



BRIEFING PAPER

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Leasehold and commonhold reform

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Contents:

1. The nature of leasehold ownership
2. The extent of leasehold ownership
3. Issues with leasehold ownership
4. Commonhold tenure



Contents

Summary	4
1. The nature of leasehold ownership	10
Leasehold in the devolved administrations	12
2. The extent of leasehold ownership	14
2.1 Estimating the stock of leasehold properties	14
Latest estimates: leasehold homes in 2018-19	14
2.2 Trends in leasehold sales	16
What type of properties are sold as leasehold?	17
Geographic variation in leasehold sales	17
The decline in new-build leasehold sales	23
Long-term trends	24
3. Issues with leasehold ownership	26
3.1 Background	26
3.2 Selling new-build houses on a long lease	28
Proposals for reform	29
3.3 Ground rents	36
Proposals for reform: new lease agreements	37
Proposals for reform: existing leaseholders	38
Exempting leaseholders from Ground 8 possession claims	42
Mis-selling and unfair terms	42
3.4 The Right to Manage (RTM)	45
Proposed reforms	46
3.5 Enfranchisement and lease extensions	47
Proposed reforms	48
3.6 Service charges	51
Potential reforms	53
3.7 Building insurance	55
3.8 Administration charges	56
3.9 Forfeiture	58
Potential reforms	59
3.10 Recognition of tenants' associations	59
3.11 Leasehold retirement properties	60
3.12 Dispute resolution	62
Potential reforms	63
3.13 A new regulatory model for managing agents	66
3.14 Buying a leasehold property	68
3.15 Simplification of the law	69
3.16 Reform in Wales	70
4. Commonhold tenure	73
4.1 Background	73
4.2 Why has commonhold tenure failed to grow?	75
4.3 An appetite for reform?	76
4.4 The Law Commission's proposals 2020	79
Appendix 1: Methodology of MHCLG's statistics	81

Summary

Leasehold tenure has grown

The Ministry for Housing, Communities and Local Government (MHCLG) estimates that there are around 4.5 million leasehold homes in England, of which 69% are flats and 31% are houses. The majority of flats in the private sector are leasehold (an estimated 94% of owner-occupied flats and 75% of privately-rented flats). Around 7% of houses in England are leasehold. However, leasehold houses are more common in the North West: an estimated 26% of houses are leasehold there.

Land Registry data tells us more about leasehold sales in England and Wales. 23% of residential property transactions in 2019 were leasehold – around 216,000 transactions in total. Almost all flats are sold on a leasehold basis, while around 6% of houses are.

There's evidence indicating that developers had started to sell new-build houses on long lease agreements as this can represent a lucrative future income stream. The proportion of new-build houses sold as leasehold rose from 7% in 1995 to a peak of 15% in 2016. The proportion has subsequently fallen, reaching 1% in March 2020. Leasehold sales of new-build houses have traditionally been more common in the North West but have also declined. Around 75% of new-build houses sold in the North West in January 2017 were leasehold, compared with 4% in March 2020.

The Government's commitment to legislate against the practice of selling new-build houses on a long lease may account for the change in trend (see below). It's worth noting that leasehold sales of resale houses (i.e. not new-builds) have remained constant in this period. Between 2016 and 2020, around 7% of all resale houses were leasehold in England, rising to 29% in the North West.

Leaseholders are owner-occupiers who are in a landlord and tenant relationship

Owners of long leasehold properties do not necessarily appreciate that, although they are owner-occupiers, they are in a landlord and tenant relationship with the freeholder. The rights and obligations of the respective parties are governed by the terms of the lease agreement, which is supplemented by statutory provisions. The freeholder (landlord) retains ownership of the land on which the property is built. Essentially, long leaseholders buy the right to live in the property for a given period.

Problems associated with leasehold ownership

Leaseholders report a whole range of problems, including: high service charges and a lack of transparency over what they are being charged for; freeholders who block attempts by leaseholders to exercise the Right to Manage; excessive administration charges and charges for applications to extend lease agreements or enfranchise; and a lack of knowledge over their rights and obligations. The trend of developers selling houses on a leasehold basis was accompanied by lease agreements that set ground rents at a relatively high level with provision for regular reviews, resulting in the accrual of significant ground rent liabilities for long leaseholders.

Despite a good deal of legislative activity in this area over the last 50 years, much of which has been aimed at strengthening long leaseholders' rights, they remain reluctant to seek dispute resolution through the tribunal system. An unfair balance of power, and potential to become liable for the freeholder's costs, are cited as barriers.

A Government commitment to tackle leasehold abuses

The Housing White Paper, [Fixing our broken housing market](#) (February 2017), included a commitment to “improve consumer choice and fairness in leasehold”. The consultation paper, [Tackling unfair practices in the leasehold market](#), marked the first step in fulfilling this commitment. The paper included, amongst other things, proposals to tackle the sale of new-build houses on a leasehold basis and to control ground rent levels in new lease agreements. The consultation process attracted 6,000 responses. A [summary of the responses received and the Government response](#) was published in December 2017. In the Ministerial Foreword, the then-Secretary of State, Sajid Javid, committed the Government to act on leasehold abuses:

Looking at the responses to this consultation it’s clear to me that real action is needed to end such abuses and create a system that works in the best interests of consumers. And that’s exactly what this government will deliver.

Specifically, the 2017 Government said it would:

- legislate to prohibit the creation of new residential long leases on houses, whether newly built or on existing freehold houses, other than in exceptional circumstances;
- restrict ground rents in newly established leases of houses and flats to a peppercorn value;
- Address loopholes to improve transparency and fairness for leaseholders and freeholders; and
- Work with the Law Commission to support existing leaseholders. This will include making buying a freehold or extending a lease “easier, faster, fairer and cheaper.”

The 2017 Government published a further technical consultation paper, [Implementing reforms to the leasehold system in England](#), on 15 October 2018. The outcome was published on 27 June 2019: [Implementing reforms to the leasehold system in England: summary of consultation responses and government response](#).

The then-Minister for Housing, Ester McVey, confirmed the Johnson Government’s intention to take forward these measures in a [Written Statement](#) on 31 October 2019. The [Conservative Manifesto 2019](#) contained a pledge to “continue with our reforms to leasehold”.

The Law Commission’s 13th Programme of Law Reform

Following various calls for evidence and consultation exercises the Law Commission published three final reports on leasehold reform in 2020:

- [Leasehold home ownership: buying your freehold or extending your lease: Report on options to reduce the price payable](#) (January 2020). There is also a [summary report](#).
- [Leasehold home ownership: buying your freehold or extending your lease](#) (July 2020). There is also a [summary report](#).
- [Leasehold home ownership: exercising the right to manage](#) (July 2020) There is also a [summary report](#).

A further report summarises the Commission’s residential leasehold and commonhold reports and sets out how they fit with other reforms the Government has announced: [The future of home ownership](#).

The Commission was also tasked with considering how to “reinvigorate commonhold to provide greater choice for the consumer.” The *Commonhold and Leasehold Reform Act*

6 Leasehold and commonhold reform

2002 introduced commonhold tenure. This form of ownership already operates around the world, for example, the Australian Strata Title system and the condominium system in America.

One of the aims of the 2002 Act was to overcome the disadvantages of leasehold ownership. It was assumed that, once in place, commonhold would become the standard form of tenure for new-build blocks of flats. In practice, it has failed to take-off – there are very few blocks in commonhold ownership. Given ongoing issues associated with leasehold tenure, there have been many calls to review the legislation and implement changes to make it a workable and attractive option in England and Wales.

The Law Commission published:

- [Reinvigorating commonhold: the alternative to leasehold ownership](#) (July 2020) together with a [summary report](#) and [an open letter to lenders on taking commonhold as security](#).

The next steps: an intention to legislate

On 7 January 2021 [the Government announced](#):

Legislation will be brought forward in the upcoming session of Parliament, to set future ground rents to zero. This is the first part of seminal two-part reforming legislation in this Parliament. We will bring forward a response to the remaining Law Commission recommendations, including commonhold, in due course.

This was followed by a [Written Ministerial Statement](#) on 11 January 2021 in which the Secretary of State said:

The Government will reform the process of enfranchisement valuation leaseholders must follow to calculate the cost of extending their lease or buying their freehold. Taken together these measures could save leaseholders thousands of pounds, depending on the remaining term of their lease.

The Government will abolish marriage value, cap the treatment of ground rents at 0.1% of the freehold value and prescribe rates for the calculations at market value. The Government will also introduce an online calculator, further simplifying the process for leaseholds and ensuring standardisation and fairness for all those looking to enfranchise.

Existing discounts for improvements made by the leaseholder and for security of tenure will be retained, alongside a separate valuation methodology for low-value properties known as “section 9(1)”. Leaseholders will also be able to voluntarily agree to a restriction on future development of their property to avoid paying “development value”.

Leaseholders of houses can currently only extend their lease once at a “modern ground rent” for 50 years, compared to leaseholders of flats who can extend as often as they wish at a zero “peppercorn” ground rent for 90 years.

I am confirming that the Government will give leaseholders of all types of property the same right to extend their lease as often as they wish, at zero ground rent, for a term of 990 years. There will continue to be redevelopment breaks during the last 12 months of the original lease or the last five years of each period of 90 years of the extension, subject to existing safeguards and compensation.

We will also enable leaseholders, where they already have a long lease, to buy out the ground rent without the need to extend the term of the lease.

[The Statement](#) also announced the establishment of a Commonhold Council:

I am confirming I will establish a new Commonhold Council as a partnership of industry, leaseholders and Government that will prepare homeowners and the market for the widespread take-up of commonhold. I will start this work immediately, including considering legislation. I know this will take time and close working with

consumers and industry, and the Commonhold Council will be the critical first step of this.

[There is a commitment](#) to respond to the Law Commission's "remaining recommendations on enfranchisement, commonhold and right to manage in due course" and to "translate these measures into law as soon as possible, starting with legislation to set future ground rents to zero in the upcoming Session."

On 5 January 2021, Lord Greenhalgh, the Minister responsible for leasehold, [responded to questions on the timing of future legislation](#):

We need primary legislation. I have been told by Professor Hopkins, who was in charge of the Law Commission work, that **the preparations to get primary legislation ready for consideration by noble Lords will take approximately one year, so we are probably talking about the third Session.**

Other relevant work

Mis-selling of leasehold properties

On 14 May 2019, the CEO of the Competition and Markets Authority (CMA) wrote to the Chair of the HCLG Select Committee, Clive Betts, confirming that an investigation would be carried out "to see the extent of any misselling and onerous leasehold terms, including whether they might constitute 'unfair terms' as legally defined." The CMA investigation was [launched](#) on 11 June 2019. An [Update Report](#) was published in February 2020 and on 4 September 2020 the [CMA announced](#) that it was opening enforcement cases against four developers. See section 3.3 for more information.

The letting and managing agent market

In October 2017, the Government published [Protecting consumers in the letting and managing agent market: call for evidence](#). The [Government response](#) was published in April 2018. The process sought views on measures to improve leaseholders' rights in relation to the quality, price, and service provided by management companies appointed by freeholders.

The 2017 Government committed to regulating managing agents in addition to letting agents "to protect leaseholders and freeholders alike". There was a commitment to introduce a single, mandatory and legally enforceable Code of Practice covering letting and managing agents which would set minimum standards in certain key areas of activity. Managing agents would be required to have a nationally recognised qualification to practice. An independent regulator would own the Code of Practice and would have enforcement powers.

A Working Group led by Lord Best was established to develop the regulatory regime. [Membership](#) of the Group and its [terms of reference](#) were published on 12 October 2018. The Group's [report](#) was published in July 2019. The recommendations on the new regulatory regime are covered in section 3.13.

The [Queen's Speech](#) on 19 December 2019 contained a commitment to introduce a *Renters' Reform Bill* which would "Professionalise letting agents, to the benefit of tenants and landlords."

Buying a leasehold property

The 2017 Government ran a parallel call for evidence between October and December 2017: [Improving the home buying and selling process](#). This paper posed questions about buying a leasehold property with a view to exploring ways in which leasehold information might "be released to a more predictable timescale, more consistently and at reasonable

cost.” The [outcome](#) was published in April 2018. The 2017 Government said it would set timescales for agents and freeholders to respond to leasehold queries and introduce maximum fees. There was an intention to introduce standard mandatory forms for leasehold information. Consultation on this issue was included in [Implementing reforms to the leasehold system in England](#) which was published on 15 October 2018. As previously noted, the outcome was published on 27 June 2019: [Implementing reforms to the leasehold system in England: summary of consultation responses and government response](#). The 2017 Government confirmed that freeholders and managing agents would be required to provide leasehold information within 15 days and that the maximum fee for providing this information would be set at £200 (plus VAT).

Complaint resolution

A further consultation process, [Strengthening consumer redress in the housing market](#), was launched on 18 February 2018. This process sought views on “better ways for consumers across the private-rented, leasehold, social-housing and owner-occupied sector to resolve their complaints.” [A summary of responses together with the Government’s response](#) was published in January 2019. The 2017 Government said it would create a Redress Reform Working Group to work with industry and consumers to develop a new Housing Complaints Resolution Service. The new service would “help renters in private and social housing, leaseholders, and buyers of new homes.” The Government’s intention was to require freeholders of leasehold properties to be members of a redress scheme:

The Government is proposing to extend mandatory membership to a redress scheme to all freeholders of leasehold properties and will introduce primary legislation to this effect as soon as Parliamentary time allows.

The [Conservative Manifesto 2019](#) contained a pledge to provide “necessary mechanisms of redress for tenants”.

Housing policy is a devolved matter

The Government’s leasehold reform proposals, if implemented, will only apply in England, although existing legislation *does* currently apply in both Wales and England. The Law Commission’s [consultation paper](#) (September 2018) said:

The extent to which leasehold enfranchisement is devolved to the Welsh Assembly is unclear. Aspects of enfranchisement have, in the past, been treated as a devolved issue. “Housing” was expressly devolved to Wales in the Government of Wales Act.

[...]

Our project, therefore, is intended to cover both England and Wales, and to result, where reasonably possible, in a uniform set of recommendations that are suitable for both England and Wales.

On 6 March 2018, the then-Welsh Housing and Regeneration Minister, Rebecca Evans, announced that, regarding houses which qualify for support under Help to Buy – Wales, agreement had been reached with some of the larger developers to only sell on a leasehold basis “where absolutely necessary.” On 1 May 2018 she announced that the Welsh Government had formally joined the Law Commission’s leasehold reform project – a multi-disciplinary task and finish group on leasehold reform was also established. The Task and Finish Group issued a report, [Residential Leasehold Reform](#), in July 2019. The report was described as “just the end of the first key stage of the work” the Group is undertaking.

[On 14 October 2020 Julie James AM](#), Minister for Housing and Local Government, told the Senedd:

...we are working very hard with the leasehold reform provisions that the Law Commission has looked at. They recently reported, and we're looking to see what can be done in conjunction with some UK legislation, if at all possible, just due to the lack of time we've now got in Senedd provisions to be able to do this.

Scotland operates a separate regime for interdependent units – there are very few leasehold properties in Scotland. Leasehold apartments in Northern Ireland are a relatively recent development. The Northern Ireland Law Commission considered a review of the [Law Relating to Apartments](#) in 2013.

Labour's new deal for leaseholders

July 2019 saw publication of [Ending the Scandal: Labour's new deal for leaseholders](#), which set out "Labour's plan to end the unfairness and injustice of leasehold for good".

1. The nature of leasehold ownership

In England and Wales, most owner-occupied flats are owned on a long leasehold basis (i.e. with a lease of at least 21 years when first granted). Houses can also be owned on a long lease, it's not as common as it used to be but there were indications it was on the increase before the 2017 Government announced plans to legislate to restrict its use in all but exceptional cases. All shared ownership properties (part own/part rent) are sold on a long lease.

Most flats in England and Wales are owned on a long leasehold basis.

Owners of long leasehold properties do not necessarily appreciate that, although they are owner-occupiers, they are in a landlord and tenant relationship with the freeholder. The rights and obligations of the respective parties are governed by the terms of the lease agreement, which is supplemented by statutory provisions. The freeholder (landlord) retains ownership of the land on which the property is built.

Essentially, long leaseholders buy the right to live in their property for a given period. In the case of flat-owners, management of the block, including its maintenance and insurance, normally remains in the hands of the freeholder. In turn, the freeholder may employ a managing agent to carry out the day-to-day management of the block. The lease agreement usually makes provision for the costs of the freeholder, or his/her agent, in discharging these management functions to be met in full by the leaseholders; these payments are referred to as service charges.¹

Long leaseholders are owner-occupiers who are in a landlord and tenant relationship with the freeholder.

When a lease expires the landlord and tenant relationship continues. Unless either the tenant or the landlord takes specific steps to end the tenancy, it continues on the same terms. It is open to the tenant to surrender the tenancy. There are a limited number of grounds on which a landlord (freeholder) can regain possession; a tenant can only be made to leave by a court order. A landlord can also end the tenancy by replacing it with an assured periodic tenancy. At this point the tenant no longer has any rights of ownership and is subject to the terms of the new assured periodic tenancy.²

On expiry of a long lease leaseholders may lose their rights of ownership.

Most long leaseholders of houses and flats have the statutory right to buy the freehold interest of their homes³ (on a collective basis in the case of flat-owners) or extend their lease agreements. Exercising these rights means that the risk of the lease expiring is substantially delayed or removed.

Section 3 of this paper describes ongoing dissatisfaction with various aspects of leasehold tenure. The [National Leasehold Survey 2016](#),

¹ The Leasehold Advisory Service (LEASE) has a helpful overview: [Living in leasehold flats – a guide to how it works](#).

² For more information on what happens when a long lease expires see: [Security of tenure when the lease runs out](#), LEASE

³ Also referred to as enfranchisement.

conducted by the Leasehold Advisory Service (LEASE) with Brady Solicitors, attracted 1,244 responses from leaseholders. The main survey findings included:

- 57% of leaseholders who responded said that they regret buying a leasehold property.
- Two-thirds of leaseholders don't feel they get a good service from their managing agent.
- Just 6% are very confident the managing agent could resolve issues.
- 68% of leaseholders have little or no confidence that their managing agent could resolve issues efficiently and effectively.
- 51% of leaseholders see a change in managing agent would improve matters and benefit the block.
- 1 in 5 leaseholders are unaware they could replace a poorly performing managing agent.
- 55% of leaseholders consider changing managing agents would be a difficult process.
- 48% of leaseholders believe a lack of knowledge is a real barrier to changing managing agents.
- 40% of leaseholders strongly disagree that service charge is value for money.
- 62% of leaseholders say the service hasn't improved in the last two years.
- Resident management company (RMC) directors are generally happier with their leasehold properties than 'ordinary' leaseholders due to a greater sense of control over the property's management.
- Two-thirds of RMC directors feel they have a good relationship with fellow directors and leaseholders, but identify a need for a strong, wide skill set beyond legal and company expertise.
- 55% of leaseholders know where to go for information, but 32% definitely do not.
- 52% of leaseholders are confident they know their rights and responsibilities.⁴

The survey was conducted online and was open to all leaseholders in England and Wales. Respondents who completed the survey are not necessarily representative of all leaseholders, so these results are only broadly indicative of the types of issues that leaseholders face.

Commenting on the findings, the MD of Brady Solicitors, Clare Brady, said:

The challenges of communal living emerge strongly throughout the nationwide survey. This is compounded where leaseholders – by their own admission – lack a clear understanding of their rights and obligations. This lack of leasehold knowledge, including understanding how to replace a poorly performing management

⁴ LEASE, [National Leasehold Survey 2016 - report](#)

12 Leasehold and commonhold reform

company, underpins many of the reported problems. It also represents a vast opportunity for the UK's leasehold sector, including its policy-makers, to bring about future change.⁵

NAEA Propertymark published a report based on responses from over 1,100 leaseholders who had bought within the last 10 years in September 2018. [Leasehold: A Life Sentence](#) records that 94% of the owners regretted buying a leasehold property and 93% would not buy another leasehold home.⁶

Leasehold in the devolved administrations

The legislation governing leasehold ownership currently applies in England and Wales but there are some differences in content and format requirements.⁷ The Law Commission's [consultation paper](#) (September 2018) said:

The extent to which leasehold enfranchisement is devolved to the Welsh Assembly is unclear. Aspects of enfranchisement have, in the past, been treated as a devolved issue. "Housing" was expressly devolved to Wales in the Government of Wales Act 2006. Following the Wales Act 2017, rather than expressly devolving competence in certain areas, competence is devolved unless expressly reserved. The Welsh Assembly cannot modify "the private law", which includes the law of property. But that does not apply if the modification "has a purpose (other than modification of the private law) which does not relate to a reserved matter".

Under our Protocol with the Welsh Ministers, the Commission will only undertake a project concerning a matter that is devolved to Wales if it has the support of the Welsh Ministers. To the extent that any of the matters in our Terms of Reference are devolved to Wales, the Welsh Ministers have indicated their support for the Commission undertaking this project.

Our project, therefore, is intended to cover both England and Wales, and to result, where reasonably possible, in a uniform set of recommendations that are suitable for both England and Wales. Nevertheless, after outlining the new scheme that we provisionally propose in this Consultation Paper in Chapter 3, we ask consultees whether any specific considerations call for particular issues to be treated differently in England and in Wales.⁸

Information on the approach to reform in Wales can be found in section 3.16 of this paper.

There are very few leasehold properties in Scotland. The [Property Factors \(Scotland\) Act 2011](#) created a statutory framework to protect homeowners who use factoring services (property managers) by providing minimum standards for their operation.

In Northern Ireland, the *Leasehold (Enlargement and Extension) Act (Northern Ireland) 1971* confers a general right on long leaseholders of

⁵ Ibid.

⁶ NAEA Propertymark, [Leasehold: A Life Sentence](#), September 2018, p6

⁷ See Leasehold Advisory Service: [Wales- differences in notices and other documents](#) [accessed on 9 August 2017]

⁸ Law Commission, [Leasehold home ownership: buying your freehold or extending your lease](#), Consultation 238, 20 September 2018, paras 1.66-1.68

houses to acquire the freehold or extend the lease. The *Ground Rents Act (NI) 2001* allows homeowners of long leases of residential property in Northern Ireland to buy out (redeem) their ground rent. The effect of this is that the resident owns the freehold and is no longer obligated to pay a ground rent. However, there are several exceptions to this, including flat-owners. Ownership of leasehold apartments in Northern Ireland is a relatively recent development. The Northern Ireland Law Commission considered a review of the [Law Relating to Apartments](#) in 2013.

2. The extent of leasehold ownership

MHCLG has made estimates of the number of leasehold homes in England based on survey data (section 2.1). The Land Registry publishes data on sales of leasehold properties (section 2.2).

2.1 Estimating the stock of leasehold properties

MHCLG has estimated the number of leasehold homes in England by combining data from the English Housing Survey (EHS) with Land Registry records. Its first set of estimates, relating to housing stock in 2014-15, was published in April 2017; subsequent publications with revised methodology have estimated the stock for each subsequent financial year up to 2018-19.

MHCLG's estimates are released as 'Experimental Official Statistics' – this means that they are still subject to further testing and development.⁹ The 2018-19 release states:

Experimental statistics are considered by the Government Statistical Service as 'new official statistics undergoing evaluation'. Publishing in this way is intended to involve users and stakeholders in their development and as a means of building in quality at an early stage. This experimental statistic, therefore, has been published in line with the standards expected of an Official Statistic.¹⁰

Latest estimates: leasehold homes in 2018-19

In a release published in July 2020, MHCLG estimates that there were approximately **4.5 million leasehold residential dwellings in England** in 2018-19, or 19% of the English housing stock.

The table overleaf shows how the total number of leasehold homes is distributed between housing types and tenure groups. An estimated **4.2 million leasehold homes are in the private sector** (95% of the total), of which around 2.5 million are owner-occupied and 1.8 million are privately rented. A minority of leasehold homes are in the social sector, i.e. let by social housing providers (around 234,000, or 5% of the total). The majority of these social-sector homes are owned by housing associations (198,000) rather than local authorities.

Around **3.1 million of the 4.5 million leasehold homes are flats (69%), while 1.4 million (31%) are houses.**

⁹ See Office for National Statistics, [Guide to experimental statistics](#) for more information about experimental statistics.

¹⁰ MHCLG, [Estimating the number of leasehold dwellings in England, 2018-19](#), July 2020, p.1

Number of leasehold homes, by type and tenure

England, 2018-19

Tenure of resident	Houses	Flats	Total
Private sector	1,299,000	2,934,000	4,232,000
<i>Owner occupied</i>	<i>1,045,000</i>	<i>1,427,000</i>	2,472,000
<i>Private rented</i>	<i>254,000</i>	<i>1,507,000</i>	1,760,000
Social sector	74,000	159,000	234,000
<i>Local authority</i>	<i>9,000</i>	<i>26,000</i>	36,000
<i>Housing association</i>	<i>65,000</i>	<i>133,000</i>	198,000
All tenures	1,373,000	3,093,000	4,466,000

Source: MHCLG, [Estimating the number of leasehold dwellings in England, 2018-19](#), Table 1

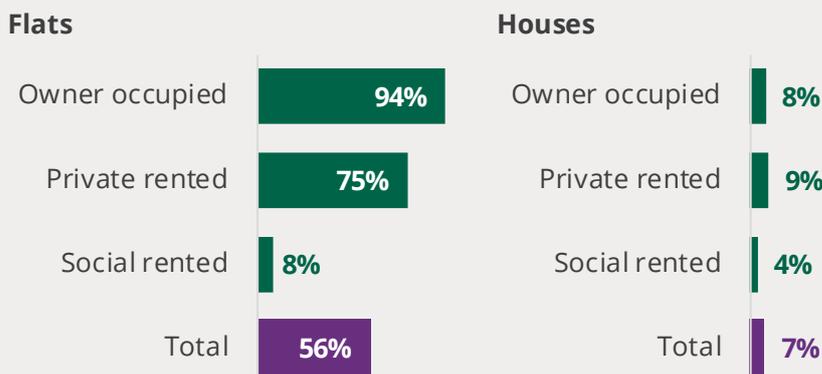
Notes: Figures are survey estimates and are rounded to the nearest thousand.

The charts below show how common leasehold is amongst flats and houses, and in different tenure groups. Most flats in the private sector are owned on a leasehold basis. An estimated 94% of owner-occupied flats in England are leasehold, as are 75% of privately-rented flats. Social-rented flats are not typically leasehold (8% are).

Most houses are not owned leasehold – around 7% are across England.

Most flats are leasehold in the private sector

% of properties that are leasehold, by type and tenure group, 2018/19



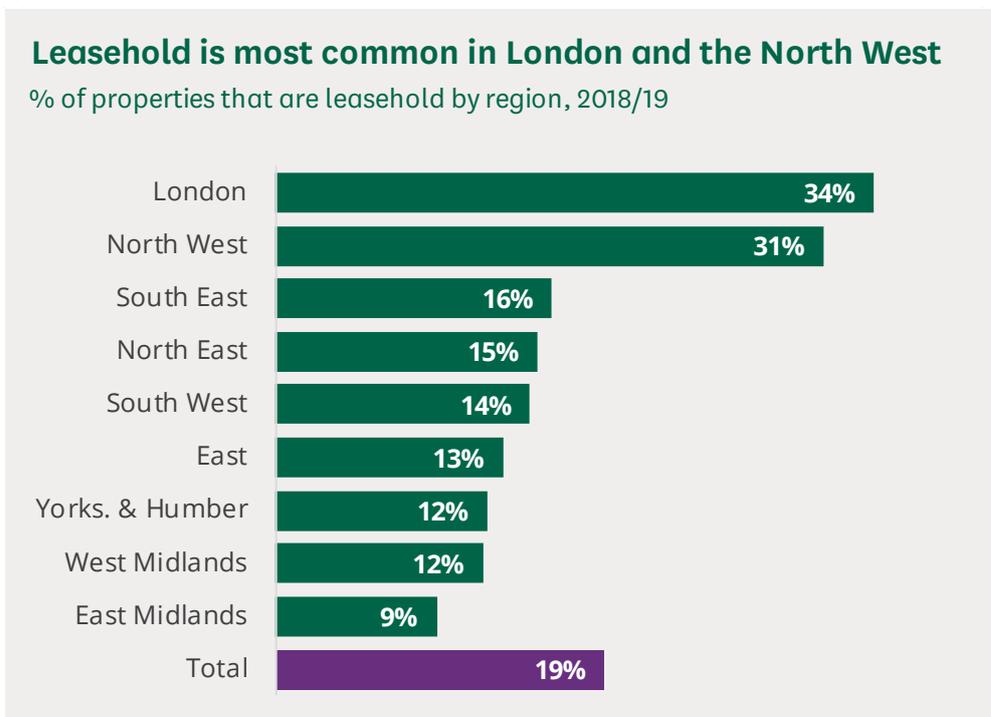
Source: MHCLG, [Estimating the number of leasehold dwellings in England, 2018-19](#), Table 1

Overall, leasehold is more common in the private rented sector than any other tenure group. **37% of private rented homes are estimated to be leasehold, compared with 16% of owner-occupied homes and 6% of homes in the social sector.** This is partly because private

rented homes are more likely to be flats than owner-occupied homes, and flats are more likely to be leasehold.¹¹

MHCLG also published estimates of leasehold housing by region for the first time in July 2020. The chart below shows the estimated prevalence of leasehold homes in each region in 2018-19.

Leasehold homes are more common in London (34%) and the North West (31%) than in other regions. Flats are more common in London than in other regions, and are more likely to be leasehold, hence London's high figure. In the North West, however, the high figure is driven by an unusually high proportion of leasehold houses. Around **26% of houses in the North West are leasehold, compared with 7% across England.** The North West's figure is higher than in any other region.¹² Section 2.2 of this briefing discusses geographic trends in leasehold practises in more detail.



Source: MHCLG, [Estimating the number of leasehold dwellings in England, 2018-19](#), Table 2

The methodology behind MHCLG's estimates has changed over time. Appendix 1 of this briefing paper explains how the methodology and estimates have changed.

2.2 Trends in leasehold sales

While headline estimates are available for the stock of leasehold properties, more detailed trends are only available from data on leasehold sales. The Land Registry's Price Paid Data (PPD) file records all

¹¹ MHCLG, [Estimating the number of leasehold dwellings in England, 2018-19](#), July 2020, Table 1

¹² MHCLG, [Estimating the number of leasehold dwellings in England, 2018-19](#), July 2020, Table 2

properties sold in England and Wales and includes details on the type of property, its location, and whether it was sold leasehold or freehold.

Looking at leasehold sales is not the same thing as looking at the stock of leasehold homes. A property only appears in the PPD if it has been sold, and a property sold multiple times will appear as multiple records in the PPD for a given year.

The following analysis uses the PPD file for 1995-2019.¹³ For more details on the content of the PPD and how it has been used here, see 'What is the Price Paid Data?' below.

Figures behind all the charts in this section are available to download from the [landing page of this briefing paper](#).

What type of properties are sold as leasehold?

23% of residential property transactions were leasehold in England and Wales in 2019 – around 216,000 transactions.

Almost all flats were leasehold. **98% of all flats were sold leasehold**, and this pattern held for both new-builds (99%) and resale properties (98%). By contrast, leasehold house sales were not generally very common, with **6% of all houses sold leasehold**. New-build houses were less likely to be sold leasehold (2%) than resale properties (7%). Across all properties, **31% of new-builds were sold leasehold** compared with **22% of resale properties**.¹⁴

Geographic variation in leasehold sales

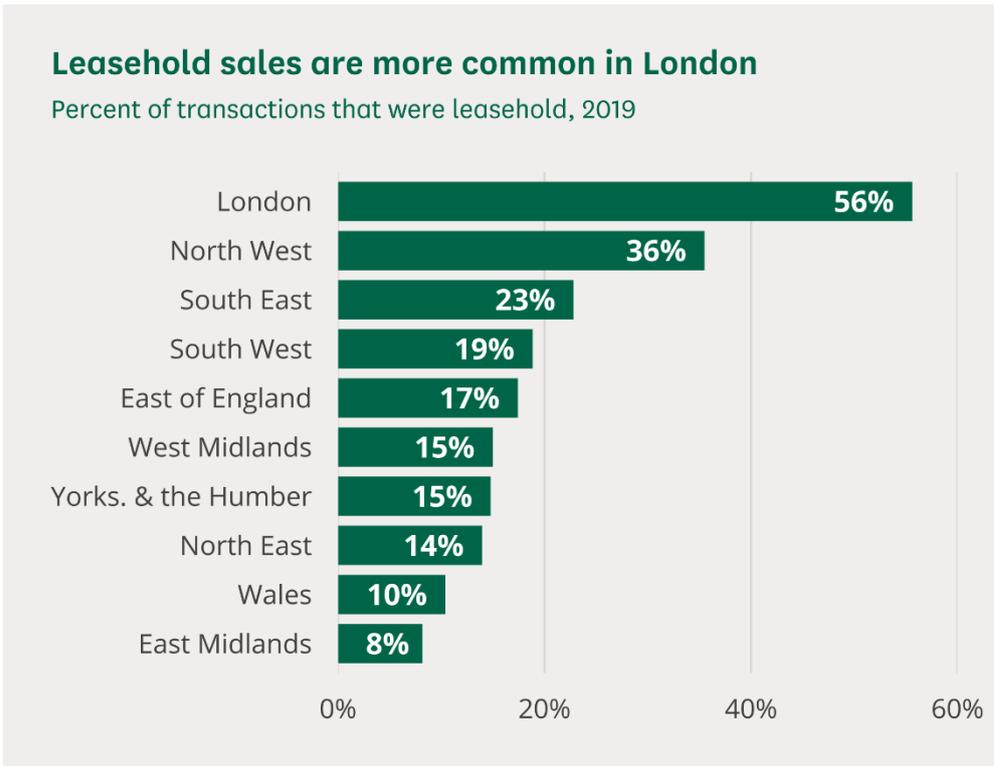
The charts overleaf show the regional variation in leasehold property sales. To some extent, these trends mirror the trends in the leasehold stock discussed in section 2.1. Leasehold sales are most common in London (56% of transactions), followed by the North West (36%) and the South East (23%). In London, this is partly driven by the high volume of flat sales – 55% of London's transactions were on flats, compared with 18% across England and Wales. Flat sales are also relatively common in several other areas with high leasehold rates.

However, in the North West this trend is mostly driven by high levels of leasehold house sales. Around 26% of house sales in the North West are leasehold, compared with 6% across England and Wales. As shown in the second chart overleaf, leasehold sales are more common amongst resale houses (28% of transactions in the North West) than they are amongst new builds (7%)

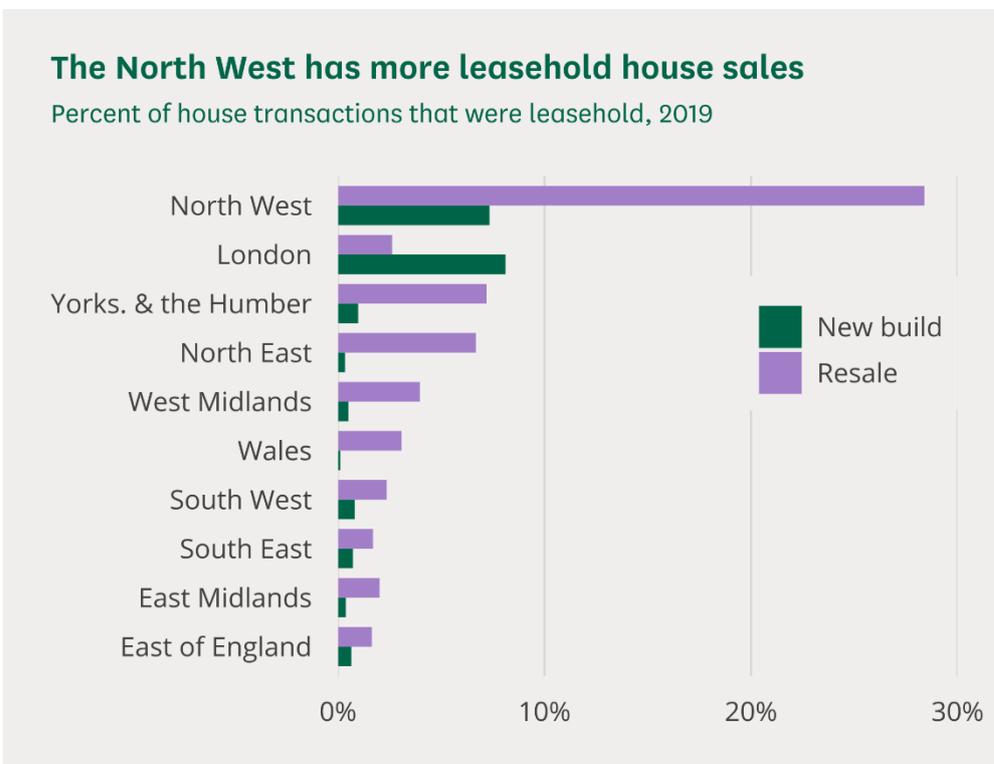
Most other areas show the same pattern, on a smaller scale – leasehold sales are less common for new-build houses than resale houses. In London, however, the opposite is the case. 8% of new-build houses were sold leasehold compared with 3% of resale houses.

¹³ HM Land Registry, [Price Paid Data Single File](#) [Accessed 12 January 2021]. The PPD file is updated monthly as new sales transactions are registered.

¹⁴ Ibid.



Source: HM Land Registry, [Price Paid Data Single File](#) [Accessed 12 January 2021].
Data produced by HM Land Registry © Crown copyright 2021.



Source: HM Land Registry, [Price Paid Data Single File](#) [Accessed 12 January 2021].
Data produced by HM Land Registry © Crown copyright 2021.

MHCLG's July 2017 consultation document, [Tackling unfair practices in the leasehold market](#), commented on geographic variation:

Leasehold houses are more prevalent in the North of England. Developers argue that the sale of new build leasehold houses in some areas of England is an accepted custom and practice, and that selling a freehold house could create a potential competitive disadvantage. In some parts of northern England this has resulted in leasehold becoming the default tenure for consumers wanting to buy a new build house. It is particularly common practice in parts of Cheshire, Greater Manchester, Lancashire and Merseyside, but is not limited to these parts of the country.¹⁵

The Office for National Statistics (ONS) has also carried out analysis of the Land Registry's data, in a [release published in July 2019](#). The ONS' analysis found that the North West accounted for two-thirds of new-build leasehold house sales in 2018, and has consistently accounted for more than half of new-build house sales in each year since 1995.¹⁶ There are some differences between the ONS' approach and the approach used in this briefing, outlined in Box 1 (p.20).

The maps and table over the next few pages show leasehold transactions by constituency. The first map shows the proportion of all transactions that were leasehold in 2019, while the second shows house transactions only. The number of new-build houses sold in a given year in each constituency is too low to make meaningful comparisons between areas.

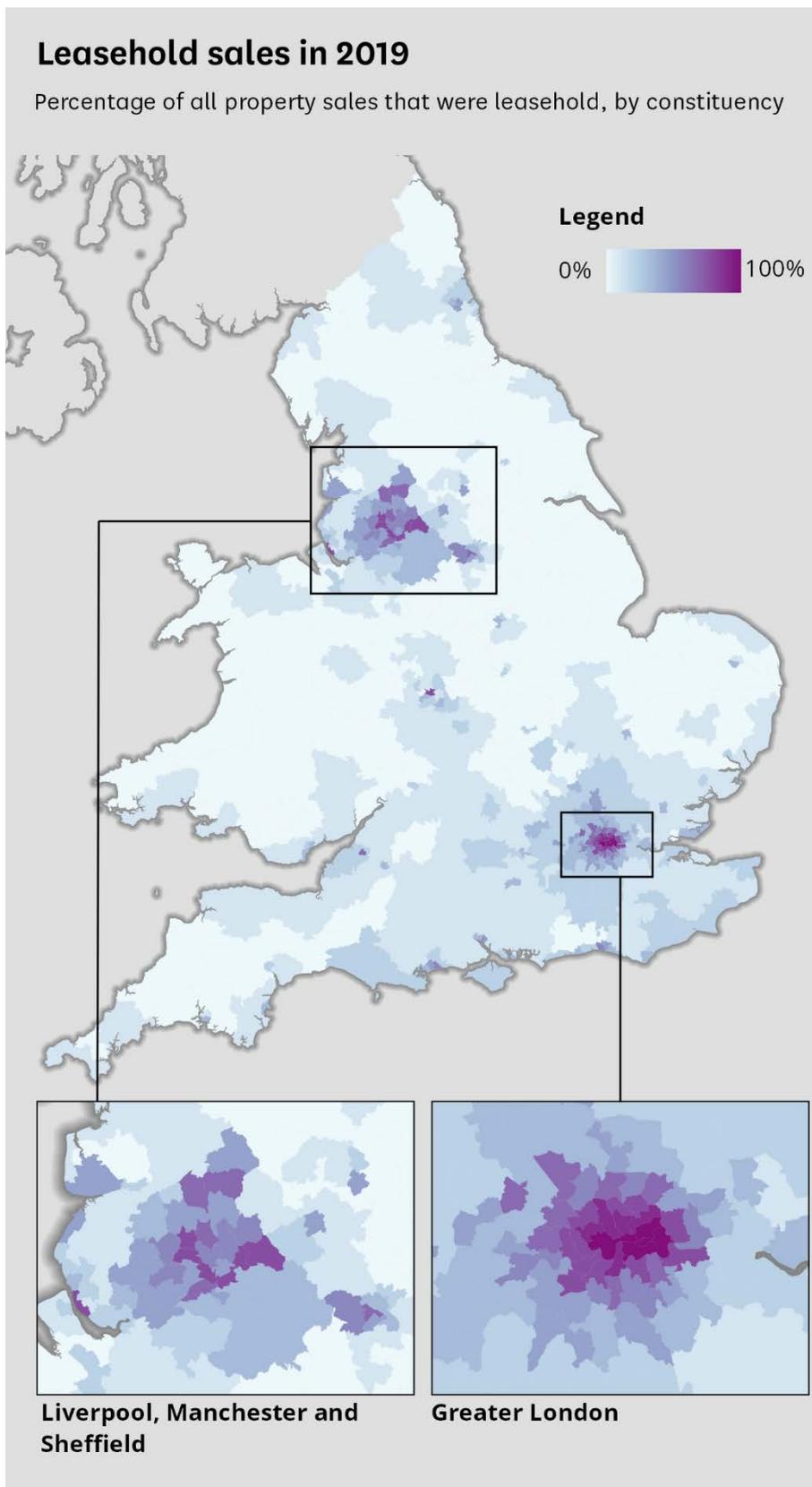
Constituency trends echo the regional data described above. Constituencies in central London had some of the highest rates in England and Wales, but this is only true when flats are included in the analysis. Leasehold house sales were most common in constituencies around Greater Manchester, Lancashire and Sheffield.

Full constituency-level data is available to download from the [landing page of this briefing paper](#).

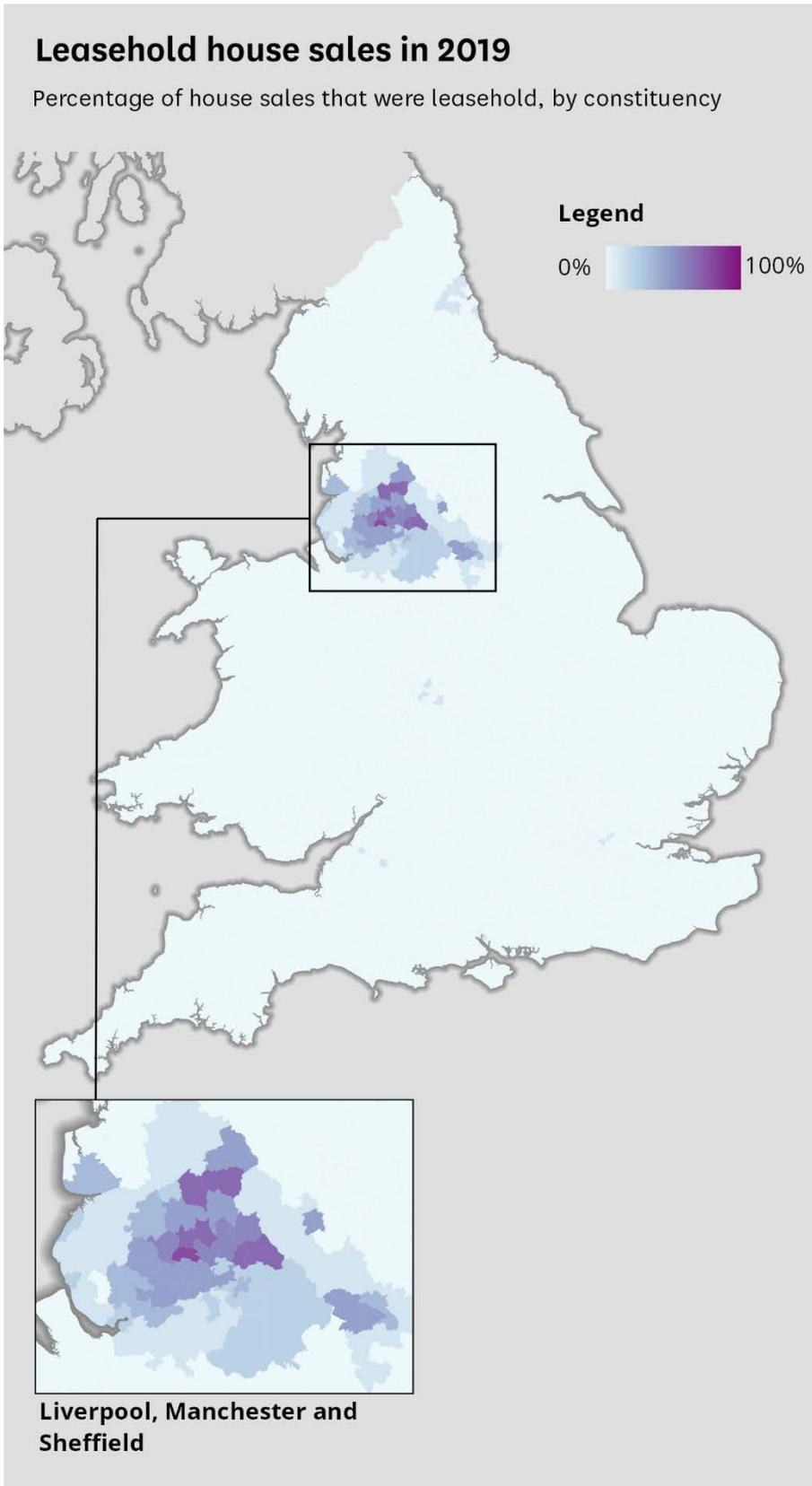
The Library has also examined geographic variation in leasehold house sales in an Insight article, [Leasehold houses: will reforms help in the North of England?](#), published in July 2019. The Insight includes a fine-grained geographical analysis of leasehold house sales: it finds that they are most common in specific areas including Salford and central Manchester, Blackburn, Huddersfield, and Sheffield.

¹⁵ MHCLG, [Tackling unfair practices in the leasehold market: a consultation paper](#), p13

¹⁶ ONS, [Leasehold and freehold residential property transactions in England and Wales: 2018](#), 15 July 2019



Source: HM Land Registry, [Price Paid Data Single File](#) [Accessed 12 January 2021].
Data produced by HM Land Registry © Crown copyright 2021.



The Commons Library Insight article [Leasehold houses: will reforms help in the North of England?](#) looks at leasehold house sales in the North West in more detail.

Source: HM Land Registry, [Price Paid Data Single File](#) [Accessed 12 January 2021].
Data produced by HM Land Registry © Crown copyright 2021.

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100040654 (2021)

Constituencies where leasehold is most common

Percent of transactions, 2019

All transactions

Constituency	Region	Percent
1 Poplar and Limehouse	London	95.9%
2 Cities of London and Westminster	London	93.4%
3 Bethnal Green and Bow	London	91.5%
4 Bermondsey and Old Southwark	London	90.9%
5 Hackney South and Shoreditch	London	89.0%
6 Vauxhall	London	86.8%
7 Westminster North	London	86.8%
8 Islington South and Finsbury	London	85.3%
9 Holborn and St Pancras	London	84.6%
10 Kensington	London	79.8%
11 Hampstead and Kilburn	London	78.8%
12 Hackney North and Stoke Newington	London	78.8%
13 Battersea	London	78.8%
14 Greenwich and Woolwich	London	78.6%
15 Islington North	London	77.4%
16 Salford and Eccles	North West	76.5%
17 Hammersmith	London	75.8%
18 West Ham	London	75.4%
19 Liverpool, Riverside	North West	74.5%
20 Birmingham, Ladywood	West Midlands	74.2%

Houses only

Constituency	Region	Percent
1 Bolton South East	North West	70.5%
2 Oldham West and Royton	North West	69.9%
3 Burnley	North West	67.9%
4 Bolton North East	North West	67.5%
5 Oldham East and Saddleworth	North West	66.8%
6 Bury North	North West	65.7%
7 Hyndburn	North West	62.1%
8 Rochdale	North West	54.6%
9 Bolton West	North West	53.7%
10 Bury South	North West	51.5%
11 Heywood and Middleton	North West	50.2%
12 Sheffield, Hallam	Yorks. & the Humber	48.4%
13 Sheffield Central	Yorks. & the Humber	48.1%
14 Matherfield	North West	46.9%
15 Leigh	North West	46.9%
16 Wigan	North West	46.3%
17 Stretford and Urmston	North West	45.6%
18 Rossendale and Darwen	North West	45.3%
19 Worsley and Eccles South	North West	43.3%
20 Huddersfield	Yorks. & the Humber	43.2%

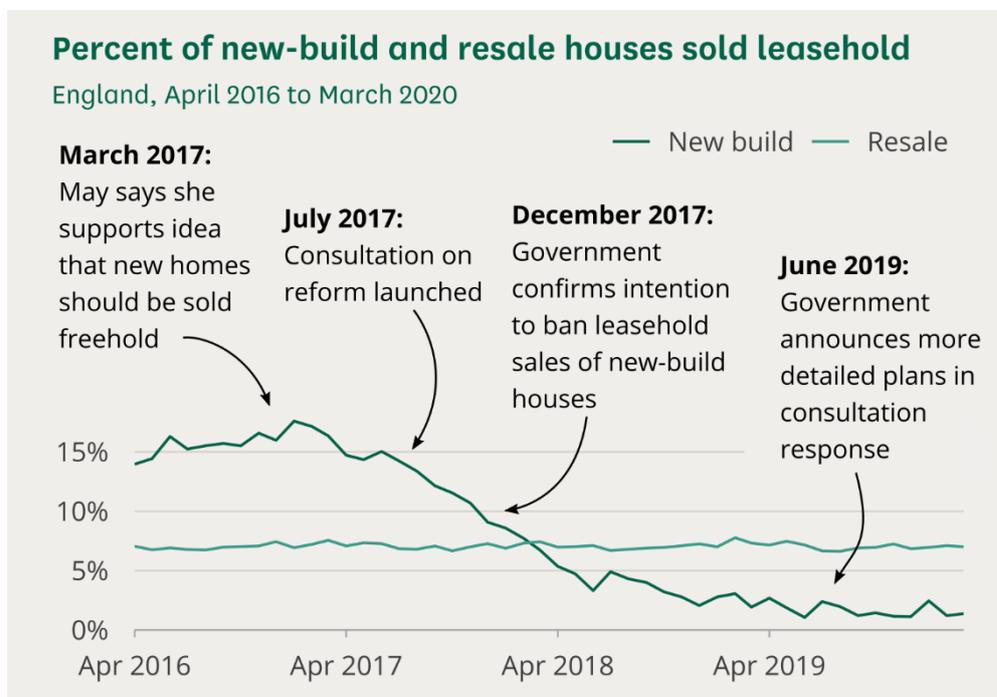
Full constituency data can be downloaded from [the landing page for this briefing paper.](#)

While the sale of new-build houses as leasehold is more prevalent in certain parts of the country, the practice appears to have declined as a result of Government policy announcements from 2017 onwards. This is discussed in the next section.

The decline in new-build leasehold sales

The chart below shows the proportion of new-build and resale houses sold as leasehold in England since April 2016. The chart shows that the proportion of new-build homes sold as leasehold decreased substantially after 2017. The proportion of new-build homes sold as leasehold was around 14-16% throughout 2016, but started to decline in late 2017. The proportion was 1% in March 2020.

By contrast, the proportion of resale homes sold as leasehold has remained very similar throughout this period, at around 7% of all transactions.



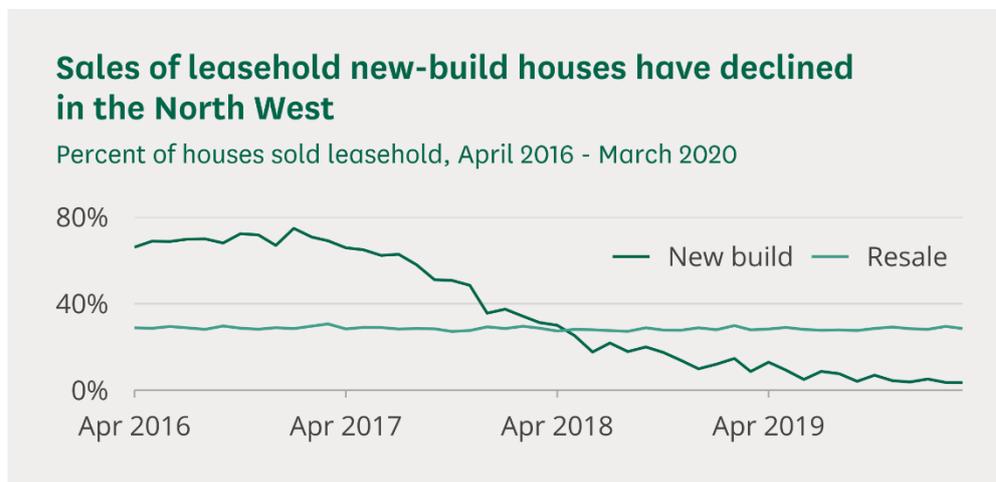
Source: HM Land Registry, [Price Paid Data Single File](#) [Accessed 12 January 2021]. Data produced by HM Land Registry © Crown copyright 2021.

This trend is likely to be a response to the Government’s stated intention to ban new-build houses from being sold on a long lease. The proposals for reform are described in more detail in section 3.2 of this briefing.

Following a commitment in the Housing White Paper (February 2017) to “improve consumer choice and fairness in leasehold”, a consultation on leasehold reform was launched in July 2017 ([Tackling unfair practices in the leasehold market](#)). The Government responded to the consultation in December 2017 saying it would legislate “to prohibit new residential long leases from being granted on houses, whether new build or on

existing freehold houses".¹⁷ By this time, the proportion of houses sold as leasehold had already declined to 9% and has continued to decrease since then. In June 2019, the Government announced more specific plans for how it would legislate in a consultation response.¹⁸ Resale of existing leasehold homes has remained much more stable – around 7% of transactions on existing homes have been leasehold throughout this period.

The North West region (as well as nearby areas such as Sheffield) has traditionally had a higher rate of leasehold house sales than other parts of the country. The chart below shows trends in new-build and resale house sales in the North West. Around 75% of new-build homes were sold leasehold in the North West in January 2017, but the proportion has fallen substantially, reaching 4% in March 2020. Resale transactions on leasehold houses have remained fairly constant at around 29%.



Source: HM Land Registry, [Price Paid Data Single File](#) [Accessed 12 January 2021]. Data produced by HM Land Registry © Crown copyright 2021.

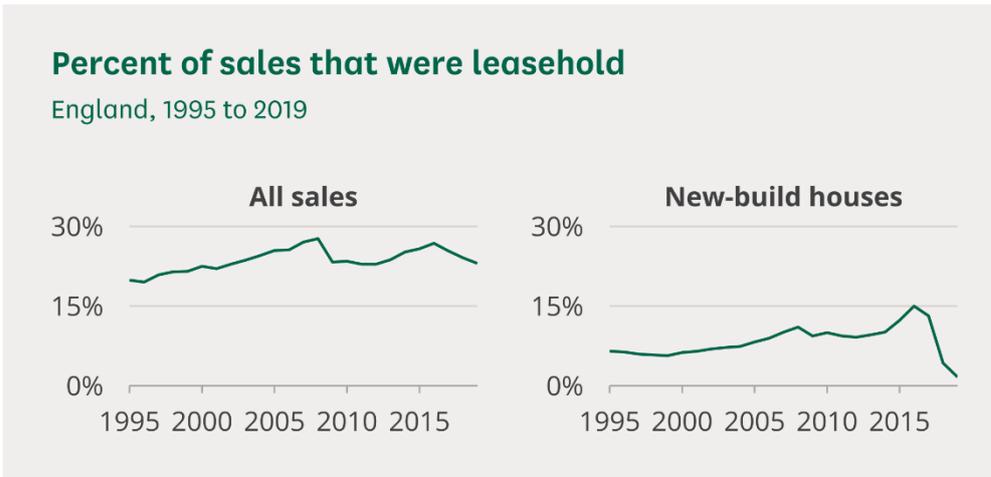
Long-term trends

The charts overleaf show trends in the proportion of properties sold on a leasehold basis since 1995. The proportion rose from around 20% to a peak of 28% in 2008, before dipping somewhat and then returning to 27% in 2016. The proportion has been in decline since then, and was at 23% in 2019.

The proportion of new-build houses sold as leasehold rose from 7% in 1995 to a peak of 15% in 2016. The proportion has since declined sharply, reaching around 2% in 2019. This is likely a response to policy announcements – the decline is discussed in more detail in the previous section.

¹⁷ DCLG, [Tackling unfair practices in the leasehold market: government response](#), December 2017, para 38

¹⁸ MHCLG, [Implementing reforms to the leasehold system in England: summary of consultation responses and government response](#), June 2019



Source: HM Land Registry, [Price Paid Data Single File](#) [Accessed 12 January 2021].
Data produced by HM Land Registry © Crown copyright 2021.

Box 1: What is the Price Paid Data?

The Price Paid Data (PPD) is a dataset published by the Land Registry. It includes all residential properties sold for full market value and registered with the Land Registry. It does not include sales that were not for full market value, such as Right to Buy sales, gifts, or sales under a compulsory purchase order.¹⁹

In 2013, the Land Registry expanded the PPD to include additional transactions: transfers under a power of sale (repossessions), buy-to-lets identifiable by a mortgage, and transfers to non-private individuals. This Additional Price Paid Data (sometimes known as the 'B series') is included in calculations in this briefing. The Additional Price Paid Data accounted for an extra 100,000 transactions in 2019, of which 34,000 were leasehold transactions. The proportion of leasehold sales is similar whether or not the Additional Price Paid Data is used.

The Office for National Statistics (ONS) has [published analysis of leasehold transactions in the PPD](#) that excludes the Additional Price Paid Data. For this reason, the ONS' estimates of the total number of transactions are lower than in this briefing.

The analysis in this briefing paper covers transactions labelled as flats, detached, semi-detached or terraced. Transactions labelled 'other' are not included, as this category includes non-residential properties.

All regional and constituency analysis also excludes a small number of properties with no listed postcode, or a postcode that could not be matched to a specific constituency or region. Postcode matching was carried out using the Office for National Statistics (ONS) postcode directory.

¹⁹ HM Land Registry, [How to access HM Land Registry Price Paid Data](#), 14 June 2016

3. Issues with leasehold ownership

3.1 Background

The respective rights and obligations of long leaseholders and freeholders are set out in the lease agreement. Lease agreements are supplemented by several statutory provisions which have been introduced over the years. Some of the key provisions include:

- The *Leasehold Reform Act 1967* which gave qualifying long leaseholders of houses the statutory right to buy the freehold of their homes.
- The *Landlord and Tenant Act 1985* which provides that service charges must be 'reasonable' and that services/works must be carried out to a 'reasonable standard.'
- The *Landlord and Tenant Act 1987* placed a duty on freeholders of blocks of flats to offer a 'right of first refusal' to long leaseholders when they are seeking dispose of their interest.²⁰
- The *Leasehold Reform, Housing and Urban Development Act 1993* gave qualifying long leaseholders in blocks of flats the collective right to buy the freehold of their blocks and the individual right to a lease extension.
- The *Commonhold and Leasehold Reform Act 2002* introduced a new form of ownership for blocks of flats and further strengthened long leaseholders' rights in respect of service and administration charges. Restrictions were introduced to limit the circumstances in which forfeiture action could be taken for failure to pay ground rent. The Act also introduced a 'no fault' Right to Manage.

These Acts have been subject to repeated amendment, most recently by the *Housing and Planning Act 2016*.²¹

Where freeholders or leaseholders are in breach of these and other statutory provisions, in most cases, enforcement takes place through an application to a First-Tier Tribunal (Property Chamber) in England, and to a Leasehold Valuation Tribunal (LVT) in Wales. Using the tribunal system was intended to provide long leaseholders with a cheaper and speedier means of resolving disputes without having to go through the courts.

Since 1 October 2014, all letting and managing agents in England have been required to be a member of a Government approved redress

²⁰ Certain types of disposal are exempt.

²¹ The 2016 Act amended the 1985 Act to provide for the Secretary of State to make regulations to impose duties on a freeholder to provide the secretary of a residents' association with information about tenants, and to made provision for tribunals or courts to consider whether it is reasonable for a landlord to recover all or part of their costs via administration charges.

scheme.²² Complaints made against members of a redress scheme are investigated and determined by an independent person. Local authorities can impose a fine of up to £5,000 for non-compliance, with a right of appeal to the First-Tier Tribunal.

On 21 December 2017, then-Secretary of State, Sajid Javid, said that the Law Commission would “take forward the work in our recent call for evidence on regulating managing agents.”²³ More information can be found in section 3.13 of this paper.

There are also approved Codes of Practice to which agents operating in this sector (in England) are expected to adhere:

[Service Charge Residential Management Code, 3rd Edition](#) (2016)

[ARHM revised Code of Practice for England](#) (2016)

Despite legislative activity in this area, long leaseholders are still calling for further reform. Organisations such as the [Leasehold Knowledge Partnership](#) and the related [Better Retirement Housing](#) campaign²⁴ argue that the balance of power is weighted in freeholders’ favour, and have highlighted continuing issues associated with leasehold ownership.

2016 saw the establishment of an All-Party Parliamentary Group on Leasehold and Commonhold. The Leasehold Knowledge Partnership describes the aims of the group as:

- To reduce the opportunities for exploitation;
- To alleviate the distress and hardship of leaseholders, particularly the elderly;
- To do away with the high costs and legal gamesmanship that have distorted the original intention of the property tribunal as a low cost forum for redress.
- It will examine the incidence of lease forfeiture, and consider the case for its reform, as recommended by the Law Commission in 2006.
- It will examine why the values of retirement leasehold properties can have no relationship at all to the local property markets.
- It will unearth and publicise scandalous behaviour of professions involved in the leasehold sector.
- It will examine those matters where leaseholders pay for a service but are not deemed party to a contract and therefore have limited rights. On issues such as insurance the matter of commissions and the leaseholders’ rights under the terms of a policy will be reviewed
- To ensure that right to manage legislation acts as intended, although currently frustrated by freeholders’ legal actions in the property tribunal and, lately, the Court of Appeal.²⁵

²² [Redress Scheme for Lettings Agency Work and Property Management Work \(Requirement to Belong to a Scheme etc\) \(England\) Order 2014](#) [Regulations made under the *Enterprise and Regulatory Reform Act 2013*]

²³ [HC Deb 21 December 2017 c65WS](#)

²⁴ Previously Carlex, the Campaign Against Retirement Leasehold Exploitation.

²⁵ [LKP, 29 March 2016](#)

The following sections outline some of the key concerns with leasehold ownership and suggested ways forward, including responses announced by Governments since 2017. The [Conservative Manifesto 2019](#) contained a pledge to “continue with our reforms to leasehold”.²⁶

3.2 Selling new-build houses on a long lease

The data in section 2.2 of this paper shows that the practice of selling new-build houses as leasehold increased in the 2000s and 2010s, reaching a peak in 2016. This resulted in concerns that developers were choosing to sell on this basis to create a future income stream from ground rent payments and the sale of the freehold interest to the long leaseholder. From the buyer’s point of view, the price of a long leasehold house may be lower than one sold as freehold, but the Government’s consultation paper, [Tackling unfair practices in the leasehold market](#) (July 2017), observed that “it is not clear that the ‘leasehold discount’ is always passed on to the consumer.”²⁷

Leasehold owners are currently liable to pay an annual ground rent (see section 3.3) and may, under the terms of the lease agreement, be required to seek the freeholder’s consent before carrying out alterations. Administration charges are usually payable for seeking consents of this sort. The July 2017 consultation paper noted “these costs can total thousands of pounds more than envisaged at the point of sale.”²⁸ Disputes over ‘unreasonable’ administration charges can be referred to a First-Tier Tribunal (Property Chamber) in England²⁹ but leaseholders are often reluctant to go down this route. Section 3.12 of this paper discusses the tribunal system and calls for alternative means of securing dispute resolution.

Most owners of leasehold houses have the statutory right to buy the freehold interest (enfranchise) once they’ve owned the property for two years.³⁰ The Leasehold Advisory Service has information on its website in regard to [eligibility and the process to follow](#). Valuation of the freehold interest is a contentious area.

Box 2: Freehold valuation

The valuation process is complicated and depends on several factors including the rateable value of the house at different dates, the ground rent, the number of years left on the lease and the current value of the house. Valuations should be carried out by qualified professionals such as chartered surveyors. Leaseholders may be required to obtain the rateable value of the house in 1965 (or the first day of the lease, if later) and in 1990. These rateable values will dictate whether the valuation should be carried out using the [Original Valuation Basis or the Special Valuation Basis](#).

²⁶ [Conservative Manifesto 2019](#), p29

²⁷ DCLG, [Tackling unfair practices in the leasehold market](#), July 2017, para 3.5

²⁸ *Ibid.*, para 3.12

²⁹ Leasehold Valuation Tribunal (LVT) in Wales.

³⁰ *Leasehold Reform Act 1967* (as amended)

Marriage value³¹ is payable on leases with fewer than 80 years left to run. Marriage value is split equally between the freeholder and leaseholder.

Long leaseholders are also liable to pay the reasonable costs of the freeholder in engaging in the enfranchisement process.

If the parties cannot reach agreement over the price payable, the matter can be referred to a First-Tier Tribunal (LVT in Wales) for determination.

Press reports indicate that buyers of new-build homes have sometimes been told that they will be able to buy the freehold interest for a certain amount once they have been owners for two years. However, developers often sell-on their freehold interest and the Government's July 2017 consultation paper said that "consumers can find that they are faced with significant legal and surveyor costs where they want to purchase the freehold."³² There is no duty on a freeholder of a house to inform the leaseholder of a change in ownership, nor does the leaseholder have a 'right of first refusal' to buy the freehold interest at that point. However, a qualifying long leaseholder's statutory right to enfranchise is still exercisable against the new freeholder, and disputes over the valuation can be referred to a First-Tier Tribunal (FTT) as outlined above.

Bellway told the HCLG Select Committee that they did not accept that buyers had been given a verbal offer to purchase the freehold at a future date for a given price.
[HC 1468](#) para 53

The All-Party Parliamentary Group (APPG) on Leasehold and Commonhold Reform published [A preliminary report on improving key areas of leasehold and commonhold law](#) in April 2017 which referred to the practice of freeholders offering to sell the freehold interest on an informal basis, i.e. outside the statutory process provided for by the 1967 Act. The APPG was told that freeholders sometimes use an informal approach "as a means of imposing onerous covenants".³³

Proposals for reform

Restricting developers' ability to sell houses on long leases

On 1 March 2017 the then-Prime Minister said:

Other than in certain exceptional circumstances, I do not see why new homes should not be built and sold with the freehold interest at the point of sale.³⁴

[Tackling unfair practices in the leasehold market](#) sought views on what steps the Government should take to limit the sale of new-build houses on a leasehold basis.

A ban on the sale of new build houses on a long lease is supported by the APPG "unless there is a legitimate reason why the land can only be owned under a leasehold."³⁵

³¹ Marriage value is the increase in the value of the property following the completion of enfranchisement or a lease extension. This reflects the additional market value of a longer lease or the freehold.

³² DCLG, [Tackling unfair practices in the leasehold market](#), July 2017, para 3.13

³³ APPG, [A preliminary report on improving key areas of leasehold and commonhold law](#), April 2017

³⁴ [HC Deb 1 March 2017 c295](#)

³⁵ APPG, [A preliminary report on improving key areas of leasehold and commonhold law](#), April 2017

The 2017 Government confirmed an intention to:

...bring forward legislation as soon as Parliamentary time allows to **prohibit new residential long leases from being granted on houses, whether new build or on existing freehold houses**. It will still be possible for existing leaseholders to extend their lease, or purchase the freehold, and we will consult on proposals to support leasehold house owners to do this on more favourable terms. We will ensure legislation clearly defines “new build” and what a “house” is to avoid any unintended consequences. Government will also work with UK Finance to address misunderstanding of lending criteria with regards to leasehold properties.³⁶

The Government intends to legislate to ban new residential long leases on houses – some exceptions will apply.

Consultation on [Implementing reforms to the leasehold system in England](#) opened on 15 October 2018. The paper sought views on:

- potential exemptions to the proposed ban on the granting of unjustified new residential long leases on houses, and what other exceptional circumstances there may be where it is impossible to provide a house on a freehold basis; and
- how the ban should be enforced and implemented.³⁷

[Implementing reforms to the leasehold system in England: summary of consultation responses and government response](#) (June 2019) advised that **forthcoming legislation will:**

- Provide that it will not be permissible for applicants to apply to HM Land Registry to register a non-compliant residential long lease of a house. If a lease is found to be contrary to the ban, the consumer will be entitled to zero cost enfranchisement as a means of redress.
- The ban will apply to residential long leases (over 21 years) for new build houses or existing freehold houses. Houses will be defined as single dwellings, self-contained buildings or parts of buildings (structurally detached or vertically divided).
- Exemptions will include shared ownership properties and community-led development, inalienable National Trust land and excepted sites on Crown land. Retirement properties and financial lease products will also be exempt where there is a non-assignable lease.
- Long leaseholders of properties that are exempt from the ban will have their ground rents restricted to £0. There will also be a statutory Right of First Refusal which will be triggered if the freeholder intends to sell their homes.
- There will be no transitional period once legislation is implemented. Owners of leasehold land at December 2017³⁸ can continue to develop leasehold houses unaffected by the ban but

³⁶ DCLG, [Tackling unfair practices in the leasehold market: government response](#), December 2017, para 38

³⁷ MHCLG, [Implementing reforms to the leasehold system in England](#), 15 October 2018

³⁸ The date of the Government’s announcement that they would ban the sale of leasehold houses.

this retrospective application does not extend to those that did not own land at that date.³⁹

When giving evidence to the Housing, Communities and Local Government (HCLG) Select Committee on 4 February 2019, the then-Minister, Heather Wheeler, said that the number of new-build houses being sold on a long lease “have absolutely dropped dramatically.”⁴⁰ Section 2.2 of this briefing (page 23) shows the trend in more detail: the number of new-build houses sold as leasehold fell from 16% in March 2017 to 1% in March 2020.

In [Ending the Scandal: Labour’s new deal for leaseholders](#) (July 2019), contained a commitment to “end the sale of new private leasehold houses with direct effect”.⁴¹ The paper posed the question of whether there should be any exemptions to this general prohibition.⁴²

A right of first refusal for house lessees

It’s been suggested that long leaseholders of houses should be given a right of first refusal to ensure that freeholders offer the sale of the freehold interest to the leaseholder **before** selling to a third party. Freeholders may be able to avoid such a provision by entering into a contract with the third party before granting the lease to the home buyer, but it could still “give an option to those whose only option at present is to exercise their right to enfranchise but only after they have owned their house for two years.”⁴³

[Tackling unfair practices in the leasehold market](#) suggested that transfers to third parties without the leaseholder’s knowledge is not in consumers’ best interests.⁴⁴

The Housing, Communities and Local Government (HCLG) Select Committee also supported an extension of the right of first refusal to leaseholders of houses and called for loopholes allowing developers to dispose of freeholds without offering the right to be closed.⁴⁵

[Responding to the Committee’s recommendations](#), the 2017 Government pointed to **confirmation that a right of first refusal for house lessees will be introduced which will apply to any houses exempt from the forthcoming leasehold ban and which will apply to existing leasehold houses**. There was also a commitment to consider “the need to address legal loopholes within the existing Right of First refusal for flat lessees”.⁴⁶

³⁹ MHCLG, [Implementing reforms to the leasehold system in England: summary of consultation responses and government response](#), 27 June 2019, para 1.13

⁴⁰ [HC 1468, 4 February 2019](#), Q515

⁴¹ Labour Party, [Ending the Scandal: Labour’s new deal for leaseholders](#), July 2019, pp12-13

⁴² *Ibid.*, p14

⁴³ [Hart Brown Solicitors, Leasehold enfranchisement](#), 26 July 2017

⁴⁴ DCLG, [Tackling unfair practices in the leasehold market](#), July 2017, para 3.13

⁴⁵ [Leasehold Reform, HC 1468, Twelfth Report of 2017-19](#), 19 March 2019, para 56

⁴⁶ [CP 99](#), 3 July 2019, para 29

Reforming Help to Buy Equity Loan support for leasehold houses

[Tackling unfair practices in the leasehold market](#) said that the Government proposed to:

...remove as far as possible Help to Buy Equity Loan support on new build houses where these are sold as leasehold. Only where there are specific circumstances to justify the use of leasehold will Help to Buy Equity Loan support the sale.

In the cases where leasehold houses can be justified, Help to Buy Equity Loan support would only be available if the ground rent terms are reasonable. We would aim to introduce this non-legislative policy change as soon as practicable.⁴⁷

[Tackling unfair practices in the leasehold market: government response](#) set out action the Government had taken in this area at December 2017:

It is not possible to impose a requirement on developers to stop building leasehold houses under existing contracts, but we expect developers to work with us to take forward this change. **The Secretary of State for Communities and Local Government has written to all developers to strongly discourage the use of Help to Buy equity loans for the purchase of leasehold houses in advance of new legislation.** We will be keeping a close eye on progress.⁴⁸

On 27 June 2019, the Secretary of State said:

Finally, we have previously said the new help to buy: equity loan scheme from 2021 will not be used to support the unjustified use of leasehold houses. Today, we are announcing that we are seeking to vary contracts with developers to ban the sale of leasehold houses, except in the rare cases where this can be justified, within the current help to buy scheme.⁴⁹

Removing the two-year moratorium on the right to enfranchise

The APPG on Leasehold and Commonhold Reform recommended that existing leaseholders of houses should not have to wait two years before being able to buy the freehold of their homes.⁵⁰ Respondents to [Tackling unfair practices in the leasehold market](#) (2017) also made reference to this.

The Law Commission's final report [Leasehold home ownership: buying your freehold or extending your lease](#) recommends the abolition of the two-year ownership requirement:

This will give all leaseholders the flexibility of being able to carry out an enfranchisement claim as soon as they acquire their lease, rather than having to wait for two years (while their lease term decreases and, in many cases, the premium for enfranchisement increases).⁵¹

The Law Commission has recommended the abolition of the two-year ownership requirement.

⁴⁷ DCLG, [Tackling unfair practices in the leasehold market](#), July 2017, paras 3.16-17

⁴⁸ DCLG, [Tackling unfair practices in the leasehold market: government response](#), December 2017, para 47

⁴⁹ Written Statement: [Housing Market: House Building and Leasehold Reform](#), 27 June 2019

⁵⁰ APPG, [A preliminary report on improving key areas of leasehold and commonhold law](#), April 2017

⁵¹ HC584, [Leasehold home ownership: buying your freehold or extending your lease](#), July 2020, para 6.131

Limiting the cost of enfranchisement and lease extensions

The APPG recommended that the cost of enfranchisement and leasehold extensions should be moved to a ‘formulaic model’ that would not require mediation by tribunals.⁵²

The Government committed to carry out further work in this area with the Law Commission:

...we will take action to ensure that **flat and house owners who want to buy out their freeholds, or extend their lease, can access a simplified means of doing this**. We will work with the Law Commission to consult on introducing a simple prescribed formula to help owners enfranchise or extend their lease, while also ensuring fair compensation to the landlord. And we will look to **introduce a minimum lease term for new long leases on flats** to protect consumers from added costs where their leases fall under 80 years.⁵³

The HCLG Committee expressed support for the Law Commission’s work and the Government’s objective of making enfranchisement simpler, easier and cheaper.⁵⁴ The Committee also called for the introduction of low-interest loans to assist leaseholders who cannot afford to enfranchise.⁵⁵ The Government response is covered in section 3.5.

The Law Commission published its final report, [Leasehold home ownership: buying your freehold or extending your lease](#) on 21 July 2020, see section 3.5 of this paper for more information.

On 7 January 2021 the Government [announced reforms](#) aimed at benefiting leasehold house owners who want to extend their lease agreements:

Leaseholders of houses will be able to extend their lease by a new 990 year term with a ground rent at zero. Marriage value⁵⁶ will be removed from the premium calculation.

The calculation rates will be set and an online calculator will be available to make it simpler for leaseholders to find out how much it will cost to buy the freehold or extend the lease.⁵⁷

Legislation in the forthcoming Parliamentary Session will “set future ground rents to zero.”⁵⁸ Additional legislation will be required to implement those aspects of the Law Commission’s recommendations that the Government intends to take forward.

Removing incentives to impose onerous terms

The APPG recommended that the Government should look at ways of reducing legal costs and removing incentives for landlords to impose

House owners will be able to extend their lease agreements for 990 years with ground set at zero.

⁵² APPG, [A preliminary report on improving key areas of leasehold and commonhold law](#), April 2017

⁵³ DCLG, [Tackling unfair practices in the leasehold market: government response](#), December 2017, para 86

⁵⁴ [Leasehold Reform, HC 1468, Twelfth Report of 2017-19](#), 19 March 2019, para 212

⁵⁵ [Leasehold Reform, HC 1468, Twelfth Report of 2017-19](#), 19 March 2019, para 216

⁵⁶ Marriage value assumes that the value of one party holding both the leasehold and freehold interest is greater than when those interests are held by separate parties.

⁵⁷ [Leasehold Advisory Service Newsletter](#), 7 January 2021

⁵⁸ [MHCLG Press Release](#), 7 January 2021

onerous terms when selling/extending a freehold interest on an informal (non-statutory) basis.

Chapter 14 of [Leasehold home ownership: buying your freehold or extending your lease](#) considers the implications of 'voluntary' enfranchisement/lease extensions in some detail. The Law Commission concluded:

...that Government consider regulating transactions for lease extensions and individual freehold acquisitions that are not on statutory terms.⁵⁹

A requirement for independent legal advice

The solicitors, Hart Brown, suggested that developers can sometimes insist or encourage the use of a "pet solicitor" to handle the purchase of leasehold properties – this raises questions about the independence and standard of the advice given:

Many of our clients have complained that they were not properly made aware that they were buying a leasehold house or of the potential costs of acquiring the freehold at a later date. An independent solicitor has no relationship with the developer and is not dependant on the developers' referrals for business.⁶⁰

The Government published [Improving the home buying and selling process: call for evidence](#) on 22 October 2017 which included questions about the transparency of referral arrangements:

We are also aware that some consumers are guided by their estate agent towards using a certain conveyancer or mortgage broker and that these agents may be in a commercial relationship with this party and receive a referral fee in exchange for making an introduction. This obviously increases the costs to consumers and may hamper competition. We would like to know whether consumers benefit from these arrangements and whether referral fees are always being disclosed to consumers.⁶¹

A [summary of responses and the Government response](#) was published in April 2018. The Government wants "to create more transparency surrounding referral fees so customers can make an informed choice and feel they are being treated fairly." A commitment has been made to:

- work with industry to standardise the presentation of referral fees and ensure that customers are made aware of any potential referral fee before they make a decision whether to purchase;
- task the National Trading Standards Estate Agency Team to proactively monitor the disclosure of referral fees; and
- look more closely at the case for banning referral fees, particularly for new build properties and instances when buyers are being referred.⁶²

⁵⁹ HC584, [Leasehold home ownership: buying your freehold or extending your lease](#), July 2020, para 14.122

⁶⁰ [Hart Brown Solicitors, Leasehold enfranchisement](#), 26 July 2017

⁶¹ DCLG, [Improving the home buying and selling process: call for evidence](#), October 2017, para 10

⁶² MHCLG, [Improving the home buying and selling process: call for evidence – Summary of responses and Government response](#), April 2018, p8

The 2017 edition of the [Consumer Code for Homebuilders](#), which was developed to make the home-buying process fairer and more transparent for purchasers of newly built homes, makes it clear that builders may offer incentives to new buyers and/or refer them to a panel of solicitors but they “should not restrict their choice of legal representative.” This includes not restricting the financial advisor or mortgage intermediary the buyer may wish to use.⁶³

The relationship between developers and solicitors was addressed by the HCLG’s inquiry. Witnesses referred to the benefits that use of a panel of solicitors can yield:

The real reason Persimmon uses a panel of solicitors is to save the customer money because they only need to review the title once. If you go each individual time, the biggest part of actual cost from a sale is to review the title.⁶⁴

Jonathan Smithers, of the Law Society of England and Wales, emphasised that arrangements with third parties who introduce business should not, according to the Solicitors Regulation Authority, “jeopardise that trust by, for example, compromising your independence or professional judgement”.⁶⁵ Evidence submitted to the inquiry referred to buyers who thought they were incentivised or coerced by developers to use their panel of solicitors. The Committee recommended that **“the Government should prohibit the offering of financial incentives to persuade a customer to use a particular solicitor.”**⁶⁶ There was a further recommendation that the Government should:

...undertake a review within the next six months to determine whether existing routes, including to redress the Legal Ombudsman’s scheme, are satisfactory or whether a new Alternative Dispute Resolution (ADR) scheme should be established for leaseholders with legitimate claims against their solicitors.⁶⁷

The [Government’s response](#) to the Committee agreed that consumers should have access to independent and reliable advice when buying a property. There is reference to guidance published by the National Trading Standards Estate Agency Team in January 2019: [Leasehold redress guidance for consumers](#). The Team is monitoring whether the guidance is followed and was to report back to the Government in March 2020 – the plan was to determine at that point whether further action should be taken.⁶⁸ Other measures referred to include proposals to create a New Housing Ombudsman⁶⁹, and action by the Solicitor’s Regulation Authority and the Council of Licensed Conveyancers on the quality and price of advice provided by members.⁷⁰ The response details

⁶³ [Consumer Code for Homebuilders: Summary of Changes to the Code](#), 2017

⁶⁴ [Leasehold Reform, HC 1468, Twelfth Report of 2017-19](#), 19 March 2019, para 63

⁶⁵ *Ibid.*, para 64

⁶⁶ *Ibid.*, para 67

⁶⁷ *Ibid.*, para 78

⁶⁸ [CP 99](#), 3 July 2019, para 35

⁶⁹ Provisions to establish the New Homes Ombudsman will be included in the forthcoming Building Safety Bill.

⁷⁰ *Ibid.*, paras 36 and 37

existing routes for complaint and redress for consumers if they are unhappy with the service provided by a lawyer and noted:

...introducing a new Alternative Disputes Resolution scheme for leaseholders to complain about their conveyancer may well cause confusion and could create problems with overlapping jurisdictions. Given this, and the above, the Government does not believe now is the correct time to conduct a wider review.⁷¹

3.3 Ground rents

Ground rent represents the consideration underpinning the contract (lease agreement) between a leaseholder and the freeholder. The lease will specify how much ground rent is payable, when it is due, and when it will be subject to review. [Tackling unfair practices in the leasehold market](#) commented on significant increases in ground rents in recent years. It seems that a trend developed of charging higher ground rents at the start of a lease with shorter review periods. This means that long leaseholders can face “onerous and unsustainable ground rents”:

This has included cases of freeholders charging initial ground rents of £295 per year on properties purchased for just under £200,000, which increase to £9,440 per year after 50 years. In these cases the estimated cost of purchasing the freehold using a statutory valuation method would be over £35,000. In such cases leaseholders can also face difficulties selling or re-mortgaging.⁷²

The consultation paper referred to the attractiveness of ground rents as a revenue stream for major investment funds:

Developers have highlighted that the returns from selling on ground rents can be up to 35 times the annual ground rent value. In the current market this can be considerably more than the amount normally charged to the purchaser of a new build house for the freehold interest at the point of sale.⁷³

There are different perceptions of what constitutes an ‘onerous’ ground rent. Witnesses to the HCLG Select Committee’s inquiry into leasehold reform referred to the impact on the leaseholder’s ability to sell their home, and where the ground rent value “becomes disproportionate to the value of a home.”⁷⁴ The UK Finance Lenders’ Handbook requires ground rents “to be predictable, to be understood as to what the level is going to be, to be set out quite clearly, and to allow that to increase periodically by a reasonable amount.” Not all witnesses agreed that ground rents which double after 10 years *are* onerous.⁷⁵ The Committee noted that some mortgage lenders had moved to restrict lending on leasehold properties with a ground rent which is over 0.1% of the property value.⁷⁶ The Committee concluded:

Any ground rent is onerous if it becomes disproportionate to the value of a home, such that it materially affects a leaseholder’s ability to sell their property or obtain a mortgage. In practical

⁷¹ Ibid., para 47

⁷² DCLG, [Tackling unfair practices in the leasehold market](#), July 2017, para 3.13

⁷² Ibid., para 4.7

⁷³ Ibid., para 4.10

⁷⁴ [Leasehold Reform, HC 1468, Twelfth Report of 2017-19](#), 19 March 2019, para 84

⁷⁵ Ibid., para 86

⁷⁶ Ibid., para 88

terms, it is increasingly clear that a ground rent in excess of 0.1% of the value of a property or £250—including rents likely to reach this level in future due to doubling, or other, ground rent review mechanisms—is beginning to affect the saleability and mortgageability of leasehold properties.⁷⁷

Proposals for reform: new lease agreements

Currently, there is no limit on the level of ground rent payable under a lease. Having considered responses to [Tackling unfair practices in the leasehold market](#) the Government said they were minded to:

...introduce legislation so that, in the future, ground rents on newly established leases of houses and flats are set at a peppercorn (zero financial value). Costs incurred by landlords for overseeing and appointing a managing agent, or carrying out wider services, can be recovered through the service charge or a marginally higher sales price. This will help ensure that costs are transparent and reasonable, with leaseholders having a right to challenge unfair service charges through the courts. We will make sure that these proposals do not interfere with shared ownership schemes, which are specifically designed to support affordable ownership.⁷⁸

In [Implementing reforms to the leasehold system in England: summary of consultation responses and government response](#) (June 2019) the **Government confirmed an intention to set ground rents at zero financial value (£0) in future leases.**⁷⁹ The paper noted that some leasehold properties would be exempt, e.g. community-led developments and financial lease products. Shared ownership properties would **not** be exempt. Other than for exempted properties, leases with ground rents above zero financial value would be unenforceable in law. Leaseholders would have the right to apply to a First-Tier Tribunal to seek a refund of incorrectly paid ground rent and associated costs with no time limit. The courts would be able to impose a civil fine on leaseholders who set ground rents contrary to the legislation.

The Government intends to legislate in the forthcoming Session to limit ground rents to zero financial value in future leases.

There would be no transition period for implementation once the legislation comes into force. It was the Government's view that the proposals "have been in the public domain long enough for the sector to prepare for the changes."⁸⁰

On 7 January 2021 the Government announced: "Legislation will be brought forward in the upcoming session of Parliament, to set future ground rents to zero."⁸¹ The initial intention (2019) had been to exempt retirement leasehold properties from zero ground rents but the 7 January 2021 announcement included the following commitment:

This will also now apply to retirement leasehold properties (homes built specifically for older people), so purchasers of these homes

⁷⁷ Ibid., para 91

⁷⁸ DCLG, [Tackling unfair practices in the leasehold market: government response](#), December 2017, para 69

⁷⁹ MHCLG, [Implementing reforms to the leasehold system in England: summary of consultation responses and government response](#), 27 June 2019, p8

⁸⁰ Ibid., pp8-9

⁸¹ MHCLG, [Government reforms make it easier and cheaper for leaseholders to buy their homes](#), 7 January 2021

have the same rights as other homeowners and are protected from uncertain and rip-off practices.⁸²

However, commencement of this provision will be deferred and come into force (for retirement properties) 12 months after Royal Assent.⁸³

In the meantime, on 28 March 2019, the Ministry of Housing, Communities and Local Government published an [industry pledge](#) which is primarily aimed at assisting existing leaseholders (see below), but which contained **a commitment not to include onerous ground rent clauses in new lease agreements.**⁸⁴

Proposals for reform: existing leaseholders

Moves to ban the sale of new-build houses on a leasehold basis, and to limit ground rents in new leases will not, it is acknowledged, assist existing leaseholders who have bought leasehold properties with onerous ground rent provisions. Reports indicate that these owners are experiencing difficulties in selling their homes or re-mortgaging as lenders have acted to restrict borrowing where the ground rent is viewed as onerous. There is no definitive information on the number of leaseholders affected; the Government has referred to an estimate of 100,000.⁸⁵

There is no definitive information on the number of leaseholders affected by onerous ground rents.

In [Tackling unfair practices in the leasehold market](#) the Government sought views on steps that could be taken.⁸⁶ [Tackling unfair practices in the leasehold market: government response](#) included a commitment to consider how to support existing leaseholders:

A number of developers have introduced schemes to compensate individuals, but these must go further and faster. **The Government wants to see this support extended to all those with onerous ground rents, including second hand buyers, and for customers to be proactively contacted.** We will be keeping a close eye on progress and will consider measures that could be pursued to take action if necessary.⁸⁷

In April 2017, Taylor Wimpey apologised for selling leasehold properties containing provisions for a doubling of ground rents every 10 years, and set aside £130 million for a [Ground Rent Review Assistance Scheme](#).⁸⁸ Commentators pointed out that this would not assist long leaseholders where the company sells on its ground rent income streams to third-party investors. Taylor Wimpey's chief executive reportedly said that the aim was to reach agreement with all third-party freeholders "but that the group would give assistance to customers if a deal could not be reached."⁸⁹ There are questions amongst leaseholders

⁸² Ibid.

⁸³ [HCWS695](#), 11 January 2021

⁸⁴ MHCLG, [James Brokenshire announces industry pledge to crack down on toxic leasehold deals](#), 28 March 2019

⁸⁵ [Leasehold Reform, HC 1468, Twelfth Report of 2017-19](#), 19 March 2019, paras 92-93

⁸⁶ DCLG, [Tackling unfair practices in the leasehold market](#), July 2017, para 4.19

⁸⁷ DCLG, [Tackling unfair practices in the leasehold market: government response](#), December 2017, para 70

⁸⁸ *Financial Times*, Taylor Wimpey sets aside £130m to cover ground rent disputes, 27 April 2017

⁸⁹ Ibid.

as to whether converting to an RPI-based mechanism for ground rents is an attractive proposition. Note that the ongoing Competition and Market Authority's (CMA) investigation into leasehold sales is relevant to the position of existing leaseholders with onerous ground rents (see section on mis-selling and unfair contract terms below).

On 28 March 2019, the Ministry of Housing, Communities and Local Government published an [industry pledge](#) "to stop leaseholders being trapped in unfair and costly deals".⁹⁰ The pledge, which has been signed by at least 63 leading property developers and freeholders, commits them to removing "onerous 'doubling clauses' that can result in ground rents soaring exponentially over a short period of time."⁹¹ The pledge also contains a commitment to work with freeholders and stakeholders "to develop a comprehensive Code of Practice which establishes the responsibilities of freeholders and enshrines the highest standards for the management and maintenance of properties."⁹²

The pledge commits the signatories to replace a 'doubling clause' with a ground rent clause linked to RPI.

Long leaseholders of houses have the option of enfranchising to remove the requirement to pay ground rent. In blocks of flats, collective enfranchisement is more challenging but flat owners can exercise their individual right to obtain a lease extension under the *Leasehold Reform, Housing and Urban Development Act 1993* which means that they would be liable only to pay a peppercorn rent. If a leaseholder of a house extends their lease under the *Leasehold Reform Act 1967* there is no premium payable, but the rent may increase to a modern ground rent. **In the announcement of 7 January 2021 the [Government set out plans](#) to legislate so that both house and flat leaseholders will be able to extend their lease for 990 years with a ground rent at zero.**⁹³ This was followed on 11 January 2021 by a Written Ministerial Statement in which Robert Jenrick said:

Long leaseholders will get the right to buy out ground rent without the need to extend the term of the lease.

We will also enable leaseholders, where they already have a long lease, **to buy out the ground rent without the need to extend the term of the lease.**⁹⁴

The HCLG Select Committee considered the position of existing leaseholders in some detail. The Committee's report acknowledged that RPI-based reviews "may still see ground rents rise above 0.1% of a property's value" – the Committee was "not convinced by the merits of the voluntary developer and freeholder led schemes" and called for stronger action from central Government.⁹⁵ **The Committee probed witnesses on the question of retrospective legislation to amend onerous terms in existing lease agreements.**

⁹⁰ MHCLG, [James Brokenshire announces industry pledge to crack down in toxic leasehold deals](#), 28 March 2019 [list updated on 27 June 2019]

⁹¹ Ibid.

⁹² Ibid.

⁹³ [MHCLG Press Release](#), 7 January 2021

⁹⁴ [HCWS695](#), 11 January 2021

⁹⁵ [Leasehold Reform, HC 1468, Twelfth Report of 2017-19](#), 19 March 2019, para 106

Housing lawyers advised the Committee that human rights legislation would make retrospective legislation difficult – Giles Peaker (partner with Anthony Gold Solicitors) said that it is “technically possible”:

Dealing with the situation for past leases could be done legally. It would undoubtedly, I think, face quite a serious article 1, protocol 1 challenge if you scrapped ground rents altogether, and probably, looking at the Strasbourg case law, successfully. That said, the legal mechanics of it are one thing. It is a policy decision in the end, rather than a legal one. It would be technically possible to do it.⁹⁶

Then-Minister, Heather Wheeler, confirmed that she had obtained similar legal advice – the main barrier from the Government’s point of view would be the cost to leaseholders of compensating freeholders.⁹⁷ The Committee called on the Government to:

...undertake a comprehensive study of existing rents to determine the scale of the problem of onerous ground rents and the level of compensation which would be consistent with human rights law.⁹⁸

The Committee drew comparisons with the Government’s aim of reducing the cost of enfranchisement with buying freeholders out of a contractual income stream at a discount stating “there is little economic difference” between the two.⁹⁹ It is arguable that a freeholder cannot rely on income from leaseholders exercising their right to enfranchise at a future date, whereas they can currently rely on the income generated from the contractual commitment to pay ground rent.

The Committee concluded:

...that, within any retrospective legislation, existing ground rents should be limited to 0.1% of the present value of a property, up to a maximum of £250 per year. They should not increase above £250 over time, by RPI or any other mechanism. While not as low as the Government’s proposed limit on ground rents for future properties, such a cap would reflect that leaseholders entered into a contract expecting to pay a modest ground rent over the course of their tenure and that freeholders have made an investment with a legitimate expectation of receiving some future revenue. Leaseholders should not face any charge, such as administrative and legal costs, or conditions for the variation of their lease to amend the level of ground rent as a consequence of retrospective legislation.

Alternatively, the Government should establish a compensation scheme for the mis-sale of onerous ground rents, funded by the relevant developers and the purchasers’ solicitors.¹⁰⁰

The [Government’s response](#) to the Committee expressed an understanding of the frustrations of existing leaseholders and referred to the use of the “public pledge for leaseholders” as a voluntary arrangement aimed at tackling onerous ground rents.¹⁰¹ There is a

⁹⁶ Ibid., para 108

⁹⁷ Ibid., para 110

⁹⁸ Ibid., para 116

⁹⁹ Ibid., para 115

¹⁰⁰ Ibid., paras 117-118

¹⁰¹ [CP 99](#), 3 July 2019, para 57

commitment to “monitor the actions of industry” and “take further action as necessary.”¹⁰² Leaseholders with complaints about their solicitor, developer, estate agent or freeholder are referred to guidance issued by the National Trading Standards Estate Agency Team in January 2019: [Leasehold redress guidance for consumers](#).¹⁰³

[Implementing reforms to the leasehold system in England: summary of consultation responses and government response](#) (June 2019)

confirmed that **the requirement, subject to certain exemptions, to set ground rents of zero financial value in future lease agreements, will apply to new leases created following a surrender of an existing lease**.¹⁰⁴ However, the reduction would **not** apply where a lease is extended voluntarily (i.e. the statutory process is not used). The Government’s rationale is:

While a voluntary lease extension amounts to a new lease, it is effectively a continuation of the original duration of the lease with an extended period at the end.¹⁰⁵

Thus, the zero financial value requirement will only apply to the newly extended part of the lease. The paper provided an example:

Therefore, if a lease with 80 years remaining was extended to mean that the new lease was for a term of 120 years, only the final 40 years would be subject to the policy, which would mean a ground rent agreed between the parties could run for the unexpired period of the original lease.

3.46 This essentially means that the unexpired part of the lease (at the time of the extension) will be exempt from the policy. The parties will also be able to agree a new ground rent if they so wish but checks and balances will be introduced in our legislation to ensure that these do not become onerous.¹⁰⁶

Where the variation of the lease is significant, e.g. a lease extension or change in the property, this will amount to a new lease and the zero financial value requirement will apply. The requirement will not apply to minor lease variations.¹⁰⁷

As previously noted, the Law Commission has recommended regulation of lease extensions and freehold acquisitions outside of the statutory process.¹⁰⁸

Heather Wheeler provided the following response to a PQ on impact assessments in relation to capping ground rents for existing leaseholders on 23 July 2019:

The Government understands the difficulties and frustrations of some existing leaseholders who are unhappy about the amount of ground rent they are required to pay and feel their leases should be changed.

¹⁰² Ibid.

¹⁰³ Ibid., para 58

¹⁰⁴ MHCLG, [Implementing reforms to the leasehold system in England: summary of consultation responses and government response](#), 27 June 2019, para 3.41

¹⁰⁵ Ibid., para 3.43

¹⁰⁶ Ibid., paras 3.45-3.46

¹⁰⁷ Ibid., para 3.47

¹⁰⁸ HC584, [Leasehold home ownership: buying your freehold or extending your lease](#), July 2020, para 14.122

There are many implications to be considered in relation to legislation which would interfere with individual contracts, for instance taking account of Article 1 Protocol 1 of the European Convention on Human Rights and the principle of legal certainty.

There are no current plans to legislate in this area, and so no impact assessment has been done.¹⁰⁹

[Ending the Scandal: Labour's new deal for leaseholders](#) (July 2019), committed to capping ground rents for existing leaseholders at 0.1% of property value, up to a maximum of £250 a year.¹¹⁰

Exempting leaseholders from Ground 8 possession claims

As ground rents have risen, an unintended consequence is that where they exceed £1,000 per year in Greater London and £250 elsewhere, the lease agreements are classed as assured tenancies under the *Housing Act 1988*. In turn, this means that landlords can seek a court order for eviction where three months' ground rent is at least three months in arrears (where ground rent is payable annually) under Ground 8 of schedule 2 to the 1988 Act. Ground 8 is mandatory – this means that a judge cannot refuse to grant an order.

In [Tackling unfair practices in the leasehold market](#) the Government sought views on amendments to the 1988 Act to rectify this "unintended consequence." **The Government has said "action will be taken to address this loophole and ensure that leaseholders are not subject to unfair possession orders."**¹¹¹

Mis-selling and unfair terms

Some respondents to the Government's July 2017 consultation exercise felt that they had been **mis-sold a leasehold property**. The Government said it would improve leaseholders' routes to redress:

...with some consumers reporting that they were mis-sold a leasehold house, or that their conveyancer acted negligently. It is right that individuals are compensated where compensation is due. To help consumers access justice we will work with the redress schemes and Trading Standards to provide leaseholders with comprehensive information on the various routes to redress available to them, including where their conveyancer has acted negligently. We will also work with the Law Commission to consider whether unfair terms apply when a lease is sold on to a new leaseholder. This will help resolve the current ambiguity around this, and provide better protection for leaseholders.¹¹²

The [industry pledge](#) published on 28 March 2019 emphasises the need for legal advisors to act in the best interest of their clients:

As part of this, legal advisers should take all necessary steps to ensure a potential leaseholder is aware of all relevant costs

Legislation will be introduced to exempt leaseholders from Ground 8 possession claims.

¹⁰⁹ [Written question – 279126](#), 23 July 2019

¹¹⁰ Labour Party, [Ending the Scandal: Labour's new deal for leaseholders](#), July 2019, p15

¹¹¹ DCLG, [Tackling unfair practices in the leasehold market: government response](#), December 2017, para 75

¹¹² DCLG, [Tackling unfair practices in the leasehold market: government response](#), December 2017, para 71

associated with the lease before such a lease is signed, and these are presented in a plain-English, clear and transparent way.¹¹³

The HCLG Committee took evidence from the National Leasehold Campaign saying that they had evidence of “blatant mis-selling of leasehold homes by developers’ salespeople.”¹¹⁴ This charge was strongly rejected by developers who questioned what more they could have done given the safeguards built into the mortgage and conveyancing process.¹¹⁵ The Committee favoured the introduction of a standard key features document at the start of the sales process to “very clearly outline the tenure of the property, the length of the lease, the ground rent and any permission fees.”¹¹⁶

The Secretary of State wrote to the Competition and Markets Authority (CMA) in November 2018 asking them to conduct a market study into the effect of onerous ground rents and raising the possibility of the CMA bringing a test case. Then-Minister Heather Wheeler provided the Select Committee with an update on the CMA’s response – at that point the CMA did not think an inquiry was needed.¹¹⁷

The Committee concluded that the CMA “should investigate mis-selling in the leasehold sector within the next six months and, where appropriate, make recommendations for appropriate compensation with the option of enfranchisement.”¹¹⁸ The Committee also called for funding for the Law Commission to carry out work to identify how unfair terms could apply to existing leaseholders:

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

Were the CMA to determine that onerous terms in existing leases are indeed unfair, or that they were mis-sold, the Government should take further action. Where leaseholders have paid unreasonable permission fees or ground rents over the course of their leases so far, they should have those refunded by freeholders with interest. In such circumstances, the Government should establish a clear and easily accessible route to compensation for affected leaseholders.¹¹⁹

On 11 April 2019, the Government confirmed that the CMA had been asked to investigate whether there has been mis-selling of leasehold properties. The Government also encouraged the Solicitors Regulation Authority to “investigate any firms for which there is evidence of misconduct.”¹²⁰

HCLG Committee recommended that the CMA should investigate mis-selling in the leasehold sector.

¹¹³ MHCLG, [Industry Pledge](#), 28 March 2019, para 19 [updated on 27 June 2019]

¹¹⁴ [Leasehold Reform, HC 1468, Twelfth Report of 2017-19](#), 19 March 2019, para 44

¹¹⁵ *Ibid.*, para 49

¹¹⁶ *Ibid.*, para 51

¹¹⁷ [HC 1468, 4 February 2019](#) Q516

¹¹⁸ [Leasehold Reform, HC 1468, Twelfth Report of 2017-19](#), 19 March 2019, para 61

¹¹⁹ *Ibid.*, paras 145-146

¹²⁰ [Written question – 242260](#), 11 April 2019

On 14 May 2019, the CEO of the CMA wrote to the Chair of the HCLG Committee, Clive Betts, confirming that an investigation *would* be carried out “to see the extent of any mis-selling and onerous leasehold terms, including whether they might constitute ‘unfair terms’ as legally defined.”¹²¹ The CMA said it would use its consumer protection law powers to conduct the investigation. The Committee welcomed the announcement.¹²²

The CMA said it would use its consumer protection law powers to investigate potential mis-selling.

The [Government’s response](#) to the Committee’s report referred to the CMA’s investigation and the fact that it could result in enforcement proceedings “if the evidence they uncover warrants it.”¹²³ The Government agreed that property agents should provide “clear and transparent information about the costs involved in purchasing a leasehold property”:

As a minimum, all leasehold properties must be clearly marked as such in marketing information and state the remaining period left on the lease. Sellers are required to provide a leasehold information pack to prospective buyers, which sets out key aspects of the lease such as ground rent and service charges.¹²⁴

The Government also confirmed that the Law Commission had been asked to undertake a project to consider the application of unfair terms in law to residential leases, particularly after assignment:

The scope of the project is expected to be relatively limited and would not be a “fix” for all onerous and unfair terms in leases. However, it would explore the possibility of bringing more leases within the purview of unfair terms law and could therefore provide consumers with another potential tool.¹²⁵

The CMA published an [Update report](#) on its investigation on 28 February 2020.¹²⁶ At that point the CMA had found “worrying evidence that people who buy leasehold properties are being misled and taken advantage of.”¹²⁷ **On 4 September 2020 the CMA announced that it was opening enforcement cases against four developers:** Taylor Wimpey; Barratt Developments; Countryside Properties; and Persimmon Homes. The CMA’s action relates to several aspects of mis-selling:

It should not be assumed at this stage of the CMA’s investigation that the businesses under investigation have been involved in any or all of the outlined practices.

- Ground rents insufficiently explained.
- Misleading information about the availability of freehold ownership on estates.
- Misleading information about the cost of enfranchisement.
- Unfair sales tactics.¹²⁸

¹²¹ [Letter to Chair from the CMA regarding the Committee’s report on Leasehold reform, 14 May 2019](#)

¹²² [Committee welcomes CMA investigation into leasehold mis-selling](#), 16 May 2019

¹²³ [CP 99](#), 3 July 2019, para 33

¹²⁴ *Ibid.*, para 38

¹²⁵ *Ibid.*, para 67

¹²⁶ [CMA115, Leasehold Housing Update Report](#), 28 February 2020

¹²⁷ [CMA Press Release](#), 28 February 2020

¹²⁸ CMA, [Leasehold homes: CMA launches enforcement action](#), 4 September 2020

The CMA is also considering onerous grounds in relation to unfair contract terms:

The use of unfair contract terms that mean homeowners have to pay escalating ground rents, which in some cases can double every 10 years. This increase is built into contracts, meaning people can also struggle to sell their homes and find themselves trapped.¹²⁹

Firms who bought freeholds from the developers named above and who have continued to use the same unfair leasehold contract terms will be considered, as will ground rent increases based on the Retail Price Index (RPI). The CMA “may take enforcement action should it find evidence of unfair practices in relation to these.”¹³⁰

3.4 The Right to Manage (RTM)

Long leaseholders in blocks of flats buy the right to live in their property but the management of the block, including its maintenance and insurance, normally remains in the hands of the freeholder. The lease agreement usually makes provision for the costs of the freeholder or his/her agent in discharging these management functions to be met in full by the leaseholders; these payments are referred to as service charges.

The *Commonhold and Leasehold Reform Act 2002* introduced a ‘no fault’ RTM for long leaseholders in blocks of flats.¹³¹ The aim was to enable long leaseholders in blocks to collectively take over the management of their blocks without having to establish a failure on behalf of the freeholder/managing agent. Long leaseholders in blocks already had the right to apply to a Tribunal for the appointment of a manager, but to be successful the leaseholder(s) had to demonstrate serious abuse by the landlord.

The aim of the RTM was to provide an alternative option to leasehold enfranchisement for leaseholders who were unhappy with the management of their blocks but who could not for some reason, e.g. cost, buy the freehold. No compensation is payable to the freeholder when the RTM is exercised.

The APPG’s report, [A preliminary report on improving key areas of leasehold and commonhold law](#) (April 2017), said:

It now appears to be accepted by government that the Right to Manage legislation is burdened with many deficiencies that add to the costs for the leaseholder.¹³²

Problems with the RTM were raised by Oliver Colville during the debate on leasehold reform on 20 December 2016.¹³³ During the same debate, Jim Fitzpatrick MP cited the case of Canary Riverside in his constituency

Of 1,244 long leaseholders surveyed by LEASE in 2016, 55% considered that changing managing agents would be a difficult process. Only 1 in 5 were aware that they could replace a poorly performing agent.

¹²⁹ Ibid.

¹³⁰ Ibid.,

¹³¹ Some exemptions apply, e.g. local authority long leaseholders cannot exercise the RTM under the 2002 Act.

¹³² APPG, [A preliminary report on improving key areas of leasehold and commonhold law](#), April 2017

¹³³ [HC Deb 20 December 2016 c1347](#)

where a Tribunal appointed manager took charge of the block's management under section 24 of the *Landlord and Tenant Act 1987* with effect from October 2016. He said that the appointed manager was being "ground down" by "continuous litigation" brought by the landlord to undermine the tribunal's decision. Mr Fitzpatrick declared section 24 to be "not fit for purpose."¹³⁴

Proposed reforms

The APPG suggested that a **review of the legislation** should be carried out and "consideration given to ending the ability of landlords to delay and add costs to the process."¹³⁵

Premises with mixed residential and non-residential use, where the internal floor area of the non-residential parts exceeds 25% of the total internal floor area of the property, are excluded from the RTM. The APPG questioned this exclusion as the commercial element is excluded from the RTM's role, saying "the 25% limit seems to serve no purpose."¹³⁶

The APPG also called for improvements to the legislation to ensure that it works for multi-site blocks and sites with a mixture of freehold and leasehold ownership.¹³⁷

Oliver Colvile MP called for "a more flexible, more transparent and less complicated system for RTM, insurance issues and service charges for leasehold properties."¹³⁸

In October 2017, the Government published [Protecting consumers in the letting and managing agent market: call for evidence](#). One of the questions posed in this paper concerned the Right to Manage:

How can we make it easier for leaseholders to access their right to manage? What further measures are required to make it easier for consumers to choose or switch agent? Should we introduce a power of veto for leaseholders over a landlord's choice of managing agent?¹³⁹

The [Government response](#) was published in April 2018 and in it the Government said "**we plan to simplify the Right to Manage process.**"¹⁴⁰ There was also a commitment to:

...introduce measures where a leaseholder can veto a landlord's choice of managing agent where justified, periodically review their performance and switch agents when agreed levels of service have not been achieved and maintained.¹⁴¹

¹³⁴ Ibid., cc1329-30

¹³⁵ APPG, [A preliminary report on improving key areas of leasehold and commonhold law](#), April 2017

¹³⁶ Ibid.

¹³⁷ Ibid.

¹³⁸ [HC Deb 20 December 2016 c1348](#)

¹³⁹ DCLG, [Protecting consumers in the letting and managing agent market: call for evidence](#), October 2017, Q4.3

¹⁴⁰ Ministry of Housing, Communities and Local Government (MHCLG), [Protecting consumers in the letting and managing agent market: Government response](#), April 2018

¹⁴¹ Ibid., para 129

The [industry pledge](#) published on 28 March 2019, contains a commitment by the signatories to:

Support leaseholders who wish to take over the collective management of their homes and any communal areas in accordance with leaseholder rights enshrined in legislation.¹⁴²

[Ending the Scandal: Labour's new deal for leaseholders](#) (July 2019), included a commitment to "simplify the Right to Manage (RTM) so that leaseholders who wish to take full control of their building's management can do so more easily."¹⁴³

On 4 July 2018, James Brokenshire, then Secretary of State, asked the Law Commission to look at improving the Right to Manage.¹⁴⁴ The Law Commission's final report, [Leasehold home ownership: exercising the right to manage](#) was published on 21 July 2020.¹⁴⁵ There is also a [summary report](#). The aim of the Commission's recommendations in respect of the RTM is to:

- reduce the costs of making an RTM claim, and give leaseholders more control over those costs;
- make the RTM available to more leaseholders in a wider variety of buildings; and
- make the process of claiming the RTM less complicated and less likely to be frustrated because of small procedural errors.¹⁴⁶

The recommendations include, for example:

- An increase in the non-residential limit from 25% to 50%.
- The removal of the "resident landlord" exception which applies to premises containing fewer than five flats.
- New rights to obtain information relevant to exercising the RTM and clarification of where costs fall during the process.
- "Significant changes" to the allocation of costs incurred during acquisition of the RTM and disputes (para 1.88 of summary report).
- Extension of the Tribunal's remit to determine disputes.

3.5 Enfranchisement and lease extensions

As previously noted, qualifying owners of leasehold houses have the right to buy the freehold interest under the *Leasehold Reform Act 1967* and a right to a lease extension for a maximum term of 50 years. No premium is payable for a lease extension under the 1967 Act, but the ground rent may increase to a modern rent. Qualifying leaseholders in blocks of flats have a *collective* right to buy the freehold interest and an

¹⁴² MHCLG, [Industry Pledge](#), 28 March 2019, para 6

¹⁴³ Labour Party, [Ending the Scandal: Labour's new deal for leaseholders](#), July 2019, p18

¹⁴⁴ [Law reform needed to help leaseholders take control of their buildings](#), 4 July 2018

¹⁴⁵ HC 585, [Leasehold home ownership: exercising the right to manage](#), 21 July 2021

¹⁴⁶ [Law Commission Right to Manage webpage](#) [accessed on 7 February 2021]

individual right to a lease extension under the *Leasehold Reform, Housing and Urban Development Act 1993*.

The impact that rising ground rents can have on the cost of exercising these rights is explained in section 3.3 of this paper. Aside from this, leaseholders have long expressed concerns over the complexity of the valuation process and price they are expected to pay. Disputes over valuation can be referred to a First-Tier Tribunal where the leaseholders invoke their statutory right to buy the freehold or extend the lease. As with the RTM, there are reports of obstructive freeholders who seek to block leaseholders in exercising their right to enfranchise/extend their lease agreements.

Leaseholders of certain landlords may not have the right to enfranchise, e.g. where the National Trust is the freeholder. Leaseholders of houses in this position have raised the fact that they can only apply for one lease extension of 50 years compared to qualifying leaseholders of flats who can buy multiple extensions.¹⁴⁷ A further issue is the charging of a modern ground rent after exercising the right to a 50-year lease extension – the National Trust attracted some adverse publicity in 2017 with reports of some rent increases of 10,000%.¹⁴⁸ A [press release](#) issued by the Trust on 26 March 2018 announced that modern ground rents would be removed for “most of its leaseholders”.¹⁴⁹

Proposed reforms

Removing the two-year moratorium on the right to buy

As previously noted (p32), the Law Commission’s final report [Leasehold home ownership: buying your freehold or extending your lease](#) recommends the abolition of the two-year ownership requirement before exercising the right to enfranchise.¹⁵⁰

Extending and standardising the right to a lease extension

The Law Commission recommended that both house owners and flat owners should have a uniform right to extend their lease agreements for 990 years.¹⁵¹ **On 7 January 2021 the Government confirmed that this would be implemented.**¹⁵² Responding to a PQ on the impact of the measure on freeholders, Lord Greenhalgh said:

Long leases provide long term security for leaseholders and save them money by avoiding the need for multiple lease extensions

The Government remains committed to promoting fairness and transparency for homeowners and ensuring that consumers are protected from abuse and poor service.

¹⁴⁷ Restrictions apply to certain leasehold owners of flats in terms of lease extensions where the freeholder is the National Trust, Crown or the property is in a cathedral precinct.

¹⁴⁸ See: Leasehold Knowledge Partnership, [Why are National Trust leaseholders in uproar over increases in ‘modern ground rents’?](#) 25 August 2017

¹⁴⁹ National Trust, [Modern Ground Rents](#), 26 March 2018

¹⁵⁰ HC584, [Leasehold home ownership: buying your freehold or extending your lease](#), July 2020, para 6.131

¹⁵¹ Law Com 392 (Summary) [Leasehold home ownership: buying your freehold or extending your lease](#), 21 July 2020

¹⁵² MHCLG, [Government reforms make it easier and cheaper for leaseholders to buy their homes](#), 7 January 2021

Our reforms seek to achieve this, by taking account of the legitimate rights of freeholders but addressing historic imbalance to ensure fairness for leaseholders. We will continue to ensure we meet this objective as we bring forward reforms.

In line with usual practice, the Government's intention would be to publish an impact assessment on our leasehold reforms as part of taking primary legislation through Parliament.¹⁵³

Limiting the costs of enfranchisement and lease extensions

In January 2020 the Law Commission published [Leasehold home ownership: buying your freehold or extending your lease: Report on options to reduce the price payable](#).¹⁵⁴ This report set out three alternatives for reducing premiums and for simplifying the way in which premiums are calculated. The Commission did not make recommendations in this area as this:

...involves considerations of law, valuation, social policy, and political judgement, and is therefore for Government and ultimately Parliament to decide.¹⁵⁵

The Commission published the [Opinion of Catherine Callaghan QC on the options to reduce the price and human rights law](#) alongside the January 2020 report, noting that the options for reform must operate within human rights law:

Some consultees asserted that any reduction in enfranchisement premiums would be unlawful under A1P1¹⁵⁶ and it is clear that any reforms will be carefully scrutinised. Given the necessity for a reformed valuation regime to be lawful under A1P1, we have obtained the independent opinion of Catherine Callaghan QC, a specialist human rights barrister, on the compliance with human rights law of our options for reducing premiums (which we refer to as "Counsel's Opinion").

[The Law Commission's summary report](#) outlined the three alternative options in an accessible format with worked examples. The alternative options were:

¹⁵³ [UIN HL12028](#), 25 January 2021

¹⁵⁴ HC13, [Leasehold home ownership: buying your freehold or extending your lease: Report on options to reduce the price payable](#), 9 January 2020

¹⁵⁵ [Leasehold home ownership: buying your freehold or extending your lease: Report on options to reduce the price payable](#) (summary), 9 January 2020

¹⁵⁶ Article 1 of the First protocol to the European Convention on Human Rights.

Scheme 1 reflects what the landlord would receive if the lease ran its course and the leaseholder never chose to extend the lease or acquire the freehold: the landlord would receive the ground rent (“the term”) and would get the property back at the expiry of the lease (“the reversion”).

Scheme 2 reflects what the landlord would receive if his or her interest were sold to a third party. An investor purchasing the freehold would not pay marriage value (because the leasehold and freehold interests would remain in separate ownership, so marriage value would not be realised). But an investor might pay hope value, to reflect the fact that he or she might in the future be able to realise the marriage value by selling the interest to the leaseholder.

Scheme 3 reflects the way in which premiums are calculated under the current law, but when combined with other reforms Scheme 3 can still be used to reduce premiums.¹⁵⁷

Marriage value is the increase in the value of the property following the completion of enfranchisement or a lease extension. This reflects the additional market value of a longer lease or the freehold.

Additional options for reforms suggested by the Law Commission included:

- Prescribing the rates used in calculating the price, to remove a key source of disputes, and make the process simpler, more certain and predictable.
- Helping leaseholders with onerous ground rents, by capping the level of ground rent used to calculate the premium.
- The creation of an online calculator for determining the premium to make it easier to find out the cost of enfranchisement, and reduce uncertainty around the process.
- Enabling leaseholders who are collectively enfranchising a block of flats to avoid paying “development value” to the landlord unless and until they actually undertake further development.¹⁵⁸

On contributions to landlords’ non-litigation costs the Commission recommended:

...if leaseholders are to continue to receive a price for a lease extension or freehold that is calculated by reference to the open market value of the landlord’s asset, leaseholders should not also be required to make any contribution to their landlord’s non-litigation costs.¹⁵⁹

The final report outlines some circumstances in which non-litigation costs would be payable paras 12.43-12.50.

The Commission published the [Opinion of Catherine Callaghan QC on our recommendations on non-litigation costs](#).

In a [Written Ministerial Statement](#) of 11 January 2021 Robert Jenrick said:

The Government will abolish marriage value, cap the treatment of ground rents at 0.1% of the freehold value and prescribe rates for the calculations at market value. The Government will also introduce an online calculator, further simplifying the process for

¹⁵⁷ [Leasehold home ownership: buying your freehold or extending your lease: Report on options to reduce the price payable](#) (summary), 9 January 2020, p16

¹⁵⁸ [Law Commission Leasehold Enfranchisement webpage](#) [accessed 7 February 2021]

¹⁵⁹ HC584, [Leasehold home ownership: buying your freehold or extending your lease](#), July 2020, para 12.35

leaseholds and ensuring standardisation and fairness for all those looking to enfranchise.

Existing discounts for improvements made by the leaseholder and for security of tenure will be retained, alongside a separate valuation methodology for low-value properties known as “section 9(1)”. Leaseholders will also be able to voluntarily agree to a restriction on future development of their property to avoid paying “development value”.¹⁶⁰

While legislation to set future ground rents to zero will be brought forward in the forthcoming Parliamentary Session, **the remaining leasehold reforms will follow at a later date:**

The Government will respond to the Law Commission’s remaining recommendations on enfranchisement, commonhold and right to manage in due course. We will translate these measures into law as soon as possible, starting with legislation to set future ground rents to zero in the upcoming Session. This will be the first part of major two-part legislation to implement leasehold and commonhold reforms in this Parliament.¹⁶¹

On 5 January 2021, Lord Greenhalgh, the Minister responsible for leasehold, responded to questions on the timing of future legislation:

We need primary legislation. I have been told by Professor Hopkins, who was in charge of the Law Commission work, that the preparations to get primary legislation ready for consideration by noble Lords will take approximately one year, so we are probably talking about the third Session.¹⁶²

3.6 Service charges

The **day-to-day management and maintenance** of blocks of flats is usually the responsibility of the freeholder. This responsibility can be contracted out to an agent on the freeholder’s behalf. The cost of the work is usually recoverable from long leaseholders, as a condition of their lease agreements, via a service charge. In its 2014 report, [Residential property management services: A market study](#), the Competition and Markets Authority (CMA) estimated that average service charges amounted to just over £1,100 annually:

This suggests that service charges could total £2.4–£3.5 billion a year.¹⁶³

¹⁶⁰ [HCWS695](#), 11 January 2021

¹⁶¹ Ibid.

¹⁶² [HL Deb 5 January 2021 cc10-11](#)

¹⁶³ CMA, [Residential property management services: A market study](#), 2014, para 1.7

Service charges are a highly contentious area for long leaseholders. There are complaints about excessive service charges and a lack of transparency over what services are being provided and how they are being charged. During the 20 December 2016 debate on leasehold, Jim Fitzpatrick said:

Previously, constituents of mine have been charged for lifts in blocks with no lifts, and for garden upkeep in places with no gardens.¹⁶⁴

There has been legislative activity in this area. Demands for service charges must contain the landlord's name and address. The demand must also include a summary of leaseholders' rights and obligations. The *Landlord and Tenant Act 1985* provides that service charges must be reasonable and that the services provided are carried out to a reasonable standard. Leaseholders can challenge the reasonableness of service charges and the standard of the work but are often reluctant to take legal action, citing cost as a significant barrier. Leaseholders can also request a summary of the service charge account and can inspect receipts and accounts in relation to the last accounting year, or where accounts are not kept by accounting years, the past 12 months preceding the request.¹⁶⁵

Service charge contributions must be held on trust by the landlord for the leaseholders. There are also provisions which limit the landlord's ability to recover service charges that have not been demanded where the costs were incurred over 18 months ago.

Issues persist *despite* legislative activity aimed at strengthening leaseholders' rights. Jim Fitzpatrick cited research by Which? into service charges:

In 2012, the consumer organisation Which? estimated that £700 million was being overcharged in service charges each year. That was when everyone thought that there were between 2 million and 2.5 million leasehold homes. Given the size of the sector as we now know it to be, that suggests that £1.4 billion may be being overcharged each year. That cannot be right either.¹⁶⁶

Long leaseholders may also face 'one-off' bills for major works to cover; for example, roof or lift replacement. This arose as a particular issue for leaseholders in the social rented sector as landlords worked towards achieving the Labour Government's target of bringing all social sector stock up to the decent home standard by 2010.

Following the Grenfell Tower fire, the issue of long leaseholders facing substantial bills arising from essential fire safety works to their blocks has attracted attention. This was raised in several contributions during a Westminster Hall debate on leasehold and commonhold reform on 21 December 2017.¹⁶⁷

There is a mandatory consultation process that must be followed by landlords who intend to recover the cost of major works from long

Of 1,244 leaseholders surveyed by LEASE in 2016, 40% strongly disagreed that service charges represented value for money. 62% said that services provided had not improved in the last two years.

¹⁶⁴ [HC Deb 20 December 2016 c1329](#)

¹⁶⁵ Sections 21 and 22 of the *Landlord and Tenant Act 1985*.

¹⁶⁶ [HC Deb 20 December 2016 c1330](#)

¹⁶⁷ [HC Deb 21 December 2017 c481WH](#)

leaseholders where the expected cost is likely to be above a certain threshold. Failure to follow the correct process can result in landlords being unable to recover the full cost of the works. In the October 2017 paper, [Protecting consumers in the letting and managing agent market: call for evidence](#), the Government recorded difficulties with this process:

The cost of major works can be a particularly problematic. Section 20 is meant to ensure that consumers have a say on these works but, in reality, offers limited opportunity for leaseholders to influence decisions on whether work is necessary or the costs that are incurred.¹⁶⁸

The paper noted that the Government is “in the process of reviewing Section 20 – but we believe that more can and should be done.”¹⁶⁹

There are some additional protections in place for social sector leaseholders in certain limited circumstances, these protections are explained in a separate Library briefing paper: [Leaseholders in social housing: paying for major works \(England\)](#).

Potential reforms

Contributions to the debate on 20 December 2016, and the APPG’s preliminary report, did not include specific reference to changes in the law in relation to service charges. However, there were calls for **the introduction of overarching regulation**. Currently, property agents in England must be members of a Government approved redress scheme, but the sector is mainly subject to self-regulation.

In [Protecting consumers in the letting and managing agent market: call for evidence](#), (October 2017), the Government asked:

What changes could be made to ensure that consumers are protected from unfair fees and charges, including major works?¹⁷⁰

In April 2018, the Government announced that managing agents in the sector will be subject to regulation by an independent body and that a Code of Practice will set out minimum standards which will cover key areas of activity, including service charges.

See section 3.13 of this paper for more information.

When giving evidence to the Housing, Communities and Local Government Select Committee on 4 February 2019, Lakhbir Hans, Deputy Director for Leasehold, Commonhold and Rentcharges at MHCLG said:

There is a wider piece of work that we are doing within the Department, outside the Lord Best group, which covers the whole range of service charges. Within the team, we are looking at that. That will cover how we need to potentially strengthen or protect leaseholder funds as part of that.¹⁷¹

The work I mentioned we are doing on service charges not only looks at the different types of charges, but will also consider the

¹⁶⁸ DCLG, [Protecting consumers in the letting and managing agent market: call for evidence](#), October 2017, para 62

¹⁶⁹ Ibid., para 66

¹⁷⁰ DCLG, [Protecting consumers in the letting and managing agent market: call for evidence](#), October 2017, Q4.1

¹⁷¹ [HC 1468, 4 February 2019](#) Q543

ways in which there can be redress or enforcement of rights within that.¹⁷²

I mentioned the service charges work—I keep coming back to this—which is a massive area that we are looking at. We are going to be considering in what circumstances some of those fees and charges might be capped or banned. That might include the use of restrictive covenants, leasehold restrictions, administrative charges or other charges placed on properties.¹⁷³

Baroness Gardener of Parkes moved to insert a new clause into the *Housing and Planning Bill 2015-16* which would have made it a requirement to establish **'sinking' or 'reserve' funds** in respect of leasehold blocks. Where these funds exist, long leaseholders make a regular payment into the fund which is then used to cover the cost of major works, thus avoiding the impact of significant one-off bills.¹⁷⁴ Viscount Younger of Leckie responded for the Government, saying that where the lease does not already provide for a sinking fund it would be possible for a variation of the lease to be agreed to do so:

This is the most appropriate route for creating sinking funds, avoiding unnecessary confusion and ensuring that appropriate protections remain in place. I hope that with this explanation my noble friend will agree to withdraw her amendment.¹⁷⁵

The amendment was withdrawn. The Regulation of Property Agents Working Group chaired by Lord Best considered regulation of sinking funds as part of its work in this area (see below).¹⁷⁶

The HCLG Committee recommended that the Government should require the use of a standardised form for invoicing service charges which clearly identifies the individual parts that make up the overall charge. Commission paid to the freeholder or agent should be clearly identified and the proportion of the cost this constitutes to improve transparency “and allow leaseholders to make comparisons with equivalent properties.”¹⁷⁷ The Committee also called for regulation of sinking funds.¹⁷⁸

The [Government response](#) referred to the work of the Regulation of Property Agents Working Group. The Group published its [report](#) in July 2019. It recommended improved transparency of leaseholder charges with the new regulator having a role in enforcement of compliance:

The new regulator should be given a statutory duty to ensure transparency of leaseholder and freeholder charges, and should work with the sector (property agents, developers and consumers) to draw up the detail of the regulatory codes to underpin this aim as it applies to property agents. The regulatory code should include standards for transparency; potential conflicts of interest (e.g. mandatory disclosure of commissions and management fee charges); communication and use of service charges; administration charges; permission fees; use of covenants; and

¹⁷² [HC 1468, 4 February 2019](#) Q551

¹⁷³ [HC 1468, 4 February 2019](#) Q575

¹⁷⁴ [HL Deb 17 March 2016 c1989](#)

¹⁷⁵ [HL Deb 17 March 2016 c1993](#)

¹⁷⁶ [Leasehold Reform, HC 1468, Twelfth Report of 2017-19](#), 19 March 2019, para 156

¹⁷⁷ *Ibid.*, para 153

¹⁷⁸ *Ibid.*, para 157

protection of client money. Standard industry cost codes, as have been developed for commercial service charges, should be developed to help consumers to more easily identify and compare items of expenditure, and to form a standard basis for accounts for managing agents.¹⁷⁹

On the issue of large one-off bills, the Committee proposed a new consultation process and a cap of £10,000 per leaseholder above which works could only be carried out with the agreement of a majority of leaseholders. Where consent is not given, freeholders would have to seek authorisation from a tribunal – the tribunal would consider whether proposed works are essential and represent value for money. The Committee also wanted freeholders to be obliged to offer low-interest long-term loans to affected leaseholders.¹⁸⁰

The [Government response](#) agreed that the consultation process for major works should be reviewed. The Regulation of Property Agents Working Group recommended:

As for a standardised charges form, we think that there is merit in the Government considering consulting on a revised major works consultation process. Ideally major works and associated costs should be planned, and leaseholders sighted well in advance, which may reduce the need for multiple one-off consultations.¹⁸¹

On sinking funds, the Group recommended:

We think that Government should consider making use of a sinking fund mandatory in both new and existing leases and freeholds on private or mixed tenure estates. Where a sinking fund is used, we think that Government should consider how to ensure that it is effectively funded, such as being underpinned by a professionally certified asset management plan.¹⁸²

The Government said they would consider the Group's recommendations alongside those of the Committee and "consult as necessary."¹⁸³

[Ending the Scandal: Labour's new deal for leaseholders](#) (July 2019), committed to:

...crack down on unfair fees and contract terms by publishing a reference list of reasonable charges, requiring transparency on service charges and giving leaseholders an improved system to challenge rip-off fees and conditions or poor performance from service companies.¹⁸⁴

3.7 Building insurance

It is common for a long lease to provide for the landlord to organise building insurance, recovering the cost from the leaseholder(s), or for the lease to require the long leaseholder to insure with a company nominated or approved by the landlord. The *Commonhold and*

¹⁷⁹ [Regulation of Property Agents Working Group – Final Report](#), July 2019, p4

¹⁸⁰ [Leasehold Reform, HC 1468, Twelfth Report of 2017-19](#), 19 March 2019, para 170

¹⁸¹ [Regulation of Property Agents Working Group – Final Report](#), July 2019, p43

¹⁸² *Ibid.*, p44

¹⁸³ [CP 99](#), 3 July 2019, para 70 & para 78

¹⁸⁴ Labour Party, [Ending the Scandal: Labour's new deal for leaseholders](#), July 2019, p17

Leasehold Reform Act 2002 gave long leaseholders of houses the right to organise their own building insurance provided certain requirements are fulfilled.¹⁸⁵ Long leaseholders in blocks of flats must abide by any provision in the lease concerning building insurance, although they can request a summary of the insurance policy and challenge the cost of the insurance if they think it is unreasonable.

There are specific concerns about the commission a landlord or agent may earn through organising insurance with a particular company. This was raised during the debate on 20 December 2016, Oliver Colvile said:

The ombudsman’s decision highlights the fact that millions of leaseholders face the same position across the country. Some landlords also happen to own an insurance broker, as we heard earlier, creating loopholes and conflicts of interest across the board. The Financial Conduct Authority is fully aware that leasehold building insurance is a problem and has reported that high commissions—up to 40%—have been paid on insurance. In 2014, the Competition and Markets Authority investigated leasehold property management, and one of its specific recommendations was that the FCA should look into the matter.¹⁸⁶

The CMA did not make specific recommendations on the charging of commission. However, in light of evidence of high charges and commission rates and a lack of transparency, the CMA encouraged the Financial Conduct Authority and the Government to consider regulation in this area.

Issues raised in relation to the inclusion of cover against terrorism in building insurance policies were debated in Westminster Hall on 22 October 2014. This is considered further in the Library briefing paper: [Long leaseholders: building insurance requirements](#).

3.8 Administration charges

A lease may make provision for leaseholders to pay for the landlord’s costs when dealing with applications for approvals (e.g. permission to adapt a property) or for the provision of documents. These are known as administration charges or permission fees. Long leaseholders can challenge unreasonable administration charges through the tribunal system.

High administration charges continue to be an issue. Justin Madders MP cited the following example during the debate on 20 December 2016:

The same constituent recently obtained planning permission to extend her home, but was told that she needed to obtain consent from Homeground in order to proceed, for which she was charged a fee of £333. However, following payment of that amount, an additional £2,440 was requested for the same purpose. This amounts to nothing less than racketeering and it should be stamped out.¹⁸⁷

¹⁸⁵ For more information see Library briefing paper 1821: [Long leaseholders: building insurance requirements](#)

¹⁸⁶ [HC Deb 20 December 2016 c1348](#)

¹⁸⁷ [HC Deb 20 December 2016 c1343](#)

Lord Young of Cookham sought to amend the *Housing and Planning Bill 2015-16* to prevent landlords from recovering costs associated with legal proceedings as administration charges.¹⁸⁸

Viscount Younger of Leckie undertook to consider the matter further.¹⁸⁹

An amendment was subsequently agreed such that, since 7 April 2017, tribunals or courts can consider, on application by the leaseholder, whether it is reasonable for a landlord to recover all or part of those costs.¹⁹⁰

[Protecting consumers in the letting and managing agent market: call for evidence](#), (October 2017) included reference to leaseholders facing “unfair administration fees when seeking permission to make changes to the property, or on sale.”¹⁹¹ The paper posed the question:

How can we support consumers to challenge unfair fees and ensure that they have a route to redress?¹⁹²

The [Government response](#), published in April 2018, said that a Working Group would be established which would, inter alia:

...look into those fees and charges that go beyond leasehold service charges, but can impact both leaseholders and freeholders, and consider under what circumstances they are justified, and if they should be capped or banned. This includes the use of restrictive covenants, leasehold restrictions, administration charges and other charges placed on properties.¹⁹³

The HCLG Select Committee received evidence of leaseholders’ concerns about onerous administration/permission fees.

Freeholders/agents defended the recovery of reasonable costs incurred for granting consent to property alterations. Views varied between the abolition of fees and their retention with a cap.¹⁹⁴ The Committee recommended a requirement for fees in leases of new-build properties not to exceed the true costs incurred by freeholders. A call was also included for legislation to restrict onerous permission fees.¹⁹⁵

The [Government’s response](#) to the Committee’s recommendations again referred to work carried out by the Regulation of Property Agents Working Group. As previously mentioned, the Working Group [reported](#) in July 2019. On fees other than service charges, such as administration/permission fees, the Group said:

We think that Government should consider consulting on the principle of establishing a statutory prescribed list of fees (what can be charged for) for inclusion into new leases – and what should be included on the list. Any fees that were not on the

Since 7 April 2017 tribunals or courts can consider, on application by a leaseholder, whether a landlord should be able to recover costs via an administration charge.

¹⁸⁸ [HL Deb 17 March 2016 cc1968-9](#)

¹⁸⁹ [HL Deb 17 March 2016 c1973](#)

¹⁹⁰ Under section 131 of the *Housing and Planning Act 2016* which inserted a new provision into the *Commonhold and Leasehold Reform Act 2002*.

¹⁹¹ DCLG, [Protecting consumers in the letting and managing agent market: call for evidence](#), October 2017, para 63

¹⁹² *Ibid.*, Q4.2

¹⁹³ Ministry of Housing, Communities and Local Government (MHCLG), [Protecting consumers in the letting and managing agent market: Government response](#), April 2018

¹⁹⁴ [Leasehold Reform, HC 1468, Twelfth Report of 2017-19](#), 19 March 2019, paras 131-134

¹⁹⁵ *Ibid.*, para 137

prescribed list could not be added to a lease nor charged to leaseholders. Alongside this, Government should also consider consulting on a set of tariffs of leaseholder and freeholder fees and charges (how much can be charged) – which unless explicitly stated in existing leases, could be applicable to both new and existing leases.¹⁹⁶

The Group also commented on the use of restrictive covenants in lease agreements and said:

...we think that Government should promote better use of restrictive covenants by implementing the recommendations from the Law Commission's report [Making Land Work](#). In addition, Government should consider providing guidance on setting restrictive covenants.¹⁹⁷

The Group's recommendations on permission fees will be considered with those of the Committee and consultation will be carried out as necessary.¹⁹⁸

[Ending the Scandal: Labour's new deal for leaseholders](#) (July 2019), committed to ending:

...the charging of unfair administration or 'permission' fees by limiting the circumstances in which fees can be charged and, for certain fees, being clear about the maximum fee that can be charged – for example for giving permission to install a doorbell . This could build on Law Commission proposals to tackle 'event fees' in retirement properties.¹⁹⁹

3.9 Forfeiture

Forfeiture of a lease is the ultimate sanction a landlord can take against a leaseholder who is in breach of the lease agreement (contract). To gain possession of the property the landlord must obtain a court order. This is initiated by the service of a notice under section 146 of the *Law of Property Act 1925*. Restrictions have been placed on the use of forfeiture for service charge arrears (e.g. the arrears must be agreed by the leaseholder), and for ground rent arrears (the leaseholder must have received a demand for payment in the prescribed form²⁰⁰). The 2002 Act also placed some limits on the use of forfeiture based on the level of outstanding arrears. As a rule, the courts can grant relief from forfeiture.

The APPG's [A preliminary report on improving key areas of leasehold and commonhold law](#), referred to "considerable injustice as a result of the use of forfeiture in the residential leasehold sector."

The HCLG Committee considered forfeiture during its leasehold reform inquiry. Giles Peaker told the Committee that there were no other mechanisms open to a landlord through which they can address breaches of a lease and, in practice, "it was very rare for freeholders to

¹⁹⁶ [Regulation of Property Agents Working Group – Final Report](#), July 2019, p46

¹⁹⁷ *Ibid.*, pp46-47

¹⁹⁸ [CP 99](#), 3 July 2019, para 64

¹⁹⁹ Labour Party, [Ending the Scandal: Labour's new deal for leaseholders](#), July 2019, p17

²⁰⁰ Section 166 of the *Commonhold and Leasehold Reform Act 2002*

actually achieve forfeiture".²⁰¹ Witnesses supplied examples of freeholders threatening forfeiture proceedings. Guy Fetherstonehaugh QC described it as a "fantastically draconian" remedy.²⁰²

Potential reforms

The APPG recommended:

- The adoption of the Law Commission report on replacing residential forfeiture: [Termination of tenancies for tenant default](#).²⁰³
- In bringing forward the Law Commission's recommendations, the Government should consider how the use of forced sale applies in commonhold regimes around the world and "consider if the Commission's wording might be adopted to any future review of commonhold in England."²⁰⁴

The HCLG Committee recommended that the Government should take up the Law Commission's 2006 proposals to reform forfeiture.²⁰⁵ The [Government's response](#) confirmed that the Law Commission had been asked to update their 2006 report to take account of the implications of reforms currently underway.²⁰⁶

[Ending the Scandal: Labour's new deal for leaseholders](#) (July 2019), said that "no one should be threatened with forfeiture of their home for breaking restrictive covenants" and committed to the abolition of forfeiture in respect of long leases:

...replacing it with a system akin to foreclosure on mortgage arrears. Under this system, freeholders would apply to the court for the sale of the lease in cases where a serious breach has had a proven detrimental effect on the property value, with the leaseholder receiving their remaining interest following sale.²⁰⁷

3.10 Recognition of tenants' associations

Gaining recognition rights for tenants' associations in leasehold housing has been a longstanding issue, even though qualifying tenants of a residential leasehold property have a legal right to form a recognised association. Amendments were made during the passage of the *Housing and Planning Act 2016* through Parliament to require a landlord to supply to the secretary of a residents' association information to allow contact to be made with absent leaseholders for the purpose of increasing the association's membership and, therefore, its likelihood of achieving recognition under section 29(1) of the *Landlord and Tenant Act 1985*.²⁰⁸

²⁰¹ [Leasehold Reform, HC 1468, Twelfth Report of 2017-19](#), 19 March 2019, para 181

²⁰² *Ibid.*, paras 182-183

²⁰³ Cm 6946, October 2006

²⁰⁴ APPG, [A preliminary report on improving key areas of leasehold and commonhold law](#), April 2017

²⁰⁵ [Leasehold Reform, HC 1468, Twelfth Report of 2017-19](#), 19 March 2019, para 185

²⁰⁶ [CP 99](#), 3 July 2019, para 85

²⁰⁷ Labour Party, [Ending the Scandal: Labour's new deal for leaseholders](#), July 2019, p17

²⁰⁸ Section 130 of the *Housing and Planning Act 2016* which has inserted a new section 29A into the *Landlord and Tenant Act 1985*.

The Government consulted on the content of regulations under the new section 29A in 2017: [Recognising residents' associations, and their power to request information about tenants](#). The outcome was published on 15 October 2018: [Recognising residents' associations, and their power to request information about tenants: government response](#). *The Tenants' Associations (Provisions Relating to Recognition and Provision of Information) (England) Regulations 2018* came into force on 1 November 2018.²⁰⁹ The then-Housing Minister's [Written Statement](#) of 31 October 2019 confirmed that these changes would "shortly" be reviewed "to see how effectively it is working in practice."²¹⁰

The Regulation of Property Agents Working Group thought there was scope to consider extending the powers of Recognised Tenants' Associations and potentially those of other types of representative leaseholder groups, particularly in relation to tackling poor performance by managing agents.²¹¹

Labour's proposals to strengthen Recognised Tenants Associations (RTAs) in [Ending the Scandal: Labour's new deal for leaseholders](#) (July 2019) included:

- building owners and managers being required to provide information to RTAs up-front about their spending each year;
- amendments to the existing statutory right to appoint a new property manager to give RTAs the right to change managing agent without having to establish mismanagement at a tribunal; and
- removing barriers to the establishment of RTAs.²¹²

3.11 Leasehold retirement properties

There are some specific issues that have arisen in relation to leasehold retirement properties. Companies that own or manage these properties often include a clause in their lease agreements requiring owners to pay an 'exit' or 'transfer' fee when they wish to sell or rent out their homes. The Law Commission has noted that payment of these fees is often triggered by an event (such as resale or sub-letting), and for this reason has referred to them collectively as "event fees." The fee, according to the Law Commission, can be up to 30% of the property's resale price. Owners have questioned whether this practice is legal, and the matter has attracted a good deal of media attention. Background and additional information can be found in Library briefing paper 5994: [Leasehold retirement homes: exit/event fees](#).

The Law Commission reported on [Event Fees in Retirement Properties](#) on 31 March 2017. The Commission identified significant problems associated with these fees:

²⁰⁹ [SI 2018/1043](#)

²¹⁰ [Leasehold update: Written Statement - HCWS55](#), 31 October 2019

²¹¹ [Regulation of Property Agents Working Group – Final Report](#), July 2019, p48

²¹² Labour Party, [Ending the Scandal: Labour's new deal for leaseholders](#), July 2019, pp17-18

- event fees can be hidden in complex leases
- leaseholders may be charged unexpectedly – even when their spouse or carer moves into the property
- event fees are often disclosed too late in the process for the consumer to take the fee into account
- that if consumers do spot event fees, they may fail to appreciate their financial consequences²¹³

The Commission did not recommend the abolition of event fees but recommended regulation through a Code of Practice supported by an amendment to the *Consumer Rights Act 2015* to enable enforcement by consumers.

The APPG questioned some of the Law Commission's findings, in particular, the idea that event fees may make retirement housing more affordable for older residents who are 'capital rich and cash poor' by deferring payments. The APPG was critical of the Commission's failure to consider counter evidence and the risk of a lack of transparency around event fees.²¹⁴ The APPG report concluded that "the APPG is concerned that the proposed event fee system may have disadvantages and produce serious continuing consumer disadvantage."²¹⁵ The report went on to call for more work to be carried out on the need for wider regulation of this part of the housing market.²¹⁶

The Government's announcement of a new industry pledge on 28 March 2019 included its response to the Law Commission's 2017 report:

The government has today announced its response to the Law Commission's report on event fees. The majority of the recommendations have been accepted which include:

- A new statutory code of practice which will ensure that these fees cannot be charged unexpectedly, while fees that breach it will be regarded as unenforceable.
- Developers and estate agents will be required to make all such fees crystal clear to people before they buy, so prospective buyers can make an informed decision before forming a financial or emotional attachment to a property.²¹⁷

The then-Housing Minister's [Written Statement](#) of 31 October 2019 confirmed an intention to consider recommendations on succession rights and a database of leasehold retirement properties with event fees to "further determine the most effective way of improving the system for consumers".²¹⁸

²¹³ Law Commission, [Event Fees in Retirement Properties](#), 31 March 2017

²¹⁴ APPG, [A preliminary report on improving key areas of leasehold and commonhold law](#), April 2017

²¹⁵ Ibid.

²¹⁶ Ibid.

²¹⁷ MHCLG, [James Brokenshire announces industry pledge to crack down in toxic leasehold deals](#), 28 March 2019

²¹⁸ [Leasehold update: Written Statement - HCWS55](#), 31 October 2019

3.12 Dispute resolution

There are references throughout this paper to leaseholders' rights to challenge aspects of how their blocks are managed and the valuation of a lease extension/enfranchisement. Challenges primarily take place through the tribunal system. The use of the tribunal system was intended to give long leaseholders access to a speedier and cheaper means of seeking redress. In practice, leaseholders are reluctant to go down this route. During the Westminster Hall debate on 20 December 2016 Jim Fitzpatrick said:

When the dispute resolution procedure was originally designed, was it not supposed to create a relatively informal arrangement whereby residents could go to a tribunal to argue their case? That has been completely distorted by some of these unscrupulous freeholder landlords bringing in high-powered barristers and then charging their fees to the residents, whether they win or lose.²¹⁹

In the same debate, Sir Peter Bottomley referred to the inability of tribunals "to fine for repeat offences"²²⁰ and described the experience of an elderly couple on Plantation Wharf in Battersea:

One of the worst cases is that of Plantation Wharf in Battersea. Two elderly people applied to challenge management costs of about £9,000. The leasehold valuation tribunal—the lower property tribunal—agreed with them in large part and struck off about £7,000. There were then applications for costs. One of the leaseholders had read on the Government website that the cost of going to the leasehold valuation tribunal was £500 and therefore assumed that there was nothing in the cost application. By inattention, he ended up bouncing between various courts and owing over £70,000. A forfeiture order was granted, with even the mortgage lender not realising that its part of the asset would be forfeited as well.²²¹

Justin Madders said:

It is not enough to say that leasehold valuation tribunals are there to resolve these issues, because these companies are going out of their way to obstruct and delay the process. I do not know whether anybody here has taken the time to read one of the tribunals' decisions, but I suspect that very few people would feel comfortable going into one of them without a lawyer, and probably also a surveyor. Certainly the freeholders seem to do that, and from what I have seen they also put the cost of their representation back on to the homeowners as well, rubbing salt into an already very expensive wound.²²²

Section 3.8 of this paper explains the changes that came into force on 7 April 2017 which enable tribunals and courts to consider, on application by the leaseholder, whether it is reasonable for the landlord to recover all or part of their costs through administration charges. Giles Peaker (partner with Anthony Gold Solicitors), told the HCLG Committee, that the burden of seeking such an order lies "with the

Of 1,244 leaseholders surveyed by LEASE in 2016, 32% said they did not know where to go for information on their rights and obligations.

²¹⁹ [HC Deb 20 December 2016 c1336](#)

²²⁰ [HC Deb 20 December 2016 c1338](#)

²²¹ [HC Deb 20 December 2016 c1333](#)

²²² [HC Deb 20 December 2016 c1345](#)

often-unrepresented leaseholder”- he argued that the default position should be reversed.²²³

The APPG is concerned there is an imbalance in the cost regime and resources available to landlords and tenants. The APPG’s 2017 report made reference to the inability of leaseholders to claim their costs:

The costs imbalance limits the proportion of leaseholders able or likely to defend their position. The knowledge of this limit to this risk of challenge encourages some landlords to overcharge.²²⁴

The APPG argued that leaseholders are less likely to defend their position as a case rises through the higher courts given the potential to incur costs while “landlords with multiple properties under their control have every incentive to defend a case on one site so as to protect their position on other sites”.²²⁵

In [Protecting consumers in the letting and managing agent market: call for evidence](#) (October 2017), the Government noted:

Rights to challenge service charges, or to take on management directly, can be undone in a tribunal system that is too daunting, costly and uncertain.²²⁶

The paper asked for views on what could be done to ensure consumers have a route to redress.²²⁷

Potential reforms

The APPG called for:

- Consideration of how the cost balance might be changed such that a landlord faces the same prospect of the leaseholder’s costs as the leaseholder might face against the landlord were it not for the cost advantage given to the landlord via the terms of the lease.
- That the landlord should face the deterrent risk of some form of penalty for repeat offences.
- That a system be considered where a standard set of costs might be set on matters such as sublet fees.²²⁸

The [Government response](#) to the October 2017 call for evidence set out an intention to create an independent regulator which will enforce minimum standards in a variety of areas, including dispute resolution in relation to managing agents (see section 3.13 below).²²⁹

The Government launched a further consultation process, [Strengthening consumer redress in the housing market](#), on 18 February 2018 which

²²³ [Leasehold Reform, HC 1468, Twelfth Report of 2017-19](#), 19 March 2019, para 178

²²⁴ APPG, [A preliminary report on improving key areas of leasehold and commonhold law](#), April 2017

²²⁵ Ibid.

²²⁶ DCLG, [Protecting consumers in the letting and managing agent market: call for evidence](#), October 2017, para 4

²²⁷ Ibid., Q4.2

²²⁸ APPG, [A preliminary report on improving key areas of leasehold and commonhold law](#), April 2017

²²⁹ Ministry of Housing, Communities and Local Government (MHCLG), [Protecting consumers in the letting and managing agent market: Government response](#), April 2018

ran to 16 April. This process sought views on “better ways for consumers across the private-rented, leasehold, social-housing and owner-occupied sector to resolve their complaints.”²³⁰ [A summary of responses together with the Government’s response](#) was published in January 2019.

The Government said it would create a Redress Reform Working Group to work with industry and consumers to develop a new Housing Complaints Resolution Service. The new service will “help renters in private and social housing, leaseholders, and buyers of new homes.”

The Government intends to require freeholders of leasehold properties to be members of a redress scheme:

The Government is proposing to extend mandatory membership to a redress scheme to all freeholders of leasehold properties and will introduce primary legislation to this effect as soon as Parliamentary time allows.²³¹

The [Government response](#) to the HCLG Committee’s recommendations on leasehold reform said that “More details on the new working group will follow in due course.”²³²

On 29 January 2019, the National Trading Standards Estate Agency Team (NTSEAT) published [guidance](#) which clarifies what a leasehold is and what it means to own a leasehold property. The guidance is aimed at helping consumers make an informed decision about buying a leasehold property, as well as understanding their rights and how to get redress.²³³

The Law Commission has recommended that all disputes concerning enfranchisement and lease extensions be covered by the tribunal system.²³⁴

On 28 March 2019, the Government announced plans to “close legal loopholes” relating to fees payable when leaseholders take freeholders to court:

Ministers have also today announced plans to close the legal loopholes that force leaseholders to pay unjustified fees when they take their freeholders to court over pernicious service charges. This includes consultation with industry on whether these changes should apply to existing leases too.

Under current rules, leaseholders who wish to take their landlords to court to challenge exorbitant fees or unfair hikes in annual charges also run the risk of being forced to pay their landlord’s legal fees. This applies even if the court rules in their favour – hitting some tenants with bills of tens of thousands of pounds

²³⁰ MHCLG, [Strengthening consumer redress in the housing market](#), 18 February 2018

²³¹ MHCLG, [Strengthening consumer redress in the housing market: Summary of responses to the consultation and the Government response](#), January 2019, para 123

²³² [CP 99](#), 3 July 2019, para 86

²³³ NTSEAT, [Leasehold Redress Guidance for Consumers](#), 29 January 2019

²³⁴ HC584, [Leasehold home ownership: buying your freehold or extending your lease](#), July 2020, para 11.20

Scrapping this loophole will reset the relationship between freeholders and leaseholders – stopping tenants being unfairly burdened with legal fees and ensuring they can access justice.²³⁵

The announcement said that “options are being explored” to close the legal loophole and next steps will be announced in due course. The industry will be consulted. **The Government said it would “raise awareness for how leaseholders can avoid paying their landlords legal fees through current legislation.”**²³⁶

The HCLG Committee recommended legislation to provide that freeholders’ tribunal costs can never be recovered through the service charge, or any other means, when the leaseholder wins the case, unless the leaseholder has behaved badly.²³⁷

The [Government response](#) to the Committee’s recommendations referred to the announcement of 28 March 2019 (see above), and pointed out legitimate circumstances where a landlord may need to take legal action against a leaseholder, e.g. for failure to pay a service charge. There is an intention to “explore this issue further to see if exemptions are needed.”²³⁸ The response went on:

The Government will explore the best means to challenge unjustifiable legal costs including what changes to legislation are needed and if they should apply to existing leases. Changes to legislation to prevent the recovery of unjustifiable legal costs from leaseholders will be implemented as soon as Parliamentary time allows.²³⁹

The response also referred to the call for evidence, [Considering the case for a Housing Court](#), responses to which are being analysed:

We want a system that works well for all users who bring housing cases to the courts and tribunal, one that is simpler, leads to swifter justice and which offers an improved service. Through this call for evidence, we want to explore how court processes can be improved further, and whether that can be done through a specialist Housing Court or by other means.²⁴⁰

Improved regulation of the sector (see section 3.13 below) should, according to the Regulation of Property Agents Working Group, “provide the opportunity to prevent bad practice and drive cultural change within the industry, focussing on prevention rather than enforcement after the event.”²⁴¹

²³⁵ MHCLG, [James Brokenshire announces industry pledge to crack down in toxic leasehold deals](#), 28 March 2019

²³⁶ Ibid.

²³⁷ [Leasehold Reform, HC 1468, Twelfth Report of 2017-19](#), 19 March 2019, para 179

²³⁸ [CP 99](#), 3 July 2019, paras 81-82

²³⁹ Ibid., para 83

²⁴⁰ Ibid., para 88

²⁴¹ [Regulation of Property Agents Working Group – Final Report](#), July 2019, p12

3.13 A new regulatory model for managing agents

[Protecting consumers in the letting and managing agent market: call for evidence](#), (October 2017) identified specific issues with agents operating in the leasehold sector:

The structure of the leasehold system itself is partially to blame. The very nature of the agreement means that leaseholders are typically excluded from decisions on property management. Government has introduced a number of protections to address the imbalance of power in leasehold over time, but these are often inconsistent and complex and can be abused by those that they were meant to protect against. Rights to challenge service charges, or to take on management directly, can be undone in a tribunal system that is too daunting, costly and uncertain.²⁴²

The paper sought views on whether an overhaul of regulation in the property agent market was needed, including empowering leaseholders by making it easier for them to choose and switch agents. As previously noted, the [Government response](#) was published in April 2018.²⁴³

The Government committed to regulating managing agents in addition to letting agents “to protect leaseholders and freeholders alike”.²⁴⁴ A single, mandatory and legally enforceable Code of Practice covering letting and managing agents will be introduced which will set minimum standards in certain key areas of activity, including:

- transparency of potential conflicts of interest;
- transparency of current and future financial commitments to which clients are agreeing;
- service charges;
- communication and customer service;
- handling of clients’ money; and
- dispute resolution.²⁴⁵

Managing agents will be required to have a nationally recognised qualification to practice. An independent regulator will own the Code of Practice and will have enforcement powers. The Government said:

We also want to empower leaseholders to switch managing agents where they perform poorly or break the terms of their contract. Furthermore, we plan to simplify the Right to Manage process.²⁴⁶

As previously noted, a Working Group led by Lord Best was tasked with making recommendations on a future regulatory regime. [Membership](#) of the Group and its [terms of reference](#) were published on 12 October

Leasehold property managers will be subject to regulation by an independent body.

²⁴² DCLG, [Protecting consumers in the letting and managing agent market: call for evidence](#), 18 October 2017, para 4

²⁴³ Ministry of Housing, Communities and Local Government (MHCLG), [Protecting consumers in the letting and managing agent market: Government response](#), April 2018

²⁴⁴ Ibid.

²⁴⁵ Ibid.

²⁴⁶ Ibid.

2018.²⁴⁷ The Group [reported](#) in July 2019.²⁴⁸ The key features of the proposed regime are as follows:

- The regulatory framework should cover estate agents across the UK and letting and managing agents in England. All those carrying out property agency work should be regulated, including rent-to-rent firms, online agents and property guardians. Some exclusions would apply, including the short-let sector, but legislation would allow for the future extension of regulation.
- The Government should create a list of 'reserved activities' which can only be performed by a licensed property agent at a regulated firm.
- Property agents and qualifying agents should be required to hold and display a licence to practise from the new regulator. The regulator will check that the agent has fulfilled their legal obligations and passed a fit-and-proper person test. The regulator should be able to vary licensing conditions and maintain records of licensed property agents.
- All property agents should be required to adhere to a code of practice which is described as "a single, high level set of principles applicable to all property agents which is set in statute". Underneath would sit regulatory codes specific to various aspects of property agent practice.
- All agents would have to ensure their staff are trained to the appropriate level. The Group recommend that licensed agents should be qualified to a minimum level 3 of Ofqual's Regulated Qualification Framework. Company directors and managing agents should be qualified to a minimum of level 4. The requirement for qualifications would apply only to licensed agents who carry out reserved activities. The regulator would set and review a modular syllabus. Continuing professional development should also be mandatory for licensed agents.
- The regulator would replace First-Tier Tribunals to block a landlord's choice of managing agent where the leaseholders have reasonably exercised a veto.
- The regulator would provide information on managing agent performance and would have a role in enforcing compliance with any new requirements in relation to leasehold/freehold charges which will apply to managing agents.
- The regulator should be a new public body which is accountable to the Secretary of State at MHCLG. It should publish an annual report on progress in raising standards of property agents. Funding would come from regulated firms and individuals but initial 'seed corn' funding would be provided by the Government.
- The regulator should take over responsibility for approving property agent redress and client money protection schemes. The regulator would be able to consider complaints from all sources.

²⁴⁷ [MHCLG Press Release](#), 12 October 2018

²⁴⁸ [Regulation of Property Agents Working Group – Final Report](#), July 2019

- The regulator would have a range of enforcement options from agreeing remedial actions to revocation of licences and prosecutions for unlicensed practice. Rights of appeal would apply to the First-Tier Tribunal.²⁴⁹

3.14 Buying a leasehold property

The Government ran a separate call for evidence between October and December 2017 entitled [Improving the home buying and selling process](#).²⁵⁰ This paper identified specific issues with buying leasehold properties:

We know that leasehold properties typically take longer to buy than an equivalent freehold property, and are more prone to delay. This may be because of the difficulties and expense of obtaining and interpreting the necessary management information. We believe that there is some poor practice in this area and that action can and should be taken to make improvements.

We want to use this Call for Evidence to explore ways of making sure leasehold information is released to a more predictable timescale, more consistently and at a reasonable cost.²⁵¹

The outcome of the call for evidence was published in April 2018. The Government committed to:

- set fixed time frames and maximum fees for the provision of leasehold information, potentially with a statutory underpinning, and encourage managing agents to make this information available electronically to enable instant access;
- work with industry to standardise the leasehold information form; and
- use our 'How to Sell' guide to encourage sellers to have early contact with their freeholder.²⁵²

In [Implementing reforms to the leasehold system in England](#) (October 2018) the Government posed questions on the following measures to improve how leasehold properties are sold:

- What a reasonable deadline would be for managing agents and freeholders to provide leasehold information; and
- What maximum fees would be reasonable for managing agents and freeholders to charge for providing leasehold information.²⁵³

[Implementing reforms to the leasehold system in England: summary of consultation responses and government response](#) (June 2019)

announced the Government's intention to:

²⁴⁹ Ibid., pp3-6

²⁵⁰ DCLG, [Improving the home buying and selling process](#), October 2017

²⁵¹ Ibid., paras 34-35

²⁵² MHCLG, [Improving the home buying and selling process: call for evidence – Summary of responses and Government response](#), April 2018, para 20

²⁵³ MHCLG, [Implementing reforms to the leasehold system in England](#), 15 October 2018, section 5

- Set a turnaround time of no more than 15 working days to provide leasehold information to a prospective buyer – this will be a statutory requirement.
- Set a maximum fee of £200+VAT for producing leasehold information to prospective buyers in the form of a leasehold property enquiry pack (LPE1). Despite the cap, freeholders and agents will be expected to charge a fee that reflects the reasonable cost of providing this information below the cap. The Government believes that this will be achieved by ensuring that consumers can challenge a fee they believe not to be reasonable. Consumers will have to the power to challenge unreasonable fees through a First-Tier Tribunal.
- There will be a maximum fee for updating leasehold information of £50.²⁵⁴

Mechanisms will provide for amendments to these fees to reflect changes in inflation.

As noted previously, on 29 January 2019 the National Trading Standards Estate Agency Team (NTSEAT) published [guidance](#) which clarifies what a leasehold is and what it means to own a leasehold property. The HCLG Committee also expressed support for the introduction of a standardised key features document for use at the start of the sales process by a developer or estate agent.²⁵⁵

The [Government response](#) to the Committee's recommendations agreed that a standardised key features document "which provides full lease details at the start of the sales process would be welcome" and committed to:

...work with major housebuilders to ensure that all purchasers of new-build leasehold homes have all of the pertinent information relating to the lease, and that this is set out clearly, before they make a decision to purchase.²⁵⁶

The Government published: [How to lease: a guide for current and prospective leaseholders in England](#). The CMA has published a series of guides:

- [Own a leasehold home? Here's what you need to know](#)
- [Buying a leasehold home? What you need to know](#)
- [Buying or owning a leasehold property](#)

3.15 Simplification of the law

The legislation governing leasehold tenure has developed in something of an ad hoc way and has been subject to good deal of amendment. The APPG called for the Law Commission to be tasked with simplifying and consolidating the existing legislation into a single Act. The APPG also called for the development of standard lease agreements:

²⁵⁴ MHCLG, [Implementing reforms to the leasehold system in England: summary of consultation responses and government response](#), 27 June 2019, pp42-43

²⁵⁵ [Leasehold Reform, HC 1468, Twelfth Report of 2017-19](#), 19 March 2019, para 51

²⁵⁶ [CP 99](#), 3 July 2019, para 25

...at present the sector is burdened with entirely nonstandard lease written by the landlord's lawyer for their clients' advantage. There would be considerable consumer benefit by moving to a standard model of lease with appendices where relevant to meet the specific needs of the site.²⁵⁷

The HCLG Committee supported "a thorough review of leasehold legislation":

The Government should invite, and fund, the Law Commission to conduct a more comprehensive review of leasehold legislation, that would incorporate a full review of the Commonhold and Leasehold Reform Act 2002, the Landlord and Tenant Act 1987 and other relevant legislation.²⁵⁸

The [Government response](#) to the Committee's recommendations emphasised the desire to ensure "concrete change for consumers":

We wish to prioritise our current programme and ensure these changes are delivered and embedded before considering further review of existing legislation.²⁵⁹

3.16 Reform in Wales

As noted previously, leasehold reform in England will not necessarily apply in Wales.

On 6 March 2018, the then Welsh Housing and Regeneration Minister, Rebecca Evans, announced that agreement had been reached with some of the larger developers in respect of houses and flats which qualify for support under Help to Buy – Wales, such that:

- new criteria will require a developer to present a genuine reason for a house to be marketed as leasehold
- leasehold contracts will have to meet minimum standards, including limiting the starting ground rent to a maximum of 0.1% of the property's sale value
- leasehold agreements will have to run for a minimum of 125 years for flats and 250 years for houses.²⁶⁰

The same leasehold rules will apply to properties built by developers supported by affordable loans through the Wales Property Development Fund. The Minister said:

We have acted swiftly to take targeted and tangible action over concerns about leasehold sales on newbuild homes, and where leasehold is already the tenure, I am setting up a new group to recommend reforms to the system. I intend to put in place a voluntary Code of Practice to underpin these measures, improve standards and to promote best practice.

This is only the start of my plans to address concerns around leasehold. I have not ruled out the possibility of legislation in the

²⁵⁷ APPG, [A preliminary report on improving key areas of leasehold and commonhold law](#), April 2017

²⁵⁸ [Leasehold Reform, HC 1468, Twelfth Report of 2017-19](#), 19 March 2019, para 226

²⁵⁹ [CP 99](#), 3 July 2019, para 105

²⁶⁰ [Written Statement - Leasehold reform in Wales](#), 6 March 2018

future, which may well be needed to make leasehold, or an alternative to it, fit for the modern housing market.²⁶¹

On 1 May 2018, the Minister announced that the Welsh Government had formally joined the Law Commission's leasehold reform project. She said:

There has been widespread criticism of poor practice in the use of leasehold in Wales, and I have been clear that the Welsh Government will not support poor practice that has a negative impact on homeowners.

This is why we introduced new criteria for Help to Buy – Wales. Now developers must give a genuine reason for a house to be marketed as leasehold, and comply with new minimum standards for both houses and flats to be sold as leasehold through Help to Buy - Wales.

I've been clear that I am not ruling out future legislation to make leasehold or Commonhold fit for the modern housing market. When I receive 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 available to address the valid concerns being raised.²⁶²

A multi-disciplinary task and finish group on leasehold reform was established to assist with this work and, on 13 July 2018, Rebecca Evans provided **details of those bodies invited to participate and the main tasks they had been asked to consider:**

The areas I have agreed the group should consider include:

- Failings in the leasehold system in Wales: how they impact on leaseholders, and any recommendations to address these.
- Advising on production and dissemination of awareness raising materials, guidance and relevant training for all those involved in buying / selling leasehold property.
- Proposals for a voluntary code of practice for property / estate management agents.
- Options for freehold homeowners on private estates to challenge estate charges.
- The group has been convened for up to two years, although the initial tasks assigned are anticipated to be completed, and a report issued to me, by summer 2019.²⁶³

The Task and Finish Group issued a report, [Residential Leasehold Reform](#), on 17 July 2019. The report was described as “just the end of the first key stage of the work”. Many of the issues identified and the proposed solutions echo those referred to elsewhere in this paper. On publication of the report alongside a related report on unadopted roads, Julie James AM, Minister for Housing and Local Government, said:

²⁶¹ Ibid.

²⁶² Welsh Government, “[Wales joins project on residential leasehold reform](#),” 1 May 2018

²⁶³ [Written Statement: update on actions relating to Leasehold Reform](#), 13 July 2018

We will carefully consider the recommendations provided in both reports and subject them to appropriate analysis before deciding on how best to proceed.

Leasehold, as tenure, is governed by complex legislation and before deciding on the full suite of actions, we will also need to consider the findings from the Law Commission review, in the context of our devolved powers.

As the then Minister for Housing and Regeneration stated when launching the Task and Finish Group we will not shy away from taking legislative action if necessary. However, we can only properly consider the potential need for legislative change when we also have the benefit of the reports due from the Law Commission which we expect later this year.

In the meantime there are recommendations in the Unadopted Roads report which we are able to take forward immediately to reduce the likelihood of issues experienced to date being repeated. We will also consider the recommendations from the Leasehold Reform Task and Finish Group to identify those actions we can take forward with immediate effect drawing on the 'tools' we already have at our disposal.

We will provide further information to Members in the autumn.²⁶⁴

All the Law Commission's final reports published in July 2020 make reference to the law in Wales. The Commission's project "is intended to cover both England and Wales, and to result, where reasonably possible, in a uniform set of recommendations that are suitable for both England and Wales."²⁶⁵

The Task and Finish Group noted:

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.²⁶⁶

On 14 October 2020 Julie James AM, Minister for Housing and Local Government, told the Senedd:

...we are working very hard with the leasehold reform provisions that the Law Commission has looked at. They recently reported, and we're looking to see what can be done in conjunction with some UK legislation, if at all possible, just due to the lack of time we've now got in Senedd provisions to be able to do this.²⁶⁷

²⁶⁴ Written Statement - [The publication of the reports from the Task and Finish Group for Leasehold Reform and the Unadopted Roads Taskforce](#), 17 July 2019

²⁶⁵ HC584, [Leasehold home ownership: buying your freehold or extending your lease](#), July 2020, para 2.65

²⁶⁶ Task and Finish Group, [Residential Leasehold Reform](#), 17 July 2019

²⁶⁷ [Senedd Cymru, Question to the Minister for Housing and Local Government, OA123](#) 14 October 2020,

4. Commonhold tenure

4.1 Background

A new form of tenure, commonhold, was introduced by the *Commonhold and Leasehold Reform Act 2002*. One of the aims of this Act was to overcome the disadvantages of leasehold ownership. It was assumed that, once in place, commonhold would become the standard form of tenure for new-build blocks of flats.

The consultation paper which accompanied publication of the *Draft Commonhold and Leasehold Reform Bill* (August 2000) summarised the challenges that developing a scheme for owning and managing interdependent properties presents:

In England and Wales, there are two ways to own land, freehold and leasehold. Each has its advantages and disadvantages in particular circumstances. Freehold comes closest to absolute ownership. Leasehold confers ownership for a temporary period, subject to terms and conditions contained in the contract, or lease.

A covenant is a promise contained in a deed, such as a deed passing ownership of property from one person to another. There are two types of covenant: the positive covenant, which is a promise to do something, such as to pay rent or to keep the property in repair, and the restrictive covenant, which is a promise not to do something, such as cause a nuisance to neighbours. For historical reasons, positive covenants cannot apply to freehold land once the first buyer of the property has sold it on. However, both positive and restrictive covenants apply to leasehold property.

The problems with covenants are accentuated in the case of blocks of flats, where each flat will often depend on its neighbour for support and shelter, and the very stability of the building depends on the proper maintenance and repair both of the individual flats and the common parts. This means that, where it is desired to set up a scheme to allow for ownership of interdependent properties and for the management of the common parts and facilities, the scheme must, today, be based on leasehold ownership. There is no satisfactory scheme at present that would allow for freehold ownership in such circumstances.

As long term residential leasehold has become more and more widely discredited, pressure has grown for the Government to bring forward a scheme which would combine the security of freehold ownership with the management potential of positive covenants which could be made to apply to each owner of an interdependent property. That scheme is commonhold.²⁶⁸

²⁶⁸ Cm 4843, para 1.2

The regulatory impact assessment (RIA) that accompanied the first *Commonhold and Leasehold Reform Bill*²⁶⁹ described commonhold as:

...the name given in this jurisdiction to a scheme widely used throughout the rest of the world with greater or lesser degrees of variation. It provides for multiple occupation of developments, such as blocks of flats, or mixed flats and shops, or business parks in which unit owners have an interest in their unit of occupation, whatever that may be, which is closely analogous to a freehold interest. A body corporate, the commonhold association, made up exclusively of unit holders, owns and manages the common parts of the development, which may be no more than hallways and stairs, but might run to parks, sports halls, lakes, etc.

Owners of units have an interest analogous to a freehold interest and a corporate body made up of unit owners owns and manages the common parts.

LEASE has published a guide: [Commonhold: What it is and how it works](#).

Commonhold tenure is viewed as offering several advantages over the leasehold system. It does not remove the obligation on residents to contribute to management/maintenance and major works, but it is argued to be a more transparent system. The September 2000 issue of Lovells' property newsletter identified the following perceived advantages of commonhold:

Commonhold will address the problem of lessees being beholden to an absentee landlord who cannot be bothered to carry out building maintenance and management, or who is more interested in trying to make a profit at their expense.

Commonhold will also remove the problem of leasehold property being a wasting asset. Commonholders will each have a perpetual interest, effectively akin to a freehold, in their individual unit.

Standardised commonhold constitutional documents should be of general benefit.

However, the newsletter went on to point out that commonhold would not make it any easier to live alongside difficult neighbours who are noisy or who refuse to pay reasonable service charges:

Large multi-occupied buildings of a certain age are expensive to maintain. Commonhold will not make any difference to this, but unit holders may feel happier about spending large amounts of money on building maintenance if they feel they are in control and no one is trying to rip them off.

The British Property Federation's (BPF) briefing note on commonhold (2000) also emphasised that it is not a panacea for problems associated with residential long leasehold:

The demands, problems and requirements of community living and block management will be the same, regardless of the legal basis of which the property is owned.²⁷⁰

The *Commonhold and Leasehold Reform Act 2002* was an attempt to introduce a new tenure for multi-occupied blocks. The principle of commonhold had broad support across the political parties. The previous Government had twice consulted on draft Commonhold Bills,

²⁶⁹ This Bill fell for lack of time before the 2001 General Election (HL Bill 11 of 2000-01)

²⁷⁰ 11 February 2000

and the genesis of the provisions in the 2002 Act can be traced back to 1965.²⁷¹

The 1997 Labour Government arrived in office with a manifesto commitment to introduce commonhold ownership; the 2002 Act honoured this commitment. During the debate on Second Reading in the Lords on the 2000-01 Bill, the Lord Chancellor, Lord Irvine of Lairg, said that he did not expect the commonhold provisions to be the subject of controversy “either in this House or in another place.”²⁷²

4.2 Why has commonhold tenure failed to grow?

Although Part 1 of the Act has been in force since 2004, commonhold tenure has failed to take-off – there are very few blocks in commonhold ownership. It appears that there may be two main reasons for this:

- conversion from leasehold to commonhold requires unanimity from everyone with an interest in the block – this has provided difficult to achieve; and
- developers have not been persuaded to build new commonhold developments. Commentators argue that there are no incentives for them to do this and, in fact, leasehold offers opportunities as a source of future revenue through the purchase of lease extensions or selling off the freehold interest.

Part 1 of the Commonhold and Leasehold Reform Act 2002 made commonhold tenure possible in England and Wales but it has failed to take-off.

Witnesses to the HCLG Select Committee’s inquiry into leasehold reform identified the following additional factors as contributing to the lack of commonhold developments:

- drafting deficiencies within the 2002 Act – it is viewed as inappropriate for mixed-use developments;
- a reluctance by lenders to provide mortgages for commonhold properties – commonhold associations may be viewed as at greater risk of insolvency. UK Finance told the Committee that 40 providers *will* loan against commonhold; and
- a loss of consumer protection arising from the leasehold model and a reluctance amongst residents to take an active management role – however it would be open to residents to appoint a managing agent.²⁷³

As the legislation progressed through Parliament there was a good deal of debate over whether there should be a *requirement* for all new blocks to be developed as commonhold – amendments along these lines were resisted.

Over the years there have been several calls for Governments to review Part 1 of the 2002 Act to address the issues inhibiting the development

²⁷¹ Cmnd. 2719. The consultation paper that accompanied the publication of the *Draft Commonhold and Leasehold Reform Bill* (Cm 4843) contains a brief history of efforts to amend the law of positive and restrictive covenants and introduce commonhold tenure at pages 79-8.

²⁷² HL Deb 29 January 2001 c455

²⁷³ [Leasehold Reform, HC 1468, Twelfth Report of 2017-19](#), 19 March 2019, paras 31-37

of commonhold units and the conversion of leasehold blocks to commonhold. Dr Blackman-Woods attempted to amend the *Housing and Planning Bill 2015-16* by adding a new clause entitled 'conversion of leasehold to commonhold for interdependent properties.'²⁷⁴ The aim of the clause was to end leasehold tenure by converting existing leasehold blocks to commonhold by 1 January 2020.

The Minister, Marcus Jones, responded for the Government:

New clause 13 seeks to replace long residential leasehold with commonhold. As hon. Members know, leasehold is a long-established way of owning property, supported by a framework of rights and protections that aims to deliver the appropriate balance between providing leaseholders with the rights and protections that they need and recognising the legitimate interest of landlords.

Commonhold is subject to a different statutory framework of rights and protections. It has its benefits, but there are important differences between commonhold and leasehold. That is partly why commonhold is and was intended to be a voluntary alternative to long leasehold ownership—a choice. There are no plans to abolish residential leasehold.

Abolishing leasehold and forcing leaseholders into commonhold may seem attractive to some, but would that be the right thing to do in all circumstances? The Government believe that it would not. Removing choice in this instance and, with it, the rights and protections currently afforded to leasehold homeowners and at the same time forcing existing leaseholders to become commonholders against their will would not be desired by all. Considerable care needs to be taken before embarking on legislation that would force existing leaseholders and landlords to transfer to the commonhold model, which would not in all cases be appropriate. Commonhold should remain a voluntary alternative to long leasehold ownership.

On that basis, I hope that the hon. Lady will, as she says, withdraw the motion.²⁷⁵

The motion was withdrawn.

During the Westminster Hall debate on 20 December 2016, both Sir Peter Bottomley and Ruth Cadbury called on the Government to review commonhold and implement necessary changes. Both referred to the fact that commonhold operates effectively around the world and should be made to work in England and Wales.²⁷⁶

4.3 An appetite for reform?

In 2014, Lord Faulks said there were no plans for a review of commonhold:

The Minister of State, Ministry of Justice (Lord Faulks) (Con):
My Lords, the Commonhold and Leasehold Reform Act 2002 introduced commonhold ownership and made numerous reforms to long leasehold law. Although the Government monitor the take-up of commonhold and continue to respond to concerns

²⁷⁴ [PCB 10 December 2015 c684](#)

²⁷⁵ *Ibid.*

²⁷⁶ [HC Deb 20 December 2016 c1337 and c1351](#)

about the working of leasehold legislation, they have no current plans to carry out a formal review of the Act.²⁷⁷

The Minister's response to an attempt to amend the *Housing and Planning Bill 2015-16* (see section 4.2 above) made it clear that the Government had "no plans to abolish residential leasehold."²⁷⁸

However, just over one year later the Government published a Housing White Paper, [Fixing our broken housing market](#) (February 2017), in which a commitment was given to:

...consider further reforms through the consultation to improve consumer choice and fairness in leasehold, **and whether and how to reinvigorate Commonhold.**²⁷⁹

The July 2017 consultation paper, [Tackling unfair practices in the leasehold market](#), was described as "the first step" in achieving the commitment set out in the Housing White Paper as it included a commitment to carry out a wide ranging project looking at several issues, including "improving commonhold."²⁸⁰

[Tackling unfair practices in the leasehold market: government response](#) (December 2017) confirmed that the Law Commission, as part of its 13th Programme of Law Reform, would be considering "the re-introduction and re-ignition of commonhold as an alternative tenure."²⁸¹ The Government said they would consider what more can be done to support commonhold tenure:

We also want to look at ways to **reinvigorate commonhold**. One of the reasons commonhold was not successful when first introduced was because of the financial incentives for developers in building leasehold. The measures we outline in this response will help address this by removing unfair financial gains, but there are other issues that we need to consider including access to finance, and consumer awareness. This will help ensure that the market puts consumers' needs ahead of those of developers or investors. **We will also look at what more we can and should do to support commonhold to get off the ground working across the sector, including with mortgage lenders.**²⁸²

The Law Commission issued [Commonhold: A Call For Evidence](#) on 22 February 2018. The paper explained:

We will use the views and evidence received during this call for evidence to assist us in preparing a detailed consultation paper. This consultation paper will be published later this year and will set out proposals for the reform of commonhold. At Chapter 2, Section D of this call for evidence we ask a question which addresses wider issues surrounding the reinvigoration of commonhold, such as the need to raise consumer awareness. These wider issues will be considered by Government, rather than by the Law Commission. Any responses which relate to these

Commonhold is part of the Law Commission's 13th Programme of Law Reform.

²⁷⁷ [HL Deb 7 May 2014 c1471](#)

²⁷⁸ [PCB 10 December 2015 c684](#)

²⁷⁹ Cm 9352, para 4.38

²⁸⁰ DCLG, [Tackling unfair practices in the leasehold market](#), July 2017, para 7.1

²⁸¹ DCLG, [Tackling unfair practices in the leasehold market: government response](#), December 2017, para 82

²⁸² *Ibid.*, para 87

wider issues being considered by Government will be shared with Government.²⁸³

Consultation on [proposed reforms](#) to “support the expansion of commonhold as an alternative to leasehold” was launched on 10 December 2018.²⁸⁴ The Law Commission said the reforms would:

- Allow a commonhold development to include both residential units (incorporating different types of affordable housing such as shared ownership), as well as commercial units (such as restaurants and shops)
- Make it easier to convert from leasehold to commonhold
- Increase lender confidence in commonhold so as to increase the choice of mortgage lenders available for purchasers
- Replace service charges set by a landlord with commonhold contributions which have to be approved by a majority of those paying them.²⁸⁵

The HCLG Select Committee urged the Government to “ensure that Commonhold becomes the primary model of ownership of flats in England and Wales”. The Committee said it supported the work of the Law Commission and would like to see early implementation, but thought the Government should go further:

...if the Government is serious about promoting commonhold as a viable alternative to leasehold, it must also ensure that the incentives to build leasehold properties— particularly, monetary ground rents and permission fees—are more limited. At the same time, the Government will need to ensure that concerns regarding commonhold properties are meaningfully addressed, including ensuring appropriate resident participation in the management of buildings. This might include the provision of training to residents in management roles and ensuring external expert support is made available in extreme circumstances.

Our expectation is that once commonhold legislation is reformed, leaseholds begin to convert, and more commonhold developments are brought forward, leasehold as a tenure will become increasingly redundant. While it may be the case that some retirement properties and the most complex, mixed-use developments would continue to require some form of leasehold ownership, there is no reason why the majority of residential buildings could not be held in commonhold; free from ground rents, lease extensions, and with much greater control for residents over service charges and major works.²⁸⁶

The [Government’s response](#) to the Committee’s recommendations referred to a number of issues highlighted by respondents to the Law Commission’s call for evidence “which may be making [commonhold] unattractive to homeowners, developers and mortgage lenders.”²⁸⁷ The Law Commission’s proposals, on which consultation has taken place, are aimed at expanding the use of commonhold for larger mixed-use

²⁸³ Law Commission, [Commonhold: A Call For Evidence](#), 22 February 2018,

²⁸⁴ [The time is right for commonhold announce Law commission](#), 10 December 2018

²⁸⁵ Ibid.

²⁸⁶ [Leasehold Reform, HC 1468, Twelfth Report of 2017-19](#), 19 March 2019, paras 42-43

²⁸⁷ [CP 99](#), 3 July 2019, para 21

developments and making it easier for leaseholders to convert to a commonhold structure. The Government's priority is to address the "perceived shortcomings" of commonhold so it can "flourish as an alternative to leasehold".²⁸⁸ However, the Government noted that leasehold for flats "can work effectively in many circumstances and there may be homeowners who do not want the responsibilities that come with commonhold."²⁸⁹ There is a commitment to increase awareness of commonhold and its advantages.²⁹⁰

In [Ending the Scandal: Labour's new deal for leaseholders](#) (July 2019), the Labour Party described a reformed commonhold model as "the best alternative for leaseholders". Labour's ambition was for commonhold to supersede leasehold ownership of flats. There was a commitment to bring forward early legislation to:

...end the building of new leasehold properties, putting in place the necessary reforms to ensure that commonhold can work for consumers, developers and lenders, just as it does in other countries. This early legislative declaration of intent will help manage the transition to commonhold over several years, allowing developers to maintain a strong planned programme of development.²⁹¹

4.4 The Law Commission's proposals 2020

The Law Commission's final report, [Reinvigorating commonhold: the alternative to leasehold ownership](#),²⁹² was published on 21 July 2020. There is also a [summary report](#) and [an open letter to lenders on taking commonhold as security](#). The detailed recommendations "seek to make commonhold not only a workable, but a preferred form of homeownership to residential leasehold"- they include measures designed to:

- make it easier for leaseholders to convert to commonhold and gain greater control over their properties;
- enable commonhold to be used for larger, mixed-use developments which accommodate not only residential properties but also shops, restaurants and leisure facilities;
- allow shared ownership leases to be included within commonhold;
- give owners a greater say in how the costs of running their commonhold are met and ensure they have sufficient funds for future repairs and emergency works;
- make it easier to take action against those who fail to pay their share of the commonhold's costs;

²⁸⁸ Ibid., para 22

²⁸⁹ Ibid., para 23

²⁹⁰ Ibid., para 24

²⁹¹ Labour Party, [Ending the Scandal: Labour's new deal for leaseholders](#), July 2019, pp13-14

²⁹² HC 568, [Reinvigorating commonhold: the alternative to leasehold ownership](#), 21 July 2020

- ensure commonholds are well maintained and insured, with new powers to replace directors who are not complying with the commonhold's rules;
- provide owners with flexibility to change the commonhold's rules while improving the protections available to those affected by the change; and
- improve mortgage lenders' confidence in commonhold to increase the choice of financing available for home buyers.²⁹³

On 11 January 2021 Secretary of State, Robert Jenrick, announced the establishment of a Commonhold Council:

Having closely reviewed their report, I am confirming I will establish a new Commonhold Council as a partnership of industry, leaseholders and Government that will prepare homeowners and the market for the widespread take-up of commonhold. I will start this work immediately, including considering legislation. I know this will take time and close working with consumers and industry, and the Commonhold Council will be the critical first step of this.²⁹⁴

²⁹³ [Law Commission's Commonhold webpage](#) [accessed on 7 February 2021]

²⁹⁴ [HCWS695](#), 11 January 2021

Appendix 1: Methodology of MHCLG's statistics

Section 2.1 of this briefing describes estimates of the number of leasehold homes in England, published by MHCLG.

The methodology behind MHCLG's estimates has changed over time. The current estimate is based on a methodology first outlined in a 2014 technical paper.²⁹⁵ The estimate used by the government up until that point had been 2.5 million households in 2011/12, based on responses to the English Housing Survey (EHS). Private tenants responding to the EHS are not asked whether their property is leasehold on the basis that they would be unlikely to know. The technical paper acknowledged that attempts to model leasehold in the private rented sector failed to account of a higher proportion of flats in the sector, resulting in an under-estimate.

The first set of estimates in MHCLG's current series was released in April 2017 and related to housing stock in 2014-15. The release put the number of leasehold properties in the private sector at **4.0 million** and did not attempt to estimate the number of leasehold properties in the social rented sector.²⁹⁶

The 2014-15 estimates were created by matching data from the English Housing Survey (EHS), which captures the attributes of a sample of properties, with data from the Land Registry, which shows whether those properties are leasehold or freehold.²⁹⁷

A subsequent release from September 2017 looked at housing stock in 2015-16. It included an expanded methodology which combined 2014-15 and 2015-16 data to produce an estimate for the social rented sector for the first time. This estimate incorporated a further 200,000 social rented homes for a total of **4.2 million** leasehold homes overall.²⁹⁸

Estimates for 2016-17 were published in October 2018, using the same methodology as in the 2015-16 release but a larger sample of addresses. The total estimate was **4.3 million** leasehold homes.²⁹⁹ A very similar method was used for the 2017-18 release, which also generated an estimate of **4.3 million** leasehold homes, and for the 2018-19 release, which generated an increase of **4.5 million** leasehold homes.^{300, 301}

²⁹⁵ MHCLG, [Residential leasehold dwellings in England: technical paper](#) (August 2014)

²⁹⁶ MHCLG, [Estimating the number of leasehold dwellings in England, 2014-15](#) (October 2018), p.1

²⁹⁷ Ibid.

²⁹⁸ MHCLG, [Estimating the number of leasehold dwellings in England, 2015-16](#) (September 2017)

²⁹⁹ MHCLG, [Estimating the number of leasehold dwellings in England, 2016-17](#) (October 2018)

³⁰⁰ MHCLG, [Estimating the number of leasehold dwellings in England, 2017-18](#) (September 2019), p1

³⁰¹ MHCLG, [Estimating the number of leasehold dwellings in England, 2018-19](#), July 2020, p.1

The difference between the estimates in each year between 2015-16 and 2018-19 isn't evidence that the number of leasehold homes in England grew by that amount in each year. This is because MHCLG's estimates are based on a survey sample and are therefore not precise.

Confidence intervals are important in interpreting differences between estimates. A confidence interval expresses the degree of uncertainty associated with a statistic and gives an indication of the range in which the 'true' value is likely to lie.

The confidence intervals for each of the years between 2015-16 and 2018-19 have a high level of overlap, which means we can't say with confidence that there is a difference between the figures in each year. It's likely that the number of leasehold homes has remained broad. This doesn't mean that there hasn't been any increase or decrease in the number of leasehold homes – just that the change is too small to be reliably detected by the methodology that MHCLG use.

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