

Tackling unfair practices in the leasehold market: A consultation paper
Response from NAEA Propertymark
September 2017

Background

1. NAEA Propertymark (National Association of Estate Agents) is the UK's leading professional body for estate agency personnel; representing more than 10,000 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.

Questions

Limiting the sale of new leasehold houses

Q5: What steps should the Government take to limit the sale of new build leasehold houses?

3. Developers should not build on land that they do not own the freehold to. A number of cases have emerged where developments have been built on leased land that is not owned by the housebuilder. Purchasers should be offered first refusal on the sales of the freehold of their home. As widely reported in the media, as a consequence 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 as a result of the developer selling the freehold, the costs have significantly increased by quotes far higher than the original builder had set out. Leaseholders looking to purchase their freehold should not be at a disadvantage, and costs should be capped to avoid escalating fees.

Q6: What reasons are there that houses should be sold as leasehold other than under the exceptions set out in paragraph 3.2?

4. Other than under the exceptions set out in paragraph 3.2 (within a cathedral precinct; on National Trust or Crown land; on land owned by local authorities and university bodies with the right for future development; in shared ownership with a 'restricted staircasing' lease; of special architectural or historic interest or adjoining properties where it is important in safeguarding them and their surroundings) we do not know of any other reasons why houses should be sold as leasehold.

5. We reiterate our view as outlined in response to Question five that the sale of new build houses should not be permitted unless there is a legitimate reason why the land can only be owned under a leasehold.

Q7: Are any of the exceptions listed in 3.2 not justified? Please explain.

6. We do not think that any of the exceptions listed in 3.2 are not justified.

Q8: Would limiting the sale of new build leasehold houses affect the supply of new build homes? Please explain

7. NAEA Propertymark does not believe that limiting the sale of new build leasehold houses would affect the supply of new build homes. Despite an increase in leasehold properties in the past three decades we believe that due to a lack of supply of new property overall this has meant that people are willing to overlook some of the detailed information concerning leasehold property for the immediate ability to get on the housing ladder. Furthermore, housebuilding in England is now at the highest level since 2008 and with the Government pledging to deliver one million homes by the end of 2020. An increase in supply will help bring down prices and consequently, there should not be a need for new build leasehold houses.

Q9: Should the Government move towards removing support for the sale of new build leasehold houses through Help to Buy Equity Loan, unless leasehold can be justified and where ground rents are reasonable (which could be a nominal or peppercorn ground rent), and if not, why not?

8. Yes, we believe that the Government should move towards removing support for the sale of new build leasehold houses through Help to Buy Equity Loan, unless leasehold can be justified and where ground rents are reasonable.

Q10: In what circumstances do you consider that leasehold houses supported by Help to Buy Equity Loan could be justified?

9. We would consider that leasehold houses supported by Help to Buy Equity Loan could be justified where ground rent is nominal or at a 'peppercorn' rate. Any homes which are supported by and sold using Help to Buy schemes must clearly be marketed and advertised as either leasehold or freehold.

Q11: Is there anything further the Government could do through Help to Buy Equity Loan to discourage the sale of leasehold houses?

10. The Government could make it a condition of purchase that the property when purchased through Help to Buy Equity Loan must be freehold.

Q12: What measures, if any, should be considered to minimise the impact on the pipeline of existing developments?

11. The Government could ensure that all lease extensions have a minimum number of years, with a peppercorn rent and with no increased premium payable to the freeholder. The Government could also abolish 'marriage value' and simplify the procedure and information concerning Right to Manage. In addition, once conditions of the lease have been waived, such as in a signed freehold survey at the time of purchase, the Government should ensure that they can't be enforced some years later.

Limiting the reservation and increase of ground rents on all new residential leases over 21 years

Q13: What information can you provide on the prevalence of onerous ground rents? We are keen to receive information on the number and type of onerous ground rents (i.e. doubling, or other methods) and whether new leases are still being sold with such terms.

12. Ground rent increase provisions in residential leaseholds can be problematic because too large an increase can make properties unsaleable. For instance, we know of examples where the ground rent provisions were to increase every 25 years based on a compound calculation of the House Price Index. This seems reasonable on face value but the year in which the increase applied was at the end of a boom period and the ground rent increased from £50 per annum to over £1,000 per annum. Another example is where the ground rent was set to double every 10 years at a time when the Retail Price Index was around 8% per annum and prices would double every nine years using a compound calculation. In a particular twenty one year period a £200 per annum ground rent could increase to £1,600 per annum. It is not possible to know whether the intentions of the lease were to gain an advantage for the landlord or simply to set out a clear and uncomplicated method for calculating what the increase should be. However, it is vital that the purchasers are advised by their solicitors as early as possible about the potential costs that could arise in the future and under different economic conditions.
13. Furthermore, the ground rent increase provisions are usually set out unambiguously in leases and it is the responsibility of the buyer's solicitors to advise them about the ground rent increase provisions, along with other matters pertaining to the lease. We know of a case where a group of leaseholders took collective action against their respective solicitors who advised them about their purchases but failed to advise them properly on this point. The leaseholders' settlement included the cost of transferring the freehold to a residents' management company and compensating the landlord accordingly as this was the most effective way of bringing an end to the escalating financial disadvantages to the leaseholders of the rent provision.
14. Therefore, if ground rent increases were regulated outside the provisions in a lease this would mean compensating landlords for changes in their entitlements set out in the lease. This currently happens with enfranchisement and term extension, so the Government should look at whether similar proposals could be put forward for changes to ground rent provisions.

Q14: What would a reasonable ground rent look like, in terms of i) the initial annual ground rent, ii) the maximum rate of increase in annual ground rent, and iii) how often the rate of increase could be applied to an annual ground rent? Please explain your reasons.

15. We do not have enough specific information to answer this question.

Q15: Should exemptions apply to Right to Buy, shared ownership or other leases? If so, please explain.

16. We do not think that exemptions should apply to Right to Buy, shared ownership or other leases. On the specific issue of shared ownership, it should be clearly established who would hold the freehold and whether it would automatically be held by the third party, or by the majority share owner.

Q16: Would restrictions on ground rent levels affect the supply of new build homes? Please explain.

17. We do not believe that restrictions on ground rent levels would affect the supply of new build homes. In the past, leaseholders would usually pay a nominal fee to the freeholder in order to enforce the terms of a lease. Since the millennium this has changed with developers realising the potential for a huge new revenue stream. However, house building has reduced during this time period and therefore restrictions on ground rent levels should not affect the supply of new homes.

Q17: How could the Government support existing leaseholders with onerous ground rents?

18. The Government could support existing leaseholders with onerous ground rents by legislating to prevent the doubling of ground rents and banning increases above inflation.

Q18: In addition to legislation what voluntary routes might exist for tackling ground rents in new leases?

19. Taylor Wimpey has recently apologised and set aside £130million to help support homeowners who had a doubling ground rent clause in their contract and where third-party firms were allowed to buy freeholds to houses, making it more difficult to sell. This is a step in the right direction and the Government should push for other housebuilders to follow suit and help consumers.

Exempting leaseholders potentially subject to 'Ground 8' possession orders due to their level of ground rent

Q19: Should the Government amend the Housing Act 1988 (as amended by the Housing Act 1996) to ensure a leaseholder paying annual ground rent over £1,000 in London or over £250 in the rest of England is not classed as an assured tenant, and therefore cannot be issued with a Ground 8 mandatory possession order for ground rent arrears? If not, why not?

20. Yes, the Government should amend the Housing Act 1988 to ensure a leaseholder paying annual ground rent over £1,000 in London or over £250 in the rest of England is not classed as an assured tenant, and therefore cannot be issued with a Ground 8 mandatory possession order for ground rent arrears.

Service charges for maintaining communal areas and facilities on freehold and mixed tenure estates

Q20: Should the Government promote solutions to provide freeholders equivalent rights to leaseholders to challenge the reasonableness of service charges for the maintenance of communal areas and facilities on a private estate? If not, what management arrangements on private estates should not apply?

21. Yes, the Government should promote solutions to provide freeholders equivalent rights to leaseholders to challenge reasonableness of service charges for the maintenance of communal areas and facilities on a private estate.

Q21: The Housing White Paper highlights that the Government will consult on a range of measures to tackle abuse of leasehold. What further areas of leasehold reform should be prioritised and why?

22. NAEA Propertymark is working with the Law Commission in its quest for the introduction of stringent codes of practice to require developers, operators and managing agents to bring 'event' fees, which are common in specialist housing for older people, to the attention of prospective buyers. The Law Commission is in the process of producing a disclosure document. A recommendation has gone to the Government and we believe that it should be supported widely to increase consumer confidence in this specialist housing market and improve the purchasing process.¹
23. Providing accurate and timely information to purchasers is vital for consumers to make informed choices. There is no overarching statutory regulation of estate agents. We believe that full mandatory government regulation of sales and letting agents is the quickest and most effective method to eliminate unprofessional, unqualified and unethical agents from the property sector the Government cannot simply go on trying to legislate for every eventuality because this is unmanageable to enforce. We are concerned that there is no statutory regulation to ensure agents are suitably qualified. Additionally, agents who are not members of a professional body do not have to meet minimum competency standards.
24. Leasehold is a complicated system and we believe that the Government should look at introducing standardised lease contracts to further protect consumers. Standardised leases with set terms that balance the interests of leaseholders and freeholders, similar to tenancy agreements, should be introduced. The standardised clauses should be consistent with whether a lease is extended as well as for new build.

¹ <http://www.naea.co.uk/news/january-2016/naea-supports-law-commission-proposals-on-event-fees/>

25. The consultation paper says that the proposals relate to England only. Although housing is a devolved issue we would like to see the same protections for leaseholders in Wales as is being proposed for consumers in England.