



## **Leasehold Advisory Service submission to Housing, Communities and Local Government Committee inquiry into Leasehold Reform**

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1. The Leasehold Advisory Service (LEASE) is an Executive Non Departmental Public Body. We were established in 1994 through a Government initiative, following the introduction of a major piece of leasehold legislation, to help deliver English and Welsh government policy objectives regarding initial advice for residential leaseholders and, since 2013, residential park homes.
  
2. The key points of our submission are:
  - a. The Government's programme of work on residential leasehold reform addresses themes that arise from subjects of enquiry raised by leaseholders with LEASE in recent years
  - b. Full benefit of the programme of work for existing leaseholders of flats and houses may depend on the Law Commission's work on enfranchisement.
  - c. Ending the doctrine of forfeiture for residential leasehold should be introduced as further reform.
  - d. To help existing leaseholders with onerous terms, LEASE can provide ongoing support and also increase the capacity of other advice providers to intervene locally.
  - e. In the event that the variation of onerous leases cannot be progressed by negotiation between the original developers and current freeholders, then government should intervene.
  - f. Action by Government, where homeowners suffer detriment, due to an issue they were unaware of at the time of purchase, is not unprecedented.

### ***The adequacy of the Government's programme of work on residential leasehold reform, including (a) its application to existing leaseholders in both houses and flats and (b) whether further reforms should be introduced.***

3. In September 2017, the then Department for Communities and Local Government, published its estimate that, in 2015-16, there were 4.2 million long leasehold dwellings in England alone<sup>1</sup>. Long leasehold is a form of property tenure that has existed for centuries in England and Wales, and continues to

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<sup>1</sup> See [Estimating the number of leasehold dwellings in England, 2015-16](#)

grow in spite of an alternative for properties such as flats - Commonhold<sup>2</sup>. There are a range of views as to why it has failed to progress, these include that developers are incentivised to retain leasehold because of the income from ground rent; and that transferring a block of flats to commonhold requires 100% agreement of those with an interest in a leasehold flat i.e. the landlord and mortgage lenders.

Long leasehold is a tenancy; and hence at its heart is a landlord and tenant relationship, which can result in disputes arising about a wide range of issues, from ownership to the costs of maintenance and management. Over the years, legislation has sought to balance the parties' rights and responsibilities whilst addressing unfairness for leaseholders. This has resulted in a large amount of often complex legislation.

4. The table below shows the top subjects raised with us over 2016-17 and 2017-18 and the percentage of our overall enquiries made up by each subject. These also reflect subjects raised in previous years.

<b>2016-17</b>		<b>2017-18</b>	
Service charges	31%	Service charges	29%
Management	13%	Lease extension	12%
Repair	12%	Freehold Purchase	11%
Breaches of covenant	11%	Repair	9%
Application to the First-tier Tribunal	11%	Breaches of covenant	8%
Lease extension	10%	Section 20 Consultation	7%
Freehold Purchase	10%	Interpreting lease	7%
		Management	6%
		Other	6%
		Licenses/consent	5%

Whilst the position of most subjects changes between the two years, it is evident that the same subjects appear consistently as issues for leaseholders.

Three headline themes emerge from the table:

1. Management
  - a. Standards (including repair)
  - b. Costs
2. Freehold purchase and lease extension (ie enfranchisement)
3. Terms of leases and understanding them

<sup>2</sup> See [LEASE Commonhold Guide](#)

5. The Government's programme of work shows an intent to:

- Remove the possibility of onerous ground rent in future;
- Reinvigorate Commonhold (Law Commission project);
- End the use of leasehold on new build houses in future;
- Improving the home buying and selling process;
- Provide freeholders who pay 'estate rentcharges' (ie service charges) with (a) the same rights as leaseholders to challenge them and (b) remove inequitable rights, such as possession, for non-payment<sup>3</sup>;
- Regulate managing agents, including the need for professional qualifications;
- Make the process of purchasing a freehold or extending a lease much easier, faster and cheaper. (Law Commission project);
- Make the Right to Manage work better for leaseholders (Law Commission project); and
- Ensure that residents of high-rise residential buildings with Aluminium Composite Material (ACM) cladding are safe, and feel safe from the risk of fire.

We feel that the programme addresses each of the headline themes from our enquiries, prospectively. Banning ground rent on new leasehold property, which is not framed as retrospective action currently, will benefit those who become leaseholders after the reforms are implemented. Existing leaseholders with onerous terms, such as hyper-escalations in their ground rent, may benefit instead from the Law Commission's work to make the process of purchasing a freehold or extending a lease much easier, faster and cheaper.

6. Even with such an extensive programme we feel that the abolition of forfeiture of residential leases also merits inclusion. Our reasons are as follows:

- a. Forfeiture is excessive, a feudal device no longer appropriate to modern home ownership and too open to abuse by unscrupulous landlords. Its impact is frequently disproportionate to the alleged breach.
- b. UK Finance's response to 'Tackling unfair practices in the leasehold market' where it highlighted impacts on its members by the threat of forfeiture, which included:
  - Regularly paying demands for service charges and ground rents in cases where the borrower is in arrears and the landlord is preparing to take action for forfeiture of the lease.

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<sup>3</sup> Whilst the creation of rentcharges has been restricted since 1977, they can still be created in order to pay towards the maintenance of common parts of an estate eg unadopted roads, play areas and communal gardens. This is known as an "Estate Rentcharge".

- Confusion around demands due to the way they are presented.
  - Being forced to act, after being advised at a late stage of the issue, to prevent the lease security being forfeited. Often with only 7 to 14 days to contact the borrower and determine whether it is appropriate to pay the amount requested.
- c. It would be consistent with the Government's intention to address the unfairness to freeholders who pay an estate rentcharge. They suffer from the risk of action for possession by the rentcharge owner in the event they do not pay the rentcharge. That is as inequitable and outmoded as forfeiture, so the forfeiture of residential leasehold property should be given the same treatment.

***What support and government intervention can be provided to existing leaseholders, in both houses and flats, affected by onerous leasehold terms?***

7. LEASE can provide ongoing support through initial advice and information via various channels. We can also help develop the capacity of other consumer advice providers, so that they can support leaseholders with onerous terms through casework intervention. LEASE now has a distance learning platform, and it would be straightforward to create modules on onerous terms and thus train other advice providers at no cost to them.

Educating leaseholders too is fundamental to empowering them to make relevant, fully informed decisions. In addition to this "micro" level of support to individuals, through the routine monitoring and analysis of the types of enquiries LEASE handles, LEASE is uniquely placed to spot concurrent and emerging trends which can then feedback to assist reform and intervention at the "macro" level.

In keeping with this, and as reforms are implemented, LEASE can provide additional support through awareness campaigns so that leaseholders understand their new rights and are able to take advantage of them effectively. An example of this is the work we have undertaken since being funded by the Government to provide fire safety advice. Issues of re-cladding and interim measures have involved LEASE advisers attending outreach events in London and in major cities, amongst other services. These events are meetings with affected leaseholders to educate them on their rights and help them to understand the terms of their leases.

In addition, LEASE can act as a conduit for informing policy/reform and disseminating information relating to the same. LEASE has already acted in this role by providing input to past calls for evidence, consultations and also hosting free webinars for leaseholders to assist them in engaging with the development of policy/reform<sup>4</sup>.

8. As regards intervention, we feel that in the event that the companies who originally granted leases with onerous terms fail in their efforts to vary the relevant leases through negotiation with the current freeholders then Government should intervene. In short, we would suggest that the consider intervening through amending the Leasehold Reform Act 1967 and the Leasehold Reform, Housing and Urban Development Act 1993 by inserting new definitions for 'qualifying tenant'. In this way, leaseholders with onerous terms would fall into this exclusive category and legislation would provide them with a simple track to enfranchisement or, in the case of flats, rent redemption. Government could consider capping ground rent at 0.1% of the property value. That is the ceiling which now forms part of the lending policy on leasehold property of the Nationwide Building Society. In addition, we suggest that an upper limit of £500 is also set. In this way, whilst there is value in the ground rent to the reversioner, the mischief of onerous future ground rent affecting the enfranchisement price is addressed.

We recognise that this may amount to retrospective intervention and appreciate that such action is rare, particularly in civil matters. However, negotiations by some builders, trying to remedy this market malpractice, suggests that retrospective action would be justified and within the government's area of appreciation and discretionary judgment in economic and social matters. In addition, intervention by Government, where homeowners suffer detriment due to an issue they were unaware of at the time of purchase, is not unprecedented. In 1984, the Government introduced a statutory scheme of assistance for people who had purchased a 'designated defective' type of property from a public authority without knowledge of the defect. The 1984 Housing Defects Act, which was later consolidated into Part XVI of the 1985 Housing Act, provided for a 90% grant towards the cost of repairing the defect, subject to an expenditure limit, or repurchase at 95% of the defect free value.

***What are the implications of providing such support and government intervention to these existing leaseholders?***

9. The implications of the advice, education and awareness raising we mention above is the real empowerment of these leaseholders to change their position

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<sup>4</sup> See [Protecting consumers in the letting and managing agent market call for evidence – webinar](#); and [Improving the home buying and selling process – Call for Evidence - webinar](#)

positively. However, it appears to us that this is tied with intervention by Government. Taken together it could provide these leaseholders with a fair market and fair terms to become freeholders.

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