



**Ministry of Housing, Communities and Local Government  
Committee: Leasehold Reform Enquiry**

**A Submission by  
The Chartered Institute of Legal Executives (CILEX)**

**September 2018**



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## **1. Introduction**

- 1.1. The Chartered Institute of Legal Executives (CILEx) is the professional association and governing body 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 approximately 5,600 members of all grades who work in conveyancing.
- 1.2. CILEx continually engages in the process of policy and law reform. At the heart of this engagement is public interest, as well as that of the profession. Given the unique role played by Chartered Legal Executives, CILEx considers itself uniquely placed to inform policy and law reform.
- 1.3. 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.

## **2. General Points**

- 2.1. It is recognised that with the myriad of ongoing and expected work taking place to improve the leasehold sector; implementation cannot be expected to take place in one day. That being said, it is necessary that short term, mid-term and long-term solutions are appropriately prioritised to safeguard those that will be most greatly impacted.
- 2.2. Successful implementation shall require further efforts invested into raising consumer awareness around leasehold assets and the rights of leaseholders with regards to their properties. This may also help tackle the issues relating to negative press of leasehold assets, which currently exacerbate the feeling of being 'trapped in a bad situation' that many leaseholders feel.

## **Government's programme of work on residential leasehold reform.**

### **3. Application to existing leaseholders in both houses and flats.**

- 3.1. CILEx welcomes the Government's efforts<sup>1</sup>, undertaken in conjunction with the Law Commission, to reform the leasehold enfranchisement regime. It is hoped that this work shall provide some comfort to those already caught within the current system.
- 3.2. Initial findings in our ongoing survey demonstrate general support from our members for the terms of reference (ToR) that have been assigned for this piece of work.<sup>2</sup>
  - 3.2.1. There was a consensus amongst respondents of agreement with the ToR intended "to simplify enfranchisement legislation." Many commented that the current enfranchisement regime is overcomplicated, lengthy and problematic.<sup>3</sup>
  - 3.2.2. 66% of respondents agreed, or strongly agreed, with the ToR intended "to reduce overall premiums paid for enfranchisement."
  - 3.2.3. 83% of respondents agreed, or strongly agreed, with the ToR intended "for simpler, clearer and consistent valuation methodology in calculating premiums."
- 3.3. The decision to prioritise enfranchisement reforms for existing leaseholders of houses<sup>4</sup>, has also been welcome, in recognising the acute grievances that these particular leaseholders face. This is especially prudent given the current risk of creating a two-tiered market, following the Government's rightly voiced intentions to prohibit the sale of new residential long lease houses.<sup>5</sup>
  - 3.3.1. Initial findings indicate strong support for this prohibition with 100% of survey respondents to date, in agreement that it is not suitable in most cases to sell houses on a leasehold basis.
  - 3.3.2. As articulated in our previous consultation response to the Department of Communities and Local Government ("Tackling Unfair Practices in the Leasehold Market")<sup>6</sup>, 62% of respondents to a 2017 survey agreed that the prevalence of new build leasehold homes has had a negative impact on consumers. The same proportion disagreed that prohibiting or limiting sale of new build leasehold properties would reduce supply.

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<sup>1</sup> As committed to in: Department for Communities and Local Government, *Government Response: Tackling the Unfair Practices in the Leasehold Market*, (December 2017), page 20, para 72. [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/670204/Tackling\\_Unfair\\_Practices\\_-\\_gov\\_response.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/670204/Tackling_Unfair_Practices_-_gov_response.pdf)

<sup>2</sup> Law Commission, *Leasehold Enfranchisement: Summary of Proposed Solutions for leaseholders of houses*, (July 2018), page 9, para 2.22. <https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2018/07/Solutions-for-Leasehold-Houses.pdf>

<sup>3</sup> One respondent commented: "*Homeowners and many lawyers struggle desperately with the process. It causes great frustration, distress and a lot of complaints.*"

Another respondent voiced: "*This can't come quickly enough. It MUST be VERY streamlined and remove all of the current obstacles and complexity.*"

<sup>4</sup> Footnote 2, page 8, para 2.16.

<sup>5</sup> Footnote 1, page 12, para 38.

<sup>6</sup> CILEx Consultation Response, *Tackling Unfair Practices in the Leasehold Market*, (2017) [https://www.cilex.org.uk/~media/pdf\\_documents/main\\_cilex/policy\\_and\\_governance/consultation\\_responses/cilex\\_submission\\_-\\_leasehold\\_reform\\_consultation\\_-\\_final.pdf?la=en](https://www.cilex.org.uk/~media/pdf_documents/main_cilex/policy_and_governance/consultation_responses/cilex_submission_-_leasehold_reform_consultation_-_final.pdf?la=en)

- 3.4. However, some respondents commented that it was less than clear, with several concurrent and simultaneous projects taking place, how these shall all interact and ultimately impact leaseholders. One good example of this is the aforementioned projects, i.e.: the work undertaken on leasehold enfranchisement, and the intention to implement an outright ban on the sale of leasehold houses.
  - 3.4.1. CILEx respondents maintained reservations that the former may undermine the latter, commenting that a simplified enfranchisement regime might encourage current practices of selling new build properties as leaseholds, where there are no legitimate reasons for doing so.<sup>7</sup>
  - 3.4.2. CILEx anticipates that the enfranchisement project is intended to provide a shorter-term solution for those currently trapped in existing leasehold arrangements. However, the Government's intentions to date, do not provide clarity on which of the two initiatives takes priority once parliamentary time permits for legislative amendments to be made.

#### 4. Should further reforms be introduced?

- 4.1. Research findings, used to inform previous consultation responses<sup>8</sup>, indicated a strong majority of members (97%) who agreed that amendments are necessary to rectify the issues around Ground 8 possession orders under the Housing Act 1988 (as amended by the Housing Act 1996). Whilst the Government has indicated an intention "*to address this loophole*"<sup>9</sup>, further clarity on how and when this shall be achieved would be welcome.
- 4.2. Earlier proposals put forward by a legal sector group consisting of CILEx, The Society of Licensed Conveyancers, Bold Legal Group and The Conveyancing Association<sup>10</sup>, highlighted the following additional reforms for consideration:
  - 4.2.1. In situations where a landlord has become absent, a leaseholder should be entitled to: a). an automatic right to manage, and b). an automatic right to acquire the freehold interest. This would supplement current work undertaken to improve the rights of existing leaseholders.
  - 4.2.2. Measures should be taken to ensure that lease extensions and assignments are subject to standard and reasonable terms.
  - 4.2.3. Personal representatives should have a statutory right to extend a lease on behalf of a deceased estate.
  - 4.2.4. Right to First Refusal for house lessees should be introduced to supplement current work that has been undertaken to empower the rights of these particular leaseholders.

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<sup>7</sup> One respondent stated: "*It would be a better solution for many new housing developments not to be leasehold in the first place. This [enfranchisement] proposal only encourages developers to go down this route.*"

Another warned that the work on leasehold enfranchisement threatens "*Further giving credibility to the practice of leasehold houses rather than freehold houses.*"

<sup>8</sup> Footnote 6.

<sup>9</sup> Footnote 1, para 75.

<sup>10</sup> Legal Sector Group, *Leasehold Reform Proposals*, (2017).

[https://www.cilex.org.uk/~/-/media/pdf\\_documents/main\\_cilex/communications/media\\_releases/legal\\_sector\\_group\\_leasehold\\_reform\\_proposals\\_june\\_2017.pdf?la=en](https://www.cilex.org.uk/~/-/media/pdf_documents/main_cilex/communications/media_releases/legal_sector_group_leasehold_reform_proposals_june_2017.pdf?la=en)

4.2.5. Further reforms are warranted to regulate reserve funds on management blocks. This would supplement commitments and ongoing work that is aimed at reducing ground rents, by ensuring that service charges are also appropriately reduced, and protections for maintenance and repair of properties are in place.

4.2.5.1. It is further noted that 94% of members have demonstrated agreement that ground rents should start and subsequently remain at a 'peppercorn' (zero financial) level.<sup>11</sup>

4.3. CILEx recognises the actions of the Secretary of State for Communities and Local Government in having written to developers to strongly discourage the use of Help to Buy equity loans for leasehold houses.<sup>12</sup>

4.3.1. 84% of our members agree that the application of these loans to leasehold houses should be removed, unless the leasehold can be justified, and the ground rent terms are reasonable.<sup>13</sup>

4.3.2. It may further be prudent to examine how commonhold could be reformed to come into accords with such schemes, given that the development of commonhold is relatively high on the reform agenda.

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

5.1. Whilst CILEx welcomes commitments made to enhance leaseholder rights, greater efforts are still needed to enhance consumer awareness of the leasehold sector and proposed changes.

5.1.1. Initial findings around leasehold enfranchisement indicate that majority of CILEx members consider the biggest issues lie with consumer awareness around costs and processes, not simply issues directly relating to the regime itself.

5.1.2. The indication therein, is that whilst legislative amendments are necessary, the success of reforms are still largely dependent on wider efforts to improve transparency and awareness amongst the public.

5.2. As voiced in earlier consultation submissions,<sup>14</sup> a number of respondents to CILEx surveys have indicated that more focus needs to be paid to substantially review the ability for leaseholders to access legal advice and challenge onerous ground rents.

5.3. CILEx members have further highlighted that fees associated with management agents, administration and landlords need to be prioritised.

5.3.1. Support could be provided in this regard, by focusing greater attention on improving transparency around fees such as service charges (e.g.: through the development of best practices).

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<sup>11</sup> Footnote 6.

<sup>12</sup> Footnote 1, para 47.

<sup>13</sup> Footnote 6.

<sup>14</sup> Footnote 6.

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

- 6.1. Increasing consumer awareness shall empower leaseholders to understand the options that are currently available to them. (paragraph 5.1, above)
- 6.2. Greater awareness more generally amongst the public of leaseholder rights, could help counteract any negative press that may be devaluing leasehold assets (paragraph 5.1, above). This shall help mobilise existing leaseholders long term.
- 6.3. Supplementing consumer awareness with improvements to available redress mechanisms, shall provide further comfort to those who are currently affected by onerous terms (paragraph 5.2, above).
  - 6.3.1. Whilst it is recognised that a substantial review of available advice and redress mechanisms would warrant time and resources, it is essential that existing leaseholders who are already affected by onerous terms, have access to a *present-day* solution that can help to improve their situation.
- 6.4. Developing best practices amongst management agents, administration and landlords, which conform to the principle of price and service transparency, shall help to rebuild trust within the leasehold market (paragraph 5.3, above).

**For further details**

Should you  
require any  
further  
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