

Labour Party Consultation: ‘A New Deal for Leaseholders’

**A Response by
The Chartered Institute of Legal Executives (CILEx)**

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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. Amongst these more than 5,800 specialise 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 members working in conveyancing through a series of past surveys disseminated to our Conveyancing Specialist Reference Group. These views are expanded in more detail below.

General Points

- 2.1 CILEx is glad that the issues relating to leasehold abuses identified in this consultation are being considered as a cross party issue. Pervasive and wide-reaching practices abusing leasehold tenure at the expense of the public have left homeowners vulnerable in their own homes, and it is for good reason that a multitude of reform efforts have already been dedicated, and continue to be dedicated, towards upheaving the sector.
- 2.2 Similarly, to previous consultations that CILEx has responded to, CILEx stresses the importance of leasehold reform and recommends that this be prioritised notwithstanding the wider political climate. The evidence gathered through this consultation, and the multitude of past consultations launched on this topic, including Law Commission proposals for leasehold enfranchisement and commonhold, should not be forgotten and must be used to help promote better opportunities and protections for current and future homeowners.
- 2.3 CILEx references the Labour Party to our earlier consultation responses which we have drawn upon in answering the below questions (see annex 1). Our consistent messaging to date, demonstrates that leasehold issues continue to permeate our broken housing system leaving it unsuitable for the many. Possible solutions have been discussed time and time again and it is now time to see at least some of those solutions realised.

Q1. Should there be any exemptions to the prohibition on new private leasehold properties, and if so, what should they be?

3.1 Provisional research into member opinion demonstrates that in the longer-term, it may be useful to abolish leasehold interests by gradually phasing out this type of tenure. As the Labour Party rightly point out, the commonhold vehicle could provide a suitable alternative, however CILEx is conscious that increased uptake of commonhold shall still require an adjustment period rendering it a longer-term option for remedying the injustices in homeownership.

3.2 Nonetheless, CILEx has long welcomed the abolition on the sale of residential long leases for houses which do not justify the use of the leasehold model in governing the maintenance and upkeep of communal areas. CILEx members have continuously expressed their strong support for such a ban with 87.5% of surveyed members agreeing or strongly agreeing that it is not suitable in most cases to sell houses on a leasehold basis, and a majority opinion that an increase in leasehold homes has had a negative impact on the market and consumers to date.

3.3 Should a prohibition on new private leasehold properties be introduced, CILEx recognises that the following exemptions may be warranted to account for special arrangements in which the original freeholder should retain some degree of control over the premises. These exemptions include:

3.3.1 Shared Ownership Schemes

3.3.1.1 CILEx considers that there may be alternative arrangements available for accommodating shared-ownership which do not rely on leasehold interests, such as the commonhold framework. However, until these alternative models have been adequately explored CILEx recognises that there may still be a need for the leasehold model in this context to account for the rent chargeable in recognition of the landlord's retained equity in the premises.

3.3.1.2 If shared ownership is included as an exemption to any prohibition on private leasehold properties, there would need to be safeguards in place to ensure that all terms, particularly those relating to staircasing are fair and reasonable. Anecdotal evidence suggests that this is not always the case, with problems arising where shared ownership leases are non-compliant with model leases.

3.3.1.3 In addition, CILEx emphasises that leaseholders under shared ownership schemes should still enjoy security of tenure. The rationale for such schemes is to provide a helping hand for those who would not be able to financially secure a property on their own. As such, leaseholders should be able to trust that these schemes are designed to ultimately help not hinder, paving the way to a future freehold.

3.3.2 Retirement Leases

3.3.2.1 It has been suggested in parallel proposals that retirement leases may also provide a justifiable exemption to any ban on the sale of residential long leases. However, in this context, CILEx members have provided disparate views.¹

3.3.2.2 CILEx recognises that such properties may require additional support and services, however stresses once again that, where possible, alternative arrangements should be adopted as opposed to exceptions to the proposed prohibition.

3.4 Whilst it is recognised that there may be some justifiable exemptions from the ban on new leasehold properties, CILEx strongly maintains that leaseholders should not be expected to pay unreasonable fees nor fees which bear them no return. In addition, any fees which are charged over the property for particular services or as a result of unique relationships, need to be transparent, with the ability for leaseholders to challenge them where they are found to be onerous. To this end, CILEx emphasises the importance of greater regulation over managing agents, strengthened redress mechanisms for leaseholders and greater transparency around admin and service charges incurred.

Q2. What changes need to be made to commonhold to ensure it can become the default tenure for new flats?

3.5 CILEx is concerned by the narrative that leasehold abuses can be fixed by simply converting to a commonhold tenure. Whilst CILEx recognises the benefits of introducing commonhold in providing an alternative form of tenure so that consumers have a wider choice in homeownership, our members have indicated that efforts should be concentrated on reforming the leasehold sector first and foremost to provide a present-day solution to existing leaseholders currently caught in the leasehold trap.

3.6 Nonetheless, CILEx recognises the Labour Party's suggestion that introducing commonhold tenure as a default may be a more suitable option for new build developments. Herein, it is important to recognise the need for a 'culture change' in order for commonhold to effectively operate, as the lack of uptake of this form of tenure since its inception demonstrates that there is still a hesitancy to develop, invest or purchase in commonhold properties.

3.6.1 In this regard, CILEx members have previously been divided, judging from their own experiences, as to whether an average purchaser would be interested in, or capable of, managing their own blocks, with a slight majority indicating that this would not often be the case. For example, one member commented:

"My experience is that many residents are disengaged with the management of their development and are often reluctant to participate even when they are shareholders

¹ CILEx Response, *Ministry of Housing, Communities and Local Government Consultation – Implementing reforms to the leasehold system in England*, November (2018).

in the company that owns the freehold. You do come across some residents who like to participate and enjoy the ability to join in decision making but a great many do not and simply see their landlord/management company as an adversary who is constantly demanding money from them. Residents are frequently resentful about major works on their developments including about having to pay towards works on the wider estate which they feel do not benefit them directly. Whilst it can be argued that a greater opportunity for control and input should be welcomed, I am not convinced it will happen in practice.”

3.6.2 Accordingly, whilst 69.6% of CILEx members have previously found commonhold to be more favourable than leasehold in the sense that it is theoretically less adversarial, without the relevant culture change in place to ensure proper engagement in the commonhold structure from all relevant parties, there is a risk that the commonhold framework may not always be the most suitable, or popular, default option for the market.

3.7 Alongside a wider culture change, other practical recommendations made by CILEx for strengthening the commonhold model as an alternative form of tenure can be found within CILEx’s earlier submission to the Law Commission consultation on commonhold reforms.²

Q3. Do you agree with our proposals to restrict ground rents to zero, or a peppercorn, for new build properties?

3.8 93.9% of CILEx members have previously agreed or strongly agreed that ground rents should start and subsequently remain at a ‘peppercorn’ (zero financial) level. Majority of survey respondents did not see any justifiable reasons why ground rents on new leases should not be capped, and have previously supported the suggestion that a ‘peppercorn level’ be quantified as 0.1% of the property value, up to a maximum of £250 a year.

3.8.1 Amongst those that did identify potential reasons, these were largely focused around concerns that: 1). ground rent caps may stunt development, or, 2). ground rent caps may dissuade landlords from effective management over leasehold properties. However, CILEx would like to highlight that these concerns represented the minority view taken.

3.8.1.1 With regards to the first point, CILEx would also like to iterate previous research which evidenced that 65.63%³ of surveyed members disagreed or strongly disagreed that ground rent caps would affect the supply of new build properties. CILEx stresses the importance of systemic changes in the market to rebalance the equality of arms between landlords and leaseholders. It is paramount that this shift is realised to remedy the broken market which is no longer fit for purpose; in turn we hope to see investment and development trends adapt for the better.

² CILEx Response, *Law Commission Consultation – Reinvigorating Commonhold: The Alternative to Leasehold Ownership*, March (2019).

³ See footnote 1.

3.8.1.2 With regards to the second point, CILEx does not foresee that caps will greatly impact the level and service of property management; the costs associated with upkeep and maintenance should fall within the service charges that leaseholders pay. There are current mechanisms in place to ensure that these charges remain reasonable and transparent (albeit CILEx would advocate for better redress mechanisms on this point), but landlords should not be relying on ground rent fees for these purposes.

Q4. Do you agree with our proposal to set the maximum ground rent chargeable at 0.1% of property value, with a cap of £250 a year?

3.9 As stated above (paragraph 3.8), CILEx welcomes the imposition of ground rent caps to reflect a nominal/‘peppercorn’ level and finds the measure of 0.1% of the property value, with a cap of £250 a year, to be a sensible suggestion for quantifying this. This is in keeping with the consensus that we received from members on previous counts.

Q5. Do you agree with our proposed formula to allow leaseholders to buy the freehold to their home, or convert to commonhold?

3.10 CILEx conveyancing practitioners have indicated that there is a need to simplify the current valuation methodology for enfranchisement in order to prevent any ambiguities or uncertainties as to how premiums shall be calculated. This is so that both parties are better positioned to make an informed decision at the outset. This principle should similarly apply for commonhold conversions following reforms to make these conversions more accessible.

3.10.1 Amongst members surveyed, 83.7% of members agreed or strongly agreed that simplification is needed, not only for the benefit of the parties to the transaction, but also for their conveyancers, evidencing the struggle that even practitioners face in respect of the current process. This has been noted to push up costs, with anecdotal information suggesting that specialist surveyors in leasehold valuation are needed to navigate the current framework due to its complexity.

3.10.2 One respondent shared their own experiences of the manner in which ambiguities and complexity within the valuation process has impacted leaseholders:

“There is constantly changing case law on valuations and when prospective enfranchisees obtain legal advice before making their decision, that advice has a very limited lifetime. They also have very little certainty over the premium depending on how the case law and various ratios applied to the pricing calculation.”

3.10.3 Crucially, this complexity within the valuation methodology has resulted in a vacuum of consumer awareness surrounding the costs of enfranchisement (something our members identified as the second most problematic issue with the enfranchisement regime, shortly after consumer awareness of processes). CILEx thereby urges that any new valuation methodology must introduce a water-tight formula that can be easily understood by consumers, easily applied by practitioners and which may

provide a consensus so that less time and costs are wasted on disputing premiums before the Tribunal.

3.11 In determining a new simplified formula, 71.1% of CILEx members welcome the removal of marriage value. Such a formula was considered by majority of respondents to be able to help in driving premiums down and in avoiding the need for professional valuation costs.⁴ As such, CILEx provisionally agrees with the Labour Party's approach in offering one simple formula for valuation which would not be dependent on marriage value.

3.12 In addition, given wasted time and costs associated with contested valuation, CILEx members have previously recommended that the use of a single valuation expert would be a realistic and cost-efficient way of solving valuation disputes without having to undergo the lengthy process of involving the Tribunal. To ensure certainty and fairness in this process, CILEx stresses the importance for this valuation expert to be an independent third party so that the valuation process does not become unduly weighted in favour of either party. As such CILEx further supports the Labour Party's suggestion for an independent valuation service to help avoid contested valuations where possible.

Q6. What should we define as a 'longer lease' for the purposes of a new, simple formula for enfranchisement?

3.13 CILEx has not received any member feedback on this point in relation to the Labour Party's specific proposals for valuation.

Q7. Do you agree that there should be a new route for redress for leaseholders suffering from unreasonable costs and conditions?

3.14 CILEx has continually lobbied for stronger redress mechanisms to help provide existing leaseholders with a present-day solution to challenge onerous terms and unreasonable costs.

3.14.1 CILEx members previously identified a lack of consumer awareness around leasehold costs and processes as amongst the biggest problems in the current system, and accordingly any new routes established to strengthen redress mechanisms must be clearly communicated to, and accessible by, the consumer. Simplification of the current redress process would thereby be welcome in removing any unnecessary complexity which makes it difficult for leaseholders to access the support that they need.

3.14.2 In addition, CILEx welcomes any future efforts made by industry, to do more in making consumers aware of how to complain and seek redress where the terms of their agreement are found to be unreasonable. In order to facilitate these efforts, CILEx recommends building upon complaints procedures that already exist in the market including, for example, redress schemes provided by The Property Ombudsman and National Trading Standards.

⁴ 53.5% of surveyed members agreed that a simple formula would help to drive premiums down, and a further 62.8% agreed that this would also avoid the need for professional valuation costs.

3.14.3 Supplementing consumer awareness with improvements to available redress mechanisms, shall provide further comfort to those who are currently affected by onerous terms. 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.

Q8. What types of covenants or administration fees should be permitted and what is a reasonable level to charge?

3.15 CILEx believes that maximum fees should be set for the services and information provided by managing agents and freeholders. Respondents emphasised to CILEx that in their experience managing agents and freeholders have been able to charge excessive fees to date, and 97% of members thereby agreed that caps should be put in place to limit these practices.

3.16 In addition, CILEx members have previously called for an end to exit and event fees (including within retirement villages), voting this as the second top priority amongst other proposals for improving transparency and fairness within the market.⁵

3.17 Alongside recommendations for capped fees, one other notable change that CILEx, along with other stakeholders, have previously called for is the presence of reserve funds to be mandatory in the context of leasehold schemes to safeguard against sudden and excessive emergency fees and to provide homeowners with greater transparency around cost contributions. CILEx is of the opinion that the same should apply in the context of commonhold contributions, with 72.2% of survey respondents voicing their agreement that reserve funds should be compulsory for a Commonhold Association.

Q9. Do you agree with our proposals to abolish forfeiture on long leases?

3.18 70.8% of CILEx members agree that the right of forfeiture should be abolished altogether, as it is a draconian remedy which unjustifiably provides landlords with the windfall from the sale of a property and is thereby not only archaic but unfair for homeowners.⁶

3.19 This reform, alongside reforms to remedy Ground 8 possession orders, must be prioritised; the solutions are simple, have been backed by the sector and have long been needed to address the injustices caused by piecemeal legislation.

⁵ Members were asked to prioritise the following potential reform areas: Reasonable fees and guaranteed timescales; mandatory redress schemes; end to exit fees; simplification of freehold acquisitions; lease extensions overhaul; right to manage overhaul; section 20 notice levels increase; comprehensive insurance of properties; management regulation; marketing information at the point of sale; end to rent charge lease conversions. Members chose 'end to exit fees' as the second highest priority issue out of this list.

⁶ Member comments on this topic have previously included: "On long leases the principle of forfeiture seems antiquated."; "The lessee/commonholder should be allowed to be able to enjoy the property without the risk of forfeiture for non-payment of ground rent or even more worrying when the Lease converts to an AST [Assured shorthold tenancy] when the rent is more than £250 outside London."; "Why should a landlord take the benefit of the premium when the lease is created and have another bite at the cherry later on? It is not equitable."

Q10. What more could be done to give leaseholders more control over management of their buildings?

3.20 CILEx has not received any member feedback on this point in relation to the Labour Party's specific proposals.

Q11. How can we best ensure effective management of commonhold or Right to Manage sites?

3.21 Previous research findings have found unanimous agreement amongst surveyed members of the power imbalance within the management of leasehold properties, whereby property agents are usually appointed by the landlord. CILEx thereby welcomes reforms seeking to place management control back in the hands of leaseholders, by both enhancing Right to Manage provisions and strengthening the ability for leaseholders to appoint their own agents.

3.22 Additional recommendations previously put forward by CILEx members for empowering leaseholders in making management decisions have included reforms to improve regulation and accountability when leaseholders and tenants intend to challenge poor services.

3.22.1 Respondents commented that the process of redress can often be complicated and time-consuming and can prove daunting and inaccessible without legal representation. As a result, many individuals are put off from challenging managing agent fees. Accordingly, a significant proportion of members have previously indicated that a new regulatory approach is needed to better empower leaseholders to manage the quality and cost of the services they receive.⁷

3.22.2 The regulation of third-party managing agents shall be particularly relevant going forward for mitigating any issues that might arise where a Commonhold Association/Right to Manage site/RTA has delegated its management functions to external intermediaries (albeit it is recognised that leaseholders and commonhold owners would be better placed to prevent any misconduct). CILEx considers that there is a strong likelihood of this happening in the short-term, given the aforementioned need for a cultural shift in thinking before these models of self-management truly take off (see paragraph 3.6 above). As such, despite any incentives put in place to encourage market uptake, it is unlikely that self-management of leasehold properties or commonholds will take place overnight. CILEx is therefore mindful that where management functions are delegated out in this way, managing agents should not be in a position to abuse this dependency.

⁷ For more information and detail around CILEx's recommendations for how to implement this new regulatory approach and ensure effective management of commonhold or Right to Manage sites, please see: CILEx Response, *The Department for Communities and Local Government Call for Evidence: Protecting Consumers in the Letting and Managing Agent Market*, November (2017); CILEx Response, *Law Commission Consultation – Reinvigorating Commonhold: The Alternative to Leasehold Ownership*, March (2019).

ANNEX 1

CILEx drew from the following consultation responses to inform this response:

- CILEx response, *Law Commission Consultation: Reinvigorating Commonhold – the alternative to leasehold ownership*, March (2019).
- CILEx response, *Law Commission Consultation: Leasehold Home Ownership – Buying your freehold or extending your lease*, January (2019).
- CILEx response, *Ministry of Housing, Communities and Local Government Consultation: Implementing reforms to the leasehold system in England*, November (2018).
- CILEx Response, *Ministry of Housing, Communities and Local Government Committee: Leasehold Reform Enquiry*, September (2018).
- CILEx response, *Improving the home buying and selling process: A call for evidence from The Department for Communities and Local Government*, December (2017).
- CILEx Response, *The Department for Communities and Local Government Call for Evidence: Protecting Consumers in the Letting and Managing Agent Market*, November (2017).

For further details

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