

Leasehold reform inquiry
Housing, Communities and Local Government Committee
Response from NAEA Propertymark
September 2018

Background

1. NAEA Propertymark is the UK's leading professional body for estate agency personnel; representing more than 11,000 offices from across the UK property sector. These include residential and commercial sales and lettings, property management, business transfer, auctioneering and land.
2. NAEA Propertymark is dedicated to the goal of professionalism and by appointing an NAEA Propertymark agent to represent them, consumers will receive in return the highest level of integrity and service for all property matters. NAEA Propertymark agents are bound by a vigorously enforced Code of Practice and adhere to professional Rules of Conduct. Failure to do so can result in heavy financial penalties and possible expulsion from the organisation.

Executive Summary

- The Government's programme of work on residential leasehold reform must go further to ensure developers no longer build on land when they do not own the freehold and put measures in place to restrict charges.
- Right of first refusal should be extended to houses and the procedure for right to manage must be simplified.
- The Government must ensure developers compensate leaseholders to remedy onerous clauses and purchasers of new build homes have access to an ombudsman scheme.
- Regulation of the property sector and better use of technology through a digital property log-book can empower new and existing leaseholders.

The adequacy of the Government's programme of work on residential leasehold reform, including (a) its application to existing leaseholders in both houses and flats and (b) whether further reforms should be introduced

3. The Government's programme of work on residential leasehold reform is not adequate enough. Preventing the sale of new-build houses, setting ground rents at zero, introducing legislation to exempt leaseholders from Ground 8 possessions claims, and making enfranchisement easier will all improve the affordability and saleability of leasehold property. However, the Government must go further and remove the requirement that leaseholders must own the lease on their house for two years before making a claim to buy the freehold of the property and ensure that developers no longer build on land when they do not own the freehold. To support existing leaseholders the Government must ensure developers compensate consumers to remedy onerous clauses, amend the Landlord and Tenant Act 1987 to extend the right of first refusal to houses and simplify right to manage. To further empower leaseholders the Government must introduce overarching statutory regulation of the property sector and introduce a digital log-book for each property that is bought and sold.
4. We agree that the sale of new build houses as leasehold should not be permitted unless there is a legitimate reason why the land can only be owned under a lease. Such as in shared ownership with a 'restricted staircasing' lease. Where consumers have purchased leasehold houses, they are

subject to ground rents, service charges and other fees. Developers sell at attractive prices but continue to generate a further stream of revenue through the ground rent and other charges. Clauses in contracts can say the fees will double after a certain amount of time. As the fees increase, it makes it difficult for homeowners to sell the property to prospective buyers who will have to take on the extra payments. Unless there are genuine shared amenities there is no need to have a separate landowner and leasehold owner when there is only one property on that land. Without a legitimate reason why, the land can only be owned under a lease, new build leasehold houses should not be permitted.

5. To support existing leaseholders the Government should go further than suggesting that developers compensate and ensure developers remedy onerous clauses. This will reassure consumers that they can sell their properties and give confidence to mortgage lenders that they can lend against these properties. There has been little evidence of industry-wide action from developers to compensate existing leaseholders with onerous terms. We are only aware that Taylor Wimpey and Countryside Properties have acted.¹ In April 2017, Taylor Wimpey put aside £130 million to specifically remedy buyers of their new build leasehold properties with onerous ground rent terms. Countryside Properties have offered deeds of variation to some customers affected by doubling ground rent. An increase in leasehold properties means that they contribute valuable properties to England's limited housing stock.² Unless developers act to re-negotiate the leases they granted to remove onerous ground rents, existing leaseholders will not be able to sell their property. Rather than making suggestions to developers the Government should be ensuring that this is set out in legislation to ensure compliance from across the sector.
6. The Government should legislate to prevent the doubling of ground rents and ban increases above inflation. Through Deed of Variation developers can remove or amend clauses. They can also change the ground-rent clause so that it rises against inflation, rather than having ground rent increase in a way that is not linked to the market. As the developer Taylor Wimpey has done developers should be made to set up a Ground Rent Review Assistance Scheme.³ Taylor Wimpey's scheme has been designed to 'alter the terms of the doubling lease' for buyers who bought one of their properties which have a lease with a 10-year doubling ground rent clause. Where the developer has sold the freehold, the developers and the Government should be working with the organisations that now own the freehold of the properties to convert the doubling leases to an alternative lease structure. The Government must act and stipulate requirements on developers to allay the concerns of existing leaseholders and increase the saleability of their homes.
7. Government plans to set ground rents at zero on all newly established leases in both flats and houses will improve the affordability of property for leaseholders. The leaseholder pays the freeholder an annual ground rent, but many developers have issued clauses which double every 10-25 years. For instance, in a lease contract of 125 years, if the ground rent began at £250 per annum, and doubled every 10 years, after 50 years the ground rent would be £8,000 (in addition to service charges). The doubling of ground rent means that these properties are difficult to sell or remortgage. Lenders are unable to approve mortgages and the escalating costs means the properties have no value when owners go to remortgage. By setting new ground rents at zero it

¹ <http://www.naea.co.uk/news/august-2017/leasehold-scandal-breakthrough.aspx>

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/646152/Estimating_the_number_of_leasehold_dwellings_in_England_2015-16.pdf

³ <https://www.taylorwimpey.co.uk/leaseholdfaq>

will help to ensure that costs are transparent and reasonable. It will also allow leasehold properties to be bought and sold more easily.

8. We agree that Ground 8 of the Housing Act 1988 is amended so long leases over 21 years with an annual ground rent over £1,000 in London and £250 outside of London cannot be an Assured Tenancy. Ground rent arrears should not be considered equal to rent arrears accrued by tenants in rental properties, and thus should not be subject to mandatory possession orders. The current law goes against the principle that leaseholders are the owner of their property. These provisions create a disproportionate outcome for leaseholders particularly for a small amount of arrears. Amending the Act will strengthen the rights of new and existing leaseholders.

9. Government action to make enfranchisement of leasehold easier and simplify the process of extending leases will improve affordability for existing leaseholders by preserving the value of their property. The Government should do two things. Firstly, remove the requirement that leaseholders must have owned the lease of their house for two years before making a claim to buy the property. Secondly, ensure that developers do not build on land that they do not own the freehold to. Several cases have emerged where developments have been built on leased land that is not owned by the housebuilder. The Government should ensure that these clauses are prohibited so leaseholders looking to purchase their freehold are not at a disadvantage. By ensuring that leaseholders don't build on land where they do not own the freehold, leaseholders will be able to more easily buy the freehold. For example, a leaseholder who bought a new build house and was told that their freehold would cost £4,000 to enfranchise, but within a year (and with the freehold been sold on) this had escalated to between £15,000 - £35,000. This has added significance because of the right of first refusal only applying to flats, but not houses, developers selling new homes as leasehold are not legally obliged to tell the purchaser if they have sold the freehold to an investment company. Many purchasers of new build leasehold houses have planned, as the law allows, to buy the freehold after two years, but because of the developer selling the freehold, the costs have significantly increased by quotes far higher than the original builder had set out.

10. The Government should amend the Landlord and Tenant Act 1987 and extend the right of first refusal to houses. Under the Landlord and Tenant Act 1987 leaseholders of flats have the right of first refusal, which means they are legally entitled to buy their freehold before it is sold. When the Act was introduced it only contained provisions for leasehold owners of flats, not houses, because most houses at the time were sold under freehold. The redevelopment of towns and cities in recent years means there are now more leasehold properties on the market with an increase in new-build apartment blocks, but more new-build houses in suburban and rural areas are now sold as leasehold. In some parts of the country, they have become the default option for developers.⁴ Extending the right of first refusal to houses will put these leaseholders on par with those in flats and ensure that their rights reflect the growing number of leasehold houses on the market.

11. The Government should simplify the procedure concerning the right to manage and limit delays, costs and uncertainty for consumers. Under the Commonhold and Leasehold Reform Act 2002, the right to manage enables a group of leaseholders to manage the block themselves or appoint a managing agent on their behalf. However, very few leaseholders do this because landlords can delay and add costs to the process. This must be stopped because right to manage has no effect

⁴ <https://www.leaseholdknowledge.com/69-of-new-houses-in-nw-are-leasehold-many-owners-stuck-in-limbo-and-ban-fleece-hold-covenants-says-maria-eagle>

on the landlord's property rights, such as ground rents and new lease claims. Furthermore, the Government must also amend the legislation to ensure it works for multi-site blocks and sites with freehold and leasehold houses. By simplifying the process of right to manage, the Government can empower new and existing leaseholders.

12. To further empower leaseholders the Government must introduce overarching statutory regulation of the property sector. Leaseholder properties can be bought and sold directly from a developer or through an estate agent. Consequently, the Government must extend their proposals to regulate letting and managing agents to include block management and sales agents.⁵ Furthermore, housebuilders' sales staff do not fall under the 1979 Estate Agent's Act and must be brought under the rules. Central to the issues consumers face is the lack of understanding between buying a freehold and leasehold during the buying process and even once they have moved into the property.⁶ Ensuring those involved in the house buying and selling process are suitably qualified and meet minimum competency standards is the only way to drive up standards of service for consumers. Consumers currently benefit from property professionals who already choose, voluntarily, to belong to a professional body, and in doing so adhere to high standards and professionalism. The focus on a new regulatory regime must be on ensuring the same consumer protections exist across the whole industry rather than being provided solely by those working in the sector who have chosen to be regulated through a professional body.
13. There should be a digital log-book for each property that is bought and sold. The log-book should have sections for the different stages of the transaction, allowing for documentation to be uploaded to a central point from the various parties with dates for deadlines and timescales. The log-book would also hold information on the property such as whether it is freehold or leasehold. This would allow for all parties involved to log-in and find out information and ensure that they are more engaged and better informed. Furthermore, the conveyancing process requires information from various third parties before contracts can be exchanged. The log-book would help to avoid delays and allow regular contact with the seller and buyer to help deal with any issues that arise.

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

14. To support existing leaseholders in both houses and flats affected by onerous leasehold terms the Government must do four things. Firstly, purchasers of new build homes should have access to an ombudsman scheme. Secondly, where there is no managing agent, freeholders must sign up to a redress scheme. Thirdly, all new house builders sign up to the Consumer Code for Home Builders. Fourthly, the Government should implement a code of practice and disclosure document concerning event fees in specialist retirement developments as drafted by the Law Commission in March 2017.⁷
15. Purchasers of new build homes should have access to an ombudsman scheme. Currently, consumers who buy a new home directly from a developer have no access to redress. Under the Government's proposals to streamline redress provision in the housing market the Government

⁵ <https://www.gov.uk/government/consultations/protecting-consumers-in-the-letting-and-managing-agent-market-call-for-evidence>

⁶ <http://www.naea.co.uk/media/1047279/propertymark-leasehold-report.pdf>

⁷ <https://www.lawcom.gov.uk/project/event-fees-in-retirement-properties/>

should extend proposals to create a one ombudsman portal to include land and new homes within the remit of the ombudsman for private housing.⁸ This would ensure that leaseholders can raise complaints with the developer, managing agent or estate agent and issues can be advanced to the ombudsman. Including new build houses within the scope of an ombudsman scheme is the most effective way to do this. It will also ensure that the construction of new build homes to help meet the Government's ambitious target is supported by a straight forward redress process.⁹

16. All developers must adhere to the Consumer Code for Home Builders.¹⁰ The Code covers every stage of the homebuyer process from pre-contract, exchange of contract and during occupation of the property. The Code covers a range of customer service requirements including clear and truthful advertising and marketing materials, contract information including termination rights and sufficient pre-purchase information to help consumers make an informed decision about their purchase. Where developers are not registered members of the Code, consumers have no guarantee of receiving minimum standards of customer service or redress. By ensuring that developers sign up to the Consumer Code for Home Builders, all purchasers of new build homes will be fully informed about their purchase and their consumer rights before, during and after they move in.
17. Freeholders of leasehold properties should all be required to sign up to a redress scheme. An absent freeholder can cause several problems for leaseholders in a building. The most common ones are the management of the building, the sale of a leasehold property and the need for a new lease or lease extension. Currently, there is no requirement for freeholders of leasehold property where they are not using a managing agent to register with a redress scheme. As a result, only leaseholders and freeholders dealing with property managers will be able to complain to an independent body about the service they have received. By guaranteeing that freeholders of leasehold properties are all required to sign up to a redress scheme this will ensure that leaseholders have access to redress where there is no managing agent and the freeholder is self-managing the property.
18. The Government should approve and put on the statute the Law Commission's drafted Code of Practice for Event Fees in Retirement Properties to protect consumers and prevent them from being charged in unexpected circumstances.¹¹ Event fees are payments under a term of or relating to a residential lease of a retirement property on certain events such as resale or subletting. The fees are common in specialist housing for older people and the fee can be up to 30% of the property's resale price. Problems arise because people aren't always being told about the fees before they purchase the property, and, in many cases, buyers hear about the fee when they hire a solicitor to read the lease. The draft Code of Practice limits the circumstances in which event fees can be charged and the amount that can be charged. The Law Commission is also proposing that clear information about event fees should be provided to customers in a standard disclosure document and any advertisement that mentions the price of the property must specify that an event fee is also payable. The Government must introduce the Code of Practice and disclosure document to ensure that consumers have accurate information and can make informed decisions.

⁸ <https://www.gov.uk/government/consultations/strengthening-consumer-redress-in-housing>

⁹ <http://www.naea.co.uk/media/1046907/strengthening-consumer-redress-in-the-housing-market.pdf>

¹⁰ <http://www.consumercode.co.uk/>

¹¹ <https://www.lawcom.gov.uk/project/event-fees-in-retirement-properties/>

What are the implications of providing such support and government intervention to these existing leaseholders

19. If implemented the support and Government intervention for existing leaseholders that we have outlined above will provide greater consumer satisfaction, change public attitudes and rebalance the relationship between developers and leaseholders. Existing leaseholders will only have greater satisfaction that they can resolve issues, and ultimately be able sell their property, if they are compensated for onerous clauses and an ombudsman scheme is in place to deal with issues. Greater regulation and extending leaseholders rights will change public attitudes because leaseholders will be provided with more support and guarantees that professional standards are being met. Preventing the sale of new build houses, ensuring that developers no longer build on land when they do not own the freehold and putting measures in place to restrict charges will rebalance the relationship between developers and leaseholders. As outlined in our report *Leasehold: A Life Sentence*¹², consumers have become increasingly frustrated with the system. The Government must make changes now to ensure that the needs of those impacted by onerous lease terms are acted upon.

¹² <http://www.naea.co.uk/media/1047279/propertymark-leasehold-report.pdf>