



## **August 2018**

### **Overview**

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

In summary, since the last Bulletin:

- On 4 July, Winckworth Sherwood hosted the Leasehold Reform Seminar in association with the Leasehold Reform Group. The seminar convened policymakers, experts from across the property sector and industry stakeholders for a private and discursive half-day forum.
- On 24 July, The House of Commons Housing, Communities and Local Government (HCLG) Select Committee launched an inquiry into the Government's leasehold reform programme. This Bulletin details the function of the Committee and this inquiry, what it is examining and how industry can respond.
- On 29 July, the Law Commission issued a paper on its "direction of travel" in relation to making the enfranchisement process on leasehold houses, fairer, cheaper and simpler.

Winckworth Sherwood LLP will be hosting a roundtable on the morning of 22 August to convene industry stakeholders to discuss a coordinated response to the HCLG Select Committee inquiry. Full details of the inquiry and sign up details can be found on pages 2-3.



## **HCLG Select Committee – Leasehold reform inquiry**

The House of Commons HCLG Select Committee serves to monitor, assess and hold to account the Ministry of Housing, Communities and Local Government (MHCLG). As part of this it commissions periodic inquiries into the Ministry's proposed reforms and other pertinent policies. Each report that is published by a House of Commons Select Committee will include tangible recommendations for Government policy. For example, in July, it published its [\*Independent review of building regulations and fire safety: next steps\*](#) with recommendations for the Government to reform the existing regulatory framework in light of the tragedy at Grenfell Tower.

On July 24<sup>th</sup>, the Committee launched its [\*inquiry into the Government's leasehold reform programme\*](#). This follows the conclusion last December of the Government's consultation on *Tackling unfair practices in the leasehold market*, and will examine the adequacy of the Government's current proposals, including its work with the Law Commission. Specifically, the Committee is concerned with the support and intervention the Government can provide for existing leaseholders.

More broadly, the call for evidence presents the opportunity for industry to reflect, and highlight, some of the issues that have dogged the sector to date and table possible reforms that the Committee can in turn recommend to the Government.

### **Stakeholders may wish to submit evidence to the Select Committee.**

Therefore, the five distinct areas that any written submission from industry should address are as follows:

- 1) Government proposals – welcoming and acknowledging the importance of the Government's work, including that of the Law Commission; and highlighting any engagement you have had to date with Government, the Law Commission and Parliament.
- 2) Assessment of the market – reflecting on the 'state of play' within the sector, including the scale of onerous leases, and an indicative summary of your portfolio, including a breakdown of:
  - a. The number of houses and flats;
  - b. Type of lease reviews (RPI, fixed etc);
  - c. 10 yearly doublers; and
  - d. The volume of what could be deemed 'onerous leases'.
- 3) Leasehold reform – highlight the role of professional freeholders (stewardship, indemnity, etc.) and the risk of that function being removed if ground rents are fixed at zero financial value; proposals for a 'reasonable' ground rent going forward and how this can enshrine good practices in the sector; and implications of commonhold tenure for consumers.
- 4) Enfranchisement – outline the importance of a fair valuation method in the enfranchisement process and the implication for pension funds (and consumers) if this is not accurate, noting the recent paper by the Law Commission (see below).



- 5) *Future of the market* – emphasise the importance of progressive reform that does not undermine the consumers' position in the long term, specifically tabling the possibility of a Freeholders Code of Conduct for adoption by the Secretary of State, and a pro-forma lease that limits the scope of onerous terms.

The deadline for written submissions is **Friday 7<sup>th</sup> September**.

#### Working Group

To convene industry stakeholders, Winckworth Sherwood in association with the Leasehold Reform Group are forming a Working Group on the inquiry to consider how to best to co-ordinate responses.

As part of this, the first industry roundtable will be held from 9.00am (refreshments available from 8.30am) on Wednesday 22 August. Presentations will be made on how to draft submissions and key areas to consider in line with the above headings.

The event will be held at Winckworth Sherwood's offices near [London Bridge](#).

We have a limited number of places available so if you would like to attend the roundtable, please register [here](#).



## Law Commission – a summary of proposed solutions for leasehold houses – 19<sup>th</sup> July 2018

The Law Commission issued a paper on its 'direction of travel' in relation to making the enfranchisement process on leasehold houses, fairer, cheaper and simpler. Concerns have been raised that the analysis in the paper isn't balanced and doesn't reflect the reality of the market place.

A key issue is the sample of enfranchisement examples the Commission refers to throughout the paper, to demonstrate the effect that the various options for reform might have on the premium payable (displayed in Fig. 3). Houses A and B have ground rent terms that do not review, and both have different remaining lease terms. House C is likely a Taylor Wimpey ten year doubler and does not take into account the real world position with these particular leases.

With regard to House C, the enfranchisement cost on House C cited in the paper is incorrect as it is based on arbitrary assumptions. Additionally, it is not taken into consideration that it is a Taylor Wimpey lease. As you will be aware, Taylor Wimpey introduced a scheme to allow customers to convert to an alternative lease structure, specifically incorporating materially less expensive ground rent review terms. As House C is a Taylor Wimpey lease, it can be converted to RPI at no cost to the leaseholder and the surveyor has estimated that enfranchisement value would be around £8,000 or 2 per cent of the value of the £400,000 house. This is entirely omitted from the Commission's paper.

Further to this, one institutional investor (which is likely to be representative of most institutionally funded portfolios), provided the following lease breakdown:

The majority, i.e. **63 per cent**, of ground rents collected are index-linked – predominantly **RPI**;

- Less than **3 per cent** of the rents collected are **10 yearly doublers** (of which approximately half of these are Taylor Wimpey leases and therefore capable of being converted to RPI at no cost to the leaseholder);
- **7 per cent** of the rents have no **review**;
- The remainder of the rent is subject to multiplier or additive reviews.

Therefore, what is clear from the Law Commission's paper is that the examples of Houses A, B & C do not reflect the vast majority of leaseholds in existence. It seems that the three examples of leases have been selectively chosen, and consequently exaggerate the scale of the onerous lease problem. This is clearly misleading and unrepresentative of the market, and leads us to believe the LC's analysis to date is incomplete.

Further, it exacerbates a common misconception that onerous leases dominate the market, where we have calculated them to account for less than 1.0 per cent of all leaseholds. To develop constructive solutions for this issue, it is vital that the Commission fully understands and establishes the extent of the issue ahead of developing proposed remedies. As a minimum, to demonstrate a fair and representative picture of the leasehold landscape, we would have expected there to be:

- 1) A recognition that House C (being explicitly referred to as a Taylor Wimpey lease) could be converted to RPI at no cost to the leaseholder, which would convert it to "House D" – and then provide the valuation analysis for House D.



- 2) Example of another house on an RPI linked lease with the same other assumptions as House A and B in terms of market value, ground rent payable today and remaining lease term – with the associated valuation analysis.

The Commission has stated that it will be formally consulting on proposals relating to enfranchisement of both houses and flats in September. However, to ensure the terms of reference of the formal consultation are balanced, and reflect the scale of the problem, stakeholders may wish to write to the Commission voicing concern that the positioning of the issue does not reflect the leasehold landscape. Where applicable, providing portfolio breakdowns would evidence this to the Commission.

As part of the Working Group on August 22<sup>nd</sup>, the agenda will also address forthcoming activity with the Commission.



## **Leasehold Reform Seminar**

On 4 July, Winckworth Sherwood hosted the Leasehold Reform Seminar in association with the Leasehold Reform Group. The seminar brought together policymakers, experts from across the property sector and industry stakeholders, for a private and discursive half-day forum which considered the challenges for the current leasehold market and explored some of the solutions that have been proposed over the past few months.

The seminar included a presentation from MHCLG, which provided an update on the Department's current progress and thinking with regard to the leasehold reform proposals. Following this, delegates heard from the Centre for Economic Business Research (CEBR) who presented the top line findings of their research into the economic contribution of ground rents and the impact of leasehold reform, sharing exclusive insights. Finally, there was a panel discussion with a range of industry experts on solutions for bringing the leasehold system into the 21st century, examining a range of topics.

### Bringing leasehold into the 21st century: Is leasehold a feudal system?

Seminar delegates heard from a panel of experts who discussed whether leasehold is a feudal system and, if so, how it could be modernised and brought into the 21st century.

The discussion began with the experts unanimously agreeing that there is a need in the industry for reform. It was accepted that there has been a number of issues with the current leasehold system, notably the high profile issues around doubling leases and houses sold on leasehold.

Panellists discussed the benefits ground rents provide consumers in leasehold apartments. Aside from a lower property price, panellists cited issues that are often faced with managing estates to a high standard and collecting service charge without a professional freeholder. It was agreed that when property managers act as arbitrators and stewards, consumer experience significant benefits from the leasehold system.

Panellists discussed the importance of understanding the extent of the issue around doubling ground rent terms. One of the major difficulties with this debate is that the extent of the problem is still uncertain – whilst the Leasehold Knowledge Partnership cites a figure of 100,000 leaseholders “locked” into leases with “spiralling ground rents”, institutional investors expect that in reality this figure is significantly lower. It was noted that without accurately identifying the problem, the Government will face difficulties in developing the right solution and this must be a priority going forward.

Panellists were asked what solutions could be introduced in order to professionalise the industry and standardise services for consumers. One suggestion for contributing to the professionalisation of the industry was a nationally recognised qualification in property management. It was agreed that it would be possible to develop such an industry qualification and this would contribute to creating a level of consistency and quality of service.