



Department for
Communities and
Local Government

Tackling unfair practices in the leasehold market

Summary of consultation responses and Government response



© Crown copyright, 2017

Copyright in the typographical arrangement rests with the Crown.

You may re-use this information (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence. To view this licence, go to <http://www.nationalarchives.gov.uk/doc/open-government-licence/version/3/> or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: psi@nationalarchives.gsi.gov.uk.

This document/publication is also available on our website at www.gov.uk/dclg

If you have any enquiries regarding this document/publication, complete the form at <http://forms.communities.gov.uk/> or write to us at:

Department for Communities and Local Government
Fry Building
2 Marsham Street
London
SW1P 4DF
Telephone: 030 3444 0000

For all our latest news and updates follow us on Twitter:
<https://twitter.com/CommunitiesUK>

December 2017

ISBN: 978-1-4098-5156-1

Contents

MINISTERIAL FOREWORD	4
INTRODUCTION	5
CONSULTATION PROCESS AND RESPONSES	7
SECTION 1: LIMITING THE SALE OF NEW BUILD LEASEHOLD HOUSES	8
SECTION 2: REDUCING HELP TO BUY EQUITY LOAN SUPPORT FOR LEASEHOLD HOUSES	14
SECTION 3: LIMITING THE RESERVATION AND INCREASE OF GROUND RENTS ON ALL NEW RESIDENTIAL LEASES OVER 21 YEARS	16
SECTION 4: EXEMPTING LEASEHOLDERS POTENTIALLY SUBJECT TO ‘GROUND 8’ POSSESSION ORDERS DUE TO THEIR LEVEL OF GROUND RENT	21
SECTION 5: SERVICE CHARGES FOR MAINTAINING COMMUNAL AREAS AND FACILITIES ON FREEHOLD AND MIXED TENURE ESTATES	22
SECTION 6: FUTURE ISSUES	24
ANNEX A	26

Ministerial Foreword

Leasehold has been a part of the UK's housing landscape for generations, usually put to sensible use in buildings with shared fabric and infrastructure, such as blocks of flats.

Leasehold should be just that, a tool for making multiple ownership more straightforward. It should not be a means of extracting ever-more cash from the pockets of already over-stretched housebuyers. Yet, in the hands of unscrupulous freeholders, that is exactly what it has become.

Over the past 20 years, the proportion of new-build houses sold as leasehold has more than doubled. Huge numbers of properties – including standalone houses with no shared facilities or fabric – are being sold as leasehold simply to create a reliable revenue stream for whoever owns the freehold. In some parts of the country, it's now almost impossible for a first-time buyer to purchase a new-build home on any other basis.

As if that wasn't bad enough, some of these leases contain exceptionally onerous terms, creating future liabilities that can leave homeowners stranded and unable to find a buyer.

These practices are practically feudal and entirely unjustifiable – which is why, earlier this year, I set out plans to end them once and for all.

The response to those plans, published here, was overwhelming. Thousands of people got in touch to share their views, with the vast majority in favour of widespread reform.

It's telling that people with experience of buying and living in a leasehold property are the keenest proponents for change. The system as it stands is clearly not working for them. But even most developers and those institutional investors who have subsequently bought freeholds accept that, in the case of most houses, use of leasehold is entirely unjustified.

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.

Sajid Javid

Secretary of State for Communities and Local Government

Introduction

1. Leasehold has shifted from being a niche market, primarily supporting the ownership of flats, to a major tenure. One-fifth of properties are now owned in this way, including over one million houses.¹ Almost half (46 per cent) of new build registrations were leasehold in 2016, compared to 23 per cent in 1995. Fifteen per cent of new build houses were sold as leasehold in 2016 compared to seven per cent in 1995.²
2. While there are examples of leasehold working well, there are also far too many problems including disproportionate costs to extend leases; poor value property management; and a slow and costly sales process. Fifty seven per cent of those that responded to the 2016 National Leasehold Survey said that they regretted buying a leasehold property.³
3. The Government has been very clear about its intention to address issues in the market. The Housing White Paper⁴ and Conservative Party manifesto committed to limiting the sale of leasehold houses and to tackling onerous ground rents. The Secretary of State for Communities and Local Government stated, “as a government committed to building a fairer society, I don’t see how we can look the other way while these practically feudal practices persist”.⁵ The Housing White Paper also committed to look at wider reforms to promote transparency and fairness, including whether and how to reinvigorate commonhold.
4. On 25 July this year the Government published a consultation document to seek views on the most pressing areas for reform, namely leasehold houses and ground rents and seeking views on priority areas for future reform.⁶ We received a staggering response with over 6,000 replies, demonstrating the strength of interest in this issue. This document sets out the findings from that consultation and the Government’s response.
5. We will bring forward legislation as soon as Parliamentary time allows to enact these measures, but our work will not stop here. We have already begun to take action to address some of the wider issues in the market having published a call for evidence

¹ <https://www.gov.uk/government/statistics/estimating-the-number-of-leasehold-dwellings-in-england-2015-to-2016>

² HM Land Registry, cited in <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-8047>

³ <https://s3.eu-west-2.amazonaws.com/brady-uploads/2017/07/Brady-Solicitors-in-partnership-with-LEASE-Leaseholder-Survey-June-16co....pdf>

⁴ <https://www.gov.uk/government/collections/housing-white-paper>

⁵ <https://www.gov.uk/government/speeches/helping-builders-to-get-building>

⁶ <https://www.gov.uk/government/consultations/tackling-unfair-practices-in-the-leasehold-market>

on proposals to regulate managing agents, and give consumers greater say over who their agent is, and a call for evidence to look at how to improve the sales process.⁷

6. We will also be working closely with the Law Commission on a wider programme of reform including reinvigorating commonhold; making it easier and more cost effective for all leaseholders to enfranchise; and better regulating managing agents. The Government also wants to introduce a minimum lease term to give leaseholders greater security and protect them from incurring costs on lease extension.

⁷ <https://www.gov.uk/government/consultations/protecting-consumers-in-the-letting-and-managing-agent-market-call-for-evidence> and <https://www.gov.uk/government/consultations/improving-the-home-buying-and-selling-process-call-for-evidence>

Consultation process and responses

7. The Department for Communities and Local Government public consultation *Tackling unfair practices in the leasehold market* ran for eight weeks from 25 July to 19 September 2017. The consultation received 6,075 responses; 5,701 via an online survey and 374 via email and post.
8. Of those responding to the online survey providing background information, 5,336 respondents said they were private individuals, of which 2,790 answered a follow up question confirming they were a leaseholder living in a house, with 1,699 confirming they were a leaseholder living in a flat and 431 identifying themselves as a freeholder. 332 respondents identified themselves as replying to the consultation on behalf of an organisation. A full breakdown of responses by type and question can be found at **Annex A**.
9. This report summarises respondents' views by considering comments made in relation to each of the questions included in the consultation document.

Section 1: Limiting the sale of new build leasehold houses

Q5: What steps should the Government take to limit the sale of new build leasehold houses?

10. There was consensus that in the majority of cases new build houses should not be built or sold as leasehold. Eighty per cent of all respondents to the online survey considered that the sale of new build leasehold houses should be banned in all cases. This was a particularly strong view among residential leaseholders, who made up 79 per cent of respondents who provided their background information within the online survey.
11. Those who were supportive of measures to limit the sale of leasehold houses said that consumers were often not aware that they were purchasing a leasehold house or that the ground rent, or cost of buying the freehold, could rise significantly in the future. Some reported being encouraged to use a solicitor known to the developer, in return for a discount on the fees. A number of examples were given of leaseholders being distressed to discover that the costs of buying out the freehold of a house had risen considerably, particularly where the freehold had been sold on to another investor. Some of these consumers are now trapped in houses with onerous ground rent terms.
12. It was also argued that in most cases it is unnecessary for houses to be built as leasehold. Some argued that it was a feudal practice, and simply a means for developers to boost profits.
13. The majority of developers also accepted that in most cases it was not necessary to build a leasehold house and that in some areas, the sale of leasehold houses was customary practice. However, it was also noted that some developers had no option but to build leasehold houses where they did not own the freehold on the land.
14. There were differences in opinion as to whether or not leasehold was necessary where houses were built on shared grounds or with shared facilities, or where houseowners have responsibility for the upkeep of green space, roads or drainage. Some commented that this practice had increased as a result of local authorities' reluctance to adopt common parts of developments. Developers, and respondents with a legal background, argued that leasehold was necessary in these cases to ensure contributions were made towards the upkeep of shared spaces and services. Others pointed out that there were other mechanisms to achieve this including commonhold, an estate rentcharge or the use and effective transfer of positive and/or restrictive covenants.

15. Responses to this question were clearly and very specifically referring to new build leasehold houses, rather than flats. Others said that any ban should also be applied to the 'second hand' housing market or investors would 'game' the system by buying freehold houses and granting long leases on sale.
16. Many respondents warned that, in taking forward proposals to prohibit leasehold houses, careful consideration would need to be given to the current legal definition of a 'house'. It was argued that there is significant ambiguity over the current definition and that an absence of clarity has led to several high-profile court cases.
17. A small number of respondents argued against any change claiming that it would increase house prices; a discount is applied to leasehold properties making it a cheaper option. Others refuted this, saying that there was no evidence of a discount. They argued that consumers were often not aware of the implications of purchasing a leasehold property, and therefore a discount was not always being applied.
18. It was also argued that the landlord's long term investment in a property could be helpful in providing a means to forward fund essential building works, or ensure legal compliance was maintained in critical areas like fire regulation and health and safety.
19. Investment companies raised concerns about limiting leasehold houses, arguing that it would have a negative impact on existing leaseholders by affecting the marketability of their properties and access to mortgages. They argued that there was already evidence of this happening with some consumers being denied mortgages. Some pointed out that Nationwide's decision to change its lending criteria for new build leasehold properties (referred to in paragraph 50) had been misinterpreted by conveyancing solicitors as applying to existing leases, resulting in some leaseholders being forced onto less favourable mortgage terms.
20. A smaller number of respondents, including some managing agents, said that consumer awareness was the problem rather than the product. They argued that the Government should require sellers to explicitly state ground rent conditions alongside any other factors that would have an impact on price, obtaining a mortgage, and future re-sale. This would safeguard purchasers by ensuring they fully understood the implications over time of their obligations in a lease.
21. Others said that leasehold houses should only be permitted where the terms are reasonable. Many respondents suggested that ground rent should be capped at a peppercorn rate (zero financial value) or increased in line with the Retail Price Index a minimum of every 10 years and that new leases should be between 250 and 999 years.

Q6: What reasons are there that houses should be sold as leasehold other than under the exceptions set out in paragraph 3.2? Q7: Are any of the exceptions listed in 3.2 not justified? Please explain.

22. While the majority of respondents argued that all leasehold houses should be banned, many of those that responded via the online survey also thought that the existing exemptions within the 1967 Leasehold Reform Act should remain in place. In particular, leasehold was argued to be important to preserve buildings with special architectural or historic interest, and to support shared ownership.
23. However, others who sent in submissions separately to the online survey argued strongly that leasehold was not justified in any cases. The Conveyancing Association argued that properties of historic or architectural importance could be protected through listings and conservation areas. Some pointed to problems that leaseholders experience where they are currently not allowed to purchase the freehold on their homes, with those leaseholders facing inadequate protections and sometimes very high ground rents.
24. A case was also made against exemptions for local authority landlords, with respondents arguing that there would be a risk that developers use this as a means to continue to build leasehold houses. It was argued that it would make little difference to these landowners anyway who, following any change in legislation, would simply change the practice and sell land as freehold. Many developers argued that it was not fair to have two sets of rules and that if a ban was put in place it should apply to all landowners.
25. Some argued that there were additional cases where leasehold could be justified for houses. This included Community Land Trusts (CLTs) and retirement villages, where local connection requirements and age restrictions are tied to the lease to ensure that properties remain within the intended community in perpetuity.
26. Representatives of CLTs argued that an outright ban of the sale of leasehold houses would impact unfavourably on community-led housing models which are projected to deliver 4,000 new homes by 2021. To date, one third of CLT housing has been sold under leasehold arrangements. Most felt that the CLT model exemplifies how leasehold can be used in an ethical way to provide affordably priced homes for those who need them, now and in the future. It is instructive, however, that two thirds of CLTs are not run on a leasehold basis.
27. In relation to retirement villages, respondents noted that leasehold was particularly helpful given the high level of shared services in retirement villages, and to ensure that age restrictions were maintained on future sale. Similarly, where a retirement village is a specialist development, providing housing with extra care, the services to new owners needed to be managed through the covenants in the lease.

Q8: Would limiting the sale of new build leasehold houses affect the supply of new build homes? Please explain.

28. Over half of the online survey respondents to this question thought that Government intervention limiting the sale of new build leasehold houses would not adversely affect supply.
29. Responses from residential leaseholders suggested developers were maximising their returns by developing a business model which allowed connected companies, owned by developers, to generate further income streams. These were viewed as additional and excessive to the profit already made from building out the properties. Typical replies said:
- “developers will say they must replace their lost income streams from somewhere else”;
 - “developers are not building what the market demands just what makes the most money”; and
 - developers selling on the freehold interest of a leasehold house represented a “stealth tax for developers and landowners”.
30. Others expressed different views. Some developers thought there could be a negative impact on supply; a blanket ban would reduce the volume of available land for development where landowners did not want to sell it on a freehold basis. Some believed an outright ban would have a short term impact on housing supply as the market adjusted. This view however, was not shared by many lenders and housing practitioners who argued that that there would not be an impact on supply but that prices may go up, having implications for affordability.
31. Some respondents took the view that the proposals would impact on the availability of institutional finance, which had provided access to cheap development finance and enabled some marginal schemes to become viable. One investor suggested that around £500 million per year was made available to house builders as a result of the purchase of residential freeholds by investors.
32. Some developers thought that measures to limit the sale of new build leasehold houses could affect the nature of new developments. They suggested that some developers may be reluctant to bring forward schemes with shared facilities and communal grounds which generally lend themselves to a leasehold approach.
33. Some argued that, instead of putting in place restrictions, a voluntary cross-industry code of practice or customer charter could be created for builders, freeholders, lenders, investors, conveyancers and other relevant parties. This would give confidence to leaseholders that agreed standards would be adhered to.

Government response

34. The Government has said previously that, other than in exceptional circumstances, we cannot see any good reason for new build houses to be sold on a leasehold basis. We remain of that view.
35. It is clear that many consumers did not make an active or informed choice to buy a new build leasehold house. Far too many homeowners report being surprised and distressed to learn that they did not own the freehold on their properties and that instead they had bought a depreciating asset, and/or to find that the freehold had been sold to a third party investor. In many cases the cost to purchase the freehold had risen considerably, sometimes running into tens of thousands of pounds. While it may be that a small discount is applied on the sale price, it is not clear that this is applied across the board, and any discount is likely to be outweighed by the medium and long term costs of owning a lease.
36. There are also a range of other means to ensure that owners of freehold houses contribute to the upkeep of shared space and services, and to ensure that buildings of historic importance are protected. The Government will be responding to the recommendations in the Law Commission's report '*Making Land Work*' to make it easier to create long-term arrangements that are legally binding for the maintenance of shared structures, facilities and open spaces on freehold developments.
37. The Government is also concerned about inconsistent and inadequate protections for leaseholders who either may not wish to, or who may be unable to, buy their freehold, as they might become subject to very high 'modern ground rents' when extending their lease.
38. This has got to stop. **We will 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 homeowners 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.
39. The Government wants to ensure that any changes made do not have an adverse impact on supply or the long-term sustainability of shared facilities, structures and open spaces and we are prepared to listen where evidence is provided that demonstrates practical challenges to delivering houses on a freehold basis. For example, we believe that an exemption will be needed to support shared ownership, and may also be needed for some Community Land Trusts, or other

specific developments. We also understand that where land is currently subject to a lease it will not be possible to build freehold houses. Where land is currently subject to a lease, developers will continue to be able to build and sell leasehold houses on that land. **However, the Government will ensure that future legislation to ban the sale of leasehold houses applies to land that is not subject to an existing lease at the date of publication of this consultation response.**

40. We will continue to work with the sector and other partners to consider the case for exemptions to the policy and its retrospective application, in particular to mitigate any undue unfairness. In bringing forward **legislation we will consider further if there are particular cases where leasehold houses can be justified and, if they can, we will work with sectoral partners to ensure that they are provided on acceptable terms to the consumer.**

Section 2: Reducing Help to Buy Equity Loan support for leasehold houses

Q9: Should the Government move towards removing support for the sale of new build leasehold houses through Help to Buy Equity Loan, unless leasehold can be justified and where ground rents are reasonable (which could be a nominal or peppercorn ground rent), and if not, why not?

Q10: In what circumstances do you consider that leasehold houses supported by Help to Buy Equity Loan could be justified?

Q11: Is there anything further the Government could do through Help to Buy Equity Loan to discourage the sale of leasehold houses?

Q12: What measures, if any, should be considered to minimise the impact on the pipeline of existing developments?

Overview of responses

41. Respondents commented that while Help to Buy was a good product for first time buyers, its use was not appropriate for the sale of leasehold houses. Ninety nine per cent of respondents to the online survey said that its use to purchase a leasehold house could not be justified under any circumstances.
42. Some respondents favoured an outright ban, rather than modifications, arguing that it would otherwise legitimise the continued development and sale of new build leasehold houses.
43. Others opposed a ban. Developers argued that prohibiting leasehold houses may mean that a larger Help to Buy subsidy is needed to offset the discount that is applied to leasehold houses, compared to freehold houses. It was argued that removing Help to Buy would risk sending a message to the public that a leasehold title is in some way inferior, and that this would negatively impact existing leasehold homeowners.
44. Some respondents thought that Help to Buy would be acceptable for leasehold houses if certain conditions were in place. For example, if the initial ground rent was a peppercorn/zero and remained at this level throughout the term of the lease and there was access to a Right of First Refusal.
45. There was a consensus that limiting the use of leasehold in Help To Buy could be done without the need for legislative reform, simply by amending the scheme to prevent the sale of leasehold houses. A burden of proof could be placed on the

developer to provide evidence to the Help to Buy Agent that any specified conditions had been met.

46. In order to ensure that there was no adverse impact on supply, respondents highlighted that changes to the Help to Buy scheme should be communicated well in advance. This would give developers and purchasers adequate time to plan. Failure to do this could impair the ability of house builders to continue marketing and selling homes on some sites. Some respondents noted that Government had reviewed the Help to Buy Equity Loan scheme, and confirmed that it would continue until 2021.

Government response

47. We do not think it is appropriate for Help to Buy to support the sale of leasehold houses. 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.

Section 3: Limiting the reservation and increase of ground rents on all new residential leases over 21 years

Q13: What information can you provide on the prevalence of onerous ground rents? We are keen to receive information on the number and type of onerous ground rents (i.e. doubling, or other methods) and whether new leases are still being sold with such terms.

48. Views on the prevalence of onerous ground rents varied according to the definition applied. Some noted that there was substantive evidence that the problem of 'onerous lease terms' in addition to 'onerous ground rents' had been increasing since at least 2005 (if not before). It was noted that this problem applies to both leasehold houses and flats and that many lessees in these properties face difficulties remortgaging or selling.
49. Overall there was agreement that anything that affected the value of the property should be classed as onerous. Some argued that this applied where ground rents exceed 0.5 per cent of the sale price and doubled more frequently than 10 or 15 years. One fund manager suggested that fewer than three per cent of their client's portfolio was classed as 'onerous', on this basis. They estimated that there may be around 15,000 ten year doubling ground rents, representing around 0.4 per cent of leasehold properties in England and Wales.
50. Others suggested that the prevalence of onerous ground rents would be much higher, arguing that ground rents that exceed 0.1 per cent of the property price should be classed as onerous. This was in line with Nationwide Building Society's new lending policy.⁸ The Royal Institution of Chartered Surveyors argued that ground rents should not rise above 0.25 per cent of the freehold vacant possession value.⁹
51. It was also noted that ground rents can become onerous where leases on houses are extended under the 1967 Leasehold Reform Act. 'Modern ground rents' are based on a rent for uplift in the 'site value', typically achieved by taking 30 to 50 per cent of the increased value of a leasehold house and decapitalising it over 50 years. As a result, some leaseholders on National Trust land have seen their ground rents rise from small sums to over £5,000 per year.
52. The Home Builders Federation advised that the vast majority of ground rents are reasonable, fair and do not impinge on the long-term value or mortgage ability of a

⁸ <https://www.nationwide.co.uk/about/media-centre-and-specialist-areas/media-centre/press-releases/archive/2017/5/05-protect-homeowners>

⁹ <http://www.rics.org/Global/leasehold-reform-graphs-of-relativity.pdf>

home. One respondent highlighted that leases with onerous terms are no longer being created as there is no market for them.

Q14: What would a reasonable ground rent look like, in terms of i) the initial annual ground rent, ii) the maximum rate of increase in annual ground rent, and iii) how often the rate of increase could be applied to an annual ground rent? Please explain your reasons.

53. Over 40 per cent of those that responded to this question through the online survey stated there was no justification for ground rents and no clear reason why they should be any more than a peppercorn (zero financial value). This has effectively been recognised through the Leasehold Reform, Housing and Urban Development Act 1993 which gives leasehold flatowners the right to access a peppercorn rent on lease extension.
54. Others cautioned against prohibiting ground rents, pointing out that they covered landlords' costs, and ensured that landlords retained an interest in the investment. They noted that it was important to strike a balance to ensure that the quality of the service provided by the landlord did not decline, or that fees for services or consents did not increase excessively.
55. This view was also expressed by several retirement housing providers who argued that ground rents play a vital role in supporting the affordability and viability of schemes. They suggested that ground rents helped offset the higher design costs of these developments but also helped ensure that developers could compete for land.
56. The majority of those that were against limiting ground rents to a peppercorn did not provide details of what a reasonable ground rent should be. Where they did, the most common reply was that an initial annual ground rent should be no more than 0.1 per cent of the property's value and capped at £500. The maximum rate of increase in annual ground rent should only be increased by the Retail Price Index, and applied to an annual ground rent after 25 years. It was deemed by some that this would even be sufficient in prime central London, although others called for a broader range, up to 0.4 per cent of the property price.
57. Some cautioned that any new policy may impact the saleability of existing leasehold dwellings, or access to mortgages, where existing ground rents exceed the Government's new proposals.
58. Respondents also pointed out that ground rents could only be considered 'reasonable' where they were transparent and well understood by the buyer and lender. Full disclosure is already required under Consumer Protection Regulations.

Exemptions and Restrictions

Q15: Should exemptions apply to Right to Buy (RTB), shared ownership or other leases? If so, please explain.

Q16: Would restrictions on ground rent levels affect the supply of new build homes? Please explain.

59. The majority of respondents argued that there should be no exemptions. Some thought that shared ownership leases should be exempted, because otherwise the shared owner would not be able to enter into a landlord and tenant relationship and pay rent on that part of the property owned by the landlord. It was also argued that it would be important for Right to Buy purchasers in the same building to have similar ground rent terms in order to prevent disruption in the estate. Therefore, new rules should not apply to estates where old ground rents were already in place, other than where they were onerous. Others said that ground rents for Right to Buy are normally fixed at £10 per year, and so it would soon become uneconomic to collect them. Therefore, prohibiting ground rents in the future would not matter.
60. In line with the responses to the previous question on the impact of banning leasehold houses on supply, most respondents thought that there would be no supply implications from restricting ground rents. There is substantial demand for new build homes. Ending unfair practice would bring stability to the market, which would mean development funders might be more willing to lend without gambling on the future role of ground rents and other leasehold incomes.

Existing leaseholders

Q17: How could the Government support existing leaseholders with onerous ground rents?

61. Some respondents commented that this was a trickier issue to resolve, that contracts had been signed and addressing these could interfere with property rights. Respondents also pointed out that these terms had not always been transparent, or clearly understood by consumers. In some cases, the seller may have breached Consumer Protection Regulations, and mis-selling may have occurred. It was argued that some may have negligence claims against their conveyancer, but also that this option may no longer be available where the advice had been given more than six years ago. Some respondents said that a 'leasehold misselling commission' should be established to assess what had happened and help consumers access redress.
62. Others favoured a legislative response. It was argued that the Government should introduce legislation so that leaseholders of houses had the Right of First Refusal on

the disposal of the reversion of a leasehold house, in the same way that qualifying flat owners do. This would prevent developers selling freeholds on houses to investment companies without the leaseholder having a chance to purchase. It was also suggested that leasehold houseowners should have the right to buy their freehold ahead of the current two year time limit.

63. Some favoured retrospective legislation, suggesting that ground rents could be capped at 0.1 per cent of the property value. Others supported the creation of a formula to provide a fair calculation for consumers wanting to buy out their freehold, similar to that provided for rentcharges via the Rentcharges Act 1977. This might also allow a lease extension after two years of ownership at a peppercorn ground rent. A related suggestion was that, under the existing enfranchisement formula, the ground rent used for capitalisation purposes could be capped so that leaseholders did not have to pay much higher costs where ground rents were onerous.
64. Respondents referred to the £130 million Taylor Wimpey Ground Rent Review Assistance Scheme with Long Harbour and HomeGround as an example of how developers and investors have sought to help consumers with onerous ground rent terms. Others noted that these do not go far enough as not all affected 'second hand' purchasers are covered, nor all onerous ground rents, including those that double every 15 years.
65. Others noted that simply prohibiting ground rents in the future would help existing leaseholders, by drying up the market for ground rent investments.

Q18: In addition to legislation what voluntary routes might exist for tackling ground rents in new leases?

66. A third of respondents to the online survey said that legislation was the only approach that would drive change. They argued that the range of issues were so serious that a voluntary solution would be too difficult to achieve.

Government response

67. The Government is concerned that ground rents have risen from historically small sums to hundreds of pounds per year in many cases.¹⁰ Where onerous rent review clauses are used, consumers can find that ground rents escalate to thousands of pounds causing considerable financial distress and leaving some facing difficulty selling their property.

10

https://www.directlinegroup.com/media/news/brand/2016/property_pain_service_charges_increasing_rapidly_14_mar_2016.aspx

68. Ground rents offer institutions clear benefits, acting as a perfect hedge against their liabilities, and allow developers to maximise their profits. However, consumers see no clear benefit from them.
69. The Government wants to ensure that consumers only pay for services that they receive. **We will 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.
70. We will also consider how we can 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.
71. This alone will not address all the abuses that have occurred, 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.
72. We also want to make it easier for leaseholders to be able to exercise their right to buy their freehold, or extend their lease, and for this right to be available as soon as possible. The Government will prioritise solutions for lessees of houses. **We will work with the Law Commission on this and consult on introducing a prescribed formula that provides fair compensation to the landlord, whilst also helping leaseholders avoid incurring additional court costs.** And we will also consider introducing a Right of First Refusal for house lessees. We will aim to bring forward solutions by summer recess 2018 and new legislation when Parliamentary time allows. In doing this we will work with UK Finance to encourage lenders to assist consumers wanting to purchase their freehold.

Section 4: Exempting leaseholders potentially subject to ‘Ground 8’ possession orders due to their level of ground rent

Q19: Should the Government amend the Housing Act 1988 (as amended by the Housing Act 1996) to ensure a leaseholder paying annual ground rent over £1,000 in London or over £250 in the rest of England is not classed as an assured tenant, and therefore cannot be issued with a Ground 8 mandatory possession order for ground rent arrears? If not, why not?

73. This question concerned a technical area of housing legislation. Over two-thirds of those that responded to this question in the online survey agreed that legislation should be changed. The general view, particularly from the legal profession, was that this area of the law should be addressed as quickly as possible and was an unfortunate consequence of increasing ground rents.
74. Respondents also pointed out that annual ground rent over £1,000 in London or over £250 in the rest of England is high and needed to be justified, and that Government should consider a lower figure since the disparity between London and the rest of England is also too wide.

Government response

75. The Government is aware that, where ground rents exceed £250 per year or £1,000 per year in London, a leaseholder is classed as an assured tenant. This means, for even small sums of arrears, leaseholders could be subject to a mandatory possession order if they were to default on payment of ground rent. **The Government will take action to address this loophole and ensure that leaseholders are not subject to unfair possession orders.**

Section 5: Service charges for maintaining communal areas and facilities on freehold and mixed tenure estates

Q20: Should the Government promote solutions to provide freeholders equivalent rights to leaseholders to challenge the reasonableness of service charges for the maintenance of communal areas and facilities on a private estate? If not, what management arrangements on private estates should not apply?

Overview of responses

76. Ninety one per cent of those that responded to this question in the online survey agreed that freeholders of residential property on private or mixed use estates receiving property management services should have the same rights as leaseholders. This would enable freeholders to challenge the reasonableness of charges set for the upkeep of communal services and shared areas.
77. It was noted that the existing inconsistency means that some consumers, who are not part of an Estate Management Scheme or who have not purchased the freehold of their house from a public sector authority, are left without similar rights as their qualifying leaseholder neighbours on an estate. Qualifying leaseholders can challenge the reasonableness of service charges through the courts whereas freeholders cannot. This is undemocratic and unfair. In taking forward any solutions, detailed and careful consideration will need to be given to the definition of the charges that would fall within a new regulatory regime.
78. A small number of lawyers and lenders raised concerns where freeholders are subject to a rentcharge.¹¹ Significant issues can arise where a small yearly rentcharge, which can be as little as £1, remains unpaid for over 40 days. This can result in the freeholder being at risk of possession or a lease being assigned on their property by the rent charge owner. Respondents suggested a small amendment to the Law of Property Act 1925 would resolve the issues highlighted in *Morgoed Estates Ltd v Lawton* [2016] UKUT 395 (TCC)¹² so that the threat of possession or of a lease being assigned are ended and more suitable existing approaches to seek payment are used, such as seeking payments through court.
79. Some respondents to this question suggested that Government should consider capping the costs involved in meeting unduly restrictive covenants. In particular for

¹¹ In general terms, a rentcharge is a perpetual periodic payment made in respect of freehold land by the current freeholder to a third party who has no reversionary interest in the land in question

¹² <https://assets.publishing.service.gov.uk/media/58ad7f8ced915d603500005e/Jonathan-Howard-Roberts-and-ors-v-Gerard-and-Siobhan-Hurst-and-ors.pdf>

fees charged for obtaining permission to make an alteration e.g. for extensions, conservatories, internal alterations etc. They also suggested applying a 'reasonableness' criteria to estate fees for freeholders. Some suggested Government should consult with the Competition and Markets Authority to arrive at a reasonable cap.

Government response

80. **The Government will legislate to ensure that freeholders who pay charges for the maintenance of communal areas and facilities on a private or mixed use estate can access equivalent rights as leaseholders** to challenge the reasonableness of service charges.
81. We will also ensure that, **where a freeholder pays a rentcharge, the rentcharge owner is not able to take possession or grant a lease on the property** where the rentcharge remains unpaid for a short period of time.

Section 6: Future issues

Q21: The Housing White Paper highlights that the Government will consult on a range of measures to tackle abuse of leasehold. What further areas of leasehold reform should be prioritised and why?

82. This question resulted in a very broad range of responses. Many responses made the point that they had previously commented on broader leasehold reform in their submission to the Law Commission, as part of its 13th Programme of Law Reform including:
- a. the re-introduction and re-invigoration of commonhold as an alternative tenure;
 - b. lease extension and enfranchisement (or buying the freehold);
 - c. the right of first refusal for house lessees;
 - d. the cost of buying and selling a leasehold house;
 - e. the fees charged by landlords and their managing agents; and
 - f. the regulation of residential managing agents.
83. In addition a number of other topics were identified including the need to simplify and standardise leases, in the same way as applies to commercial, Right to Buy and shared ownership leases; the need for greater transparency at the point of sale; the need to introduce a minimum term lease; and to improve access to redress.
84. There were a large of number of responses regarding the case of *Mundy v The Trustees of the Sloane Stanley Estate*, which concerns the methodology for calculating the cost of enfranchisement. The Court of Appeal has granted permission for an appeal in this case.

Government response

85. As we have stated earlier in this response, the Government is absolutely committed to improving the situation of leaseholders. The proposals that we have outlined in the preceding chapters are just the first steps on that journey. We are also undertaking work to:
- help professionalise **managing agents**, tackle **unfair service charges** and give consumers greater choice over who their agent is – a call for evidence¹³ on this closed on 29 November;

¹³ <https://www.gov.uk/government/consultations/protecting-consumers-in-the-letting-and-managing-agent-market-call-for-evidence>

- ensure that landlords are signed up to **redress** schemes, and will be consulting on whether this should also be extended to landlords who grant long leases; and
- look at ways to **modernise the home buying process**, including addressing the particular challenges faced by leaseholders. A call for evidence on these issues closed on 17 December.¹⁴

86. But we also want to go further. We have said in Section Three that 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.

87. 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.**

¹⁴ <https://www.gov.uk/government/consultations/improving-the-home-buying-and-selling-process-call-for-evidence>

ANNEX A

Tabulated results of responses to questions asked in the online survey

- For 'open ended' question, categories were informed by the responses to the online survey.
- Please note that due to rounding some of the total percentages may not add up to 100%.
- Results exclude responses to each question that were left blank.
- Responses to Q4 showing the postcode of the respondent to the online survey have been omitted.
- For responses to Q13, please see the main report.

Q1. Are you responding as?

Category	Number of responses	Percentage
A private individual	5,336	94.1%
On behalf of an organisation	332	5.9%
Total	5,668	100.0%

Q2. If you are responding as a private individual, is your main interest as?

Category	Number of responses	Percentage
An owner or tenant of a leasehold house	2,790	49.0%
An owner or tenant of a leasehold flat	1,699	29.8%
An owner of a freehold house	431	7.6%
A private landlord	79	1.4%
An individual with a portfolio of ground rents	20	0.4%
Other	675	11.9%
Total	5,694	100.0%

Q3: If you are responding on behalf of an organisation, is the interest of organisation as (tick all that apply):

Category	Number of responses	Percentage
A solicitor/conveyancer	121	21.8%
An organisation representing leaseholders	81	14.6%
A residents' management company or right to manage company?	62	11.2%
A supplier management and /or other services to leaseholders	52	9.4%
An organisation representing freeholders	44	7.9%

A developer	40	7.2%
Other private landlord	38	6.8%
A local authority	22	4.0%
An estate agent	21	3.8%
An investment company or pension fund that has a portfolio of ground rents	20	3.6%
A social landlord (either Registered Provider or local authority)	18	3.2%
A developer of other housing tenure beside leasehold houses	14	2.5%
A company that buys and sells ground rents	14	2.5%
A lender	7	1.3%
An organisation representing lenders	2	0.4%

Notes: 424 respondents to the online survey answered this question, however respondents could choose more than one category.

Q5: What steps should the Government take to limit the sale of new build leasehold houses?

Category	Number of responses	Percentage
Ban all leasehold	2,680	75.9%
Ban all leasehold and ban ground rents too	148	4.1%
Increase awareness and transparency	81	2.3%
Do nothing otherwise it's unlawful state interference	52	1.5%
Stop the Help to Buy Equity Loan scheme for leasehold houses	35	1.0%
Other	544	15.2%
Total	3,576	100.0%

Q6: What reasons are there that houses should be sold as leasehold other than under the exceptions set out in paragraph 3.2?

Category	Number of responses	Percentage
There are no other reasons	1,554	76.9%
Enforcement of a positive covenant or a promise to do something - does not run with land	48	2.4%
For retirement homes or supported housing	30	1.5%
Other	389	19.2%
Total	2,021	100.0%

Q7: Are any of the exceptions listed in 3.2 not justified? Please explain.

Category	Number of responses	Percentage
Yes	840	26.8%
No	2,300	73.2%
Total	3,140	100.0%

Q8: Would limiting the sale of new build leasehold houses affect the supply of new build homes? Please explain.

Category	Number of responses	Percentage
Yes	139	3.9%
No	1,963	54.4%
Other (please specify)	1,505	41.7%
Total	3,607	100.0%

Q9: Should the Government move towards removing support for the sale of new build leasehold houses through Help to Buy Equity Loan, unless leasehold can be justified and where ground rents are reasonable (which could be a nominal peppercorn ground rent), and if not, why not?

Category	Number of responses	Percentage
Yes	3,070	87.4%
No	444	12.6%
Total	3,514	100.0%

Q10: In what circumstances do you consider that leasehold houses supported by Help to Buy Equity loan could be justified?

Category	Number of responses	Percentage
None	2,279	98.6%
Other	33	1.4%
Total	2,312	100.0%

Q11: Is there anything further the Government could do through Help to Buy Equity Loan to discourage the sale of leasehold houses? Please explain.

Category	Number of responses	Percentage
Yes	1,951	68.6%
No	892	31.4%
Total	2,843	100.0%

Q12: What measures, if any, should be considered to minimise the impact on the pipeline of existing developments?

Category	Number of responses	Percentage
No action required	2,086	99.6%
Other	8	0.4%
Total	2,094	100.0%

Q14i: What would a reasonable ground rent look like, in terms of the initial annual ground rent? Please explain your reasons.

Category	Number of responses	Percentage
0/none/never/peppercorn	889	33.7%
Up to £50	571	21.7%
£51- £100	381	14.5%
Percentage of sale price /or market value	235	8.9%
£101 -£200	213	8.1%
£201- £300	144	5.5%
£300+	57	2.2%
Other	142	5.4%
Total	2,632	100.0%

Q14ii: What would a reasonable ground rent look like, in terms of the maximum rate of increase in annual ground rent? Please explain your reasons.

Category	Number of responses	Percentage
0/none/never/peppercorn	976	40.8%
Above 0 and up to 5%	247	10.3%
5-10%	78	3.3%
11%+	22	0.9%
Verified index/RPI/CPI	671	28.0%
Multiple of property value	40	1.7%
Double	35	1.5%
Other	326	13.6%
Total	2,395	100.0%

Q14iii: What would a reasonable ground rent look like, in terms of how often the rate of increase could be applied to an annual ground rent? Please explain your reasons.

Category	Number of responses	Percentage
Never	993	41.1%
0-4 years	297	12.3%
5-9 years	214	8.8%
10-20 years	471	19.5%
21+ years	299	12.4%
Other	145	6.0%
Total	2,419	100.0%

Q15: Should exemptions apply to Right to Buy, shared ownership or other leases? Please explain.

Category	Number of responses	Percentage
Yes	249	8.8%
No	1,681	59.5%

Other	893	31.6%
Total	2,823	100.0%

Q16: Would restrictions on ground rent levels affect supply of new build homes? Please explain.

Category	Number of responses	Percentage
Yes	115	3.9%
No	1,648	55.5%
Other (please specify)	1,205	40.6%
Total	2,968	100.0%

Q17: How could the Government support existing leaseholders with onerous ground rents?

Category	Number of responses	Percentage
Keep ground rent but make changes to it e.g. capping, freezing	807	28.1%
Help tenants to buy freehold at a fair price	512	17.8%
Ban ground rent	507	17.6%
Convert existing leases to freehold/commonhold	201	7.0%
Take action against solicitors and/or developers	106	3.7%
Provide compensation	89	3.1%
Change the law/create legislation (non-specific)	63	2.2%
Other	589	20.4%
Total	2,874	100.0%

Q18: In addition to legislation what voluntary routes might exist for tackling ground rents in new leases?

Category	Number of responses	Percentage
Legislation is the only approach that would work	602	33.3%
Voluntary routes will not work	268	14.8%
Action by developers/freeholders	230	12.7%
Greater transparency and consumer awareness	126	7.0%
Greater accountability i.e. no code of conduct, ombudsman, 'name' and 'shame' developers	109	6.0%
Kite marking/accreditation of good developers	63	3.5%
Using existing measures i.e. negotiations tribunal	38	2.1%
Action by financial lenders/sector	36	2.0%
New planning permission rules	22	1.2%

Other	314	17.4%
Total	1,808	100.0%

Q19: Should the Government amend the Housing Act 1988 (as amended by the Housing Act 1996) to ensure a leaseholder paying annual ground rent over £1,000 in London or over £250 in the rest of England is not classed as an assured tenant, and therefore cannot be issued with a Ground 8 mandatory possession order for ground rent arrears? If not, why not?

Category	Number of responses	Percentage
Yes	2,005	68.7%
No	118	4.0%
Other	796	27.3%
Total	2,919	100.0%

Q20: Should the Government promote solutions to provide freeholders equivalent rights to leaseholders to challenge the reasonableness of service charges for the maintenance of communal areas and facilities on a private estate? If not, what management arrangements on private estates should apply?

Category	Number of responses	Percentage
Yes	2614	91.0%
No	257	9.0%
Total	2,871	100.0%

Q21: Future issues: The Housing White Paper highlights that the Government will consult on a range of measures to tackle abuse of leasehold. What further areas of leasehold reform should be prioritised and why?

Category	Number of responses	Percentage
Abolish leasehold tenure and replace with commonhold	307	12.7%
Review and reduce cost of enfranchisement	239	9.9%
Reform leasehold to improve transparency	219	9.0%
Prohibit onerous ground rents	179	7.4%
Provide help for existing leaseholders	175	7.2%
Reduce cost of building management	136	5.6%
Reduce cost of service charges	134	5.5%
Reduce cost of a lease extension	108	4.5%
Reduce cost of permission in a lease to alter or improve	102	4.2%
Intervene in the Mundy case on costs of extending a lease and enfranchisement	101	4.2%
Increase length of a lease	31	1.3%
Other	694	28.6%
Total	2,425	100.0%

