

September 2018

Overview

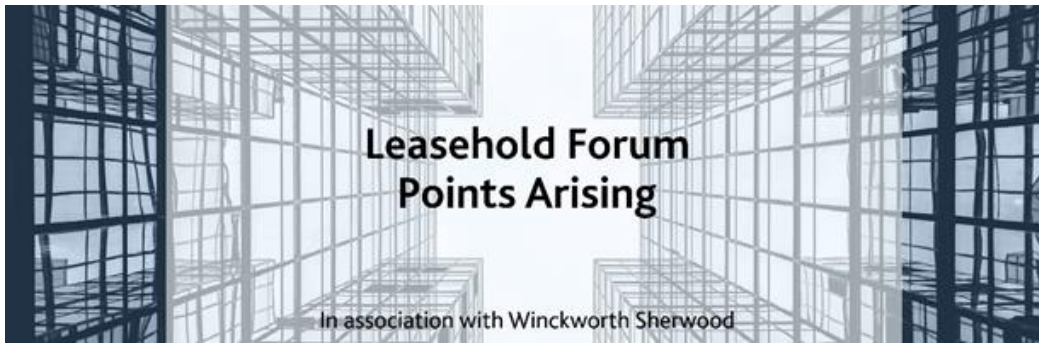
Winckworth Sherwood continues to maintain an active dialogue with various interested stakeholders, in respect of the Government's ongoing programme of leasehold reform.

In summary, since the last Bulletin:

- The Housing, Communities and Local Government Select Committee concluded their call for written evidence in the inquiry into leasehold reform. The Committee is now examining written evidence ahead of oral evidence sessions expected to take place towards the end of October and into November.
- Paul Winstanley, writing in this month's [Estates Gazette](#), addresses the Law Commission's initial proposals for leasehold reform, discussing the difficulty of balancing fairness with ensuring leaseholders are better off.
- The Law Commission published its latest consultation [paper](#), examining the options to simplify the enfranchisement process for leaseholders. This follows on from the summary of proposed solutions for leaseholders of houses [paper](#), published by the Law Commission on 19 July.
- Winckworth Sherwood LLP has begun the process of drafting a Freeholders Code of Conduct (see below for more detail).
- The National Housing Federation held their annual summit where both the Prime Minister, Rt Hon Theresa May MP, and Secretary of State for Housing, Communities and Local Government, Rt Hon James Brokenshire MP, delivered speeches reaffirming their commitments to shift societal perceptions about social housing and deliver long-term programmes to build new affordable homes. This was the first time that a prime minister has addressed the Summit.

The Prime Minister briefly mentioned the leasehold reform agenda and reaffirmed the Government's commitment to "bringing an end to unjustified use of leasehold".

The full speech is available [here](#).



'Attempting the impossible?' – Paul Winstanley in Estates Gazette

In this month's edition of [Estates Gazette](#), Paul Winstanley analyses the Law Commission's initial proposals for leasehold reform, highlighting the difficulty of balancing fairness with ensuring leaseholders are better off.

In July, the Law Commission [published](#) 'Leasehold enfranchisement: A summary of proposed solutions for leaseholders of houses', as a precursor to a comprehensive review of the leasehold enfranchisement process for houses and flats. The Law Commission's objectives include providing a better deal for leaseholders as consumers, simplifying enfranchisement and promoting transparency and fairness.

The piece makes the case for the modernisation and streamlining of the current leasehold/freehold system and recognises the disjointed and complex nature of the current structure. However, Winstanley suggests that the calculations discussed by the Law Commission to reduce enfranchisement premiums are overly simplistic and based upon a set of case studies that are not representative of the market.

"My fear is that, if enacted, any of the proposed valuation methodology changes would undoubtedly create a raft of lengthy litigation, judicial challenges and market disruption."

Striking a balance between reducing enfranchisement prices for leaseholders and fairly compensating freeholders is difficult. Additionally, the current valuation methodology is governed by tribunal decisions, not illegitimate market practice, and therefore it is difficult to see how prices could be considered "unfair".

Winstanley states that the Law Commission's paper is based upon the inaccurate assumption that there is one solitary market for freehold assets and a series of examples that are not representative of the majority of leasehold interests in the UK today.

Whilst Winstanley recognises that the Law Commission is on the right track with the philosophy for leasehold reform, more work is required on the mathematics of premium calculation. He suggests a range of alternative options that should be explored and debated as part of this process, for example:

- Seeking to reflect the markets for freehold interests subject to different unexpired lease lengths, rather than size of ground rent. This could be taken as an opportunity to modernise the calculation methods without fundamentally changing them.
- Council tax bands could replace the low rent test.
- Leasehold interests with 100 years or more unexpired could have a calculation based on the value of ground rent income linked only to some market parameters (such as gilt rates) with reference to the underlying income stream review pattern and provision.
- Shorter leases could have more prescribed parameters for deferment, capitalisation and relativity depending on different lease term characteristics, rather than one single rate or no rate at all. This would avoid a significant amount of negotiation in shorter



lease cases and make the process simpler, yet still allow the flexibility for fairness to both leaseholder and freeholder alike.

It is essential that the specifics of any changes are discussed with specialist valuers, and that any recommendations provided to Government are representative of the market, rather than the overriding sentiment behind the proposals.

Full article available here: [‘Attempting the impossible?’ Estates Gazette](#)

Open Consultations

Housing, Communities and Local Government Select Committee

On Friday 14th September, the Housing, Communities and Local Government (HCLG) Select Committee concluded its call for Written Evidence in its inquiry into leasehold reform.

The inquiry invited submissions on the adequacy of the Government’s programme of work on residential leasehold reform, including its application to existing leaseholders in both houses and flats, and whether further reforms should be introduced. As part of this, the Committee is looking at what support can be provided to those leaseholders affected by onerous leasehold terms and what the implications of providing such support could be.

The Committee will now consider the written submissions before preparing to hear Oral Evidence. Sessions are expected to take place at the latter end of October and into November. The Committee will hold a series of sessions where they will question various experts including leading trade bodies and industry figures and before concluding with the HCLG Ministerial team.

It is likely the final report will be published early in the New Year which will include recommendations for the Government.

More information is available on the Committee’s website [here](#).

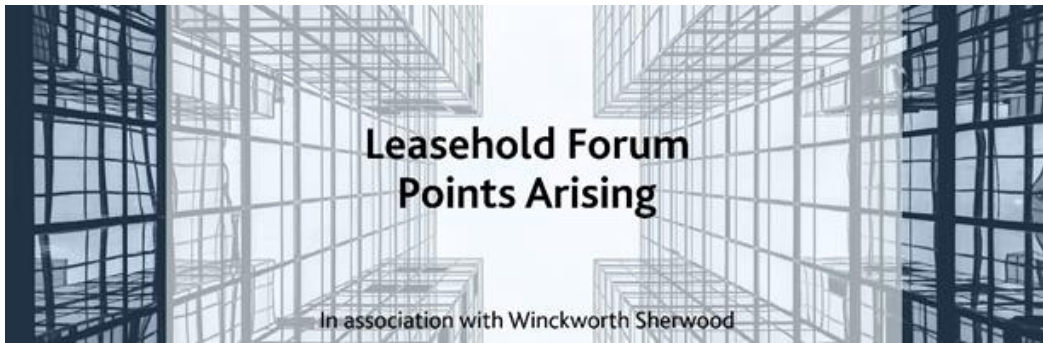
Law Commission consultation: Enfranchisement

On 20th September, the Law Commission published its latest [consultation paper](#) focusing on the enfranchisement process. The paper examines the process through which a leaseholder can purchase their freehold or extend their lease. This consultation is one of the central tenets of the Law Commission’s mandate to review the enfranchisement process for house and flats to make it “simpler, easier, quicker and more cost-effective”.

Upon publication of the paper, the principal Law Commissioner overseeing the process, Professor Nicholas Hopkins, said: *“The current system is complex, slow and expensive and it’s failing homeowners. Many feel that they are having to pay twice to own their home.*

“Our proposals would make it easier and cheaper to buy the freehold or extend the lease of their home, ensuring the system works for ordinary homeowners across the country.”

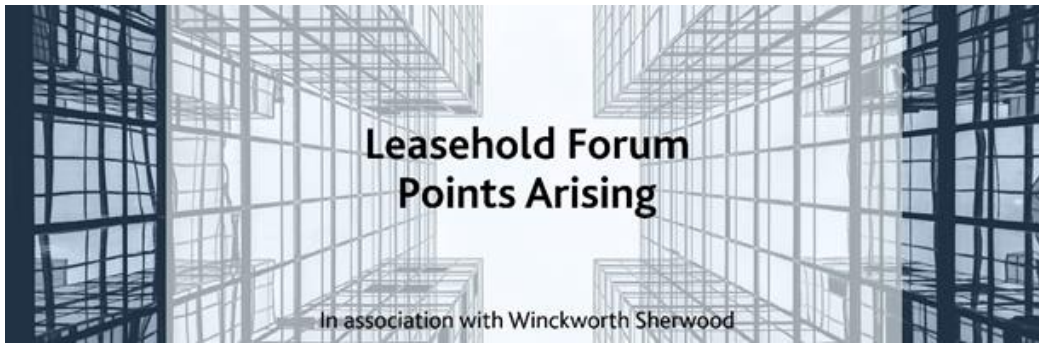
A critical area for debate in the consultation is the formula for valuations of the premium charges on the transaction. The notion of an easily accessible online calculator has been tabled to



streamline the process. In the precursor to this paper, published in July, the Law Commission proposed the idea that the ground rent multiplier could be set at ten times the existing ground rent. However, this paper stresses the importance of fair compensation for freeholders.

This follows a number of industry participants raising concerns that a distorted valuation process would have a knock-on impact on the value of the investment and would undermine a different pool of consumers, i.e. retirees who are exposed to greater risk of losing significant value of their pensions. The argument has been conveyed to the Law Commission that a new enfranchisement process must incorporate a fair market capitalisation for freeholders.

The Commission is inviting submissions for written evidence through to November 20th.



Code of Conduct

Overview

In partnership with industry, Winckworth Sherwood is drafting a comprehensive Code of Conduct to help reform the industry in the interests of the consumer and in line with the Government's objectives. This Code will set out a series of practices to establish clear, high-level standards, outlining how stakeholders should conduct business, with the primary objective of providing additional protections for consumers.

The Code will be an important step in working towards formally regulating the industry. This has been called for by a number of professional bodies and was a prominent theme at the Leasehold Reform Seminar that took place at the beginning of summer. The Code will incorporate a Freehold Investment and Management Charter and be based on the adoption of the following guiding principles: Fairness; Accountability; Integrity; Transparency and Helpfulness.

The Code will be voluntary and signed up to by stakeholders across the leasehold and commonhold market. To encourage the wide take up of the Code, those that sign up will agree to not work with those who have not. The application, procedural and compliance process will be overseen by a Housing Ombudsman or a relevant regulator.

Key objectives

In addition to legislation for a fixed nominal ground rent – 0.1% of original unit value, with a floor of £200, rising periodically in line with RPI – there is significant scope for formal regulation. The Code will:

- Guarantee responsible conduct in the sector
- Raise standards across the sector and drive out bad practices
- Ensure fairness for residents in the leasehold system

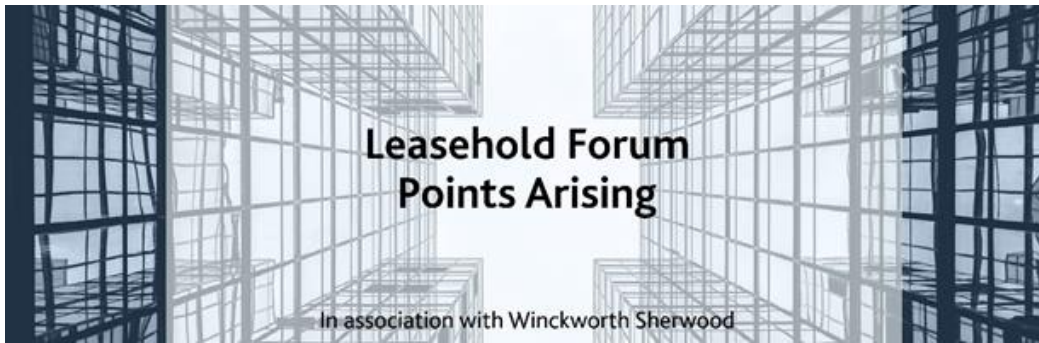
This initial proposal was presented to the then-Secretary of State, Rt Hon Sajid Javid MP, in December 2017 and suggested by a number of industry bodies. Since then, Winckworth Sherwood has initiated the process and begun drafting the full, comprehensive code.

Driving up standards

At the centre of the Code will be consumers, whether this is leaseholders or tenants. This Code will give Leaseholders a number of additional protections. Where it touches the consumer, it will regulate the activities of all types of private sector Landlord, including those who are not institutional investors, using consumer protection legislation.

Crucially the Code will be regulated and policed by an external body and there will be penalties for non-compliance. Consumers will be able to check whether the organisation they are dealing with has signed up to the Code and whether the organisation is thus compliant to the Code content. Organisations will be held to account by consumers, other industry players and the regulator.

Summary and next steps



The current system has systemic flaws and there is widespread support amongst industry for reform and some sort of regulation, of which industry has been vocal on and engaging with the Ministry and Secretary of State. Regulation would be best achieved via adoption of this Code of Conduct.

The Code can be incorporated into legislation under S.87 of the Leasehold Reform Housing and Urban Development Act 1993.

Upcoming events and deadlines

- Conservative Party Conference, September 30th – October 2nd
- ARMA Conference October 18th
- Law Commission consultation closes November 11th