under the Consumer Protection Regulations 2008 to give consumers clear details about any referral fee arrangements.¹⁸ The National Trading Standards Estate Agency Team will closely monitor whether this guidance is being followed, reporting back to Government in March 2020. We will then determine whether further action should be taken.

36. However, we know that many new-build homes are sold directly by developers rather than through estate agents. The Government agrees that more needs to be done to strengthen consumer redress for purchasers of new-build homes, which is why on 1 October 2018, the Government announced proposals to ensure that a New Homes Ombudsman is established, working with industry and others, to protect the rights of homebuyers and hold developers to account. When Parliamentary time allows, we intend to introduce legislation to require developers of new-build homes to belong to a New Homes Ombudsman, which will be underpinned in statute. On 27 June 2019 the Government published its consultation *Redress for Purchasers of New Build Homes and the New Homes Ombudsman* on the detail of the legislation and the design and delivery of a New Homes Ombudsman.¹⁹ The Government is clear that it expects all developers, and those they refer purchasers to, to treat their customers fairly and provide an exemplary professional service.

37. The Solicitors Regulation Authority's code of conduct is clear that clients' interests must be protected and solicitors must inform clients of any financial or fee-sharing arrangements so that clients are in a position to make informed decisions. In addition, consumers may take unresolved service complaints to the Legal Ombudsman, which can order redress. Where the Solicitors Regulation Authority considers that solicitors are not meeting these standards, they can and do take regulatory action in the public interest. The Secretary of State wrote to the Solicitors Regulation Authority on 2 November 2018 expressing concerns about the conveyancing sector, and the Solicitors Regulation Authority is taking action, as set out in its recently published residential conveyancing thematic review. The Council for Licensed Conveyancers has also recently implemented new rules that require lawyers regulated by it to provide more information about the services they provide and how, and the quality and price.

¹⁸ National Trading Standards Estate Agency Team, Guidance on Transparency of Fees involving Property Sales,

https://www.nationaltradingstandards.uk/site_assets/files/Guidance%20for%20EABSs.pdf

¹⁹ MHCLG, Redress for Purchasers of New Build Homes and the New Homes Ombudsman Consultation,

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/812038/Redress_for_Purchasers_of_New_Build_Homes_and_the_New_Homes_Ombudsman_.pdf

38. We further agree that property agents should provide clear and transparent information about the costs involved in purchasing a leasehold property. As a minimum, all leasehold properties must be clearly marked as such in marketing information and state the remaining period left on the lease. Sellers are required to provide a leasehold information pack to prospective buyers, which sets out key aspects of the lease such as ground rent and service charges.

Failure to highlight onerous terms

It was extremely concerning to hear from so many leaseholders that their developer-recommended solicitors had failed to advise them of onerous terms in their leases. Such evidence suggests that some conveyancing solicitors have become too close to developers and did not put their client's interests first. This does not, however, absolve developers of the blame for taking advantage of their dominant position and creating such leases in the first place. Buyers should be encouraged to ensure that they seek independent legal advice. (Select Committee Report Paragraph 72)

39. The Government notes the conclusions of the Committee.

Routes to redress

The Government needs to act on its promise to help leaseholders seek redress where they have been let down by their conveyancing solicitors. *The Government should undertake a review within the next six months to determine whether existing routes, including to redress the Legal Ombudsman's scheme, are satisfactory or whether a new Alternative Dispute Resolution (ADR) scheme should be established for leaseholders with legitimate claims against their solicitors.* (Select Committee Report Paragraph 78)

40. In the 21 December 2017 response to the consultation *Tackling unfair practices in the leasehold market*, the Government committed to “work with the redress schemes and Trading Standards to provide leaseholders with comprehensive information on the various routes to redress available to them, including where their conveyancer has acted negligently”. The Government has worked with Trading Standards to ensure that the information is available, and they recently published helpful guidance for leaseholders seeking redress.²⁰

41. We note that part of the Committee's report focuses on leaseholders who may wish to sue conveyancing solicitors for negligence. However, it is important to note there are existing routes for complaint and redress if a consumer is unhappy with the

²⁰ National Estate Agents Trading Standards, Leasehold redress guidance for consumers, <https://en.powys.gov.uk/article/4850/Consumers-Information-NTSEAT>

service received by, or conduct of, their lawyer, other than taking legal action. Although of course, this latter option does remain open to consumers.

42. Where a consumer feels the conduct of their solicitor falls below the standards required by the Code of Conduct, they should contact the Solicitors Regulation Authority who, depending on the specifics of the case, may take regulatory action.²¹ All solicitors are required to hold professional indemnity insurance and consumers may be entitled to claim against this insurance where their solicitor has failed to properly advise them. Furthermore, the Solicitors Regulation Authority maintains a discretionary compensation fund which can also compensate consumers in certain instances.

43. Where a consumer feels the service they received from their lawyer fell below the standard expected, they can also complain to the Legal Ombudsman scheme, which is administered by the Office of Legal Complaints. The Legal Ombudsman is able to award redress up to a maximum of £50,000.

44. Lawyers regulated by the Council for Licensed Conveyancers are also required to signpost the existing routes of redress (to the Legal Ombudsman for service issues, and to the Council for Licensed Conveyancers in relation to breaches of the Code of Conduct) and the lawyers themselves will refer claims of negligence to their Professional Indemnity Insurers for action. We believe that the cases that are referred to by the Committee, which can give rise to a negligence claim as a result of a conveyancer's failure to advise a client properly in relation to a purchase, can be managed within that framework. An alternative approach could confuse an already complex set of arrangements.

45. In July 2017 the Ministry of Justice undertook a Tailored Review of the Office for Legal Complaints (OLC).²² This review was conducted to *“provide assurance to Government and the public on the continued need for the form and function of public bodies, as well as assessing the potential for improved efficiency, effectiveness, and governance.”* The Review *“concluded that the function of...the OLC are still required by Government and that the current delivery models...a statutory body (OLC) [is] the most appropriate for the organisations. [And whilst the OLC] is generally operating efficiently and effectively, the review has made a number of recommendations to further improve performance and efficiency.”* The Ministry of Justice, as part of its ongoing Tailored Review programme, will consider the best time to review the Office for Legal Complaints again.

²¹ Solicitors Regulation Authority, SRA Code of Conduct 2011, <https://www.sra.org.uk/solicitors/handbook/code/content.page>

²² Tailored Reviews of the Legal Services Board and the Office for Legal Complaints, <https://www.gov.uk/government/publications/tailored-reviews-of-the-legal-services-board-and-the-office-for-legal-complaints>

46. In addition, in December 2016 the Competition and Markets Authority published the final report in its legal services market study.²³ This report made a number of recommendations, several of which were aimed at improving the transparency of price, service and quality, consumer choice and redress, and the broader operation of the legal services market as a whole. The Legal Services Board, in responding to the Competition and Markets Authority's market study, required regulators to publish action plans setting out how they planned to implement the recommendations of the study. Regulators are in the process of implementing these action plans.

47. We are also conscious that introducing a new Alternative Dispute Resolution scheme for leaseholders to complain about their conveyancer may well cause confusion and could create problems with overlapping jurisdictions. Given this, and the above, the Government does not believe now is the correct time to conduct a wider review.

Onerous lease terms

Ground rents

The Minister was right to say that ground rent bears no relation to the level of maintenance or quality of service provided to leaseholders—indeed, that is the function of the service charge. Many buildings are well managed without any ground rent being paid. While monetary ground rents may provide an economic incentive for professional freeholders to participate in the market, we have already concluded that—other than in complex, mixed-use developments and retirement properties— most do not provide a significantly higher level of service than that which could be provided by leaseholders themselves. While developers told us that leasehold houses are routinely sold at a lower price than their freehold equivalents, it is concerning that several leaseholders provided evidence that this was not a consistent policy. (Select Committee Report Paragraph 83)

Any ground rent is onerous if it becomes disproportionate to the value of a home, such that it materially affects a leaseholder's ability to sell their property or obtain a mortgage. In practical terms, it is increasingly clear that a ground rent in excess of 0.1% of the value of a property or £250—including rents likely to reach this level in future due to doubling, or other, ground rent review mechanisms—is beginning to affect the saleability and mortgage-ability of leasehold properties. (Select Committee Report Paragraph 91)

48. The Government notes the conclusions of the Committee.

²³ CMA, Legal services market study, <https://assets.publishing.service.gov.uk/media/5887374d40f0b6593700001a/legal-services-market-study-final-report.pdf>

Ground rents in existing leases

It is unacceptable that some leading developers have in the past sought to use their market dominance to exploit their customers through the imposition of terms leading to disproportionate ground rents. There is no excuse for such onerous terms, which are symptomatic of the imbalance of power in the leasehold market and are causing considerable distress to affected leaseholders. (Select Committee Paragraph 95)

49. The Government notes the conclusions of the Committee.

We were disappointed that, despite making two written requests for information, some developers were not willing to provide us with clear information as to the numbers of leasehold houses and flats that they had sold with ground rents exceeding 0.1% of the value of the properties. We are sceptical that the industry does not readily have access to data on the houses they sold and the ground rents they set. There needs to be greater transparency from the industry and we call on them again to publish this information, to help clarify the true scale of the issue. (Select Committee Report Paragraph 96)

50. The Government agrees with the Committee that developers should publish information on the number of leasehold properties sold with onerous ground rent terms. We also agree that developers should provide periodic updates as to how many of these properties have been contacted to change these terms and how many properties have had their terms changed.

51. As a first step, Government has been working with industry to get existing leases with onerous ground rent terms changed to a better deal. In March we announced a new industry pledge – a ‘public pledge for leaseholders’ – to stop leaseholders being trapped in unfair and costly deals.²⁴ More than 60 leading property developers and freeholders, including Taylor Wimpey and Barratt Homes, signed the pledge at its launch, with further companies coming on board since then. The pledge commits freeholders and developers to changing the leases of those affected by onerous lease terms. We encourage others to sign the pledge.

Remedies for existing leaseholders

The options for leaseholders with onerous ground rents are limited. Houseowners are entitled to pay to enfranchise after two years of ownership, thus removing any obligation to pay ground rent, onerous or otherwise. However, this would only be possible if the cost of enfranchisement—which we call to be made “substantially cheaper” later in this report—is both reasonable and affordable for the house owner. Flat owners, similarly, are entitled to enfranchise, although this is a much more

²⁴ MHCLG, Industry pledge, <https://www.gov.uk/government/news/james-brokenshire-announces-industry-pledge-to-crack-down-on-toxic-leasehold-deals>

difficult process, requiring the consent of 50% of the owners in a residential block of flats. Otherwise, leaseholders are reliant upon the benevolence of their freeholder to remove unreasonable terms. (Select Committee Paragraph 98)

52.The Government notes the conclusions of the Committee.

We are not convinced of the merits of the voluntary developer- and freeholder-led schemes that offer to convert leases with doubling ground rents to RPI-based review mechanisms, which have been supported by the Government. RPI-reviews may still see ground rents rise above 0.1% of a property's value, which many lenders consider to be onerous. Most require RPI reviews across the entire length of the lease, as opposed to a defined initial period, while others demand high fees in exchange for removing onerous terms. These offers are not good value when compared to the Government's proposed cap for ground rents on new leasehold properties. It is unacceptable that many freeholders and developers are not even offering this bare minimum. The Government's threat to "eyeball" freeholders and developers is simply not good enough; leaseholders need stronger action from central Government—as we call for in this report. (Select Committee Paragraph 106)

53.The Government notes the conclusions of the Committee.

"Retrospective" legislation

We note that it would be legally possible for the Government to introduce legislation to remove onerous ground rents in existing leases. While it would be difficult to change the terms of existing leases, it would not be impossible. Retrospective legislation could be compliant with human rights law. We understand that controlling rent would not be confiscation of property but control of its use. Thus, provided not imposed arbitrarily, it is likely Parliament could amend the terms of existing leases 'lawfully'. Compensation would most likely result in a scheme being compliant with human rights legislation; the impact on society could also justify a scheme. (Select Committee Paragraph 114)

Indeed, the Government proposes to reduce the premium payable to enfranchise, effectively buying freeholders out of a contractual income stream at a discount. There is little economic difference between reducing the statutory discount and reducing the contractual income stream, and this is likely to be equally justifiable in human rights terms. (Select Committee Paragraph 115)

54.The Government notes the conclusions of the Committee.

The Government should undertake a comprehensive study of existing rents to determine the scale of the problem of onerous ground rents and the level of compensation which would be consistent with human rights law. (Select Committee Paragraph 116)

55. The Government agrees that a formal review of ground rent abuses is needed to understand, among other things, the scale of the problem. This will be included as part of the Competition and Markets Authority's investigation into the extent of any mis-selling and onerous lease terms and we await the outcome of their work.

Our view is that, within any retrospective legislation, existing ground rents should be limited to 0.1% of the present value of a property, up to a maximum of £250 per year. They should not increase above £250 over time, by RPI or any other mechanism. (Select Committee Report Paragraph 117)

Alternatively, the Government should establish a compensation scheme for the mis-sale of onerous ground rents, funded by the relevant developers and the purchasers' solicitors. (Select Committee Report Paragraph 118)

56. The Government understands the difficulties and frustrations for existing leaseholders who are unhappy about the amount of ground rent they are required to pay and feel their leases should be changed. As the Committee has recognised, there are many considerations in thinking through the implications of new legislation which would interfere with individual contracts, for instance taking account of Article 1 Protocol 1 of the European Convention on Human Rights and the principle of legal certainty.

57. We have encouraged freeholders and developers to sign a "public pledge for leaseholders" to commit to certain actions to help existing leaseholders with onerous ground rent terms. This is an important first step towards industry fixing the problem that they have created. We will be continuing to monitor the actions of industry and will take further action as necessary.

58. Where leaseholders have a complaint about a conveyancer or solicitor, a property developer, an estate agent, landlord or freeholder, or management agent, there are existing routes to redress. We have worked with Trading Standards who recently published comprehensive information for leaseholders to access the right support.²⁵

Ground rent in future leases

We recommend that the Government should revert to its original plan and require ground rents on newly established leases to be set at a peppercorn (i.e. zero financial value). (Select Committee Report Paragraph 129)

²⁵ National Estate Agents Trading Standards, Leasehold redress guidance for consumers, <https://en.powys.gov.uk/article/4850/Consumers-Information-NTSEAT>

59. The Government agrees with the Committee on removing any financial value from ground rents on newly established leases. Many respondents to the *Implementing reforms to the leasehold system in England* technical consultation raised concerns about the proposal of capping ground rents at £10 on newly established leases, arguing that it was not a peppercorn rent and would still leave leaseholders exposed to financial liabilities.²⁶

60. Having considered the responses to our consultation and also the Committee's recommendation, the Government has decided to legislate to remove any financial value from ground rent in future leases. This should ensure that no monetary rent is payable under the lease, i.e. no financial payment of any sum.

While the Law Commission is currently undertaking a programme of work to reform commonhold, it will take some years for its proposals to be implemented and for commonhold to become a realistic alternative for most leaseholders. Until that point, freeholders are likely to continue to play some role in the supervision of large and complex mixed-use developments—and we accept that there will be little incentive for them to do so without a monetary ground rent. *The Government may need to implement an exemption for mixed-use buildings, until such point that the reforms proposed by the Law Commission and others lead to commonhold becoming a realistic alternative for leaseholders in more complex buildings. Any exempted ground rent should not exceed 0.1% of the present value of a property, up to a maximum of £250 per year.* (Select Committee Report Paragraph 130)

61. The management and supervision of mixed-use developments is no different in principle to management and supervision of single use developments. The costs of management and supervision are generally recoverable under the leases from residential leaseholders through the service charge and from commercial tenants in either the same way or as a part of the rent.

62. For complex estates, charging a ground rent for 'supervision' is ineffective since it (a) allows freeholders to define what 'supervision' is (b) is not contractually connected with any maintenance obligation and therefore, leaseholders are unable to hold freeholders to account for any failing in 'supervision'.

63. The Government therefore does not believe an exemption is needed for mixed-use developments. For more information on the proposals to restrict future ground

²⁶ MHCLG, *Implementing reforms to the leasehold system in England: Summary of consultation responses and Government response*, <https://www.gov.uk/government/consultations/implementing-reforms-to-the-leasehold-system>

rents and consideration of exemptions, see the Government's response to the recent technical consultation.²⁷

Permission fees

Alongside its proposal to cap ground rents on future leasehold properties, the Government should require that permission fees in the leases of new-build properties are not permitted to exceed the true administrative costs incurred by freeholders. The Government should also introduce legislation to restrict onerous permission fees in existing leases, as we have recommended for onerous ground rent terms. Compensation for costs already incurred may be appropriate if terms in existing leases are found to have been unfairly imposed upon leaseholders. (Select Committee Report Paragraph 137)

64. The Government recognises the Committee's concerns expressed in this recommendation on the use of permission fees and the need to review the use of and charges associated with them. It was for these reasons that we stated in our consultation response document *Protecting consumers in the letting and managing agent market*²⁸ that the *Regulation of Property Agents* working group chaired by Lord Best would be asked to consider permission fees, including considering in what circumstances they are justified and whether they should be capped or banned. The working group is expected to report back to Ministers later this summer.²⁹ The Government will consider recommendations made by the working group alongside recommendations made by the Committee on leasehold and freehold fees and charges and we will consult as necessary.

The growing practice of imposing permission fees in the deeds of new-build freehold properties and enfranchised former-leasehold properties is an unjustified intrusion upon homeowners which many campaigners have rightly referred to as 'fleecehold'. The Government should require that permission fees are only ever included in the deeds of freehold properties where they are reasonable and absolutely necessary, although we cannot think of any circumstances in which they would be so. (Select Committee Report Paragraph 138)

²⁷ MHCLG, Implementing reforms to the leasehold system in England: Summary of consultation responses and Government response, <https://www.gov.uk/government/consultations/implementing-reforms-to-the-leasehold-system>

²⁸ MHCLG, Protecting consumers in the letting and managing agent market, <https://www.gov.uk/government/consultations/protecting-consumers-in-the-letting-and-managing-agent-market-call-for-evidence>

²⁹ Regulation of Property Agents: Working Group, <https://www.gov.uk/government/groups/regulation-of-property-agents-working-group>

65. The Government agrees in principle with the Committee that it can see few circumstances where a permission fee should be required for a freehold property. The *Regulation of Property Agents* working group chaired by Lord Best will consider in what circumstances such fees are justified and whether they should be capped or banned. The *Regulation of Property Agents* working group is expected to report back to Ministers later this summer.³⁰ The Government will consider recommendations made by the working group alongside those made by the Committee on leasehold and freehold fees and charges, and we will consult as necessary.

The Government should set clear timescales for the implementation of its proposal to introduce a cap on the administration fees that are incurred during the sales process. (Select Committee Report Paragraph 139)

66. The Government remains committed to ensuring that leaseholders can obtain leasehold information from freeholders and managing agents in a timely manner and at a reasonable cost. The Government consulted on proposals to do this in its recent consultation *Implementing reforms to the leasehold system in England* which closed in November 2018. The response to this consultation sets out how we will meet this commitment.³¹ These proposals will be implemented as soon as Parliamentary time allows.

Onerous terms: are they ‘unfair’?

The Government should immediately ensure that the Law Commission has adequate funding to extend its programme of work to identify how unfair terms law could apply to existing leaseholders. (Select Committee Report Paragraph 144)

67. The Government has already asked the Law Commission to undertake a project to consider the application of unfair terms law to residential leases, particularly after assignment. The law of unfair terms already applies to new leases. The scope of the project is expected to be relatively limited and would not be a “fix” for all onerous and unfair terms in leases. However, it would explore the possibility of bringing more leases within the purview of unfair terms law and could therefore provide consumers with another potential tool.

Alongside a review of mis-selling in the leasehold sector, which we have called to be carried out within the next six months, the Competition and Markets Authority should exercise its powers under section 130A of the Enterprise Act 2002 to indicate its view as to whether onerous leasehold

³⁰ Regulation of Property Agents: Working Group, <https://www.gov.uk/government/groups/regulation-of-property-agents-working-group>

³¹ MHCLG, *Implementing reforms to the leasehold system in England: Summary of consultation responses and Government response*, <https://www.gov.uk/government/consultations/implementing-reforms-to-the-leasehold-system>

terms constitute ‘unfair terms’ and are, therefore, unenforceable. (Select Committee Report Paragraph 145)

Were the CMA to determine that onerous terms in existing leases are indeed unfair, or that they were mis-sold, the Government should take further action. *Where leaseholders have paid unreasonable permission fees or ground rents over the course of their leases so far, they should have those refunded by freeholders with interest. In such circumstances, the Government should establish a clear and easily accessible route to compensation for affected leaseholders.* (Select Committee Report Paragraph 146)

68. Paragraphs 32 and 33 above outline our engagement with the Competition and Markets Authority. If, following their investigation, the Competition and Markets Authority considers that a detriment has occurred under unfair terms legislation, the Government will consider what further action is needed.

Service charges, one-off bills and dispute mechanisms

Transparency and overcharging

We have been greatly concerned by reports of leaseholders being overcharged, paying for services they are not receiving, and high commission fees for freeholders and managing agents. *The Government should require the use of a standardised form for the invoicing of service charges, which clearly identifies the individual parts that make up the overall charge. It should be clearly identified where commission has been paid to the managing agent or freeholder and the proportion of the cost this constitutes.* This would improve transparency and allow leaseholders to make comparisons with equivalent properties. (Select Committee Report Paragraph 153)

69. The Government strongly believes that service charges should be transparent, communicated effectively and that there should be a clear route to challenge or redress if things go wrong.

70. The *Regulation of Property Agents* working group chaired by Lord Best is considering issues around standards and use of charges faced by leaseholders and freeholders and will report back to Ministers later in the summer.³² One of those considerations will be the introduction of a standardised form. The Government will consider recommendations made by the working group alongside those made by the

³² Regulation of Property Agents: Working Group, <https://www.gov.uk/government/groups/regulation-of-property-agents-working-group>

Committee on leasehold and freehold fees and charges, and we will consult as necessary.

Regulation of sinking funds

Sinking funds urgently require regulation, to improve transparency for leaseholders and protect their money from less scrupulous freeholders and managing agents. Requiring them to be held separately, as legislated for in 2002, would improve transparency and make it easier to identify the trust funds. *The Government should immediately bring into force sections 42A and 42B of the Landlord and Tenant Act 1987 to ensure that leaseholders' reserve funds are protected.* (Select Committee Report Paragraph 157)

71. The *Regulation of Property Agents* working group chaired by Lord Best is considering issues around the protection of leaseholder monies held by a freeholder or managing agent. They will report back to Ministers later in the summer.³³ The Government will consider the recommendations made by the working group alongside those made by the Committee on leasehold and freehold fees and charges, and as noted above, we will consult as necessary.

Estate management fees and the non-adoption of communal areas

There should always be a clear agreement between developers and local authorities before development begins as to the public areas and utilities that are to be adopted by local authorities. These details must be provided to prospective purchasers at the start of the sales process. (Select Committee Report Paragraph 160)

72. When a new development is granted planning permission, local authorities can use conditions or section 106 planning obligations to secure a commitment from developers to provide and maintain open and communal space. This means that the local authority does not have to adopt and maintain the land at its own expense. It is up to developers and the local planning authority to agree appropriate funding arrangements as part of these commitments.

73. The Government will update the guidance on planning obligations and conditions to reaffirm that there should be a clear agreement between developers and local authorities about public areas and utilities that are to be adopted. The Government agrees it should always be clear to potential purchasers what the arrangements are for the upkeep of open spaces, other communal services or facilities and the maintenance of roads.

The Government is right to legislate to ensure that freeholders who pay charges for the maintenance of communal areas and facilities should have the same rights as leaseholders to contest the fairness of those fees. As we

³³ Regulation of Property Agents: Working Group, <https://www.gov.uk/government/groups/regulation-of-property-agents-working-group>

have recommended for service charges, such fees should be provided to residents on a standardised form, which clearly identifies the individual parts that make up the overall charge. (Select Committee Report Paragraph 163)

74.As the Committee acknowledges, the Government has already announced it will legislate to ensure that freeholders who pay charges for the maintenance of communal areas and facilities on a private or mixed-use estate, can access equivalent rights as leaseholders to challenge the reasonableness of service charges. Further detail can be found in the Government response to the technical consultation on *Implementing reforms to the leasehold system in England*.³⁴

75.As mentioned above, the *Regulation of Property Agents* working group chaired by Lord Best is considering the introduction of a standardised form and will report back to Ministers later in the summer.³⁵ The Government will consider recommendations made by the working group alongside recommendations made by the Committee and will consult as necessary.

One-off bills for major works

High one-off bills for major works can be greatly distressing for leaseholders. Florrie’s Law was introduced to protect council leaseholders from high one-off bills, but it has too many exemptions. (Select Committee Report Paragraph 169)

76.The Government notes the conclusions of the Committee.

Further, high bills are not only a concern in the social sector. We have received evidence from several leaseholders in the private sector who have been made to pay high one-off bills for major works. We recommend that the Government implement a new consultation process for leaseholders in privately-owned buildings affected by major works. A threshold of £10,000 per leaseholder should be established above which major works should only proceed with the explicit consent of a majority of leaseholders in the building. If no agreement can be reached with leaseholders, freeholders should only be able to proceed with major works subject to the authorisation of a tribunal, which would determine whether the works are both essential and represent value for money. If works are deemed to be inessential or unreasonably expensive—for example, due to excessive management fees—they should not be allowed to proceed. Where such works do proceed, the freeholder should be obliged to offer a low-interest, long-term loan to affected leaseholders. The threshold should apply regardless of whether funding is provided by central government and

³⁴ MHCLG, *Implementing reforms to the leasehold system in England: Summary of consultation responses and Government response*, <https://www.gov.uk/government/consultations/implementing-reforms-to-the-leasehold-system>

³⁵ *Regulation of Property Agents: Working Group*, <https://www.gov.uk/government/groups/regulation-of-property-agents-working-group>

should apply to the cumulative costs of all major works within a five-year period. (Select Committee Report Paragraph 170)

77. The Government agrees with the Committee that the consultation process for major works should be reviewed to ensure that it gives leaseholders adequate notice of potential high bills and gives leaseholders a meaningful opportunity to engage in decisions concerning major works.

78. The *Regulation of Property Agents* working group is considering major works consultations and will report back to Ministers later in the summer.³⁶ As previously mentioned, the Government will consider recommendations made by the working group alongside those made by the Committee on leasehold and freehold fees and charges, and we will consult as necessary.

These proposals would rebalance power towards leaseholders, ensuring transparent and meaningful consultation over major works, pressure to keep costs low, and the explicit consent of those who ultimately have to pay the bill. They would also ensure that leaseholders are not able to block essential works unnecessarily. Further, this would also likely create a strong incentive for freeholders to manage sinking funds more effectively. (Select Committee Report Paragraph 171)

79. The Government notes the conclusions of the Committee.

The Government should introduce a Code of Practice for local authorities and housing associations, outlining their responsibilities to leaseholders in social housing blocks and offering guidance on best practice for major works. Local authorities should be required to provide evidence to leaseholders that they are receiving the same value from procurement practices in the public sector as they might reasonably expect in the private sector, and that public procurement rules are not used as an excuse for overcharging. Further, as is common in the private sector, local authorities should also be required to administer sinking funds for each of the buildings or estates they are responsible for, so leaseholders are less at risk of unexpected bills for major works. (Select Committee Report Paragraph 172)

80. A Code of Practice for property agents is currently under consideration by the *Regulation of Property Agents* working group, chaired by Lord Best. As part of this work, the group is considering standards of transparency of service charges (including major works consultations). The *Regulation of Property Agents* working group is also considering how to better protect leaseholders from large and

³⁶ Regulation of Property Agents: Working Group, <https://www.gov.uk/government/groups/regulation-of-property-agents-working-group>

unexpected large one-off bills, such as encouraging the greater use of sinking funds. The scope of this work applies to property agents, but we will consider how recommendations made could also apply to social leaseholders. The working group will report back to Ministers later in the summer.³⁷ The Government has also asked in its Green Paper, *A new deal for social housing*, what more it can do to support leaseholders of a social housing landlord.³⁸

Legal costs

Leaseholders should not be required to run the risk of paying their freeholder's legal costs, even if they win. *The Government must legislate to require that freeholders' tribunal costs can never be recovered through the service charge, or any other means, when the leaseholder has won the case, unless the leaseholder has behaved unreasonably.* This would go some way towards alleviating the risks to leaseholders in bringing service charge or other challenges to tribunal. *The Government must legislate to require that freeholders' tribunal costs can never be recovered through the service charge, or any other means, when the leaseholder has won the case, unless the leaseholder has behaved unreasonably.* (Select Committee Report Paragraph 179)

81. The Government announced in March 2019 that it will address the issue of legal costs.³⁹ We believe leaseholders should not be subject to unjustified legal costs and have committed to closing the legal loopholes that allow this to happen. Leaseholders can already make an application to the First-tier Tribunal to request that their landlord's legal costs are not recharged to them, but not all leaseholders are aware of this and it is discretionary.

82. There may be circumstances when there are legitimate and justified reasons for legal costs being recoverable by the landlord or a management company, such as when a resident-owned freehold company without assets needs to take legal action against a leaseholder who refuses to pay their service charge. We will explore this issue further to see if exemptions are needed.

83. The Government will explore the best means to challenge unjustifiable legal costs including what changes to legislation are needed and if they should apply to existing leases. Changes to legislation to prevent the recovery of unjustifiable legal costs from leaseholders will be implemented as soon as Parliamentary time allows.

Forfeiture

While the threat of forfeiture puts freeholders in a near unassailable position of strength in disputes with their leaseholders, freeholders do

³⁷ Regulation of Property Agents: Working Group, <https://www.gov.uk/government/groups/regulation-of-property-agents-working-group>

³⁸ MHCLG, Social Housing Green Paper: a new deal for social housing, see: <https://www.gov.uk/government/news/social-housing-green-paper-a-new-deal-for-social-housing>

³⁹ MHCLG March 2019 announcement, <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2019-03-28/HCWS1466/>

require an alternative, less draconian, mechanism for ensuring compliance with the lease. *The Government should immediately take up the Law Commission's 2006 proposals to reform forfeiture, to give leaseholders greater confidence in disputing large bills by reducing the threat of losing a substantial asset to the freeholder.* (Select Committee Report Paragraph 185)

84. The Government agrees that forfeiture is a draconian measure and should only be used as a last resort. However, as the Committee has been informed, forfeiture happens very rarely and is subject to the right of relief, to be exercised at the court's discretion.

85. Forfeiture is a part of the general law of landlord and tenant. Changes to forfeiture will require a careful balancing of the rights and responsibilities of landlords and leaseholders. Any changes will also require primary legislation. As a first step, we have asked the Law Commission to update their 2006 report, given the passage of time, and to take into account the implications of the reforms currently underway.⁴⁰

New routes to redress and control for leaseholders

We welcome the Government's strong focus on improving regulation and routes of redress in the housing sector and note it has made multiple announcements over the past 12 months on a variety of proposals. *However, we urge the Government to implement these measures with urgency, and to do so with a clear and joined-up approach that acknowledges how each of these mechanisms might work together, in particular with a Specialist Housing Court and the Housing Ombudsman Service, to provide a coherent route to redress for leaseholders.* (Select Committee Report Paragraph 192)

86. The Government is pleased the Committee recognises its efforts to improve and strengthen redress for consumers in the housing market and acknowledges that we should seek to implement our proposed reforms as quickly as possible. The Government published its response to the *Strengthening Consumer Redress in the Housing Market* on 24 January 2019 which set out ambitious proposals to simplify access for consumers to redress services and close the gaps in redress to allow more consumers to access redress when complaints remain unresolved.⁴¹ The Government announced proposals for a new Housing Complaints Resolution Service to be established to provide a single point of access to redress services across all tenures. We are aware that other bodies are also dealing with housing or housing related issues which will need to be considered as the new service is developed. The Government proposes to set up a new Redress Reform working group to work with

⁴⁰ Law Commission, Termination of Tenancies for Tenant Default, <https://www.lawcom.gov.uk/project/termination-of-tenancies-for-tenant-default/>

⁴¹ MHCLG, Strengthening consumer redress in the housing market, <https://www.gov.uk/government/consultations/strengthening-consumer-redress-in-housing>

redress schemes to focus on developing the new service, working with industry and consumers bodies. More details on the new working group will follow in due course.

87. In parallel, the Government proposes to fill the gaps in redress to ensure more consumers are provided with the opportunity to seek help for their unresolved housing complaints. The Government will actively seek opportunities to bring forward legislation to require mandatory membership of a redress scheme for all freeholders of leasehold properties, developers of new-build homes and all private landlords (including private providers of purpose-built student accommodation and residential park home site owners).

88. The Government recently published a call for evidence on *Considering the case for a Housing Court*. We want a system that works well for all users who bring housing cases to the courts and tribunal, one that is simpler, leads to swifter justice and which offers an improved service. Through this call for evidence, we want to explore how court processes can be improved further, and whether that can be done through a specialist Housing Court or by other means. We are currently analysing responses and will publish our response in due course.

Regulation of the Freehold sector

The Committee supports the proactive approach of freeholders in devising a code of conduct and urges the Government to review the case for mandatory regulation of the freehold sector, overseen by an ombudsman, with redress and sanctions where appropriate. (Select Committee Report Paragraph 196)

89. Currently, legislation applying to the private sector only requires membership of a redress scheme where the freeholder instructs a managing company to manage their property. Freeholders who carry out their own property management on their leasehold properties are not required to sign up to a redress scheme. Therefore, leaseholders (not living in social housing) whose freeholder does not use a managing agent have limited recourse for redress other than through the First-tier Tribunal. However, as set out in the Government's response to the *Strengthening consumer redress in the housing market* consultation, we are proposing to extend mandatory membership to a redress scheme to all freeholders of leasehold properties and will actively seek opportunities to bring forward primary legislation to this effect as soon as Parliamentary time allows.⁴²

90. The Government strongly believes that there should be clear expectations for accessibility, transparency, timeliness and sanctions in terms of complaint handling

⁴² MHCLG, *Strengthening consumer redress in the housing market*, <https://www.gov.uk/government/consultations/strengthening-consumer-redress-in-housing>

for consumers. The responses to the Government's *Strengthening Consumer Redress in the Housing Market* consultation stated that a single code of practice for complaint handling would help improve redress in the housing market. We concluded in our response that the most effective approach in the medium-term would be to drive improvements on a sector-by-sector basis. We see this work being carried out on a voluntary basis but where appropriate we will use existing statutory powers or proposed legislative vehicles to drive uptake.

LEASE

We are concerned that the only government-funded service for leaseholders continues to have such a poor reputation among many leaseholders. *The Government should undertake a comprehensive review of the Leasehold Advisory Service (LEASE), with a focus on maximising the service provided to leaseholders. The Government must, as a matter of urgency, appoint representatives of leaseholders to the board of LEASE, to ensure their voices are fully reflected in strategic discussions.* (Select Committee Report Paragraph 201)

91. The Leasehold Advisory Service provides a valuable service to leaseholders and park home owners. It dealt with 27,477 enquiries and 19,190 customers in 2018/19, compared to 22,207 enquiries and 16,428 customers in 2017/18.

92. Alongside the 21 December 2017 response to the consultation on *Tackling unfair practices in the leasehold market*, the 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". The Government started this process last year, by conducting an internal review of the Leasehold Advisory Service. The review concluded there is a need to maintain the delivery of free, initial, independent advice, and a need to clarify and strengthen the aims and objectives of the organisation so it is clear what this advice should achieve and who it is for. It also concluded that the Leasehold Advisory Service should concentrate resources on improving the provision of advice and support to leaseholders, including minimum standards regarding the quality of advice.

93. On 7 January 2019, the Government appointed Wanda Goldwag as interim chair to strengthen the leadership of the Leasehold Advisory Service and help raise its profile. Ms Goldwag's appointment is pivotal in ensuring that the Leasehold Advisory Service is an effective organisation. She has already had a positive impact and has made it clear that the organisation is on the side of leaseholders and that it only provides support and information to leaseholders and park home residents. She has been engaging with leaseholders and consumer campaigners and has established Project Open Door, a data sharing project to increase transparency about the issues that leaseholders are most concerned about. The first set of data was published on the Leasehold Advisory Service website on 2 April 2019 and further data will be published on a regular basis going forward.⁴³

⁴³ LEASE, <https://www.lease-advice.org/about-us/media/data/>

94. The Government will continue to work closely with Ms Goldwag and her team on a programme to improve and strengthen the Leasehold Advisory Service, and to consider the advice and support needs of leaseholders in the longer term. This will include consideration of the Leasehold Advisory Service board member vacancies and the skill set needed for the organisation in the future. Three of the four current board members are leaseholders, and the organisation regularly engages with leasehold consumers to ensure it continues to meet their needs.

Enfranchisement

Cost of enfranchisement

It is not always clear to leaseholders that there is a statutory route to enfranchisement and lease extensions, and this has led to many accepting worse terms than they might otherwise have been legally entitled to.

Freeholders should be required to provide an estimate of the statutory cost of enfranchisement or lease extensions when making an offer through the informal route. (Select Committee Report Paragraph 208)

95. The Government notes this recommendation in the context of the Law Commission's work on enfranchisement.⁴⁴ The Law Commission consulted on the question of whether, and if so how, voluntary lease extensions should be regulated. The Commission will consider the Committee's recommendations as it prepares its final report.

Law Commission consultation

We support the Government in its objective to make it simpler, easier, quicker and cheaper for leaseholders to enfranchise. We agree that costs are too high and the process too complex. We support the Law Commission's detailed analysis of this issue and look forward to the outcome of its consultation. *We urge the Law Commission to recommend a process that will make enfranchisement substantially cheaper. If this represents "an obvious transfer of power from one party to another", as freeholders warned, then that may be a good thing. The Government should implement these changes within 12 months, as many leaseholders are waiting to enfranchise under a new system.* (Select Committee Report Paragraph 212)

96. The Government notes this recommendation in the context of the Law Commission's work on enfranchisement. The Law Commission will consider the Committee's recommendations as it prepares its final report. The Commission will recommend reforms to make the enfranchisement process simpler, easier, quicker

⁴⁴ Law Commission – Enfranchisement, <https://www.lawcom.gov.uk/project/leasehold-enfranchisement/>

and cheaper, including setting out the options that are available to reduce the premiums payable by leaseholders, whilst ensuring that sufficient compensation is paid to landlords. It will then be for the Government to decide which of those options to adopt. The Government will bring forward any legislative changes as soon as Parliamentary time allows.

As we have already noted, the Government's proposal to reduce the premium payable to enfranchise is equally justifiable in human rights terms as our recommendation to reduce freeholders' contractual income streams through lower ground rents. If the Government is willing to countenance a cheaper process for enfranchisement, it should have no objection to removing onerous terms from existing leases either. (Select Committee Report Paragraph 213)

97. The Government notes the conclusions of the Committee.

Support for low-income leaseholders

While we look forward to the implementation of a reformed enfranchisement process, many leaseholders will struggle to afford to purchase their freeholds at any price. This is a particular concern for house lessees on estates with a mixture of leasehold and freehold tenure, but also where lease terms have affected the saleability and mortgage-ability of properties. *The Government should introduce a low-interest loan scheme, so that leaseholders who want to enfranchise or extend their leases—but cannot afford to or obtain the necessary finance—have the opportunity to do so. This could be promoted as a form of Help to Buy for leaseholders.* (Select Committee Report Paragraph 216)

98. The Government has asked the Law Commission, as part of its work programme on enfranchisement, to examine the options to reduce the price payable by leaseholders to enfranchise. Their proposals include options for a single valuation methodology for enfranchisement premiums. We hope that this standard formula will benefit all leaseholders, meaning that a loan scheme should not be necessary.

99. The Government will also work with UK Finance to ensure that mortgage companies' policies do not disadvantage leaseholders if they are trying to sell their properties or re-mortgage.

National Trust leaseholders

National Trust leaseholders are in a difficult position given the inalienability of the land on which their properties sit. We support the National Trust's proposal to buy back any long lease at market value, which balances the obligations they face on inalienable land, while protecting the value of their leaseholders' assets. The National Trust, and other charities, may wish to

consider whether it is appropriate to sell leasehold properties on inalienable land in the first place. (Select Committee Report Paragraph 222)

100. This is a recommendation for the National Trust. We are pleased the Committee has recognised the special nature of inalienable land and the importance of ensuring the National Trust is able to continue to protect inalienable land for ever, for everyone to enjoy. We have confirmed in our response to the consultation on Implementing reforms to the leasehold system in England that we will provide an exemption from the ban on the granting of new residential long leases on houses for inalienable National Trust land.⁴⁵ While the National Trust rarely develops new leasehold housing on such land, it does sometimes seek to convert existing buildings into leasehold properties as part of the ongoing protection and maintenance of the buildings. Without this exemption the National Trust would have been prevented from developing any houses on this land.

101. The National Trust have informed us that they do not generally intend to grant new long residential leases on inalienable properties not already let on a long residential lease. However, we understand that they need to grant new long leases in certain circumstances. For example, in the case of a surrender of an existing lease and a regrant of a new lease, usually to the same tenant. This is often needed when a leaseholder wishes to change the terms of their lease (such as increasing the length of the term) or for technical legal reasons which require a surrender and regrant.

102. We also understand that there may be exceptional cases where the National Trust deem the granting of a long lease to be appropriate. For instance, where the granting of a lease is part of the terms of the National Trust acquisition of a property. In these cases, the National Trust can acquire the property and therefore protect it for the benefit of the nation because they were are willing to grant a lease.

103. Despite this, the National Trust see this type of case as an exception to the rule. As such, the Government understands that they generally do not anticipate that new long leases will be granted out of inalienable land.

Wider review of legislation

The work being undertaken by the Law Commission is important and welcome. However, the wider legislation that governs leasehold is not fit for purpose, and a more thorough review of leasehold legislation will be required. The Government should invite, and fund, the Law Commission to conduct a more comprehensive review of leasehold legislation, that would incorporate a full review of the Commonhold and Leasehold Reform Act

⁴⁵ MHCLG, Implementing reforms to the leasehold system in England, Summary of consultation responses and Government response, <https://www.gov.uk/government/consultations/implementing-reforms-to-the-leasehold-system>

2002, the Landlord and Tenant Act 1987 and other relevant legislation.
(Select Committee Report Paragraph 226)

104. The Government is reforming leasehold, working with the Law Commission, which will involve overhauling significant parts of the existing law on leasehold and commonhold in taking forward important changes for consumers. The Law Commission's work on enfranchisement alone involves a consideration of 50 Acts of Parliament and 450 pages of legislation.

105. The Government's focus through its current extensive programme is to ensure that concrete change for consumers is delivered. We wish to prioritise our current programme and ensure these changes are delivered and embedded before considering further review of existing legislation.

Conclusion

106. The Government would like to thank the Committee for its inquiry and its shared commitment to promote fairness and transparency for leaseholders and residential freeholders, and ensuring that consumers are protected from abuse and poor service.

107. The Government will continue to take an ambitious approach to reforming the leasehold tenure and reinvigorating commonhold as a viable alternative. It is vital that we have a leasehold market that is transparent, fair and affordable for all those involved; where people know in advance what they are going to have to pay, are not saddled with mounting or unaffordable costs and are able to challenge fees if they feel they are unjustified or unfair.

108. This work forms part of wider efforts to fix the housing sector to ensure that everyone, whether they rent or own their home, has an affordable, safe and good-quality place to live.

109. We hope that this response demonstrates the Government's continued commitment to take action to support both existing and future leaseholders to ensure that leasehold works for everyone.

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