



Tackling unfair practices in the leasehold market

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Basis

In July the government published a consultation paper – [‘Tackling unfair practices in the leasehold market’](#) – asking for views on:

- i) Prohibiting the sale of new build leasehold houses where the developer is not obliged to sell a house on a leasehold basis
- ii) Restricting ground rents on new leases to a ‘peppercorn’
- iii) How to tackle existing onerous ground rents
- iv) Possible changes to the Help to Buy scheme in relation to leasehold houses
- v) Providing freeholders on private estates with equivalent rights to leaseholders to challenge unreasonable service charges for the upkeep of communal areas and facilities via the First-tier Tribunal (Property Chamber).

The consultation and concept

The main thrust of the reporting of this consultation has related to the first issue above, ie, leasehold houses - although listeners to Radio 4 may have been confused by the almost hysterical reporting that the government was proposing to ‘abolish all leasehold tenure’!

Members may be aware that there have been many reports in the media of leaseholders of houses who have seen huge increases in the ground rents of their houses, to then find that the lease also allows for similar increases in the future. Leasehold houses fall outside of the Right of First Refusal, which means that such estates of leasehold houses can be sold by developers to third party landlords without reference to the house leaseholders.

The consultation follows a government commitment made in the Queen’s Speech to:

“Consult and look to take action to promote transparency and fairness for leaseholders. We will look at the sale of leasehold houses and onerous ground rents, working with property developers, the Competition and Markets Authority and others as outlined in the Housing White Paper.”

Leasehold Network members may have read of the consultation and thought that while this issue is of interest, and even welcomed, but that it will have little effect on them.

However, I would urge members to read sections 4, 5 & 6 of the consultation paper.

Clearly the proposal in section 4 to limit ground rents to all new residential leases over 21 years to a peppercorn will affect all organisations. Local authorities, and housing associations with preserved Right to Buys, will be used to only receiving a maximum of £10 per year ground rent Together with the onerous task of issuing a notice for it) however in future all new ground rents will be limited to zero (except for RTB leases where the £10 *could* remain).

However, my main concern in this consultation relates to section 6 ‘Service charges for maintaining communal areas and facilities on freehold and mixed tenure estates’.

The proposal in this section is that *'the government wants to promote appropriate rights for all freeholders living on private estates to challenge the reasonableness of service charges.'* The paper refers to the fact that *'even though freeholders may be paying for exactly the same services as leaseholders, they do not have a right to challenge the reasonableness of service charges through the First-tier Tribunal (Property Chamber), which qualifying leaseholders can do.'*

This is, perhaps, a laudable aim. However, I think that Leasehold Network members should be aware of the potential ultimate consequences. To achieve this, it is possible that all of sections 18–30 of the Landlord and Tenant Act 1985 could be extended to freeholders paying a variable service charge. This may then, in turn, meaning that Section 20 could then possibly apply to leaseholders. While it is unlikely that the schedules relating to qualifying works would apply, it is conceivable that freeholders could then be caught up in consultations relating to Qualifying Long Term Agreements! After all, the threshold of £100 p.a. has been set for 14 years now and doesn't buy much these days. Depending how your services contracts are packaged, this could easily be exceeded.

The consultation closes on **Tuesday 19 September 2017** and [responses can be submitted through an online survey](#).

Alternatively you can email your response to the questions in this consultation to: LeaseholdHousesConsultation@communities.gsi.gov.uk.

House of Commons Briefing

The House of Commons Library has also published a briefing paper considering Leasehold and Commonhold reform. The research in the paper has clearly informed the proposals in the consultation paper.

The briefing paper considers recent trends in leasehold ownership and on-going problems associated with the sector. Areas identified for possible reform are summarised, including Government proposals which are currently subject to the above and other consultations.

The Department for Communities and Local Government estimates that there are around 4million leasehold homes in the private sector in England, of which 70% are flats. In 2016, around 27% of residential property transactions in England and Wales were leasehold. Because almost all flats sell as leasehold, leasehold transactions are more common in London, where 60% of transactions were leasehold in 2016. The practice is also more common for new-build properties: 46% of new build transactions were leasehold.

The full briefing paper [Leasehold and commonhold reform](#) can be found by clicking the link.

About the author

John Gargan has over 40 years' experience in public sector housing, including over 25 years in leasehold management and home ownership. He offers a wide range of services, including alternative dispute resolution (RICS accredited mediator), consultancy and training in leasehold management, Right to Buy and interim management solutions.

He is a regular contributor to LEN conferences and seminars, and is a qualified trainer.

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