LEASEHOLD KNOWLEDGE PARTNERSHIP RESPONSE TO GOVERNMENT'S CONSULTATION – REFORMING THE LEASEHOLD AND COMMONHOLD SYSTEMS IN ENGLAND AND WALES 9/02/22

Updated Version Dated Thursday February 17th

Consultation: Published 11/01/22 and open for 6 weeks
Closing Tuesday February 22nd at 11:45pm UK time

MESSAGE TO LEASEHOLDERS READING LKP RESPONSE TO DLUHC CONSULTATION (HARRY SCOFFIN WRITES)

Leasehold Knowledge Partnership has published this document for leaseholders to read when considering how they should best respond to the consultation which features many highly technical questions and can be off-putting to many ordinary homeowners not familiar with policymaking and law. Please do not copy and paste answers as such an approach will be looked upon poorly when consultee responses are reviewed by government.

The LKP consultation response shared with you below should only be used as a rough guide when formulating your own answers. Please do use your own words, discuss your own situation and how you think these proposed reforms will help YOU, your neighbours and other leaseholders, too. Rest assured, officials read every single one of these consultation responses. You sharing your stories and explaining what you need changed in past consultation exercises is partly why leasehold reform is now so high up on the political agenda, surviving both Brexit and Covid. If you don't tell government your problem, they may not know of it when considering what goes into the second leasehold reform bill. Remember, freeholders, developers, lawyers and other industry insiders will be spending an awful lot of time and effort to get their answers in to this consultation to argue for the status quo. If you decide you've had enough of consultations and choose not to participate in this one, you risk the sector convincing government to water down the reforms as part of a preservation of the archaic and deeply unfair leasehold system. So even if a proposed reform doesn't necessarily benefit you and your development, do please consider responding to the questions with answers that will help others.

For those of you who want extra help with some of the policy concepts, the Department for Levelling Up, Housing and Communities (DLUHC) has published very helpful explanatory notes to bring the consultation questions and proposed reforms to life:
https://www.gov.uk/government/consultations/reforming-the-leasehold-and-commonhold-systems-in-england-and-wales/reforming-the-leasehold-and-commonhold-systems-in-england-and-wales

If you are not emailing your answers to leasehold.reform@communities.gov.uk and prefer to use the digital survey hosted on Citizen Space, the numbering of the questions is slightly different to that used by DLUHC in the link above. The wording of the questions is the same, however.

(DIGITAL SURVEY CALLS THIS SECTION: "1. LEASEHOLD AND COMMONHOLD REFORM")

1. **What is your name?**
2. **What is your email address?**
3. **Are you responding as an individual or on behalf of an organisation?**

Q4 – Q8 (Not applicable – only to be answered by individuals)

9. **What is the name of your organisation?**
   Leasehold Knowledge Partnership
10. **What is your organisation?**
    l. Charity
11. **Please describe your organisation's purpose in relation to this consultation.**
    c. Other (please specify)
    We advise leaseholders on the perils and pitfalls of the leasehold system, and on how to succeed in a system that is rigged against them by commercial interests. LKP also seeks to report the news from the leasehold sector that affects those who pay for the whole edifice: leaseholders. The charity runs an accreditation scheme for managing agents who share our ethos for straight-dealing and support the self-governance by flat owners that is standard across the world, except in England and Wales.

Q12 – Q18 (Not applicable – only to be answered by developers and freehold investors)

CONSULTATION RESPONSES

The non-residential limit for collective enfranchisement

(DIGITAL SURVEY CALLS THIS SECTION: "10. LEASEHOLD REFORM – THE NON-RESIDENTIAL LIMIT FOR COLLECTIVE ENFRANCHISEMENT")

Question 1. Do you agree or disagree that increasing the non-residential limit for collective enfranchisement from 25% to 50% meets government's aim of addressing the historic imbalance of rights between freeholders and leaseholders?

A1. Agree

Question 2. Do you support or oppose a 50% non-residential limit for collective enfranchisement?

More information: "Mixed-use buildings refers to properties that contain both residential units such as flats, and commercial units such as shops, offices, or restaurants.

"This proposal will allow leaseholders of flats in mixed-use buildings to collectively purchase the freehold of the whole building where the flats make up half or more of the property."

A2: Strongly support

If response Strongly support or Support - What are the benefits of increasing the non-residential limit for collective enfranchisement from 25% to 50%? (Max 500 words)

Changing the 25% rule to a non-residential limit of 50% for collective enfranchisement would massively democratise flat ownership. It gives more leaseholders the opportunity to remove their freeholders, who may see the building as an investment vehicle, "sweat"

the asset and scrimp on maintenance while service charges roll in (safe in the knowledge they have a monopoly on these people's homes due to the 25% rule), thus giving more leaseholders the opportunity to take ownership and control of their developments and gain control of their bills – standard in almost every jurisdiction in the world outside of England and Wales. Lawyers have even written articles highlighting the 25% rule, urging developers to engineer schemes in such a way to curb residential rights. Leaseholders are "captive consumers" where the 25% rule prevents them from enfranchising to control their service charges, appoint an agent accountable to them (i.e. the homeowners paying the bills), and end rip-off practices such as collusively tendered major works. A mixed-use site where leaseholders have 50% or more of floor space should be seen as "predominantly residential" (the type of property for which enfranchisement had intended to apply originally) and must qualify for collective enfranchisement in these reforms. For a 50% rule to have the desired effect, however, it must be accompanied (alongside mandatory leasebacks) by a substantial relaxation, or scrapping, of the "vertical division condition" since many mixed-use developments have residential flats sharing services, such as utilities and plant room, with the commercial premises and are structurally interdependent. The Law Commission agrees in Recommendation 33 of its enfranchisement report. Mixed-use developments where flats sit alongside commercial premises, say offices or hotels, have proliferated in recent years as regeneration continues apace. Mixed-use was far less a policy concern in the years preceding the 2002 Act, which introduced the 25% rule, because it hadn't taken off in this country. Ultimately, the 25% rule contradicts with the approach taken elsewhere in legislation. Right of First Refusal covers property where "no more than 50% of the premises to be in non-residential use", covering more leaseholders in mixed-use schemes. The 50% limit also applies under s.25(4) of the 1987 Act so leaseholders in many mixed-use schemes can compulsorily purchase the freehold after 2 years of a s24 manager. LKP chair Martin Boyd used this right to remove his freeholder in spite of the fact Charter Quay has blocks up to 60% commercial. We have seen many cases where service charges on mixed-use developments spiral, are far too high and don't tally with what is being provided. Those leaseholders in developments affected by the 25% rule have no easy way, for example, of bringing secret buildings insurance commissions to an end, which can sometimes double their premiums, by buying out a problematic third-party freeholder landlord through enfranchisement. A 50% limit will also aid the shift to commonhold, which will ensure flat owners won't be subsidising services and works that pertain exclusively to the commercial, which is unfortunately a common practice in leasehold mixed-use schemes.

Question 3. If you were to benefit from a new 50% non-residential limit, would you buy your freehold?
A3: Not a leaseholder

Question 4. If no/not sure to Q 3, please select all relevant reasons?
A4: [left blank. Not a leaseholder]

Question 5. Are there any individuals, organisations or types of properties that you believe should be exempt from the proposed increase in the non-residential limit to 50%?
A5: No

Interdependent proposals

(DIGITAL SURVEY CALLS THIS SECTION: "11. LEASEHOLD REFORM – INDIVIDUAL FREEHOLD ACQUSITIONS)

Question 6. Do you support or oppose a 50% non-residential limit for individual freehold acquisitions? (IF USING DIGITAL SURVEY, THIS IS QUESTION 1. OF SECTION 11)

A6: Strongly support

If response Strongly support or Support - What are the benefits of a 50% non-residential limit for individual freehold acquisitions? (Max 500 words)

A 50% non-residential limit has several benefits:

- It aligns with the Law Commission's recommendations for collective freehold acquisitions
- It supports the introduction of reforms designed to simplify enfranchisement that introduces the new definition of "unit" by keeping things simple and should thus reduce future legal challenges on the definition of a property
- It ensures that existing enfranchisement rights are not removed from existing leaseholders (in the much discussed "flat above a shop" example)
- It is less likely that this limit will be abused in the building of new "units" but given the previous unscrupulous behaviour of some developers and freeholders we would encourage those drafting legislation to ensure that any loopholes created to use this limit to restrict enfranchisement rights are considered and addressed

Question 7. What are the potential impacts of introducing a 50% non-residential limit for individual freehold acquisitions? (Max 500 words) (IF USING DIGITAL SURVEY, THIS IS QUESTION 2. OF SECTION 11)

A7: There are both positive and potentially negative impacts of introducing a 50% non-residential limit for individual freehold acquisitions. The positive impacts are:

- It fits into the "bigger picture" of reforms that the Law Commission is recommending by moving away from the complexity that sits behind the current definitions of flats and houses, and towards a simplified definition of a "unit"
- It is designed to "keep things simple" in what is a quagmire of existing complex leasehold law.
- It aligns with the 50% non-residential limit for collective enfranchisement

It does introduce some risks:

- Unintended consequences of removing existing enfranchisement rights for leaseholders. Those drafting legislation need to adopt a cynical lens and consider how an unscrupulous developer and/or freeholder will seek to abuse this new limit (e.g. would it be possible in a 'flat above shop' scenario for the freeholder to add a small extension to the shop to tip the non-residential space into more than 50%?).

Mandatory leasebacks

(DIGITAL SURVEY CALLS THIS SECTION: "12. LEASEHOLD REFORM – MANDATORY LEASEBACKS)

Question 8. Do you agree or disagree that mandatory leasebacks to landlords as part of the collective enfranchisement process will reduce the cost of purchasing a freehold? (IF USING DIGITAL SURVEY, THIS IS QUESTION 1. OF SECTION 12)

A8: Agree

Question 9. Do you support or oppose mandatory leasebacks to landlords as part of the collective enfranchisement process? (IF USING DIGITAL SURVEY, THIS IS QUESTION 2. OF SECTION 12)

A9: Strongly support

If response Strongly support or Support - What are the benefits of mandatory leasebacks as part of the collective enfranchisement process, on the presumption of a 50% non-residential limit? (Max 500 words)

We believe the mandatory leasebacks policy would make collective enfranchisement a reality for many more flat leaseholders, particularly on mixed-use sites with a significant amount of commercial premises, as the costs of buying out the freeholder would be cut quite dramatically. We don't believe the freeholder or landlord should have a say on leasebacks, so they must be mandatory where leaseholders elect to hand back some of the premises on a 999-year lease to bring down the premium. For many mixed-use developments, the freehold is not worth a huge amount as the residential leases are 999 years (minimal reversionary value as freeholder is not getting the properties back anytime soon) and ground rent relatively modest, and the commercial premises are on their own super-long leases and therefore separate from the freehold title. Indeed, as we have reported, over at Beetham Tower, a mixed-use high-rise in Manchester, (now former) freeholder North West Ground Rents Limited, an interest of Ground Rents Income Fund plc, argued before the High Court that its "only commercial interest in the building was to collect relatively modest ground rental income" of approximately £65,000pa and that the £400,000 it paid for the freehold "was minimal in comparison with the premium paid … by the claimant to acquire [hotel] leasehold (some £45 million)". A leaseback will separate the hotel / commercial value from the apartments in a clean manner and won't negatively impact freeholder landlords as, in the event they're unhappy with losing the income streams in leaseholders' homes and feel the on-site businesses are not making enough money by themselves, they would be free to sell on the interest in the commercial premises and exit the development altogether at a time of their choosing. However, we strongly believe the mandatory leasebacks policy must ensure the former freeholder landlord cannot enjoy management control or influence as the lessee of the commercial premises/commercial tenant. We know in some cases, service charges have been weaponised by those controlling the commercial premises to undermine RTM companies or court-appointed managers, and estates cannot be run on arrears. It would put enormous strain on the managing agent and the residential flat owners to keep suing the ex-freeholder operating the commercial premises for a money judgment. We know of sites where the leaseholders would not want their freeholder involved at all, post-enfranchisement, but compulsory leasebacks must ensure the former building owner

cannot be a veto player in the running of the estate, say by blocking a cheaper cleaning contractor because residents did not choose his related company, not paying utility bills or withholding payment for the commercial premises' portion of the buildings insurance premium. We also urge government considers how mandatory leasebacks would apply to buildings held on 999-year head leases, an issue raised by Philip Rainey QC in his Law Commission submission. 999-year head leases are becoming increasingly popular and must not be allowed to stifle collective enfranchisement bids by residential leaseholders who will want to use compulsory leaseback to make freehold purchase affordable.

The non-residential limit in right to manage claims

(DIGITAL SURVEY CALLS THIS SECTION: "13. LEASEHOLD REFORM – THE NON-RESIDENTIAL LIMIT IN RIGHT TO MANAGE CLAIMS)"

Question 10. Do you agree or disagree that increasing the non-residential limit for the right to manage from 25% to 50% meets government's aims of addressing the historic imbalance of rights between freeholders and leaseholders? (IF USING DIGITAL SURVEY, THIS IS QUESTION 1. OF SECTION 13)
A10: Agree

Question 11. Do you support or oppose a 50% non-residential limit for right to manage claims? (IF USING DIGITAL SURVEY, THIS IS QUESTION 2. OF SECTION 13)
A11: Strongly support

If response Strongly support or Support - What are the benefits of increasing the non-residential limit for right to manage from 25% to 50%? (Max 500 words)
We vigorously support increasing the non-residential limit for Right to Manage from 25% to 50%. It is only fair that paying flat owners appoint the managing agent and control their service charges, as is standard across the world where commonhold systems operate, at least where they are in the numerical majority in terms of floor space of a development in the Anglo-Welsh leasehold context. Without the ability to switch providers, freeholders and their agents have no incentive to provide a good service or deliver value for money for the end users, the leaseholders and other occupiers. Together with government's proposed reform to the 25% rule for collective enfranchisement qualifying criteria, a non-residential limit of 50% for RTM would help end the situation of flat leaseholders being "captive consumers", which means they are locked into unregulated freeholders and managing agents they cannot easily change for a more responsive or affordable provider. This can lead to major problems including spiralling and opaque service charges; essential major works projects being deferred, thereby making the residential leaseholders' bill bigger when these jobs can no longer be avoided; reserve funds being used inappropriately; and building deterioration as management is largely remote and unaccountable to the service charge paying homeowners since the agent operates according to the profit-seeking logic of the client, the freeholder landlord, who may be unknown to the residential leaseholders, even offshore. Achieving section 24 involves proving fault against the landlord in tribunal and can cost significant time, money and stress to secure and it is not guaranteed that leaseholders needing professional management of their homes and service charges will secure a court appointed manager.

Leaseholders in mixed-use developments with 50% or more residential premises/50% or less non-residential space must have the ability to secure RTM to gain control of their buildings, managing agent and service charges, the situation enjoyed by their counterparts across the globe under commonhold equivalents. We also urge government to consider how RTM can best function on mixed-use developments where the residential leaseholders share services with the commercial premises which could be utilities and plant room. As there is no forfeiture in the RTM regime for an RTM company, government must ensure the reformed RTM regime is robust against pugnacious and profit-seeking freeholders who may want to use their control of the commercial premises to blow up an RTM company and regain management (and the lucrative incomes associated with leasehold management control) by withholding payment for window cleaning, buildings insurance, utilities or plant room maintenance etc. As we have noted in our answer on mandatory leasebacks, sites cannot be run with significant service charge shortfalls and so any new RTM scheme must ensure that the residential leaseholders' RTM company has access, and the rights to manage, shared services on mixed-use sites where these leaseholders have 50% or more of a development's internal floor space (and pay a majority of the service charges). We have case studies where freeholders have invoked their property rights to nobble a section 24 order.

Interdependent proposals

(DIGITAL SURVEY CALLS THE FOLLOWING ROUND OF QUESTIONS: "14. LEASEHOLD REFORM – RIGHT TO MANAGE COMPANY VOTING RIGHTS")

Question 12. Do you agree or disagree that right to manage company voting rights should be amended to ensure leaseholders continue to have effective control of decisions? (IF USING DIGITAL SURVEY, THIS IS QUESTION 1. OF SECTION 14)
A12: Agree

Question 13. Do you support or oppose capping the total votes allocated to landlords in right to manage companies to one-third of the total votes of qualifying tenants (Law Commission's Option 3)? (IF USING DIGITAL SURVEY, THIS IS QUESTION 2. OF SECTION 14)
A13: Strongly support

If response Strongly support or Support - What are the benefits of capping the total votes allocated to landlords in right to manage companies to one-third of the total votes of qualifying tenants? (Max 500 words)

Capping the total votes allocated to landlords ensures that they do not have disproportionate voting rights and undermine the effectiveness of the aim of the Right to Manage recommendations – to give leaseholders more control of the management of the building they live in and ensure democratic resident control of the service charges they pay. Without the cap, leaseholders may deem that the benefits of pursuing Right to Manage as not worth the effort, as little will change if the freeholder is still essentially in control. Not having a cap creates a disincentive for leaseholders to progress RTM. We also urge the government to consider what should happen with freeholder-linked, controlled and owned residential flats. We know of sites where the freeholder landlord owns several apartments through obscure companies, sometimes offshore, and even via nominee

directors, and so this could pose a major problem for the residential leaseholders wanting fairness where these properties turn into spoiler votes / landlord proxies on the RTM company and block democratic self-governance by genuine flat owners who hated the past management of the block. Similarly, in many mixed-use developments, the freeholder either owns the commercial premises directly or indirectly and so we urge the government to consider arrangements to ensure that the commercial premises cannot sabotage the RTM company by insisting they must have votes on shared concerns such as buildings insurance or window cleaning. Ultimately, the leaseholder of the commercial premises, which can often be linked to or owned by the overall freeholder landlord, may want to go for a buildings insurance policy that is favourable to the freeholder landlord and its broker in terms of considerable commissions and other unfair arrangements such as a no or low claims rebate to the freeholder, which will not benefit the residential leaseholders and may well be one of the reasons these leaseholders sought Right to Manage in the first place. The RTM regime has to be reformed to ensure it cannot be thwarted by bad faith actors, either the freeholder landlord, its proxy flats or the lessee of the commercial premises / commercial tenant (often linked to the freeholder landlord and part of the same interest).

(IF USING DIGITAL SURVEY, THE FOLLOWING QUESTION WILL APPEAR ON YOUR SCREEN WHICH YOU SHOULD RESPOND TO BY CLICKING 'YES' FOR MORE IMPORTANT QUESTIONS TO ANSWER)

15. LEASEHOLD AND COMMONHOLD REFORM (TITLE)
"1. Do you want to answer consultation questions on commonhold reform? Answering 'No' will end the survey.**"**
A1: Yes

Commonhold voting rights for shared ownership properties

(DIGITAL SURVEY CALLS THIS SECTION: "16. COMMONHOLD REFORM – VOTING RIGHTS FOR SHARED OWNERSHIP PROPERTIES")

Question 14. Do you support or oppose that, where Shared Ownership providers are liable for paying for repair and maintenance during the 'Initial Repair Period' of a new Shared Ownership lease, they should have the right to vote on matters relating to these works and their costs? (IF USING DIGITAL SURVEY, THIS IS QUESTION 1. OF SECTION 16)
A14: Support

If response Strongly support or Support - What are the benefits of allowing Shared Ownership providers the right to vote on matters relating to the works and costs for which they are responsible during the "Initial Repair Period"? (Max 500 words)
The benefits of allowing Shared Ownership providers to the right to vote on matters relating to works in the "Initial Repair Period" are that it gives the provider voting rights when they are liable for payments. In a market where shared ownership providers behave ethically and responsibly this is logically the correct decision; and gives providers the same rights over costs that they are liable for, in the same way these reforms aim to give leaseholders more control of costs they are liable for. However, consideration needs to be given to how to address issues where shared ownership providers do not behave

ethically or responsibly. In particular, the end of the "Initial Repair Period" (IRP) could be a "cliff edge", with providers voting to delay works until the IRP is over – thus pushing costs that should have been taken in the IRP onto shared owners and which will likely cost far more than if the works had been carried out sooner. Conversely, giving providers the right to vote in the IRP prevents shared owners forcing work that is not yet required into the IRP and making the provider liable for costs of works undertaken prematurely. We believe that housing associations tend not to do more than the minimum – they will adhere to formal directives but won't actively pursue best practice. They also operate as developers and use a controversial policy called "cross subsidy", which means the income they generate from shared owners and leaseholders is used to subsidise the rest of their portfolio and the building of new homes. This suggests that scrimping on block maintenance may well be in their interests. In terms of the IRP policy applying to major works projects (we expect that shared owners even protected by IRP will still need to pay for day-to-day upkeep through service charges), blocks of flats should be well constructed in the first instance and therefore not require, for example, replacements of lifts or putting in new utility meters within the first 10 years anyway. Housing association shared owners who will benefit from this IRP will still need a say where their housing association landlord is deferring critical major works, such as to the plant room, which may mean continued hot water and heating outages etc. Disrepair and poor block management does not just affect the shared owner in terms of what they see as poor value for money service charges, but in terms of actually living in the property and so it would be wrong to allow the housing association to have all the power on the Commonhold Association for these properties. There needs to be a mechanism to ensure that shared owners in this IRP window have some dignity, autonomy and control over how their homes are being maintained. After all, shared ownership is regularly talked up as a home ownership product. Like with leasehold, we need to make the actual lived experience of this property system for the occupier much closer to the marketing spiel.

Question 15. Do you support or oppose that, where Shared Ownership providers wish to delegate this right over decision-making to the shared owner, they should be able to do so? (IF USING DIGITAL SURVEY, THIS IS QUESTION 2. OF SECTION 16)

A15: Support strongly

If response Strongly support or Support - What are the benefits of allowing Shared Ownership providers to delegate this right over decision-making to the shared owner? (Max 500 words)

The benefits of allowing shared ownership providers to delegate this right over decision-making is that the provider is delegating the decision to the people who are best informed to make them – those that have huge personal interests in the stewardship of the buildings they live in. Where the relationship between the provider and the shared owners is harmonious this should be a win-win situation. We doubt that most shared ownership providers will want to delegate control to shared owners, but having it as an option is beneficial, particularly where trust exists between provider and shared owners. We also know of cases where the housing association has fought shared owners from acquiring the Right to Manage and they suggest to us that housing associations should not have all the power or management control, certainly not in the commonhold context

which should be about democratised flat ownership and homeowner self-rule. Those who pay must have a say and this critical principle will cover shared owners even in the "Initial Repair Period" as we envisage they will still be having to pay service charges for day to day maintenance and upkeep of the building and common areas – and that the IRP only relates to costly one-off major works projects that the housing association will be expected to fund for the first decade of a building or development's occupation. Delegation of decision-making to the shared owner, as proposed, also gives shared owners some leverage over poorly performing housing associations as they can urge them to "do the right thing" and give them, those actually living in these properties and paying for them in service charges, a seat at the commonhold table over how their homes are being managed. It could also be a great way for purchasers and local authorities to distinguish between ethical housing associations and those who are more commercially minded and less pro-consumer. Those committed to shared owners can boast on their website and in their marketing materials that they have a policy where they hand over decision-making to the shared owners even though the law doesn't require them to do this because they genuinely believe that those who live in the buildings (and pay for them), i.e. shared owners, are best placed to care about their management and the costs associated with looking after them.

(DIGITAL SURVEY CALLS THESE LAST 2 QUESTIONS OF THE CONSULTATION: "17. COMMONHOLD REFORM – HOME BUYING AND SELLING")

Question 16. What should be the maximum fee (£) for issuing a Commonhold Unit Information Certificate (CUIC)?
A16: 101 - 150

Why do you think your chosen maximum fee (£) is most suitable? (Max 500 words)
We urge government to consult the sector to understand what it really costs to pull together these information packs. They should not be produced at a loss. The consumer perspective must also be considered when finalising the policy on cost for issuing a Commonhold Unit Information Certificate (CUIC). We know in leasehold that some freeholders have been charging extortionate amounts for a sales pack. This can slow down the property market on flats and even make such properties less attractive to buyers. Indeed, in one case, the assigning of the underlease at the point of sale saw one leaseholder being charged £1,600 plus VAT, comprising legal fees of £1,250 plus VAT and surveyor's fees of £350 plus VAT. This was litigated over in No.1 West India Quay (Residential) Ltd v East Tower Apartments Ltd [2016] EWHC 2438 (Ch) (06 October 2016). The High Court ruled in favour of the leaseholder and found that a "reasonable fee for the assignments would have been £350 plus VAT". We believe that there will be less information to compile for the prospective purchaser in commonhold as you have the one commonhold community statement, which may or may not have been updated since the last sales pack was produced, and any news of upcoming major works will also be required. We also support the work of Beth Rudolph and the Conveyancing Association who will be well placed to advise on the appropriate fee. £101-£150 seems sensible to ensure that Commonhold Association is not out of pocket when it comes to producing these CUICs, especially on the larger sites, and this would not be prohibitively expensive

for the buyer either. It is worth highlighting that the Commonhold Association will have no ground rent, license and permission fees or other income to give it sustenance and so the cost it will take to assemble and pull together CUICs must be reimbursed. It cannot be done at a loss to the Commonhold Association.

Question 17. Do you support or oppose a sanction on the commonhold association that no fee is payable, if the deadline for the CUIC's provision is missed?
A17: Support

If response Strongly support or Support - What are the benefits of placing a sanction on the commonhold association that no fee is payable, if the deadline for a CUIC is missed? (Max 500 words)

We only Support this proposal, not Strongly Support, for the reason that the Commonhold Association is going to be made up of homeowners, not an institutional freeholder which makes money out of other people's homes and whose day job is meant to involve sorting this type of administration and bureaucracy to ensure the smooth buying and selling of property in an apartment development. These commonhold unit-owners will have careers, families, lives outside of the Commonhold Association and will not be remunerated for serving on the Commonhold Association. The appointed managing agent will have to do most of the work on CUICs. However, the benefits of placing a sanction on the Commonhold Association are that it incentivises a timely response for production of a CUIC and reinforces that the Association should have robust processes and governance in place. Delays in the conveyancing process can lead to lost sales and thus it is in the interests of all commonhold unit-owners that the Association is supporting the sales of units within the commonhold development and not creating barriers to sale. There is one potentially quite major flaw in the proposal though. If the purchaser gets the CUIC for free because of delays by the Commonhold Association and its appointed agent in preparing it, this may not mean that they will get the certificate in a timely manner. It could still take months for the CIUC to see the light of day, which will have negative repercussions on the property market especially where chains are involved. We also do not want to encourage a litigation culture in commonhold as this is one of the major benefits of the tenure versus leasehold. Purchasers should not need to go to court or tribunal to force the production of this CIUC at developments where the Commonhold Association is not on top of the buying and selling process and the paperwork involved in ensuring smooth transactions. There needs to be a proportionate and effective mechanism to force the CIUC to be prepared to the correct standard and released by the Commonhold Association, to the purchaser and their conveyancers, in a timely manner. Financial penalties work and are sometimes necessary to enforce compliance. However, any financial sanction must not be excessive. We must remember that Commonhold Associations, unlike RTM or RMC companies in leasehold, will have no right to collect ground rent, license and permission fees or any other income to keep it afloat. This makes it incredibly vulnerable financially.