

**Ministry of Housing, Communities and Local Government  
Consultation – Implementing reforms to the leasehold system in  
England**

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

**November 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 within 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. 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 opinions on how best to implement the proposals put forward, and the possible impact that the reforms may have. These are expanded in more detail below.

## 2. General Points

- 2.1. CILEx greatly welcomes both the proposed ban on residential leasehold houses and the proposed caps for ground rent on all leasehold properties. People should be made to feel safe and secure in their own homes, and it is hoped that these changes can help counter the well-publicised abuses amongst landlords exploiting their dominant position for monetary gain.
  - 2.1.1. Members have continuously expressed strong support of the proposals put forward for a ban on the sale of residential long leases granted on houses. Previous research findings evidenced strong member agreement (62%) that an increase in leasehold homes has had a negative impact on the market and consumers,<sup>1</sup> with trends in member opinion highlighting a growing consensus and overwhelming majority in favour of the ban.<sup>2</sup>
  - 2.1.2. An equally large consensus from members has previously advocated for nominal ground rents.<sup>3</sup> These findings supported the stance that ground rents should not only begin at, but continue to remain at, a peppercorn level. It is thereby welcomed that the proposals put forward suggest an indefinite cap of £10 per annum.

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<sup>1</sup> CILEx Response, Tackling Unfair Practices in the Leasehold Market: Consultation from the Department of Communities and Local Government", (July 2017), p.3, para 2.2.

<sup>2</sup> See: Footnote 1, p.5, para 7.3 (July 2017); research findings obtained in Sep-Oct 2018 evidenced an 87.5% majority of respondents agreed/strongly agreed that it is not suitable in most cases to sell houses on a leasehold basis, and more recent research findings indicate that an 85.37% majority of respondents are in support of the government ban proposed within this consultation.

<sup>3</sup> Footnote 1, p.9, para 16.1: 93.9% of surveyed members agreed or strongly agreed that ground rents should start and subsequently remain at a 'peppercorn' (zero financial) level.

- 2.2. CILEx is happy to see such progress on implementing Government commitments, and it is hoped that this shall continue to be a high priority in improving the leasehold sector for consumers and eliminating any risk of abuse.
- 2.2.1. As previously articulated, CILEx would welcome greater clarity around the multiple ongoing and expected leasehold reform projects.<sup>4</sup> Such information would be useful to help legal practitioners and the wider public better prepare for likely overhaul in the sector.
- 2.2.2. CILEx members have identified the following additional areas as top priorities within leasehold reform: raising consumer awareness; reasonable fees and timescales; an end to exit fees; protecting vulnerable leaseholders from repossession<sup>5</sup>, and regulation of estate and managing agents.
- 2.3. To help existing leaseholders of houses who do not fall within the scope of the proposed ban, CILEx welcomes the work currently undertaken by the Law Commission to: simplify the enfranchisement regime; remove archaic differences between the treatment of leaseholders of flats and houses; allow for the collective enfranchisement of houses on an estate; and, for reducing the overall costs involved in the enfranchisement process.
- 2.3.1. Implementation of the current proposals should ideally coincide with enfranchisement reforms. This may help to mitigate any adverse impacts that the proposals could otherwise have on the value of existing leasehold houses which do not fall under the proposed ban due to timing.<sup>6</sup>
- 2.4. CILEx recognises that matters within the December announcement, which have not been referenced herein, were identified as changes already actionable outside the consultation.<sup>7</sup> However, CILEx would like to draw the attention of the Ministry of Housing, Communities and Local Government (MHCLG) to the topic of Ground 8 mandatory possession orders. Whilst this matter was not expressly mentioned within the December announcement, it did fall within the scope of the consultation on “*Tackling Unfair Practices in the Leasehold Market*” (conducted by MHCLG’s predecessor in July 2017). Almost all CILEx members who were surveyed on this issue (96.97%) agreed or strongly agreed that Ground 8 possession orders need to be amended.<sup>8</sup>
- 2.4.1. Member comments were largely of the opinion that the application of Ground 8 possession orders is at odds with the true intention behind residential long

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<sup>4</sup> CILEx Submission, Ministry of Housing, Communities and Local Government Committee: Leasehold Reform Enquiry, (Sep. 2018), p.3., para 2.1.

<sup>5</sup> Please see paragraph 2.4.

<sup>6</sup> Some of our members did voice apprehension that without protections in place (such as improving the accessibility and affordability of enfranchisement), the ban could negatively impact existing leaseholders of houses: “*This will have a detrimental effect on values of existing leasehold properties and may make it difficult for people to sell or mortgage those properties.*”; “*Effectively a two tier system will be created with those who currently own leasehold houses struggling to sell and having market value affected.*”

<sup>7</sup> Sajid Javid, *Leasehold and commonhold reform: Written statement - HCWS384*, (21<sup>st</sup> December 2017): <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2017-12-21/HCWS384> ; Consultation Paper, p.8. para 1.9.

<sup>8</sup> Footnote 1, p.11, para 20.2. Please note that the remaining percentage of respondents had selected an ‘I don’t know’ option (none of our members disagreed that Ground 8 possession orders should be amended).

leases,<sup>9</sup> and blurs the distinction between short term and long-term leaseholds, whilst simultaneously leaving leaseholders vulnerable in their own homes.

2.4.2. Whilst CILEx recognises that the £10 ground rent caps shall safeguard against future leaseholds being converted into an assured tenancy, there is still a need for further amendment to protect existing leaseholders as well as others who shall be exempt from the proposed caps.

2.4.3. CILEx urges for this matter to be rectified so that all leaseholders can feel comforted to know that they will not be unreasonably evicted from their properties on disproportionate grounds.

### **3. Responses to Specific Questions**

#### **Q1. Do you have views on any further means to implement the ban on unjustified new residential long leases being granted on non-exempt houses?**

3.1. CILEx members have continuously expressed their strong support for a ban on the sale of residential long leases for houses.<sup>10</sup> 85.37% of surveyed members agreed or strongly agreed with the proposals put forth by the consultation on how this ban should operate.

3.2. CILEx welcomes the benefits of implementing this ban via restrictions on registering land interests with HM Land Registry. This may act as a catch-all for any contracts which mistakenly or intentionally attempt to evade the ban, by preventing the transaction at the very point of the transfer of title. The approach rightly removes any extra impetus or responsibility falling on leaseholders to protect their own rights; a realistic approach given the current imbalance of bargaining power between landlord and leaseholders, coupled with the lack of consumer awareness within the leasehold sector (something our members have identified as a primary concern).

3.3. To help identify situations where a residential long lease has been granted on a house legitimately, it is suggested that the relevant list of prescribed clauses under the Land Registration Rules 2003 Schedule 1A include a new clause stipulating the exemption under which the lease has been granted.

#### **Q2. Do you have any views on how to provide appropriate redress for the home owners should (a) a long lease be incorrectly granted upon a house...**

3.4. CILEx agrees that in such situations the freehold interest should be transferred at the earliest opportunity by merging the leasehold and freehold interests together, with the Land Registry possessing the requisite power to do so. It is advocated that this be done at no extra cost to the leaseholder, given that the error will most likely lay elsewhere.

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<sup>9</sup> Member comments included: “*This was never the intended consequence of the Housing Act.*”; “*That was never the original intention behind the legislation.*”; “*It’s an unintended consequence that should be rectified.*”

<sup>10</sup> Footnote 2.

3.5. Some CILEx members did identify the Legal Ombudsman or Property Ombudsman as avenues that could be taken for seeking redress in these situations, however majority of our members did not believe that any of the existing redress schemes would be suitable in these circumstances.

3.5.1. This once again emphasises the need for better redress mechanisms for use by leaseholders, which CILEx has called for on previous occasions.<sup>11</sup>

...or (b) a long lease be granted at a ground rent in excess of the cap, after the legislation has taken effect?

3.6. CILEx members suggested that the best method for rectification in this instance would be a deed of variation to reduce the ground rent in line with the £10 cap. Once again, it is emphasised that this should be issued at no extra cost to the leaseholder.<sup>12</sup>

3.6.1. It was further suggested that prior to completion of the deed of variation, any ground rents demanded in excess of £10 should not be recoverable, with the leaseholder entitled to issue a unilateral notice asserting that the ground rent should fall within the statutory cap.

3.7. There should additionally be provision for any ground rents already paid in excess of the £10 cap to be reimbursed to the leaseholder; herein the Tribunal may be given discretion in exceptional circumstances to determine necessary repayment arrangements for these purposes.

Q3. To ensure there is a workable definition of a 'house', we would welcome your views on the type of arrangements and structures which should or should not be considered to be a 'house' for the purpose of the ban on new leasehold houses.

3.8. Survey results identified the following trends that our members deem suitable for the definition of a 'house' for these purposes: a). the property should be self-contained; b). built for human habitation; c). there should be an absence of communal areas; d). repairing and insurance covenants should be in place; e). planning consent should include residential use; f). there should be no separate dwellings (however semi-detached properties and terraced properties should not be excluded); g). there should be exclusive rights of access and occupation.

3.8.1. It was emphasised that extra care may be necessary to prevent developers from retaining a roof space in the hopes of circumventing the new definition. The same risks may equally arise with developers attempting to limit rights of access to the property.

3.8.2. CILEx further emphasises that in light of parallel consultations for Planning Reforms,<sup>13</sup> the definition of a house needs to take account of a suspected

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<sup>11</sup> See: Footnote 1, p.12, para 22.2; Legal Sector Group, Leasehold Reform Proposals, (June 2017), para 3.

<sup>12</sup> Member comments on the matter: "Automatic deed of variation at no cost to the Lessee to reduce the ground rent to £10 with no further penalties for the tenant. Although if conveyancers do their job correctly, this should not happen"; "Legislate for the landlord to be obliged to enter into a Deed of Variation to a reasonable rent."

<sup>13</sup> Ministry of Housing, Communities and Local Government, *Planning Reform: Supporting the High Street and Increasing the Delivery of New Homes*, (October 2018), p.11, para 1.7.

increase in commercial units (i.e.: hot food takeaways) which have been converted for residential use.

- 3.9. Members suggested that the following should not fall within the definition of a 'house' for these purposes: a). maisonettes; b). coach houses; c). where there is any kind of horizontal division within the property; d). garages/any detached unit on the premises; e). a property whose use is not defined as residential with regards to the Town and Country Planning use classes order<sup>14</sup>; f). a property without a ground floor; g) a property where access over common areas is required to reach the entry doors; h). Holiday Developments subject to restrictions preventing full time occupation; i). Moveable dwellings.

Q4. With the exception of community-led housing, do you agree that any exemptions provided which allow the continued granting of new long leases on houses should have their ground rents restricted as proposed?

- 3.10. Whilst it is recognised that there may be some justifiable exemptions from the ban on new leasehold houses (i.e.: to account for special arrangements), 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.

3.10.1. To this end, CILEx emphasises the importance of greater regulation over managing agents, and strengthened redress mechanisms for leaseholders.

- 3.11. Survey findings reflect that the majority of respondents are in agreement that ground rent caps should continue to apply within the exemptions provided.

3.11.1. In the context of shared-ownership, 75.86% agreed or strongly agreed that ground rent caps should still apply.

3.11.1.1. CILEx recognises that specifically within this context, charging a rent is justified in recognition of the landlord's retained equity within the premises. However, it is important that rent payable in relation to the landlord's retained equity, and ground rent (which relates to the leaseholder's equity) are not converged into one umbrella category. The two types of rent should be kept as distinct from one another; following which there is no reason for why the ground rent cap of £10 per annum should not apply in cases of shared-ownership.<sup>15</sup>

3.11.2. In the context of inalienable trust land, 56.67% agreed or strongly agreed that ground rent caps should still apply.

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<sup>14</sup> <http://www.legislation.gov.uk/ukxi/1987/764/contents/made>

<sup>15</sup> Member comments on the matter: "*peppercorn ground rent for share of ownership [and] existing arrangements to be kept in place for rent due on unowned share*"; "*Must distinguish between ground rent and shared ownership rent. Ground rent should be treated in the same way as for any other property.*"

3.11.2.1. As a charitable organisation, it follows in principle that ground rents charged by the National Trust should not be onerous nor opaque. Of course, reasonable service charges for the maintenance of inalienable land would still be permissible.

3.11.3. In the context of excepted sites on Crown land, 55.17% agreed or strongly agreed that ground rent caps should still apply.

3.12. Significantly, even in the context of community-led housing 73.33% of survey respondents agreed or strongly agreed that the ground rent caps should continue to apply. Whilst 86.67% of our members did concede that they have not come across community-led housing providers which do not rely on ground rent income, it is suggested that there are other mechanisms which can be adopted to maintain the revenue stream in a more transparent and accountable manner (consultation paper, para 3.22).

3.12.1. Along a similar vein, in situations where a modern ground rent may be justified as it allows for discounts of the premium, alternative mechanisms to allow for repayment are advisable (e.g.: registering a charge on the property).

3.12.2. Creating alternative arrangements in these instances, rather than exceptions, is recommended so that the hard-line commitment for ground rent caps is not softened or blurred.

Q5. Are there any other conditions that should be applied to exemptions from the leasehold house ban to make them acceptable to consumers?

3.13. As stated above (paragraph 3.10), CILEx maintains that all leaseholders should be protected against excessive or unreasonable fees. However, CILEx members have warned that excessive fees are already being charged by landlords and/or managing agents in the form of service charges and admin costs.<sup>16</sup>

3.13.1. For instance, anecdotal evidence obtained from member surveys has suggested that with regards to shared-ownership leases, unreasonable costs have been charged for work involved in staircasing.

3.13.2. CILEx foresees that without further regulation and adequate redress mechanisms in place, the risk of this happening may increase following implementation of the proposed ground rent caps, as developers seek to replace lost revenue streams.

3.13.3. To limit these practices, it is suggested there should be added protections and greater transparency around admin and service charges incurred. The same should apply to ground rent fees in the context of leaseholders within houses exempt from the proposed ban. This is especially relevant given that some of the exemptions being considered (e.g.: community housing and retirement villages) are likely to involve vulnerable persons.

3.14. CILEx recognises that the exemptions listed have been listed on the grounds that there may be justifiable reasons by which the original freeholder should retain some

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<sup>16</sup> See: Footnote 1, p.12, para 22.1; Footnote 10 (Legal Sector Group Proposals), para 1.

degree of control over the premises. However, CILEx stresses that leaseholders should be entitled to enjoyment of the premises as if it were exclusively their own home. As such, protections are needed against landlords requiring leaseholders to obtain prior consent and/or pay permission fees for reasonable internal alterations to the property.

- 3.15. CILEx additionally suggests better protection for residential long leases, in the form of an extended original term. CILEx has previously endorsed a minimum of 250 years for new leases,<sup>17</sup> however members have also voiced a desire for leases to be granted on 999-year terms.
- 3.16. As previously mentioned (paragraph 2.4 above), CILEx strongly advocates for amendments to Ground 8 possession orders. This is of particular significance to ensure that existing leaseholders can feel safe and secure in their own homes without fear that their properties will be repossessed on disproportionate grounds.
- 3.17. CILEx would strongly emphasise that the above protections (para 3.13-3.16) should also apply to leaseholders of flats and other property which do not fall within the current ban. Onerous terms negatively impact all leaseholders and it is paramount that conditions are put in place to protect against their use in all circumstances.
- 3.17.1. This approach supplements the stance taken by the Law Commission in their work on enfranchisement reforms; removing incoherent and archaic distinctions in the treatment of different leaseholders.

#### Q6. Do you agree that there should be an exemption for shared ownership houses?

- 3.18. The majority of survey respondents acknowledged the need for shared ownership houses to be exempt from the proposed ban.<sup>18</sup> There were some suggestions for the use of commonhold in these situations, however it is cautioned that until further reforms are undertaken to simplify and clarify the commonhold system, there should not be an imposed obligation on shared ownership houses to take this form.
- 3.19. Shared ownership houses as an exemption to the ban need to ensure that all terms, particularly those relating to staircasing are fair and reasonable. Anecdotal evidence suggests that problems have occurred in the past largely owing to the fact that shared ownership leases are non-compliant with model leases.
- 3.19.1. More effective redress mechanisms to help leaseholders struggling under onerous terms would help in this respect.

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<sup>17</sup> Footnote 10 (Legal Sector Group Proposals), para 4.

<sup>18</sup> 63.15% of survey respondents from a previous survey agreed or strongly agreed that properties in shared-ownership with a restricted staircasing lease is a justified exemption to the ban. More recent survey findings found that 53.33% of survey respondents agreed or strongly agreed with shared-ownership as an exemption to the ban.

Member comments on the ban for leasehold houses included: “*Other than for shared ownership (where there must be a tenancy of sorts) there is no good reason for houses to be sold as leasehold titles.*”

3.20. 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.

3.20.1. CILEx would like to reiterate the point raised above (paragraph 3.11), whereby ground rent caps should still continue to apply (given the distinction between ground rents and rents charged over the landlord's retained equity). This approach should safeguard against shared ownership houses falling within the classification of an assured tenancy. In any case, the desired amendments to Ground 8 possession orders should help to safeguard that leaseholders under shared ownership schemes enjoy this security of tenure.

Q7. Do you agree that there should be an exemption for community-led housing developments such as Community Land Trusts, cohousing and cooperatives?

3.21. The survey highlighted that respondent views on this matter were largely disparate. This was mostly owing to the varying levels of exposure that respondents have had with these developments, coupled with the fact that 'community-led housing' encompasses many different types of initiative.

3.21.1. Amongst opinions raised was a suggestion that where community led-housing gives rise to a tenancy (except for cases of shared-ownership), this ought to predominantly focus on granting short term leases, so that housing becomes routinely available for those in need of assistance.

Q8. We would welcome views on the features or characteristics that should be included within a definition of community-led housing for the purpose of an exemption?

3.22. CILEx members identified that the definition for community-led housing needs to: a). require that the property is part of a scheme led by Housing Associations or Local Authorities, b). that the scheme is for charitable purposes only, c). that the housing is for use by the community.

Q9. Do you agree that there should be an exemption for land held inalienably by the National Trust and excepted sites on Crown land?

3.23. CILEx welcomes that this exemption is solely intended to apply to inalienable trust land, and thereby shall not apply across the board to all land held by the National Trust.

3.23.1. A majority of survey respondents (56.67%) neither agreed nor disagreed with exempting inalienable National Trust land from the proposed ban on leasehold houses.<sup>19</sup>

3.24. With regards to excepted sites on Crown land, survey respondents were largely passive on this matter, (again mostly owing to the varying levels of exposure that respondents have had with these developments; coupled with the particularities of each case).

3.25. CILEx is reassured that these exemptions are not intended to have a major impact, given the unlikelihood of new developments taking place over inalienable trust land and excepted sites on Crown land.

Q10. Do you agree that the law should be amended to allow the inclusion of newly created freeholds within existing estate management schemes?

3.26. Survey respondents revealed strong support for newly created freeholds to be included within existing estate management schemes. 83.34% of respondents agreed or strongly agreed with this proposal, with many commenting that this amendment would make a lot more sense in practice, would eliminate incoherent distinctions and would be helpful in creating a level playing field for all.

3.27. CILEx recommends that this inclusion be supplemented with the reforms proposed under question 22 for freeholders to enjoy equivalent rights as their leasehold counterparts within the estate management scheme. It is only right that those living in the same estate, paying for the same services, should be entitled to the same rights in relation to those services.

Q11. Are you aware of any other exceptional circumstances why houses cannot be provided on a freehold basis that should be considered for an exemption, in order to protect the public interest or support public policy goals?

3.28. Within the context of retirement leases, survey respondents were largely divided on whether this should or should not be an exemption to the ban on residential long leases granted over houses. CILEx recognises that such properties may require additional support and services, however once again would stress that, where possible, alternative arrangements should be adopted as opposed to exceptions to the ban.<sup>20</sup>

3.28.1. CILEx would like to reiterate previous survey findings which identified the removal of exit fees (event fees) as an area of reform that our members

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<sup>19</sup> However, previous survey results identified that a majority of 57.89% of members agreed or strongly agreed with properties on National Trust land being exempt, in appreciation of the Trust's role as a custodian of national assets.

<sup>20</sup> Please see above, paragraph 3.12.1, on situations in which such housing has been provided on a discounted basis.

believe should be prioritised.<sup>21</sup> A possible solution proposed by CILEx, at the very least, is for a restriction to be put in place such that event fees are only permitted in situations where they are directly credited to the requisite reserve fund.<sup>22</sup>

Q12. Do you agree that there should be no further transitional arrangements after the commencement of the legislation to permit the sale of leasehold houses?

3.29. CILEx acknowledges that the ban on the sale of leasehold houses has been well publicised for some time, and as a result the market ought to have already begun preparing for the ban to enter into force.

3.29.1. Majority of members agreed with commencement of this ban taking place sooner rather than later.

3.30. Some members were apprehensive that there could be an influx of landlords attempting to circumvent the ban by completing their leases prior to the date of entry into force. CILEx is thereby happy to see that the ban shall apply retrospectively to cover non-exempt houses sold on a leasehold basis since December 2017 (i.e.: since the Government first expressed this commitment).

3.31. Nevertheless, it is important that as well as consulting legal practitioners on how reforms shall be implemented, sufficient time is allocated for legal practitioners to familiarise themselves with the new laws and formalities so that they are able to advise their clients accordingly. CILEx thereby strongly encourages for information to be published in a timely and transparent manner.

Q13. Are there justifiable reasons why ground rents on newly created leases should not be capped as a general rule at a maximum value of £10 per annum, but instead at a different financial value?

3.32. As stated above (paragraph 2.1), CILEx welcomes the imposition of ground rent caps to reflect a nominal/‘peppercorn’ level. This is in keeping with the consensus that we received from members on previous counts.

3.32.1. Survey respondents from our most recent research, indicated an 82.85% agreement rate with the proposed cap.

3.32.2. Members identified the following benefits of this cap in removing: escalating ground rents; the complexity of calculating rents; grounds for disputes; risks of assured tenancies at law.

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<sup>21</sup> 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. (Note: ‘reasonable fees and guaranteed timescales’ was the highest ranked priority).

<sup>22</sup> Footnote 10 (Legal Sector Group Proposals), para 4.5.

3.33. Majority of survey respondents did not see any justifiable reasons why ground rents on new leases should not be capped at a maximum value of £10 per annum. 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.

3.33.1. With regards to the first point, CILEx would also like to reiterate previous research which evidenced that 65.63% 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.

3.33.2. 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.

Q14. Are you aware of separate ground rent being charged in addition to a rent on the retained equity in shared ownership leases?

3.34. 41.94% of surveyed members indicated that they are aware of a separate ground rent being charged in addition to a rent on the retained equity in shared ownership leases.

3.34.1. A few members suggested that this is a fairly common practice under the name of 'variable rent charges', however is more commonly seen in the context of shared ownership flats as opposed to houses.

Q15. Do you represent a community-led housing provider which does not rely on ground rent income?

3.35. Of all surveyed members, there were none who had come across a community-led housing provider which does not rely on ground rent income. Nevertheless, on principle, 73.33% of our members agreed or strongly agreed that ground rent caps should apply to community led housing.<sup>23</sup>

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<sup>23</sup> Please see paragraph 3.12 above.

Q16. Do you agree there is a case for making specialist arrangements permitting the charging of ground rents above £10 per annum for properties in new build retirement developments?

- 3.36. CILEx recognises the arguments put forward within the consultation paper for introducing an exception in the case of new build retirement developments; taking account of the higher costs of construction which could not otherwise be recovered through service charges. The exception shall safeguard that these higher construction costs do not automatically increase the initial purchase price, safeguarding affordable housing for the elderly.
- 3.37. CILEx welcomes the decision to provide consumers of new build retirement properties with a choice to opt in or out of the £10 ground rent caps, so that they have the freedom to determine which arrangement is most suitable based on their own financial situation.
- 3.38. CILEx further welcomes the proposal for this choice to be supplemented with independent legal advice and an adequate redress/complaint mechanism to ensure that leaseholders continue to have a recourse should they face onerous terms or unforeseen consequences in future.
- 3.39. However, CILEx would like to stress that consumers must be made fully aware of the repercussions they may face should they opt out of the £10 ground rent caps upon purchase of new build retirement properties. Clear explanations of the different choices available to them and transparency of ground rent information is thereby essential.
- 3.39.1. Member feedback has identified consumer awareness at the point of sale as one of the major issues currently facing the leasehold sector. Greater choice, clearer information and access to legal advice shall all help safeguard that consumers make property purchase decisions from an informed position.
- 3.39.2. Given the particular vulnerability of consumers in new build retirement developments, extra caution must be taken to safeguard consumer choice and understanding.
- 3.40. CILEx further suggests that consumers be provided with a right to review their initial decision. As such there should be a mechanism in place by which consumers have the ability to change their mind at a later date, opting into the £10 ground rent cap upon payment of the difference.

Q17. What positive or negative impacts does paying ground rents have on older people buying a home in the retirement sector? Please give your reasons and if you think the impacts are negative explain what measures might mitigate them.

- 3.41. Whilst CILEx has not obtained any information on this specific point, the negative impacts of exit fees have been noted on former occasions and CILEx would thereby welcome greater protections in this respect (please see paragraph 3.28 above).

Q18. Do you agree with our approach to the treatment of mixed use leases?

Q19. Are there any other circumstances in which mixed use (a) should be within scope of the policy or (b) excluded from the scope of the policy?

3.42. CILEx agrees that the proposed ground rent caps should only apply to residential long leases, and thereby not extend to cover commercial leases granted for business purposes.

3.43. CILEx welcomes that in situations where a separate residential lease or sub-lease has been granted over part of the premises, the intention is for ground rent caps to continue to apply.

Q20. Do you agree with the circumstances set out above in which a capped ground rent will apply in replacement leases?

3.44. CILEx is happy to see the proposal for voluntary lease extensions to fall within the ambit of replacement leases. This shall ensure that there is consistency across the board in light of the Law Commission's work on enfranchisement.

3.44.1. Whilst replacement leases shall not cover lease extensions under the statutory regime, CILEx recognises that enfranchisement reforms nonetheless call for nominal ground rents and shall thereby help existing leaseholders all the same.

3.44.2. CILEx recommends that what constitutes a 'nominal' ground rent should apply uniformly across current reforms and the ongoing enfranchisement reforms. This is suggested for ease and consistency, as well as to ensure that all leaseholders (those on new leases, those on voluntarily extended leases, and those on enfranchised leases) are treated equally. Furthermore, this shall avoid any ambiguity as to what constitutes a 'nominal' ground rent.

3.45. CILEx strongly emphasises that in the absence of a requirement mandating that all existing leases be brought in line with the proposed £10 cap, it is essential that better redress mechanisms are put in place for leaseholders currently struggling under onerous ground rent terms.

3.45.1. CILEx has previously called for better redress mechanisms as leaseholders should not be expected to pay unreasonable fees solely designed as a new income stream for landlords. It is stressed that the function of ground rents should simply be to recognise that the landlord has retained an interest within the leasehold land and should not be regarded with the same lens as market rents on short-term leases.

Q21. Do you agree there should be no further transitional period after commencement of the legislation permitting ground rents above £10 per annum?

3.46. CILEx welcomes the decision to implement the proposal for £10 ground rent caps as quickly as possible. The issue concerning onerous ground rents has been negatively impacting leaseholders for some time, and this solution to the problem should not be postponed for longer than necessary.

3.46.1. A majority of respondents agree with implementing ground rent caps sooner rather than later.

3.47. Similar to concerns raised above (paragraph 3.30), some members foresee problems with the three-month transitional period, in that this could result in landlords attempting to complete their leases as quickly as possible so as to circumvent the ground rent caps. This issue is exacerbated by the fact that the proposal is not intended to apply retrospectively in the same vein as the ban on leasehold houses (the latter of which shall be backdated to the December 2017 announcement).

3.47.1. Members have voiced concerns that three months would be an insufficient period of time for legal practitioners to realistically complete the necessary deeds of variation for bringing lease terms in alignment with the £10 cap. Thereby, at the same time, our members envision pressure from leaseholders who may wish to put off completion despite transactions having already been exchanged.

3.47.2. CILEx suggests that to overcome these issues, there needs to be increased efforts in improving consumer awareness of the proposed caps and their date of entry into force. Timely and effective disclosure of this information shall empower prospective leaseholders to make more informed decisions earlier on about how and when to purchase interests in land. In turn this shall hopefully decrease the level of disruption caused to all parties and the practitioners involved.

Q22. Should we provide freeholders with a right to change the management of the services covered by an estate rent charge or contained within a deed of covenant arrangement?

3.48. CILEx agrees that freeholders included within estate management schemes should have the right to: challenge the reasonableness of service charges and administration fees; to consultation on charges; to service charge information; and, the right to take over management much the same as leaseholders. The call for freeholders to enjoy these rights is only logical when the same services are applied to all.

3.48.1. Previous research identified strong support (93.94%) from surveyed members that these rights should be extended for freeholders on an estate; justified on the basis of achieving parity.

Q23. What will be the impact of these proposals on companies or bodies that provide the long-term management of communal areas and facilities?

3.49. As neither a Residents' Management Company, a managing agent nor a representative body for such organisations, CILEx and its members do not classify as "affected parties"<sup>24</sup> for the purposes of this specific proposal and as such cannot provide specific views on this point.

Q24. What would constitute a reasonable deadline for managing agents and freeholders to provide leasehold information?

• Less than 10 working days • 10 - 15 working days • More than 15 working days

3.50. Data obtained from previous surveys on the regulation of managing agents highlighted 48% of respondents believed that 10 working days or less was a reasonable deadline for managing agents and freeholders to respond to enquiries made.

3.50.1. It is noted here that only 16% of respondents considered more than 15 working days to be reasonable.

Q25. What would constitute a reasonable maximum fee for managing agents and freeholders to provide leasehold information?

• Less than £100 • £100 • £150 • More than £150

3.51. 46.67% of survey respondents considered that £100 would constitute a reasonable maximum fee.

3.51.1. Members noted the growing tendency for information to be saved in an electronic format. As a result, it was contended that compiling and delivering the information to leaseholders has become administratively more convenient and cost-effective.

3.51.2. Anecdotal evidence suggested that in some circumstances the fee charged for obtaining leasehold information has been separated out as fees for obtaining ground rent information and fees for obtaining service charge information. Due caution is warranted to prevent managing agents and freeholders from circumventing cost restrictions in this way.

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<sup>24</sup> Consultation paper, p.30, para 4.10.

Q26. What would constitute a reasonable fee for managing agents and freeholders to update leasehold information within 6 months of it first being provided?

• No additional cost • less than £25 • £25 - £50 • More than £50

3.52. Half of survey respondents (50%) considered a fee of between £25 and £50 as reasonable in this case.

**For further details**

Should you  
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further  
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