



**2019**

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## **Overview**

Winckworth Sherwood continues to maintain an active dialogue with various interested stakeholders, in respect of the Government's ongoing programme of leasehold reform.

Since the last bulletin:

- **04 April** – Winckworth Sherwood LLP hosted a seminar to convene industry stakeholders to determine the next steps for engagement with the draft of Code of Practice.
- **28 March** – The Ministry of Housing, Communities and Local Government (MHCLG) [announced](#) the Public Pledge for Leaseholders, an industry-led commitment to changing the terms of leases for those who are affected.
- **19 March** – The Housing, Communities and Local Government (HCLG) Select Committee published its [report](#) on leasehold reform, with recommendations to the Government, the Competition and Markets Authority and the Law Commission.
- **10 March** – The Law Commission closed its [consultation](#), '*Reinvigorating commonhold: the alternative to leasehold ownership*' and is due to publish its final report in 2019.
- **26 February** – HCLG Select Committee published Housing Minister, Heather Wheeler MP's [letter](#) to Chair Clive Betts MP following the Oral Evidence session on 4 February.
- **19 February** – The Law Commission held a symposium in Manchester on proposals to reform the law of commonhold and the right to manage.
- **12 February** – The Law Commission held a symposium in London on proposals to reform the law of commonhold and the right to manage.
- **12 February** – MHCLG closed its call for evidence: '*Good practice on how residents and landlords/building managers work together to keep their home and building safe*'. This call for evidence was launched as a result of The Hackitt Review.
- **04 February** – HCLG Select Committee questioned Housing Minister, Heather Wheeler MP and Lakhbir Hans, Deputy Director for Leasehold, Commonhold and Rentcharges, in an Oral Evidence session.



- **28 January** – The Law Commission published a [consultation](#), '*Leasehold home ownership: exercising the right to manage*'.
- **24 January** – MHCLG published its formal [response](#) to the consultation, '*Strengthening Consumer Redress in Housing*'.
- **14 January** – The HCLG Select Committee questioned legal experts and the Law Commission in an Oral Evidence session.
- **7 January** – The Law Commission closed its [consultation](#), '*Leasehold home ownership: buying your freehold or extending your lease*' and is due to publish its final report in 2019.
- **7 January** – Wanda Goldwag was [appointed](#) interim Chair of LEASE. In a statement announcing her appointment to the role, she outlined that she is delighted to be joining LEASE at a time of renewal of the organisation's aims.



## **Code of Practice Seminar**

### **Code of Practice Working Group Seminar – 4 April**

After MHCLG committed to working with industry on a Code of Practice the previous week as part of the Public Pledge for Leaseholders (see below), Winckworth Sherwood LLP hosted a seminar to convene industry stakeholders. There were over fifty attendees representing investors, freehold managers, developers, managing agents and legal advisers.

During the seminar, a panel session of experts shared their views on the Code of Practice, and broader positions on reforming the leasehold model of ownership. They also discussed the implications of the Code's adoption, the legal mechanism to adopt this and the possible process going forward to deliver it. Speakers included:

- James Duncan (Chair), Partner, Alternative Real Estate Investments, Winckworth Sherwood
- Lord Best, Chair of the Working Group on Managing Agents
- Simon Allison, Barrister & Specialist Property Practitioner, Landmark Chambers
- Dr Nigel Glen, Chief Executive, Association of Residential Managing Agents
- Graham Donaldson, Chairman of Mainstay

A consensus was clear that a formal Working Group must be formed to drive this process forward if the industry is to build on the momentum initiated by the Pledge. Likewise, a number of attendees raised an important point that any regulatory framework must incorporate existing Codes, or similar, like the RICS Code of Practice on Service charges in commercial property, or complement the ongoing work by Lord Best to consider regulation of property agents.

Over the course of the coming week, the industry will seek to appoint an independent chair to oversee drafting of the Code. This will be followed by a complete Working Group representing every element of the industry convening to drive this process forward and present a further draft to Government.



## **MHCLG Public Pledge for Leaseholders**

On 28 March 2019, the Ministry for Housing, Communities and Local Government published an industry-led Public Pledge for Leaseholders. The Pledge represented a major step towards substantial change in the residential leasehold sector. It reflected the desire and ambition from professional freeholders, developers, managing agents and the Government to bring about meaningful reform.

Freeholders have agreed to identify leases within their portfolios which contain a clause whereby ground rent doubles more frequently than every 20 years, contact leaseholders to inform them, and offer to amend to one linked to RPI. Importantly it also endorses the elimination of new leasehold houses from the market and includes firm commitments from developers to ensure leaseholders are aware that the freehold may be sold.

As part of the Pledge, the Government made a firm commitment to “*work with other freeholders and stakeholders to develop a comprehensive Code of Practice which establishes the responsibilities of freeholders and enshrines the highest standards for the management and maintenance of properties*”.

More than 40 leading property developers and freeholders have already signed up to the Pledge. The Pledge can be read in full [here](#).

Commenting on the announcement, Minister for Housing and Homelessness, Heather Wheeler MP, said:

*“The plans announced today will stop leaseholders from picking up the tab for unjustified legal costs – creating a housing market that truly works for everyone.”*

Richard Silva, Executive Director of Long Harbour said:

*“This pledge is a crucial first step towards positive change in the residential leasehold market and it reflects our commitment to eliminating bad practice from the market.”*

Nigel Glen, Chief Executive of the Association of Residential Managing Agents, said:

*“Addressing the problem of doubling ground rents is a welcome central theme to the pledge. ARMA is delighted that a part of this responsible approach is to ensure that managing agents acting for participating freeholders or developers should be regulated by a formal industry body, such as ARMA. This will ensure that leaseholders are given the highest standards of service.”*

If you are interested in finding out more information about signing up to the Pledge, please contact James Duncan, Partner, Winckworth Sherwood LLP on the following:

[jduncan@wslaw.co.uk](mailto:jduncan@wslaw.co.uk) / +44 (0) 207 593 5017



## **Leasehold Reform inquiry report – 19 March**

On 19 March, the HCLG Select Committee published its report on leasehold reform, with recommendations to the Government, the Competition and Markets Authority and the Law Commission.

The report comes after the Committee launched an inquiry into leasehold reform on 24 July 2018. The Committee received over 500 submissions of Written and Oral Evidence from a range of stakeholders, including consumers, property companies, legal professionals and the Government.

### **The Committee's main findings and recommendations:**

Main findings and recommendations of the Committee:

#### **Ground rent**

- Any ground rent is onerous if it becomes disproportionate to the value of a home, such that it materially affects a leaseholder's ability to sell their property or obtain a mortgage.
- In practical terms, it is increasingly clear that a ground rent in excess of 0.1% of the value of a property or £250—or likely to become so in future due to doubling, or other, review mechanisms—is beginning to affect the saleability and mortgage-ability of leasehold properties.
- It notes that it would be legally possible for the Government to introduce legislation to remove onerous ground rents in existing leases.
- Its view is that existing ground rents should be limited to 0.1% of the present value of a property, up to a maximum of £250 per year. They should not increase above £250 over time, by RPI or any other mechanism.
- Alternatively, the Government should establish a compensation scheme for the mis-sale of onerous ground rents, funded by the relevant developers and the purchasers' solicitors.
- It recommends that the Government reverts to its original plan and require ground rents on newly established leases to be set at a peppercorn (i.e. zero financial value).

#### **Permission fees**

- The Government should introduce legislation to restrict onerous permission fees in existing leases.
- The Government should require that permission fees are only ever included in the deeds of freehold properties where they are reasonable and absolutely necessary, although we cannot think of any circumstances in which they would be so.



## **Costs of maintenance**

- The Competition and Markets Authority should indicate its view as to whether onerous leasehold terms constitute 'unfair terms' and would be, therefore, unenforceable.
- The Government should require the use of a standardised form for the invoicing of service charges, which clearly identifies the individual parts that make up the overall charge.
- It recommends that the Government implement a new consultation process for leaseholders affected by major works in privately owned properties. A threshold of £10,000 per leaseholder should be established, above which works should only proceed with the consent of a majority of leaseholders in the building.

## **Protecting buyers at point of sale**

- The Competition and Markets Authority should investigate mis-selling in the leasehold sector and make recommendations for appropriate compensation.
- The Government should require the use of a standardised key features document, to be provided at the start of the sales process by a developer or estate agent, and which should very clearly outline the tenure of a property, the length of any lease, any ground rent or permission fees, and—where appropriate—a price at which the developer is willing to sell the freehold within six months.
- The Government should prohibit the offering of financial incentives to persuade a customer to use a particular solicitor.

## **Dispute resolution**

- The Government must legislate to require that freeholders' tribunal costs can never be recovered through the service charge, or any other means, when the leaseholder has won the case.
- The Government should immediately take up the Law Commission's 2006 proposals to reform forfeiture, to give leaseholders greater confidence in disputing large bills by reducing the threat of losing a substantial asset to the freeholder.

## **Enfranchisement**

- It urges the Law Commission to recommend a process that will make enfranchisement substantially cheaper.
- The Government should introduce low-interest loans—a Help to Buy scheme for leaseholders—so that leaseholders who want to enfranchise or extend their leases, but cannot afford to or obtain the necessary finance, have the opportunity to do so.



## **Law Commission – Right to Manage consultation**

On 29 January, the Law Commission published its right to manage (RTM) consultation paper, '*Leasehold home ownership: exercising the right to manage*'. The aim of the consultation is to seek views on the Law Commission's provisional proposals to reform RTM. **The consultation period is open until 30 April 2019.**

The provisional proposals have been developed with the intention of making the RTM process simpler, quicker and more accessible for leaseholders. These include:

- Relaxing the qualifying criteria, so that leasehold houses, and buildings with more than 25% non-residential space, could qualify for the RTM;
- Permitting multi-building RTM on estates;
- Reducing the number of notices that leaseholders must serve, and giving the tribunal the power to waive procedural mistakes;
- Setting out clearer rules for the transfer of information about management functions, and for the management of property which is not exclusive to the premises claiming the RTM; and
- Requiring each party to bear its own costs of any tribunal action and exploring options for the landlord's non-litigation costs.

## **Events**

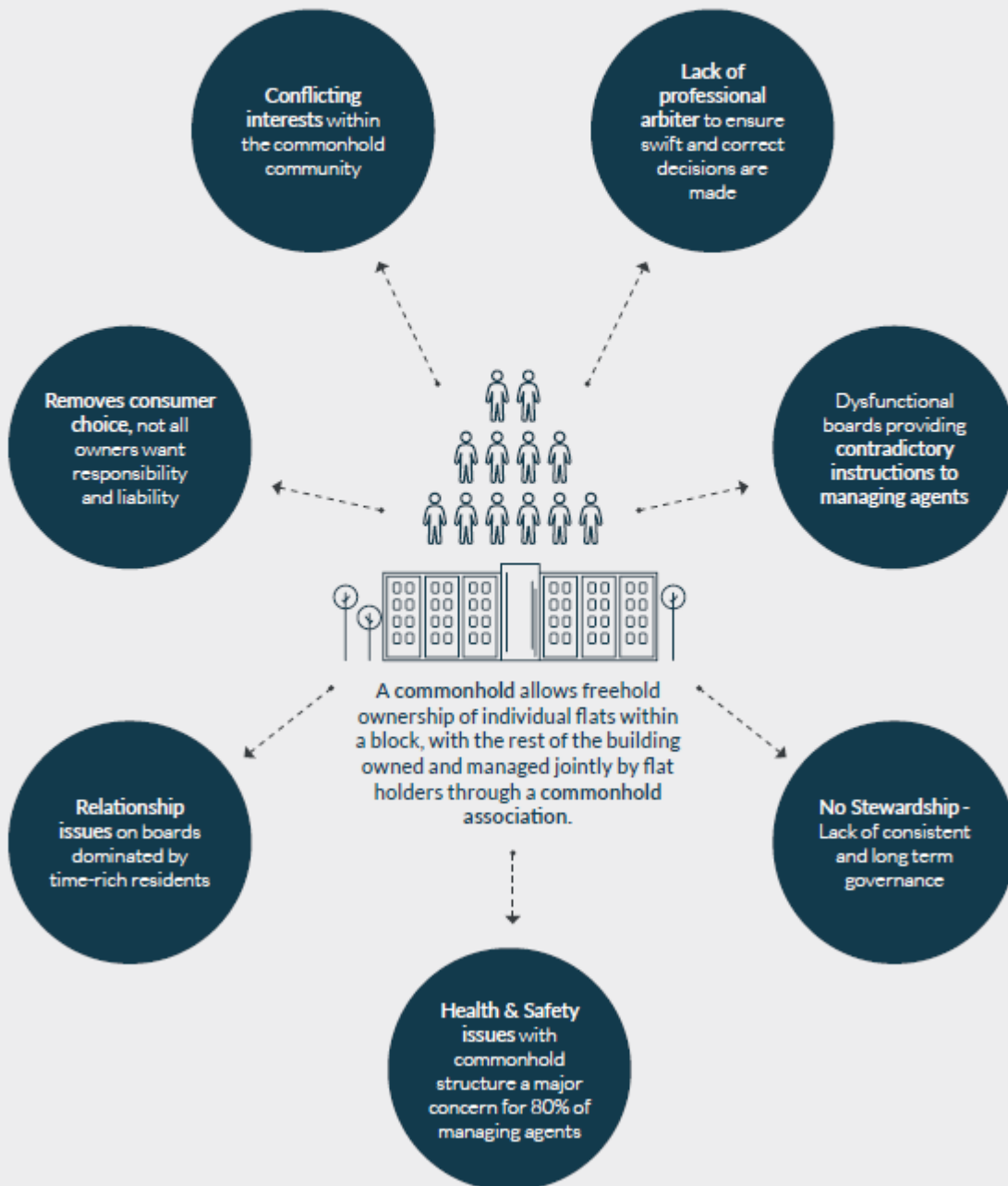
As part of the process, the Law Commission held a number of events across England and Wales. During these events the proposals were discussed and the Law Commission gathered stakeholder views. The events tied in with the Commonhold reform work stream.

## **Next steps**

The Law Commission welcome responses via the following methods:

- Using the online form ([here](#))
- By email to [rtm@lawcommission.gov.uk](mailto:rtm@lawcommission.gov.uk).
- By post to Right to Manage Team, Law Commission, 1st Floor, Tower, 52 Queen's Anne Gate, London, SW1H 9AG.

## What problems occur with commonhold structure?







## Leasehold vs commonhold

	Leasehold	Commonhold
Professional stewardship and long term oversight of your property	✓	✗
The choice of whether or not to participate in the day-to-day management responsibilities for your property	✓	✗
All residents' opinions are taken into consideration before setting rules (rules cannot be changed by majority)	✓	✗
No requirement for you to foot your neighbour's bill when they fail or refuse to pay their contribution	✓	✗
Independent arbiter of neighbourly disputes and disputes between you & your managing agents	✓	✗
Provision of immediate funding in an emergency	✓	✗

\*In both tenure types managing agents fees will be payable and there will be costs associated with buying & selling, or requesting permission to do something outside of the rules

## What do managing agents say about resident-led apartment blocks?

Long delays in completing straightforward tasks, frustration from leaseholders, agents and directors and general deterioration of the building

Resident directors attacked in their own home due to them making decisions which were in the best interests of the development as a whole and in compliance with the lease

Directors insist on using their own "pet contractors" despite a lack of accreditation to prove their competence. Focus is on cost rather than best value

Quarterly meetings end up in arguments between the directors which get personal and result in management decisions not being made

Quotes from a survey of managing agents covering 400,000 leaseholds in April 2018



## **MHCLG – Strengthening Consumer Redress in the Housing Market**

The Government published [plans](#) on 24 January, following a consultation with consumers and industry, to strengthen consumer redress.

### **Issues**

The plans for improved consumer redress have been developed in line with the Government's broader objectives of making a housing market that works for everyone, not just by building more homes but instilling processes that makes the market fair for consumers.

The consultation examined how the current redress landscape works, whether there is a case for streamlining redress services, how the in-house complaints process can be improved and how to fill any gaps.

According to the Government, the consultation responses indicated that redress needs to be more accessible and improvements need to be made to in-house complaint handling.

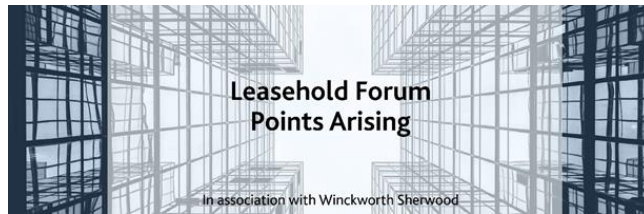
### **Proposals**

In the Ministerial Foreword, Secretary of State James Brokenshire, outlined plans to empower residents through a series of proposals:

- Strengthen existing redress services to help resolve disputes without going through the courts. As part of this, plans for a New Homes Ombudsman, underpinned by legislation following the establishment of an interim voluntary service, was announced. In addition to this, plans will be developed to ensure that private landlords, including private providers of purpose-built student housing, and park home site operators belong to a redress scheme.
- The creation of a new Housing Complaints Resolution Service to provide a clearer simpler route to redress. This would become a single one-stop-shop for housing complaints and help prevent anyone with a problem from being turned away.
- The creation of a single "Code of Practice" on complaint handling across all tenures to raise the bar for service consumers should expect when they seek help.

### **Next steps**

Following the publication of this summary of responses and the Government response to the consultation, the Government will release a strategy setting out plans for executing the recommendations.



### **Upcoming events**

- **8 May** – [Professionalism in Property Conference](#), London
- **25 June** – [Housing 2019](#), Manchester