

**‘Tackling unfair practices in the leasehold market’ – consultation from the  
Department of Communities and Local Government**

**A response by  
The Chartered Institute of Legal Executives**

**September 2017**

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## **1. Introduction**

- 1.1. The Chartered Institute of Legal Executives (CILEx) is the professional association for Chartered Legal Executive lawyers, other legal practitioners and paralegals. CILEx represents around 20,000 members, which includes approximately 7,500 fully qualified Chartered Legal Executive lawyers. This includes more than 5,000 members of all grades who work in conveyancing.
- 1.2. As it contributes to policy and law reform, CILEx endeavours to ensure relevant regard is given to equality and human rights, and the need to ensure justice is accessible for those who seek it.
- 1.3. This response includes contributions from some of CILEx's members working in conveyancing. CILEx liaised with practitioners through its Conveyancing Specialist Reference Group, and conducted a survey of members into their experience with new build leasehold properties and onerous ground rents, the consultation's proposed solutions to tackling issues associated with these matters, and the proposed reforms to best deal with the complications surrounding 'Ground 8' possession orders and service charges on freehold and mixed tenure estates. These are expanded in more detail below.
- 1.4. Surveyed CILEx members estimated that, on average, just under a third of all work involving clients purchasing a new build property was on behalf of clients who had bought, or were in the processes of purchasing a new build leasehold property (32%) as opposed to freehold.

## **2. General Points**

- 2.1. CILEx members throughout our survey highlighted significant concerns over the use of leasehold in new build housing estates, and the often onerous ground rents that are found on these properties.
  - 2.1.1. 62% either agreed, or strongly agreed with the statement that the increase in prevalence of new build leasehold homes has had a negative impact upon consumers. Only 2.7% of respondents disagreed with the statement.
- 2.2. Based on a majority view of our members, CILEx recommends that the provision of leasehold new build homes be limited through reform of current leasehold legislation, and in relation to Help to Buy, that careful consideration be given to avoid penalising consumers by withdrawing support for the sale of new build leasehold houses through Help to Buy Equity Loans.
  - 2.2.1. We also recommend that new build leasehold homes should only be sold in cases where the nature of the lease can be justified, and where the ground rent level is initially set at a 'peppercorn' rate.
    - 2.2.1.1. Additional information regarding the appropriate level of ground rent is provided later in this submission (16.1 – 16.2)
- 2.3. CILEx recommends that The Housing Act 1988 (as amended by the Housing Act 1996) be amended to ensure leaseholders paying annual ground rent over £1,000 in Greater London or over £250 in the rest of England is not classed as an assured tenant, and therefore cannot be issued with Ground 8 mandatory possession orders for ground rent areas.
- 2.4. With regard to mixed tenure estates, CILEx would also like to see solutions that will provide freeholders with equivalent rights to challenge the reasonableness of service charges for the maintenance of communal areas and facilities on a private estate in order to create parity and fairness within the market.

### **3. Question 1: Are you responding as (please tick one):**

**A Private individual?**

**On behalf of an organisation?**

- 3.1. On behalf of an organisation, the Chartered Institute of Legal Executives.

**4. Question 2: If you are responding as a private individual, is your main interest as:**

**An owner or tenant of a leasehold flat?**

**An owner or tenant of a leasehold house?**

**An owner of a freehold house?**

**A private landlord?**

**An individual with a portfolio of ground rents?**

**Other? (Please specify)**

4.1. Not applicable

**5. Question 3: If you are responding on behalf of an organisation, is the interest of your organisation as (tick all that apply):**

**A residents' management company or right to manage a company?**

**A developer?**

**An organisation representing leaseholders?**

**An organisation representing freeholders?**

**A lender?**

**A solicitor / conveyancer?**

**An estate agent?**

**An organisation representing lenders?**

**A supplier or management and/or other services to leaseholders?**

**Other private landlord?**

**A social landlord (either Registered Provider or local authority)?**

**A developer of other housing tenures besides leasehold houses?**

**A company that buys and sells ground rents?**

**An investment company or pension fund that has a portfolio of ground rents?**

**A local authority?**

**Other (Please specify)?**

5.1. The Chartered Institute of Legal Executives (CILEx) is the professional association for Chartered Legal Executive lawyers, other legal practitioners and paralegals. CILEx represents around 20,000 members, which includes

approximately 7,500 fully qualified Chartered Legal Executive lawyers. This includes more than 5,000 members of all grades who work in conveyancing.

**6. Question 4: Please enter the first part of the postcode in England in which your activities (or your members' activities) are principally located (or specify areas in the box provided):**

6.1. CILEx members conduct work throughout all regions of England.

**7. Question 5: What steps should the Government take to limit the sale of new build leasehold houses?**

7.1. On balance, those surveyed held the view that sale of leasehold properties was acceptable in some circumstances, but not in the case of new build houses (with some exceptions).

7.2. When asked if the sale of new build leasehold houses should be **limited to a certain extent**, almost two thirds (65.79%) of surveyed CILEx members agreed or strongly agreed.

7.2.1. Of the 10.53% of surveyed members who disagreed with the limiting of the sale of new build leasehold properties, and the 21% who neither agreed nor disagreed, the majority of comments raised concerns that this limitation would impact upon properties on National Trust or Crown estates, where there are often legitimate uses for leasehold agreements.

7.2.2. Additional comments also raised concerns about the need for limiting leasehold properties, especially in the face of “a lack of existing property for sale [,] and so to limit this will mean that prices increase as demand will be too high.”

7.3. When asked if the sale of new build leasehold properties should be **entirely prohibited**, over half (54.05%) of CILEx survey members disagreed or strongly disagreed.

7.3.1. Of those that disagreed however, 50% added that prohibition is suitable in some cases, especially in cases of houses in new developments and houses not currently covered by the exemptions (3.2 – 3.4 of consultation document).

7.3.2. Furthermore, of all other respondents (45.95%), 76.47% highlighted that prohibition was unsuitable in cases where the exemptions apply.

7.3.3. Consequently, a significant majority (62.16%) of surveyed CILEx members agree that prohibition of leasehold properties is a viable option for properties not covered by the exemptions listed in the consultation document, or if there are additional practical reasons to provide a leasehold option for properties, such as commercial properties.

**8. Question 6: What reasons are there that houses should be sold as leasehold other than under the exceptions set out in paragraph 3.2?**

8.1. Throughout the survey members highlighted that flats and apartments are in most cases, appropriate for being sold on a leasehold basis.

8.1.1. When asked what other reasons there are for properties to continue to be sold as leasehold other than the exemptions provided in 3.2, - 3.4 of the consultation, and 31% of surveyed members explicitly stated that flats should be exempt from any future limitations or prohibitions.

8.1.2. Excluding those respondents, 38% felt that the exemptions set out in paragraph 3.2 – 3.4 were sufficient.

8.2. However, 29.63% of surveyed members highlighted that limitation and / or prohibition may not be suitable.

8.2.1. These respondents commented that leasehold should remain in use for cases where: freehold would be impractical, the upkeep of buildings is a much-needed requirement, new developments have or require shared services, and/or for developments which can be appropriately managed on a leasehold regime.

**9. Question 7: Are any of the exceptions listed in 3.2 not justified? Please explain.**

9.1. Respondents did not raise objections to the exceptions listed in 3.2

**10. Question 8: Would limiting the sale of new build leasehold houses affect the supply of new build homes? Please explain.**

10.1. 62.17% of respondents disagreed or strongly disagreed that the prohibition or limitation of selling new build leasehold properties will reduce the supply of new build homes.

10.1.1. Respondents, who felt there would be an impact, highlighted that, due to the lower initial costs as a result of not having to purchase the land on which the property is situated, a number of consumers and prospective buyers could risk being “priced out” of the market.

10.1.2. However, respondents who disagreed stated that this risk is largely offset by the perceived availability of financial gain available to property developers who would still be able to sell properties on a freehold basis if the sale of new build leasehold houses was limited as a result of Government policy.

10.1.3. Other respondents highlight that there “are numerous other factors that influence supply and demand,” and therefore the difficulties associated with leasehold are unlikely to solely contribute to the reduction in supply of new build properties.

**11. Question 9: 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?**

11.1. A significant majority (84.21%) of surveyed CILEx members agreed that the Government should 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 the ground rent terms are reasonable.

11.2. Members have however sought assurances that if the Government decide to move towards removing support for the sale of new build leasehold houses through Help to Buy Equity Loan, significant reform to limit the use of onerous ground rents is still required.

11.2.1. If this fails to occur, there is a risk that the move could unfairly impact upon consumers who without the support of a Help to Buy Equity Loan, would not be able to purchase a leasehold property since onerous ground rents would prevent their provision.

11.2.2. The Government should be mindful that the Help to Buy process is considerably complicated already, and this proposed move could further complicate the process. Consideration should therefore be given to the potential additional burden that may be placed on conveyancers.

**12. Question 10: In what circumstances do you consider that leasehold houses supported by Help to Buy Equity Loan could be justified?**

- 12.1. In cases where leasehold can be justified, either through the exemptions listed in 3.2 - 3.4 of the consultation document, or as a result of substantive supporting evidence of leasehold being appropriate, and where ground rents are reasonable (according to our member recommendations in paragraph 16.1 – 16.2), then leasehold houses could be supported by Help to Buy Equity Loan.
- 12.2. However, surveyed members are of the view that the use of leasehold for new build homes in particular should be limited where possible, and that efforts to prevent ground rents from becoming onerous should be made regardless.

**13. Question 11: Is there anything further the Government could do through Help to Buy Equity Loan to discourage the sale of leasehold houses? Please Explain.**

**Yes**

**No**

- 13.1. Surveyed members indicated that the Government may wish to consider if lenders can be encouraged to provide a greater incentive for consumers to purchase properties on a freehold basis, such as by increasing bonus contributions and / or lending a larger percentage on freehold properties.
- 13.1.1. This option could be considered an alternative to simply having lenders refuse to lend on a leasehold basis.

**14. Question 12: What measures, if any, should be considered to minimise the impact on the pipeline of existing developments?**



14.1. Some CILEx members expressed that if any measures were to be introduced to minimise the impact on the pipeline of existing development, that a differed or staggered timetable be considered

14.1.1. If developers attempt to complete contracts more quickly as result of a tight deadline imposed by the Government, there is a risk of a potential increase in workloads for conveyancers that could have a substantive impact upon the work of the conveyancing, and even the housing, market.

14.2. One possible measure suggested by a number of surveyed members was to find incentives to encourage developers to sell new build houses that are currently in the pipeline as freehold rather than leasehold.

**15. Question 13: 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.**

15.1. CILEx does not collate this specific data. However, several members did identify this as an issue, and some offered their experiences:

15.1.1. One member commented that they see unfair practices such as decreased reservations and increased ground rents on new builds in 95% of developments, and that leaseholders are not consulted and / or cannot afford to buy their freeholds.

15.1.2. Another member highlighted that in his experience he frequently sees leases start at excessive levels; in particular on Retirement Properties, the levels of which often exceed service charge limits.

**16. Question 14: 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.**

i) Initial ground rent –

ii) Maximum rate of increase in annual ground rent –

iii) How often the rate of increase could be applied to an annual ground rent -

- 16.1. 93.93% of CILEx members surveyed agreed or strongly agreed with the recommendation that ground rents should start and subsequently remain at a 'peppercorn' (zero financial) level.
- 16.1.1. Of members who provided specific figures for what level the ground rent should initially be, half suggested figures varying between £50 per annum to £150 per annum.
- 16.1.2. 32% specified that an alternative maximum rate of increase could be linked to, and therefore not exceed, the retail price index (RPI).
- 16.2. As a result, CILEx recommends that the initial annual ground rent should start at a 'peppercorn' level unless there are sufficient reasons otherwise. The maximum rate of increase in annual ground rent should either remain at a 'peppercorn' level, or if this is not possible, the rate should instead be linked to the retail price index (RPI).

**17. Question 15: Should exemptions apply to Right to Buy, shared ownership or other leases? If so, please explain.**

- 17.1. 51.61% of surveyed CILEx members expressed that exemptions should not apply to Right to Buy properties.
- 17.2. However, surveyed members were split evenly over whether exemptions for ground rent should apply to cases of shared ownership properties.
- 17.3. As a result, CILEx recommends that greater consideration be given to the extent of exemptions, and whether exemptions are appropriate in cases of shared ownership housing.

**18. Question 16: Would restrictions on ground rent levels affect the supply of new build homes? Please explain why.**

- 18.1. Two thirds (65.63%) of surveyed CILEx members disagreed or strongly disagreed with the notion that restrictions on ground rent levels would affect the supply of new build properties.
- 18.1.1. Explanations given by members largely focused on the ability for developers to still benefit from the potential financial gain of providing new build housing on a freehold basis or on a leasehold basis with restricted ground rent levels.

**19. Question 17: How could the Government support existing leaseholders with onerous ground rents?**

**Question 18: In addition to legislation, what voluntary routes might exist for tackling ground rents in new leases?**

19.1. A number of responses from surveyed CILEx members asked that greater amounts of support be provided to leaseholders who are currently suffering as a result of onerous ground rents.

19.1.1. These CILEx members highlighted that the Government should provide support by establishing a new standard for ground rents on future new build houses.

19.1.1.1. Furthermore, if this were to be complemented by a substantial review into the ability for leaseholders to access legal advice in order to challenge onerous ground rents in the Lands Tribunals for example, existing leaseholders may be able to seek compensation and to re-arrange their onerous ground rent terms.

**20. Question 19: 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 in not classed as an assured tenant, and therefore cannot be issues with a Ground 8 mandatory possession order for ground rent arrears? If not, why not?**

20.1. While cases are rare, a small number of CILEx members involved in conveyancing have, in their experience, had a client request a deed of variation or insurance due to the issues associated with Ground 8 mandatory possession orders (30.30%).

20.2. Despite this however, almost all surveyed CILEx members (96.97%) agreed that the Government should amend the Housing Act 1988 (as amended by the Housing Act 1996).

**21. Question 20: 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 arrangement on private estates should apply? Yes**

**No**

21.1. A majority (93.94%) of surveyed CILEx members strongly agree or agree that the Government should promote solutions to provide freeholder equivalent rights to leaseholders to challenge the reasonableness of service charges for the maintenance of communal areas and facilities on a private estate.

21.1.1. A mechanism that could allow this that the Government may wish to consider commissioning a review of the costs associated with the tribunals, especially in cases of the charges that are made for deeds of covenant consent which, as a number of our members have highlighted, can be excessive, therefore preventing many individuals from accessing justice.

**22. Question 21: 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?**

22.1. A large number of our members highlighted that one area of leasehold reform that should be prioritised is the fees associated with management agents, administration, and landlords faced by consumers. Some felt that consumers are unfairly impacted upon where fees are excessive and unreasonable.

22.2. Other areas of reform that should require prioritising according to our members are; regulation of leasehold management, enforcement via mandatory redress schemes, tackling exit fees, overhaul of lease extensions, increasing the availability of information at the point of sale, and looking to end rent charges as a result of lease conversion.

**For further details**

Should you  
require any  
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