Residential Leasehold Reform

A Task and Finish Group Report

July 2019

Contents

	Page
Foreword	**1**
Introduction	**2**
Executive Summary	**7**
Group Membership	**11**
Sub Groups Key Tasks	**12**
Issues Identified and Recommendations	**14**
Task and Finish Combined Sub Group Recommendation	**27**

Appendices

Appendix 1:	Written Statement Issued by the Minister for Housing & Regeneration March 2018	**29**
Appendix 2:	Previous Work in Relation to Residential Leasehold.	**32**
Appendix 3:	Terms of Reference for the Residential Leasehold Reform Task and Finish group	**33**
Appendix 4:	Task and Finish group Membership	**35**
Appendix 5:	Additional Contributors	**36**
Appendix 6:	Law Commission Review	**42**
Appendix 7:	Glossary of Terms	**43**

Foreword

In recognising the impact of the misuse of leasehold, the former Minister for Housing and Regeneration used the 'tools' available to her and took immediate actions. This response through Help to Buy-Wales and commitment from the volume home builders not to develop and sell leasehold houses in Wales have proved to be highly successful in curbing the issue in the short term. However, it was also essential to take a wider view of the sector and establish why the misuse was able to happen, and take actions to prevent a repeat in the future. To do this the Minister established this independent Task and Finish Group to investigate what might be done. In being invited to participate in this key piece of work it was clear to us that the membership of the group was carefully considered to provide a balanced representation from all stakeholders, and for us to be experts in our sectors.

To ensure the work in a highly complicated and wide area of housing was focused we were given the brief to review key areas of concern and develop a set of recommendations aimed at securing a stable future for leasehold residents. We were also charged with reviewing options for freeholders paying an estate charge. While we were given direction the independence of the group was also a priority which we hope is reflected in this report.

The publication of this report is just the end of the first key stage of the work we are undertaking and alongside the work being done by the Unadopted Roads Taskforce and the Law Commission we intend it to be a big step towards providing security to leasehold residents in Wales. We recognise many of the recommendations set out would need to be implemented by developing new primary legislation, or amending existing primary legislation and they will require detailed technical consideration and be subject to a comprehensive analysis of legislative competence.

Finally, we would like to compliment our colleagues on the group in taking this work forward with a shared objective and focus, and for their commitment, dedication and hard work. We would also like to thank the Wales Cooperative Centre, Rent Smart Wales and Long Harbour Ltd for their important contribution to the work of the group.

We would like to commend the Welsh Government for their actions to tackle the misuse of leasehold and welcome the opportunity we have had in being part of shaping the future of the tenure in Wales.

A joint statement from the Sub Group leads.

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Introduction

Background:

Leasehold is a form of property ownership by means of a long tenancy (granted for 21 years or more initially), which confers the right to occupation and use of the property for a long period – the 'term' of the lease. The term is often for 99 or 125 years but it can also be significantly longer with leases for 999 years not being uncommon. The freehold is retained by someone other than the leaseholder and as with any form of property ownership the freeholder is able to sell the freehold interest. Similarly, the leasehold to the property can be bought and sold during that term. As a 'tenant' of the freeholder the leaseholder may be required to pay the freeholder an annual amount of money known as ground rent, this is set out in the terms of the leasehold agreement when the home is purchased.

Leasehold has been historically accepted as tenure for flats due to the complexities of maintaining and managing the external fabric of the building, communal areas and services. In some areas of England and Wales it was historically common for houses to be sold on a leasehold basis, especially where they were provided as housing for workers in local industry (mines, railways etc.). In Wales it might have been in areas where the freeholder wishes to retain the mineral rights to the land and in England it has been a traditional tenure in the North East and West. However, in recent years there has been an upsurge in the number of new build leasehold houses. This increasing trend in leasehold houses has been associated with poor practice in respect of onerous lease terms.

Leasehold properties may be subject to ground rent, an annual sum payable to the freeholder (or landlord). Traditionally this may have been set at a peppercorn but the amount of the ground rent can be substantial, the details of this charge are governed by the terms of the lease agreement which the leaseholder signs on purchase of the lease. The lease also governs the terms of any review of the ground rent level. This has been one of the key areas where the misuse of the tenure has been directed with:

- High levels of initial ground rent.
- Punitive ground rent review terms e.g. provisions which allow for the ground rent to double every 10 years.
- High charges for purchasing the freehold (often after this has been sold on by the original developer).
- Reluctance to seek dispute resolution through the tribunal system.
- Lack of information provided to potential leasehold purchasers around the consequences of leasehold ownership.

- Related concerns about unclear relationships between developers, sales agents, property management companies, conveyancers etc. where for example referral fees may not be transparent, and there may be a perception of conflicting interests during the sale of properties.

- Lack of knowledge among new and existing leaseholders of their rights and in relation to their lease.

Leasehold homes can also be subject to service charges for the maintenance of communal areas and/or facilities. The freeholder may use a property management agent to carry out functions on their behalf. At the end of the lease if it is not renewed, or in the event of a failure to comply fully with the terms of a lease, ownership reverts to the landlord. Leasehold properties may lose value as the remaining term of the lease reduces with some mortgage companies unwilling to lend on leases with less than a specified number of years left to run.

Current Position:

While many of the issues have been evident for some time a combination of higher levels of unwarranted leasehold properties, media interest and individual constituency queries received by Assembly Members it has raised the prominence of the tenure in the Assembly. The key focus has been on:

- Large increases in ground rent and rent review periods.

- Problems with extending leases.

- The high cost of buying freeholds and the exercise of enfranchisement rights.

- High service charges and unsatisfactory engagement from property management companies.

- Difficulty with setting up Right to Manage companies due to obstruction from freeholders and property management companies.

- Inequalities between the rights of leaseholders and freeholders to challenge service charges (some freeholders face management charges for communal areas and facilities provided e.g. as part of an estate development, but lack the statutory recourse to challenge these which is available to leaseholders).

- Wider issues around the potentially growing predominance of estate management charges being made to freeholders where roads and other communal spaces and facilities are not adopted by local authorities.

Leaseholders of flats have statutory rights to a lease extension (once they have owned the leasehold interest for 2 years), or to apply as a group to either take over the management functions by acquisition and exercise of the right to manage (Right to Manage), or to purchase the freehold (collective enfranchisement). Leaseholders in flats must be given first refusal if the landlord is intending to sell on their interest in the property (Right of First Refusal) provided the requirements of Part 1 of the Landlord and Tenant Act 1987 are met.

Leaseholders of houses have different statutory rights: they may also apply to extend the lease, or they may apply to purchase the freehold of their property, these rights apply after the leaseholder has been a tenant of the house under a long tenancy for 2 years at the time when he/she gives notice in accordance with the Leasehold Reform Act 1967, of his desire to acquire the freehold or extend the lease. Leaseholders of houses do have a right to extend their lease by 50 years under Part 1 of the Leasehold Reform Act 1967. Unlike flats, this is a one time 50 year extension. Leaseholders of flats have a right to a 90 year extension, and can extend as many times as they like.

Leaseholders of both flats and houses have rights to challenge the reasonableness of service charges, by applying for a determination by the Leasehold Valuation Tribunal.

Welsh Government Action to Date on Leasehold

The Minister for Housing & Regeneration issued a written statement (Appendix 1) on 6 March 2018 announcing a package of measures to address concerns around leasehold, these included:

- New criteria for Help to Buy-Wales and the Wales Property Development Fund preventing new build leasehold houses from being built or bought through the schemes (unless under certain circumstances).

- The five biggest volume housing developers in Wales (Bellway, Redrow, Taylor Wimpey, Barratt Homes and Persimmon) confirmed they will no longer offer new build leasehold houses for sale, unless absolutely necessary.

- New minimum standards for lease agreements for both houses and flats purchased through Help to Buy (limiting the starting ground rent to a maximum of 0.1% of property sale value, future increases must be no more than a Government recognised inflation index, minimum lease terms of 125 years for flats and 250 years for houses).

- Introduction of Help to Buy-Wales Conveyancer Accreditation scheme, ensuring the proper advice regarding leasehold is given to purchasers through the scheme. The performance of these conveyancers will be monitored in relation to their Help to Buy-Wales purchases, but the

Welsh Government also promotes using an accredited conveyancer for all property purchases.

- A voluntary code of practice for property management companies to be developed.

In addition to these actions the Minister established a multi disciplinary task and finish group to assist in policy development in this area (terms of reference included at Appendix 3). This group was charged with reviewing the current status of residential leasehold, identifying areas where change is necessary providing recommendations to the Welsh Government on actions which can be undertaken. The group was also given the remit to review the options available to freehold home owner who pay estate management charges. These charges are usually as a result of roads and open spaces not being adopted by the local authority.

To complement the work being undertaken by the task and finish group the Minister for Housing and Regeneration wrote to Assembly Members on 30 April to confirm that the Welsh Government is engaging, alongside the UK Government, with the Law Commission's project on residential leasehold. While the task and finish group take a wide assessment of this extremely complicated area of housing the Law Commission project will initially examine three key areas:

- Leasehold enfranchisement, including lease extensions and the purchase of the freehold of leased properties. The project will consider how the processes can be made easier, quicker and more cost effective.

- Commonhold, which provides an alternative form of ownership to residential leasehold. The Commission will review the current commonhold legislation with a view to improving market confidence and workability.

- Right to Manage (RTM) which was introduced to give leaseholders control over the management of their buildings. However, there have been numerous problems reported. The Commission will review the existing legislation with a view to making the procedure simpler, quicker and more flexible.

The Law Commission's work involves a significant element of stakeholder engagement and consultation. The initial reports from the Law Commission and the task and finish group are due in summer 2019. Following the publication of the reports it will be up to the Welsh and UK Governments to decide individually what, if any, legislation should be pursued by each administration. For the Welsh Government this will need to include consideration of whether the legislative recommendations fall within the competence of the Assembly.

NOTE: The recommendations in this report are provided by the independent Task and Finish Group on Residential Leasehold Reform and are subject to legal and technical analysis.

Executive Summary

Leasehold and estate management is a vast and complicated area of housing. To ensure the Welsh Government decisions to address the issues in the sector are as informed as possible two key strategies were implemented:

- The Welsh Government partnered with the UK Government on the Law Commission review of Leasehold, specifically in relation to Enfranchisement, Right to Manage (RtM) and Commonhold.
- The Task and Finish Group for Residential Leasehold Reform.

In addition to these actions the Minister for Economy and Transport established an Unadopted Roads Taskforce. The maintenance of unadopted roads is one of the key reasons for freehold developments where residents pay estate charges.

To focus the group on key areas for review, it was agreed to create four sub groups with dedicated areas of work. These were categorised as:

- Identifying Failings in the Leasehold System.
- Code of Practice.
- Options available to Freehold Homeowners.
- Education / Training / Raising Awareness.

It was also recognised there would be areas of significant overlap, not just with the work being undertaken by the sub groups but also with the Law Commission review and the Unadopted Roads Taskforce. To mitigate any risk of 'double handling' and provide opportunity for information sharing the Law Commission and taskforce officials attended task and finish group meetings. Housing officials leading the task and finish group also sat on the taskforce review.

Primary Recommendations from Sub Groups:

Given the complexity of current leasehold legislation and devolved responsibilities the sub groups focused on the issues in the sector and the actions which could be taken to address them. It was understood the implementation phase of the work would analyse the technical and legal position of the recommendations proposed to take forward. There was also a further understanding that while the group agreed the report a broad set of recommendations from a large group of experts would raise questions on the details and practicality of implementation. These would be further investigated during the implementation phase of

Identifying Failings in Leasehold System Sub Group:

- Lack of education and easy access to information.
- Implement measures to improve how leasehold properties are sold.

- A licensing or accreditation scheme for managing agents.
- Make the requirement of a suitable level of Client Money Protection (CMP) mandatory. This can be tied to the licence to operate (recommended above).
- Establish mandatory, free on-line education of all directors associated with the management of a building or estate, regardless of whether they employ a professional managing agent or not.
- Conduct a feasibility study and impact assessment on the effect of compulsory commonhold on the current stock of houses and flats.
- Legislate to introduce a ban on the unjustified use of leasehold in new build houses, with potential exceptions.
- Ban onerous ground rents and implement the reduction of future ground rents to a nominal financial value.
- Amend the Regulatory Reform (Fire Safety) Order 2005 to support the Fire and Rescue Service in regulating leaseholders in high rise blocks.
- Provide guidance to freeholders on developing leases that allow for access for safety purposes.

Code of Practice:

- Create an umbrella online portal for all Welsh Government home/housing schemes and advice services.
- Immediate update of Codes of Practice in Wales (e.g. RICS).
- Develop a consolidated single Code for Wales linked to a licensing or accreditation scheme, to include organisations providing estate management services to freehold homes.
- Any development using, or intending to use, current or future Welsh Government schemes such as Help to Buy-Wales must appoint an accredited Managing Agent.
- Work with mortgage providers to require lending only on properties for which the managing agent (for leasehold or freehold home paying an estate charge) is part of the accreditation scheme?
- Rebrand the Help to Buy-Wales accreditation for conveyancers.
- Create an accreditation for estate agents to include minimum standards for information provided to purchasers of leasehold.
- To get the major developers to voluntarily agree to appoint only accredited managing agents.
- Managing agents can only be accredited if they employ staff working to professional qualification status.

Options available to Freehold Homeowners:

- Welsh Government to consult on a requirement that all unadopted roads, open spaces etc. are adopted by the local authority, regardless of design or condition. This will have a significant overlap with the work being undertaken by the Unadopted Roads Taskforce and the groups should continue their close working relationship.

- Requirement on those selling a property to visibly identify at all points of sale if the property is freehold or leasehold, and all financial obligations relating to the property.
- Creation of a simple freeholder guide explaining:
    - What an estate management charge is
    - Why it's payable
    - What it's payable for
    - Potential consequences of non payment
- Requirement on part of whoever's selling to ensure all potential home buyers are aware of the guide and how to access it.
- Marketing materials for a property to also include a joint statement from the local authority and developer briefly explaining the decision to adopt (or not).
- Consider the use of commonhold as a means of maintaining and financing the common areas (if unadopted).
- Create a 'schedule of rates' or matrix for commuted sums and have them agreed by the local authorities and developers.
- The Welsh Government to establish a code of practice and accreditation scheme for managing agents on freehold estates.
- Extend leasehold protections so they apply to freeholders and extend the jurisdiction of the Leasehold Valuation Tribunal so they can hear various matters relating to these estates, including disputes.

Education / Training / Raising Awareness:

- Welsh Government to develop and publish a Welsh 'How to buy and live leasehold' guide. Estate agents to provide the guide with property particulars and ensure the correct and detailed information are presented when advertising the property. Managing agent must issue the 'How to buy and live leasehold' guide with the ground rent and service charge demand.
- Lenders/Valuers to value a property with the correct leasehold information.
- Managing Agent must be qualified covering technical, safety, customer liaison, ethics and behaviours.
- Create an appropriate licensing regime for anyone who is self-managing a leasehold property. Self-managers to complete training based on the number of management functions or administrative functions the person managing the property is performing.

A common theme across the sub groups is the difficulty the public have in accessing accurate and current information on leasehold. Although correct information is widely available online it was masked by too many options being provided when searched for, leading to confusion. To address the issue the group recommended the development of a Welsh Government housing portal. It would create a single point of access to information for any person with a home in Wales where they will be directed to the right information by answering a few simple 'high level' questions. This portal can be used for

anyone needing information on leasehold, reducing energy bills, buying or renting a home, landlords etc.

It was also recognised there is a much wider lack of knowledge about the different types of tenure/housing options which can lead to confusion and misuse. Some consideration should be made in terms of a wider educational approach to housing knowledge – perhaps addressed through the Welsh curriculum.

The comprehensive review from the task and finish group, the unadopted roads taskforce and the findings of the Law Commission project will ultimately lead to the introduction of further actions to ensure leasehold is not exposed to future misuse; this could also include primary legislation. This review is focused on the future of leasehold and eliminating the opportunity for it to be misused as it has in recent years. It is noting the issue of the way in which some developers have allegedly used it for further financial gain by unnecessarily selling houses as leasehold and applying onerous terms, making the freehold attractive to third party investors. However, it was also recognised in certain circumstances leasehold currently remains the most suitable tenure for both the resident and freeholder and it was essential to focus on the misuse rather than the tenure itself. The group is also limited in its ability to bring change to those who have already fallen foul of this misuse and this may require the fairness of their leasehold terms to be challenged in the courts.

Group Membership

There had been significant investigative work already undertaken to identify the key issues in this area (Appendix 2) and it was not the purpose of the group to replicate this work but to take it forward. With this purpose being considered the group members were selected for their expertise in the sector and their involvement in the work already done (Appendix 4). This gave the overarching purpose to build on the back of the findings from previous work and provide recommended actions which could be implemented to address them, and prevent the opportunity for future misuse.

Despite the previous work it was realised there is little Wales-specific research on the prevalence of leaseholds, and uncertainties remain over leaseholder knowledge and attitudes towards lease agreements. It was apparent that more research was needed to provide timely and reliable information on leasehold tenure in Wales in order to inform the development of policy. To address this requirement the Welsh Government has procured specialist research which will advise the future work of the group and be used to inform the Welsh Government's understanding of how leaseholds have been implemented and used in practice, and provide insights into the impact this can have on people and households in leasehold agreements.

Additional Contributors

To ensure the group was as informed as possible on current events and options a number of additional contributions were invited to attend the meetings (Appendix 5).

Wales Cooperative Centre (WCC): In partnership with the with the Confederation of Co-operative Housing the WCC has supported and advised Hayes Point in the Vale of Glamorgan. The residents had already established a Right to Manage but were seeking to enfranchise. The WCC presented on their experience and ambition for the scheme.

Rent Smart Wales (RSW): RSW started as a voluntary body (Landlord Accreditation Wales) which was established to encourage landlords to meet a minimum standard and to provide tenants with confidence when selecting a home to rent. RSW were invited to present a history of the development of RSW from the accreditation scheme into a regulatory body. Further discussion was had on how the model could be used for managing agents and estate management service providers.

Long Harbour Ltd: To provide an example of activity in the freeholder sector Long Harbour Ltd were invited to present to the group to discuss what actions freehold investors and managers are undertaking to address the misuse of leasehold tenure.

Sub Group Key Tasks

Identifying Failings in Leasehold System:

The overarching task is to help the Minister further understand issues in leasehold from a wider variety of perspectives. Where issues are identified recommendations should be made on what options the Minister should consider to address them. These could be in the form of actions the Task and Finish group may progress, or which the Minister may consider taking forward with officials.

Code of Practice:

Consideration of existing codes of practice – what works and what is missing? Is there a requirement for a bespoke code for Wales, and if so how to move forward. The group should consider the most appropriate form for this Code, with an aim of progressing work, alongside officials, to deliver a Code of practice for publication. Work on this issue should also include consideration of how it should be promoted and embedded.

Options Available to Freehold Homeowners:

Although this is not strictly a leasehold issue, the Minister requires the group to review and provide recommendations and advice on options available to freehold homeowners on private estates (where homeowners are expected to pay for the maintenance of communal areas and facilities) to challenge the reasonableness of estate (service) charges.

Education / Training / Raising Awareness:

Feedback from correspondence and previous work highlights a critical lack of understanding of what leasehold, or paying freehold estate charges, entails. Confusion around the ramifications of buying a leasehold property appears to be common.

The group will consider what may be done to improve the situation for would-be buyers, and other interested and involved parties, via the means of awareness raising material, guidance and training. Each of these tasks will need to begin with an understanding of what is already available – is it fit for purpose/reaching the right audiences? The group should consider this and recommend where new content is required, how this should be achieved, and what publication/publicising changes should be made to improve take up of the facilities identified. These are specified as:

- Advise on production and dissemination of awareness raising materials about leasehold tenure for prospective home purchasers and for other stakeholders where a need has been identified.
- Advise on bespoke relevant training for all those involved in buying / selling leasehold property i.e. prospective buyers, leaseholders, estate

agents, conveyancers, freeholders, property / estate management agents and others.

Other Tasks Identified by the Task and Finish Group:

Members may also propose additional recommendations which they consider to be important to this work.

Issues Identified and Recommendations

Identifying Failings in Leasehold System Sub Group:

Sub Group members:

Academic Member
Association of Residential Management Agents (ARMA)
Citizens Advice Cymru (CAC)
Community Housing Cymru (CHC)
UK Finance
Welsh Local Government Association (WLGA)

Leasehold as a tenure has been around a long time and in many cases has worked. Due to misuses in recent years significant concerns have been raised about its use and the complications and high cost of resolving the issue. The group reviewed the current system and provided recommendation on potential policy/legislative changes.

Issues Identified:

- Lack of understanding by prospective homeowners about the implications and their rights in owning a leasehold home, and access to clear and accurate information.

- Houses being built as leasehold without any justifiable reason.

- Extortionate ground rents making the freehold of the property unaffordable to the leaseholder and attractive to investment companies.

- Lack of regulation within the residential leasehold sector. Anyone can manage a block, with all the legislative, Health & Safety and Financial issues that represents. No prior experience, qualifications or membership of a professional body is required.

- Directors of self-managed blocks (FMC's, RMC's, RTM's, landlords) are responsible for the overall management of a block. Many do not understand the legislation around UK Company law, let alone relevant property legislation such as Section 20. If a professional managing agent is employed this helps, but millions of leaseholds in England and Wales self-manage.

- Managing agents hold billions of pounds of leaseholder money. In 2014 the CMA estimated the service charge total to be in the range of £2.5 - £3.5bn per annum. An ARMA survey indicated that reserve funds held are five times that of service charges – so the total could be up to

£21bn. There is currently no requirement for firms to protect these funds via Client Money Protection (CMP)

- In high rise and other high risk residential buildings, building managers and/or owners have limited rights to enter leaseholders' property to perform safety checks. Similarly, there is a lack of understanding among leaseholders of their responsibilities to ensure compartmentation is not breached through the replacement of fire doors or damage to walls.

Recommended Actions:

- Education and easy access to information on what it means to be a leaseholder, their responsibilities and their rights to challenge and redress, and where to seek independent advice.

- Implement measures to improve how leasehold properties are sold. There needs to be an upfront provision in the sellers pack so prospective buyers are aware when 'first' considering a leasehold on what the financial commitments are (service charges, ground rents, planned maintenance etc.), the remaining term of the lease and what that means and the restrictions in place (keeping pets, improvements such as wooden flooring etc.). Introduce deadlines for providing leasehold information for seller's packs with a schedule of (low) fees for doing so.

- In order to manage a residential block a license or accreditation to operate needs to be obtained. This could be provided by a Welsh Government organisation in exchange for a fee (to offset costs), similar to Rent Smart Wales. To reduce administration, professional bodies such as the Association of Residential Management Agents (ARMA) etc. (who must apply for the status of a recognised body) can help the Welsh Government organisation by undertaking any administrative checks such as Client Money Protection, Professional Indemnity Insurance, and independent accountant's report (confirming suitable banking facilities are in place) and Fit and Proper person tests on directors.

- Make the requirement of a suitable level of CMP mandatory. This can be tied to the licence to operate recommended above.

- Establish mandatory training of all directors (possibly on-line and free to resident owned organisations), regardless as to whether they employ a professional managing agent or not.

- Conduct a feasibility study and impact assessment on the effect of compulsory commonhold on the current stock of houses and flats. This will have particular focus on:

  - Will the action have a significant positive/negative result on the current or future value of leasehold homes and how any change in property value and tenure will impact on the ability to finance the property?

  - What issues will be faced by converting current stock with particular regard to mixed (commonhold/leasehold) management and the appointment of sufficient directors with the associated skills to accept liabilities.

  - Any other risks identified through the review.

- Introduce a ban on the unjustified use of leasehold in new build houses, with potential exceptions for:

  - Shared ownership properties;

  - Community-led housing (Community Land Trusts, cooperatives and co-housing schemes); and

  - Inalienable National Trust land and excepted sites on Crown land.

  - Houses for older people that are part of a bigger estate where there are shared facilities.

- Ban onerous ground rents and where current levels are measured to be excessive implement the reduction of future ground rents to a nominal financial value.

- Implementing measures to improve how leasehold properties are sold.

- Amend the Regulatory Reform (Fire Safety) Order 2005 to support the Fire and Rescue Service in regulating leaseholders in high rise blocks.

- Provide guidance to freeholders on developing leases that allow for access for safety purposes.

Code of Practice Sub Group:

Sub Group members:

Association of Retirement Housing Managers ARHM
Competition and Markets Authority CMA
Mid and West Wales Fire and Rescue Service
Royal Institute of Chartered Surveyors RICS

The group gave consideration of existing codes of practice – what works and what is missing and how this could be developed into a code for Wales.

This required detailed review to establish the potential and the most appropriate form for this Code. Key work was also undertaken on the issue of how it should be promoted and embedded.

Looking forward at the future developments in the sector the group reviewed the current RICS and ARHM V3 Codes of Practice and identified possible recommendations the panel can put forward.

Issues identified:

- Out of date Codes of Practice for management agents – RICS and ARHM codes adopted in Wales are now superseded.

- Potentially there are too many codes covering different sections of the sector. This could lead to access to information relating to leasehold being difficult for leaseholders or prospective leaseholders.

Recommended Actions:

- To create an umbrella portal for all home/housing services.

    - To adopt the 'Your Home in Wales' site to accommodate all the key information relating to home/housing, not just for home ownership.

    - Your Home in Wales to become the overarching "brand" trusted by consumers to provide a one-stop-shop for all home/housing information

    - To include links to the managing agent accreditation information, along with Rent Smart, Estate Agents, Conveyancers, Developers, Qualifications, how to reduce energy bills etc. Essentially a single point of access for anyone living (or planning to live in) Wales where they can access trusted information about their home.

    - The site will be able to adaptable to accommodate other future changes/requirements in housing but maintain a recognised single source of information.

- To ensure there is an immediate update of practices in Wales the Welsh Government can make Wales-specific changes to the RICS and ARHM approved Codes, agree changes with RICS and ARHM and adopt them in Wales.

- Develop a consolidated single Code for Wales linked to a licensing or accreditation scheme requiring members to recognise and adhere to the Code of Practice.

- Any development using, or intending to use current or future Welsh Government schemes such as Help to Buy-Wales, Property Development Fund and Social Housing Grant must appoint an accredited Managing Agent. This will also include freehold developments where there is a charge for estate management services (such as unadopted roads, open spaces or sustainable drainage measures). This can be taken forward using the same evolutionary process as Rent Smart Wales, with an expectation that it evolves into a regulatory body.

- Work with mortgage providers to require lending only on properties for which the managing agent is part of the accreditation scheme?

- A similar accreditation for conveyancers in relation to information provided to purchasers of leasehold.

- A similar accreditation for estate agents in relation to information provided to purchasers of leasehold.

- To get the major developers to voluntarily agree to appoint only accredited managing agents for their new developments where Welsh Government support is not required.

- Managing agents who are members of professional bodies (already adopting the standards in the Code of Practice) to be pass-ported automatically for accreditation.

- Cross reference with recognised professional qualification working group so managing agents can only be accredited if they employ staff working to professional qualification status.

Options Available to Freeholders Sub Group:

Sub Group members:

Federation of Private Residents Associations (FPRA)
Home Builders Federation (HBF)
Law Society in Wales
Leasehold Valuation Tribunal LVT

One of the key questions the group asked is why are open spaces and roads not adopted by the local authorities, leading to freehold owners having to pay estate management charges?' The group recognised the Welsh Government was conducting a review of unadopted roads which was addressing part of this question. Officials from the leasehold task and finish group also attended meetings and provided updates on progress and findings.

Freehold homeowners paying estate management charges do not have the same level of legal protection afforded to leasehold properties. The group

reviewed this difference and the options available to freehold homeowners on private estates (where homeowners are expected to pay for the maintenance of communal areas and facilities) to challenge the reasonableness of estate management charges.

Issues Identified:

- Lack of understanding and access to clear information for home buyers on the implications of purchasing a freehold home where estate management services are charged. This is often realised by the home buyer before they have completed the purchase but after they have become emotionally invested in their new home.

- The charges that freeholders must pay towards the maintenance of communal areas can be unclear, unfair and without the right of challenge by the home owner. Freeholders paying an estate management charge do not have the same protections or the same rights to challenge the services and costs as a leaseholder paying a service charge. Leaseholders paying a service charge have a raft of protection set down by section 18 – 30 of the Landlord and Tenant Act 1985. These are not replicated for freeholders.

- The perception of freeholders is that they are paying for the services twice, once to the estate management company and secondly to the local authority through their council tax.

- Historically open spaces and roads etc. have been adopted by local authorities. Recently however there has been a perceived move towards authorities not adopting resulting in the requirement to introduce estate management companies and charge residents for their services. These companies can be either:

    - Commercial companies where residents have little or no control of the services or charges.

    - Residents' Management companies where all dwelling holders are members of the RMC (by virtue of them owning the freehold interest in their property). As such, they have a voice and some control in the services provided etc. and have a say in the services provided etc.

- Local authorities require 'commuted sums' from a developer to offset the future management and maintenance of the open space, roads etc. This is in addition to the council tax being received from the new home being constructed. Often these sums are not agreed at the earliest stages of a development, or there can be disputes that the figures represent a true reflection of future costs. These delays can result in both time delays and additional costs with developers taking an 'easier' and more certain approach and not having these areas adopted. These

uncertainties can also impact on pre development viability studies. This issue is not unique to market housing developments but also a reality where a Registered Social Landlord (RSL) is developing social housing for affordable rent.

- On leasehold developments, where management is failing or where the terms of the leases are unsatisfactory, leaseholders have the ability to take matters to the Tribunal. The Tribunal can intervene and appoint an external third party to take over management, and/or vary the terms of the leases. No such recourse exists for freehold home owners paying an estate charge.

- Similarly, leaseholders can exercise and acquire the right to manage their block under the relevant provisions of the Commonhold and Leasehold Reform Act 2002. In doing so, they can take control of the management functions. No such ability exists for freeholders to take over the management of the communal areas on their developments .
- Leaseholders facing enforcement action have a raft of protections, not lease the statutory restrictions that are placed on a landlord's right to forfeit a lease. A freeholder who pays an estate rent charge can be faced with the prospect of re-entry proceedings on the part of the rent owner. Protections and rights of relief are limited or non existent.

Recommended Actions:

Get rid of the problem:

- Welsh Government to consult on a requirement that all unadopted roads, open spaces etc. are adopted by the local authority, regardless of design or condition. An exception to this proposed mandatory action would include developments where the residents have formed their own estate management company and wish to continue. It is recommended that where a resident management company is in place a regular review (possibly every 10 years) would be required. An additional question for consultation is where a resident management company is in place that an actual figure is calculated on the cost savings to the local authority for not carrying out the estate management services (grass cutting and street sweeping etc.). This amount is could be refunded to the resident owned management company to offset some of the charges, meaning the residents are not paying for the same services twice. This exception would only be available to resident owned estate management.

Educate and signpost:

- Requirement on who's selling to visibly identify if the property is freehold or leasehold, and all financial obligations relating to the

property. This will also include the creation of a simple guide explaining:
    - What an estate management charge is
    - Why it's payable
    - What it's payable for
    - Potential consequences of non payment

- Requirement on part of whoever's selling (and however they're selling, including online only estate agents) to ensure all potential home buyers are aware of the guide and how to access it, this will include:
    - Displayed in show home and sales office
    - Included in sales particulars
    - In plain sight on the Website

- Marketing materials for a property to also include a joint statement from the local authority and developer briefly explaining the decision to/or not to adopt.

Pre Development:

- Where the property is commonhold tenure provide the freehold of the communal areas to the commonhold association.

- Create a 'schedule of rates' for commuted sums and have these agreed by the local authorities and developers, except in circumstances where it is clearly demonstrated a higher rate is required. These will apply to open spaces; roads etc. and provide developers with an early indication of costs and viability.

Managing the Sector:

- The Welsh Government to establish a code of practice and accreditation scheme for managing agents on freehold estates. This code will replicate the service standards and rights to challenge enjoyed by leaseholders. Any development where Welsh Government support (HtBW, SHG etc.) is being used or proposed will require the appointment of an accredited provider. Local authorities will also be encouraged to enforce this action as part of their planning requirements. This action could follow the Rent Smart Wales model and be developed into a regulatory body.

- Extend the protections currently afforded to leaseholders under s.167 of the Commonhold and Leasehold Reform Act 2002 so that similar restrictions apply to freeholders and restrict the ability of a rent owner to commence re-entry proceedings unless the arrears exceed a prescribed amount (currently £350) or have been outstanding for more than a prescribed period of time (currently 3 years).

- Section 18 of the Landlord and Tenant Act 1985 provides a succinct description of what a service charge is in relation to leasehold property. Whilst section 1 of the Rentcharges Act 1977 will apply, there is an argument that this does not apply to all sums payable by freehold home owners. There is argument therefore for a single succinct definition (or amendment to section 1 of the 1977 Act) this can then lead to a further extension of the rights and protections afforded to freeholders, which will enable them to:

  I. Challenge the reasonableness and payability of the estate charges (replicating section 27A and 19 of the 1985 Act and extending the jurisdiction of the Tribunal

  II. Seeking the appointment of a third party manager in the event of fault on the part of the current management (essentially replicating section 24 of the Landlord and Tenant Act 1987 and extending the jurisdiction of the Tribunal)

  III. Allowing freeholders to seek to vary the terms of the transfer deeds where those deeds fail to make satisfactory provision for certain items, eg insurance of the common areas.

- In the same way leaseholders have the ability to take control of their block; freehold home owners should have the same ability to take control over the common parts of their estate. Leaseholders do this by acquiring and exercising the right to manage under the relevant provisions of the Commonhold and Leasehold Reform Act 2002. Similar legislation could be enacted which would allow the freeholders, in sufficient numbers, to act as a collective and acquire the management functions in relation to their estate.

Education, Training and Awareness Sub Group:

Group members:

Chartered Institute of Housing Cymru CIHC
Institute of Residential Property Management (IRPM)
Leasehold Advisory Service (LEASE)
NAEA Propertymark
Tenant Participation Advisory Service (TPAS)

Through correspondence and the media, perceptions are that leaseholders, and those considering purchasing a leasehold property, do not have a good understanding of what buying such a property entails; the rights and responsibilities they have and how to manage their tenure effectively. This can also impact on effectiveness of Right to Manage companies, who can struggle to recruit sufficiently educated directors. The group considered and evidenced the extent of the issue and which methods may be effective in remedying situations which are identified.

It is recognised that leasehold has a place, but the abuse of the tenure, and the consequential media attention in recent years, has potentially tarnished its reputation. This could adversely impact on the saleability and value of leasehold homes. This potential 'blight' or a 'two-tier market' is something that both the Building Societies Association[1] and the UK Finance[2] have also highlighted. The group needed to consider the potential risks and how to deal with those reputational issues.

One of the primary issues identified by the group was the lack of specific information being provided at early key stages, by key points of contact when a person is looking for a new home. This can lead to a person becoming emotionally involved in a particular home without a full understanding of the requirements of living in the property. This aspect of purchasing a home has been recognised in the Law Commission's report 'Event fees in retirement properties' (March, 2017)[3]

To address the issue the sub group has provided recommendations by specific organisations, at various stages in the home buying process to be taken forward

Welsh Government -

1. Formulise and enhance a single 'How to buy and live leasehold' guide. This should cover both flats and houses.

2. The guide should outline such issues as:
    - living in a communal property with other leaseholders
    - how the property is managed
    - dispute resolution
    - how to access your agent and block manager
    - rent charges

3. The guide should be based on existing guidance in the sector but customised for Wales.

<u>Pre- Purchase:</u>

Estate agent –

1. Must provide the 'How to buy and live leasehold' guide with property particulars.

[1] See BSA response to MHCLG consultation 'Implementing reforms to the leasehold system in England' (November, 2018) https://www.bsa.org.uk/BSA/files/61/61eb20dd-d9f3-43a5-bf10-d20c06482ced.docx

[2] See 'Reforming leasehold and reinvigorating commonhold' (UK Finance, March 2019) https://www.ukfinance.org.uk/news-and-insight/blogs/reforming-leasehold-and-reinvigorating-commonhold

[3] See paragraph 5.5 https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2017/03/LC-373.pdf

2. Must ensure the correct and detailed information regarding the lease is presented when advertising the property online.

NB: *Under the Consumer Protection Regulations this is classed as material information, but it is an area that needs strengthening.*[4]

Lenders/Valuers –

1. Value a property with the correct leasehold information. This would ensure that the terms of lease and years remaining are reflected in the valuation and prevent 'blind' valuations. In addition, this would force the selling agent to provide the information for the valuation to take place before being able to advertise the property.

Post- Purchase:

Managing agent -

1. The 'How to buy and live leasehold' guide must be issued by the managing agent with the first ground rent or service charge demand, whichever comes first.

2. Where issued the 'How to buy and live leasehold' guide should be allowed to be given electronically.

Consumers -

1. There must be free independent advice for consumers.

2. The provider of independent advice could be a new body or a combination of existing bodies already working within the sector.

Managing Agent -

1. Professional managing agents whose services are paid for must be qualified covering technical, safety, customer liaison, ethics and behaviours.

2. Further development is needed on who should be qualified. However, it must be the practitioner on the ground if they are delivering **regulated activity** (i.e. service charge manager yes but receptionist no).

3. Ofqual regulated providers to deliver the qualification.

Self-Managing

In addition to improving consumer awareness when choosing a new home the sub group reviewed the support and skills requirements for residents who wish to self-manage their developments.

The group recommended the establishment of either of these two options:

[4] https://en.powys.gov.uk/article/4854/Advice-for-Estate-Agents

Option A

1. Create an appropriate licensing regime for anyone who is self-managing a block of leasehold flats based on whether they are undertaking management or administrative functions.

2. Define services provided to a building containing residential long leasehold tenants :
    - Collecting or holding contributions to the relevant costs or other amounts payable by residential long leasehold tenants.

    - Exercising delegated powers and duties of the lessor, including:
        I. making payments to third parties on behalf of the lessor,
        II. negotiating or entering into contracts on behalf of the lessor, or
        III. supervising employees or contractors hired or engaged by the lessor"

3. Define administrative functions by creating a list of things that determine administrative functions.

4. Use the list of functions to form the basis for training requirements and modules covering both management and administrative functions depending on what the self-manager does.

Option B

1. Create an appropriate licensing regime, based on a threshold of the number of properties being managed, for anyone self-managing a leasehold property.

2. Use the definition of management functions and administrative functions (as outlined in Option A) to set training requirements.

Training requirements:

1. Self-managers to complete modules based on the number of management functions or administrative functions the person managing the property is undertaking. The number of defined functions would act as a checklist, so if they are doing more or all management (and administrative functions) then they must do more training modules.

NB: *See Condominium Management Regulatory Authority of Ontario in Canada 'Do I Need a Licence?' document.*[5]

It was also recognised that there is a much wider lack of knowledge about the different types of tenure/housing options which can lead to confusion and

[5] https://www.cmrao.ca/en-US/

abuse. Some consideration should be made in terms of a wider educational approach to housing knowledge – perhaps addressed through the Welsh curriculum.

Next Steps and Potential Requirements to Take the Actions forward:

The report is presented to the Minister for Housing and Local Government for her consideration. The Minister will have the opportunity to consider the recommendations in this report along with the Law Commission's review and the Welsh Government's research into leasehold. When the Minister has decided on future actions the Task and finish group can be reconvened to assist in the consultation and implementation stages. This work could include the development of:

- A Welsh Government appointed licencing or accreditation body
- A company level licence to operate infrastructure
- A complaints/review panel
- Approved professional bodies
- Awareness campaign
- Fines/criminal offence to operate without the licence
- All people/firms that manage a block must either obtain the licence to operate themselves or appoint someone who has that licence.
- Consideration of whether there should be a lower limit – does four flats in a converted house really need regulation?
- Development of courses on the requirements of being the director of a UK company
- Development of courses on relevant Welsh property law – such as section 20.
- A portal to deliver these courses (LEASE?)
- Certification available for directors upon completion
- CPD requirement to remain contemporary with legislation
- Legislation requiring mandatory CMP for residential block management funds.

Task and Finish Combined Sub Group Recommendation:

One significant area where there was an overlap in recommendations from the sub groups was the lack of public understanding of the financial implications and responsibilities of being a leaseholder, or freeholder paying estate charges. It was noted that anyone trying to find relevant and up to date information was presented with a huge number of options when conducting a web search, not all of which is accurate. To help address the issue all sub groups recommended the establishment of a 'web portal' where anyone living in Wales (or seeking to move to Wales) can easily access accurate information. This 'single' point of access can be used to provide information on any issue a person may have whether its in regard to leasehold, wanting to reduce energy bills, being a landlord or tenant or an SME construction company seeking Welsh Government support to build new homes.

The group reviewed current Welsh Government web based housing advice and provided a further recommendation to expand the 'Your Home in Wales' web page. The current page asks high level questions to assist people who wish to buy their own homes and directs them to Welsh Government schemes to assist them (Help to Buy-Wales, Rent to Own, Self-Build Wales etc.) The extension of this portal would take it from just being about home ownership to creating a single source of information for anyone with a question or concern about buying or renting a home in Wales.

The group also recommended the expansion of the Your Home in Wales web page to being more than a source of information and to develop a 'brand'. One of the key areas of complaint around the misuse of leasehold was with developer recommended conveyancers. To address the problem the Minister for Housing and Regeneration introduced the Help to Buy-Wales (HtBW) Conveyancer Accreditation scheme as part of the measures implemented in March 2018. The scheme required conveyancers to be trained by HtBW and provide a minimum (high) standard of service and advice. It also provided the home buyer the confidence their legal representation was independent. A further requirement was that all new home sales through HtBW had to use an accredited conveyancer. The task and finish group recognised the success and limitation of this scheme (when HtBW ends the accreditation will finish) and recommended the creation of a single brand which the public can easily recognise. It is suggested that as an extension of the single point of information the proposed web portal provides, a 'Your Home in Wales' accreditation is also created. The accreditation can be used by estate management service providers (ESP) and management agents (MA) who sign up to a minimum standard of service (to include transparency of costs, fees, deadlines for responding etc.).

The Welsh Government could require the appointment of an accredited managing agent for all developments where Welsh Government support (HtBW and Social Housing Grant etc.) is being used, or proposed. Local

authorities could also set the appointment of an accredited provider as part of their planning requirements. Once established the brand and portal could be used for any new housing related scheme to provide consumers a trusted source of information, and the assurance service providers meet a high standard.

Appendix 1: Written Statement Issued by the Minister for Housing & Regeneration 6 March 2018

There has been widespread criticism of poor practice in the use of leasehold. This Government has made clear its commitment to responding swiftly and firmly to these issues.

In the debate on leasehold on 31 January, I committed to taking some immediate actions to curb the particular use of leasehold for new build houses. As I said then, I do not believe this practice is appropriate. Leasehold does have its place as a tenure (for flats, for example), but I will only support its use where it is appropriate - and this does not apply to new build houses other than in very specific circumstances.

As a first step, I undertook to use the tools currently at my disposal to ensure our popular and successful schemes supporting home ownership and assisting home builders do not allow bad practice.

Today, I am introducing a package of measures which have been designed and developed by the Welsh Government with the co-operation from the sector through our House Builder Engagement Programme. As part of this engagement, we have already secured confirmation from major developers including Bellway, Redrow, Taylor Wimpey, Barratt Homes and Persimmon that they will no longer offer houses for sale on a leasehold basis unless it is absolutely necessary. I look forward to the other developers making the same commitment to cease the practice.

I have also had an agreement from the Home Builders Federation that they will discuss and share with the Welsh Government their submission to the Law Commission consultation into alternatives to selling flats on a leasehold basis.

Welsh Government will not support poor practice that impacts negatively on homeowners. That is why new criteria for Help to Buy-Wales being introduced today will require a developer to present a genuine reason for a house to be marketed as leasehold. Without a valid reason, which might include National Trust or Crown land, for example, it will not be eligible for Help-to-Buy-Wales. In addition, the terms of any new lease agreement, for both houses and flats, will have to comply with new minimum standards I am introducing into Help to Buy – Wales. Any leasehold contract will have to comply with these minimum standards to qualify for sale with the support of the Help-to-Buy-Wales scheme.

These new minimum standards include limiting the starting ground rent to a maximum of 0.1% of the property's sale value. Any future increases in ground rent will have to be no more than a Government recognised inflation index, such as the Retail Price Index. This will put and end to ground rents increasing exponentially and ensure they remain affordable. Leases will also

have to run for a minimum of 125 years for flats and 250 years for houses. These minimum terms will provide security to the leaseholder by maintaining the property value and giving assurance the freeholder will not be in a position to force an unfair agreement at the point of renewing a lease.

To ensure compliance with all of the measures I am introducing today they will be included in the contracts Help to Buy-Wales have with the house builders. This will mean that any house builder offering homes for sale with our support will be legally obliged to meet with these new requirements.

Another significant issue I am able to tackle at this point is home buyers not being properly advised of the implications of their lease agreements and other ongoing commitments. There have been concerns raised regarding the practice of developers recommending particular conveyancers to prospective purchasers. I am introducing the Help to Buy - Wales Conveyancer Accreditation Scheme to ensure all purchasers have access to good quality independent advice. To qualify for accreditation conveyancers will have to complete training designed and delivered by Help to Buy – Wales. They will have to comply with the high standards set out by the scheme. In addition to demonstrating their experience in the Help to Buy - Wales process they will have to provide clear, understandable and documented advice on leasehold, service charges, ground rents and unadopted roads.

The performance of all accredited conveyancers will be monitored by Help to Buy-Wales to ensure these high standards are maintained. Of course, whilst use of an accredited conveyancer will be a requirement if purchasing under Help to Buy-Wales, we will also be promoting use of accredited conveyancers by anyone buying a new home, even if they are not funding through Help to Buy - Wales.

The Help to Buy - Wales Conveyancer Accreditation Scheme already has nearly 150 trained members across all regions of Wales. From today, a full list of accredited conveyancers will be available on the Help to Buy - Wales website and from home builders and financial advisers who use the scheme.

The Welsh Government also provides encouragement and assistance to small, local house building companies through the Wales Property Development Fund. This scheme grants accessible, affordable development loans to SME home builders. To ensure this highly successful and important fund does not allow poor practice I am today introducing the same Help to Buy - Wales leasehold criteria to properties built with support through this scheme.

The actions I have outlined today will address some of the key concerns relating to leasehold for new build homes. They will ensure that all Welsh Government schemes designed to support the building and ownership of new homes provide home buyers with a proper level of protection and support.

However, this is only the start of my plans to address concerns about leasehold, and I will be continuing to develop policy in this area. I have asked

officials to set up a multi disciplinary task and finish group to expedite this.

I also intend to put in place a voluntary Code of Practice to underpin these measures and improve standards and engagement between all parties and promote best practice.

Finally, I reiterate that I am not ruling out the possibility of future legislation. I recognise that legislation may be needed to resolve the wider issues and make leasehold, or an alternative tenure, fit for the modern housing market.

Setting out our path for any wider reforms requires detailed consideration which is why I am commissioning research and engaging with the Law Commission Law Commission project looking at this issue. Once I have the benefit of the Law Commission's report and our own research, I will set out our next steps. In the meantime, I continue to explore every avenue currently at my disposal to address the valid concerns being raised.

Appendix 2: Previous Work in Relation to Residential Leasehold.

- **'*Tackling unfair practices in the leasehold market'*** – ran between July and September 2017, UK Government response published December 2017. The UK Government announced their intention to legislate to prohibit the development of new build leasehold houses; restrict ground rents in newly established leases to peppercorn levels; address loopholes in the law to improve transparency and fairness for leaseholders and freeholders; and to work with the Law Commission project on leasehold.

- **'*Improving the home buying and selling process'*** – ran between October and December 2017, UK Government response published April 2018. The UK Government announced their intention to improve consumer experience, reduce the time from offer to completion and reduce failed transactions via a range of methods, including enhancing regulation of Estate agents.

- **'*Strengthening consumer redress in the housing market'*** – ran between February and April 2018, UK Government response not yet published. The UK Government sought views on better ways for consumers across the private-rented, leasehold, social-housing and owner-occupied sector to resolve their complaints without recourse to intimidating, expensive and time-consuming legal battles.

- '***Protecting consumers in the letting and managing agent market'*** – ran between October and November 2017, UK Government response published April 2018. The consultation sought views on potential regulation of both letting agents and property management agents, including whether there should be minimum entry requirements, training and CPT, and what model of regulatory approach should be pursued. The UK Government response announced the formation of a working group to develop the regulatory model

Appendix 3: Terms of Reference for the Residential Leasehold Reform Task and Finish Group.

Purpose / Role of the Group:

- To advise the Minister for Housing and Local Government on leasehold reform, including the reform of practices carried out by Property and Estate Management Agents.

- Recommendations to be submitted to the Minister for approval by July 2019. This is when the Law Commission is due to produce its final reports on reform of residential leasehold and so it will be beneficial for the Minister to receive both reports at the same time. Interim timescales for specific tasks to be decided by group at first meeting.

- Particular tasks / milestones include:

  - Identify the failings in the leasehold system in Wales and how they impact on leaseholders.

  - Submit recommendations to the Welsh Government on addressing the failings identified above.

  - Advise on production and dissemination of awareness raising materials about leasehold tenure for prospective home purchasers and for other stakeholders where a need has been identified.

  - Advise on bespoke relevant training for all those involved in buying / selling leasehold property i.e. prospective buyers, leaseholders, estate agents, conveyancers, freeholders, property / estate management agents and others.

  - Advise on a voluntary code of practice for property / estate management agents.

  - Advise on options available to freehold homeowners on private estates (where homeowners are expected to pay for the maintenance of communal areas and facilities) to challenge the reasonableness of estate (service) charges.

  - Advise on requirements for non statutory guidance for prospective home buyers as well as those involved in the leasehold process and the format, content and dissemination of guidance.

Accountability:

- Establishment of subgroups based on work streams, which will feed back at meetings from each group. This will be decided at the group's first meeting.

- Final report to be submitted to the Minister by July 2019.

Working methods:

- Group to report at bimonthly meetings as necessary, in addition to producing a final report.

- Members to participate on a voluntary basis, and will not be remunerated.

Meetings:

- Bi-monthly to start end July 2018.

- John Howells, Director of Housing and Regeneration, to chair.

- Secretariat to be provided by Welsh Government leasehold policy team.

Timescale:

- Anticipated lifetime for group of 2 years if required, although the tasks identified in this document are expected to be completed by end July 2019.

Appendix 4: Task and Finish Group Membership

Membership:

- Academic representative
- Association of Residential Management Agents (ARMA)
- Association of Retirement Housing Managers (ARHM)
- Chartered Institute of Housing Cymru (CIHC)
- Citizens Advice Cymru (CAC)
- Community Housing Cymru (CHC)
- Competition and Markets Authority (CMA)
- Federation of Private Residents Associations (FPRA)
- Fire Safety Advisory Groups
- Head of Leasehold Reform, Welsh Government
- Home Builders Federation Wales (HBF)
- Law Commission (in an observer capacity)
- Law Society (representing solicitors dealing with leasehold matters)
- Leasehold Advisory Service (LEASE)
- Leasehold Valuation Tribunal Wales (LVT)
- NAEA Propertymark
- Royal Institute of Chartered Surveyors Wales (RICS)
- Tenant Participation Advisory Service Cymru (TPAS)
- UKfinance (representing mortgage lenders)
- Welsh Local Government Association (WLGA)

Appendix 5: Additional Contributors

The following contributed to the group's discussions.

The Wales Cooperative Centre:

Housing co-operatives are groups of people who collectively own and manage their accommodation – from shared houses, to blocks of flats, to entire housing estates. Together they take responsibility for arranging repairs, making decisions about rent and who joins or leaves the co-operative. Living in housing co-operative can be a good way to get affordable housing and gives people more control over where they live.

The goal of the Co-operative Housing project is to develop and stimulate demand for the Co-operative and Community-led Housing approach throughout Wales. Support is available to new and existing community-led schemes at any stage of development.

In 2011 the Welsh Government established a Co-operative Housing Project, managed by the Wales Co-operative Centre and supported by the Confederation of Co-operative Housing. Since then the project has worked with dozens of local groups and housing organisations to explore mutual, co-operative and community-led housing options including several pioneer schemes across Wales.

The Wales Co-operative Centre has been funded by the Welsh Government since 2012, and additional financial support has been provided by the Nationwide Foundation since 2014.

It provides support and advice to groups and organisations across Wales to stimulate the co-operative and community-led housing sector, in turn creating more affordable homes, for people in need, and has helped to develop and renovate 137 new affordable homes, up skill over 250 people in co-operative principles, and has worked with partners across Wales to raise awareness of co-operative housing.

One project that the Centre has supported and advised, with the Confederation of Co-operative Housing, is Hayes Point in the Vale of Glamorgan. It is a community of 236 apartments, of which just over half are owner occupied, the other properties being tenanted by 'buy to let' landlords. This equates to just over 200 separate leaseholders.

The services at Hayes Point were being managed by a 'Right to Manage' (RTM) company, and there was a legal dispute between that organisation and the freeholder that, in part, drove the thinking about using leaseholder enfranchisement, as an option to buying out the freeholder. Members of the group had experience co-operatives, and considered a co-operative as the most suitable and democratic model for the legal collective enfranchisement.

They gathered residents' support, and financial pledges for the enfranchisement, whilst successfully negotiating a potential private sale with the freeholder, and settling the dispute with the RTM company prior to the High Court Hearing. They registered a company limited by guarantee, called Hayes Point Collective Freehold Limited, which will manage the apartments for 3 years. Through this company they have collected £1 membership fees and also permanent loans towards the freehold, whilst reducing service charge arrears. They also commented on the Law Commission consultative document on reform of collective enfranchisement, and at their last AGM resolved to convert to a co-op, upon the successful outcome of this reform.

In partnership with the Hayes Point 'RTM' Company, and solicitors, the Wales Co-operative Centre developed model Leaseholder Land Trust Rules, which have been registered with Co-ops UK and facilitate their conversion to a housing co-op. This model could also be used for other potential leaseholder enfranchisement RTM companies across Wales.

Rent Smart Wales (RSW):

Landlords and agents of private residential property in Wales are required by law to be registered or licenced, along with their portfolio of property. This follows the introduction in November 2015 of the Welsh Government's Rent Smart Wales scheme, the first of its kind in the UK.

Under the Scheme, landlords and agents will have up to one year to comply with their new legal obligations, without fear of legal action being taken against them by local authorities and the licensing authority, City of Cardiff Council.

The registration and licensing process can be completed either online at **www.rentsmart.gov.wales** or over the telephone.

The Scheme will require landlords to:

- pass a 'fit and proper person' check
- undertake approved training
- pay a registration / licensing fee (see website for fee structure)

Alternatively, landlords will be able to appoint a licensed agent to manage the property on their behalf, but will remain involved with the process.
The Scheme will also:

- Prevent rogue landlords and agents from letting and managing properties in Wales.

- Raise awareness by landlords, agents and tenants of their respective rights and responsibilities.

- Allow councils for the first time to fully identify all of the private rented properties within their local area, making it easier for them to work closely with landlords on ensuring high rental standards are being met.

- Replace the existing voluntary Landlord Accreditation Wales scheme, with those members accredited under it transferring over to the new system.

RSW replaces the previous voluntary Landlord Accreditation Wales scheme and members accredited under it were transferred during establishment of the service. Through RSW, landlords and agents of private residential property in Wales are required by law to be registered or licenced, along with their portfolio of property. This follows the introduction in November 2015 of the Welsh Government's Rent Smart Wales scheme, the first of its kind in the UK. Under the Scheme, landlords are required to pass a 'fit and proper person' check, undertake approved training and pay a registration / licensing fee. Alternatively, landlords can appoint a licensed agent to manage the property on their behalf, but will remain involved with the process.

The Scheme also:

- Prevents rogue landlords and agents from letting and managing properties in Wales.

- Raises awareness by landlords, agents and tenants of their respective rights and responsibilities.

- Allows councils for the first time to fully identify all of the private rented properties within their local area, making it easier for them to work closely with landlords on ensuring high rental standards are being met.

The potential to introduce interim regulation arrangements for agents who manage residential leasehold properties, or provide estate management services into the current Rent Smart Wales scheme was raised by the group. RSW were invited to attend the meeting to present on the scheme and discuss the potential in taking the ideas forward.

Rent Smart Wales officials highlighted the proposed interim action would require new primary legislation. The group were informed that Part 1 of the Housing (Wales) Act 2014 imposes requirements in relation to properties let under domestic tenancies. The 2014 Act creates a licensing authority (i.e. Cardiff Council operating as Rent Smart Wales) and imposes a registration requirement on private sector landlords who let their properties under domestic tenancies and imposes a licence requirement on those agents who carry out property management work on behalf of landlords who let their properties under domestic tenancies. The registration and licensing functions are undertaken by the licensing authority. If new statutory requirements are to be imposed on those persons who manage leasehold high-rise residential buildings and the role of the licensing authority extended to accord, significant legislative change would be necessary. The group were also provided with an

overview of how Rent Smart Wales was established and how this process could be replicated to create a similar body to regulate managing agents and estate management providers.

Long Harbour Ltd:

Long Harbour Ltd was established in 2009 to help bridge the gap between illiquid asset classes, often with high barriers to entry, and institutional investors seeking to deploy capital into investment grade, income-generating assets. Their role is to overcome these barriers, facilitating investment through transparent structures with strong corporate governance.

Long Harbour is majority owned by management, however in 2012; CK Hutchison Holdings Limited (CKH) (formerly Hutchison Whampoa Ltd) became a significant minority stakeholder. CKH is among the largest companies listed on the main board of The Hong Kong Stock Exchange.

To provide an example of activity in the freeholder sector Long Harbour Ltd were invited to present to the group to discuss what actions freehold investors and managers are undertaking to address the misuse of leasehold tenure. A number of questions were presented to them prior to the meeting and they were asked to address two key areas of concern:

1. How they are supporting residents in unfair contracts; and
2. How they are taking action to ensure the issues are not repeated in the future.

In addition there was a Q&A session during their presentation. Following the meeting Long Harbour provided written confirmation to the points raised in the discussion, this included data and actions they were taking to address the misuse of leasehold:

How many properties do they have in Wales?

- There are 4,171 units (includes flats, houses & “other”: parking spaces, commercial, etc.) in total under management in Wales.

How many flats vs. houses?

- Of these units the breakdown in houses & flats is 83.84% flats & 14.00% houses by volume. Please note that there are other types of units, e.g. car parking spaces & garages which are not included.

- Since Q1 2017, Long Harbour have undertaken to no longer purchase leasehold houses as they are committed to support the Government’s proposal to ban the sale of all new leasehold houses. Leasehold houses acquired prior to that date were primarily included within portfolio transactions and were never a main focus for their fund.

Where developers have implemented Ground Rent Review Assistance Schemes how are they supporting residents to access the support?

- Within their portfolio, they are in ownership of 1,661 ten yearly doubling leases where the developer has initiated a review assistance scheme. This includes both primary customers (i.e. the first owners of the properties) and secondary customers (i.e. those who did not purchase those leases directly from the developer).

- Following communication with their leaseholders to invite them to vary the terms of their lease to a fairer RPI review, they have since formally completed on 584 deeds of variation. A further 293 customers have applied to vary their lease and so they are now waiting to hear from the remaining 784 customers.

Doubling leases in Wales?

- Of their portfolio of units located in Wales, there are 49 units (across 3 separate developments) which have a doubling lease where the developer has implemented a review scheme. Of these, 34 have applied for their lease to be varied and 30 have formally completed.

Code of Practice

- The Leaseholder Pledge was a crucial first step towards positive change in the leasehold sector and reflects the desire and ambition to bring about meaningful reform. Within the Pledge is a commitment from the UK Government to develop a comprehensive Code of Practice that forges a path to introduce formal regulation.

- In consultation with a broad group of industry stakeholders, including managing agents, investors and freehold managers amongst others, specialist law firm Winckworth Sherwood have been developing this comprehensive Code of Practice.

- The aim of this is to create a more transparent and consumer friendly environment for leaseholders, by promoting high quality management practices and robust consumer protections. It will also govern the terms to grant any new leases.

- This will ensure freeholders can serve as long term responsible stewards of properties, holding managing agents to account and ensuring consumers, albeit leaseholders or tenants are not affected by the bad practices that led us to this point today.

General industry overview

- Ground rents have proven to be an attractive form of investment to institutional investors due to the stable, long term and high quality

nature of the income. This income derived from the ground rent cash flow within the leases provides a suitable match for the long term liabilities of these institutional investors which include insurance and pension providers and in return the institutional investors will serve as responsible stewards for the duration of a lease.

This alignment of interest between the preservation of this long term income and therefore the long term preservation of the buildings has brought great benefits to the residential leasehold market. Responsible freeholders ensure large residential properties are maintained in the long-term interest of residents and ensure that properties are managed in a professional and efficient manner, ensuring residents' safety.

Appendix 6: Law Commission Review

The Minister for Housing and Regeneration wrote to Assembly members on 30 April to confirm that the Welsh Government is engaging, alongside the UK Government, with the Law Commission's project on residential leasehold. The project will initially examine three key areas:

- Leasehold enfranchisement, including lease extensions and the purchase of the freehold of leased properties. The project will consider how the processes can be made easier, quicker and more cost effective.

- Commonhold, which provides an alternative form of ownership to residential leasehold. The Commission will review current commonhold legislation with a view to improving market confidence and workability.

- Right to Manage (RTM) which was introduced to give leaseholders control over the management of their buildings. However, there have been numerous problems reported. The Commission will review the existing legislation with a view to making the procedure simpler, quicker and more flexible.

The Law Commission work involves a significant element of stakeholder engagement and consultation and their initial reports on are due in summer 2019. Following the publication of the reports it will be up to the Welsh and UK Governments to decide individually what, if any, legislation should be pursued by each administration. For the Welsh Government this will need to entail a consideration of whether the legislative recommendations fall within the competence of the Assembly.

Appendix 7: Glossary of Terms

Commonhold:
This is an alternative form of ownership to leasehold where the freehold of each flat is owned by 'unit holders' and the common parts by their 'commonhold association'. The commonhold is governed by a 'commonhold community statement'. It is similar to co-propriété in France or condominiums in North America.

Freeholder:
This is the person or organisation who owns the freehold of a building divided into flats or a single house. They may also be called the 'landlord', and they retain ownership of the land on which the building is built.

Freehold homeowner:
This is the owner of a freehold house on an estate.

Ground rent:
Because leasehold is a tenancy, it is subject to the payment of a rent to the landlord. Ground rent can vary from a nominal value to a significant amount that increases over the term of the lease. Ground rent is a specific requirement of the lease and must be paid on the due date. The term "peppercorn rent", is an historic term which means a ground rent has no financial value.

Lease:
A lease is a legally binding document, or contract, giving the leaseholder the exclusive possession of a property for a fixed period of time. The terms of the lease determine the rights and responsibilities of the landlord and leaseholder in respect of the property and cannot usually be changed without the agreement of all parties or an application to a tribunal or court for a variation.

Leasehold:
A form of property ownership by means of a long tenancy (granted for 21 years or more initially), which confers the right to occupation and use of the property for a long period – the 'term' of the lease.

Leaseholder:
A person who holds the long tenancy of a property

Leasehold Enfranchisement:
Is the purchase of a freehold interest in a house where the leaseholder of the house may buy the freehold. Enfranchisement can also take place in a building containing flats, where leaseholders act together to exercise a right to collectively buy the freehold.

Leasehold Valuation Tribunal:
A body of people (some may have legal, surveying or other property expertise) who look at the matter of the Leasehold dispute for the property.