

Response by the Council for Licensed Conveyancers:

Consultation from the Department for Levelling Up, Housing and Communities (in collaboration with the Welsh Government).

‘Reforming the leasehold and commonhold systems in England and Wales’

February 2022

Summary

The Council for Licensed Conveyancers (CLC) welcomes this consultation on how to further improve the leasehold and freehold framework in England and Wales. We have offered advice to organisations on developments in this field in the past, and will continue to support the regulated sector, DLUHC, and consumers to help navigate this increasingly high-profile issue.

Following our analysis of these latest set of proposals we believe that:

- They are broadly positive.
- The changes on enfranchisement are particularly important, and have the potential to transform the situation for consumers and the market in a sustainable, positive manner.
- A major role for government will be to ensure that any potential changes are communicated early, clearly and consistently if they are to be effective.

About the CLC

Legal Background

The CLC was established by Parliament under the Administration of Justice Act 1985. We are also bound by statutory regulatory objectives under the Legal Services Act 2007 which describe what we must aspire to achieve for the public, consumers and the regulated community. The CLC also has powers derived from the Courts and Legal Services Act 1990 and the Deregulation Act 2015.

Role

We licence and regulate licensed conveyancers and Practices in the provision of both reserved legal activities - currently conveyancing and probate services - and other non-reserved legal activities, including will writing. As a Licensing Authority we also authorised to license and regulate Alternative Business Structures (ABS). Our remit covers England and Wales.

To note, the CLC has no representative function, and has always been an independent regulator since its inception.

Sector

We regulate a diverse sector that last year consisted of over 200 firms, and over 1500 CLC Lawyers, working across a very wide range of property and probate issues.

Regulatory Objectives

As set out in Section 28 of the Legal Services Act 2007 the CLC must, so far as is reasonably practicable, act in a way which is compatible with the following 8 regulatory objectives:

1. protecting and promoting the public interest
2. supporting the constitutional principle of the rule of law
3. improving access to justice
4. protecting and promoting the interests of consumers
5. promoting competition in the provision of services by 'authorised persons' as defined in the Act
6. encouraging an independent, strong, diverse and effective legal profession
7. increasing public understanding of the citizen's legal rights and duties
8. promoting and maintaining adherence to the professional principles.

We also must have regard of regulatory principles, under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed. (Alongside any other principle appearing to us to represent best regulatory practice).

Regulatory Review

Alongside our own processes, and to further support the delivery of these statutory objectives, our work is regularly analysed by two separate layers of scrutiny and advice. Firstly by an independent CLC Board - consisting of both professional and lay members - and secondly by the independent cross-sector regulator, the Legal Services Board (LSB).

Introduction

Our responses below have been considered with the above requirements and framework in mind. Notably, but not exclusively, regulatory objectives 1, 4, 5 and 7.

Summary

The CLC is broadly supportive of these further proposed reforms to the leasehold system, in order to make it fairer, more transparent, and more efficient.

Recent direct and indirect events, from Grenfell, and the passage of new legislation, has highlighted the growing prominence of leasehold risks and the need for wider reform. The media and consumers purchasing property (especially flats) are also becoming more aware of the issues involved, and what they require more information on.

We also believe that offering a new, clear **framework** will offer certainty and efficiencies to both consumers and landlords in the sector, and the wider property market.

The litmus test for any **changes** to the current approach should be that they make the process fairer, faster and easier for both leaseholders and landlords.

Having analysed the Department's proposals we believe the recommendations potentially reach the criteria above, if they can be implemented and communicated in an effective manner.

Information & Communication

We would like to highlight this issue. Any possible reform requires a strong commitment to communication. One part of a conveyancer's role is to explain the implications of buying or dealing with any part of a leasehold property. They, and others, will need clarity. We believe further and more engaged work is required on legal education, to inform consumers of their options and their rights in this area, and those advising them.

We would encourage an early full life-cycle plan of how these potential changes are communicated to all side of the purchasing and sales chain, and particularly consumers. This should be mapped alongside the implementation process to ensure all information objectives are monitored and met.

We would also encourage a distinction between how information on existing property is communicated (versus new build sites). For example, many post-1945 flats in England and Wales were not built to high standards. Much of this stock does or will require alterations or major refurbishment, or replacement. These reforms, and how they impact that particular sector of the market, may require a different set of guidance to new build flats. The latter may also have additional obligations to categorise and note. For example, on the costs of covering shared services, such as a private road, or specific positive covenants (e.g. maintain a boundary wall).

There is scope for government, working with the regulated sector, to lead work on if and how any new information this reform results in could be integrated with technical developments and digital tools around the buying and selling process.

Such an approach may also reduce the need for potential redress later in the process. Which could also lead to a more efficient, reliable and trusted market (to the benefit of all participants).

Response to Questions

Collective Enfranchisement Limits

Question 1. Do you agree or disagree that increasing the non-residential limit for collective enfranchisement from 25% to 50% meets government's aim of addressing the historic imbalance of rights between freeholders and leaseholders?

- a. Agree**
- b. Disagree
- c. I don't know

Question 2. Do you support or oppose a 50% non-residential limit for collective enfranchisement?

- a. Strongly support
- b. Support**
- c. Neither support nor oppose
- d. Oppose
- e. Strongly oppose

If response Strongly support or Support - What are the benefits of increasing the non-residential limit for collective enfranchisement from 25% to 50%? (Max 500 words)

- We support the concept, as it adheres to our previous approach to back careful reform of the leasehold framework.
- This in turn rests on our focus the statutory regulatory objectives noted above. Which includes our responsibilities to consumers.
- We recognise that many landlords are responsible and considerate owners. While some may not be pushing for these changes, they will want to make these proposals work if they are implemented. And that will require clear communication (see points above), separate to the tailored advice for leaseholders. We would suggest that this could best be delivered via a range of methods. For example, information pilots, early engagement with the regulated

community, and via a mechanism to share early lessons and best practise in this area, both before any changes are launched, and during the first year of implementation.

- In both the launch, monitoring and guidance of any future reforms we would note a focus on the following issues, to foster clarity,
 - The scale / size of the estate is an important factor. The larger and more diverse it is, the greater the need for a robust agreements or managing grievances between different parties.
 - The splitting of estate management charges between the parties, especially around shared common parts and service or road charges.
- We believe the above approach will help support these reforms if they are passed.
- In terms of market burdens, we would note that by reducing the administrative burden on sections of their property portfolio, there is also a potential benefit to some landlords, with funds and time being released and made available for other parts of their business.
- it potentially alleviates them from several regular business costs, covering management, renewals, insurance, complaints, monitoring, etc.
- It would also reduce administrative and financial impacts on consumers later, when they would otherwise have to renew leases on their property (which would now form part of their freehold), and improve the ability to retain value in their respective flats without the threat of termination too frequently.
- Having noted the benefits, we would note two areas to encourage further study and review. These would assist all parties in obtaining a clearer picture of potential outcomes.
- The first of these would be an analysis on whether the proposals could make aspects of the rented sector less attractive to investors, and whether that could have some negative impact on consumers and parts of the housing market.
- The second would be a consideration of time limits for a freehold purchases under these reforms, e.g. perhaps including criteria for different types, sizes and locations of estates. Such a framework could help in giving guidance and confidence to investment planning.

Question 3. If you were to benefit from a new 50% non-residential limit, would you buy your freehold?

- a. Yes
- b. No
- c. Not sure
- d. ***Not a leaseholder***

Question 4. If no/not sure to Q 3, please select all relevant reasons?

- a. Cost i.e. can't afford cost of buying freehold
- b. Do not want ownership and management responsibility
- c. Not enough qualifying tenants
- d. Not enough support from other qualifying tenants

e. Other [Non-applicable]

Question 5. Are there any individuals, organisations or types of properties that you believe should be exempt from the proposed increase in the non-residential limit to 50%?

- a. Yes
- b. No

c. I don't know

If Yes - Please set out what type of individual, organisation or property should be exempt. Please provide information on the following. Why you think they should be exempt, providing evidence where possible; and the criteria for how an exemption would work in practice

- We currently have no recommendations on who should be exempt. However - in light of our earlier points on market clarity - we would encourage a separate process on forecasting and scenario planning on this issue.
- This would be aimed at establishing who could be likely to claim or require exemptions. For example, these possibly might include sections of some Crown-related properties, or charities with a large property footprint such as the National Trust.
- Any findings on this should be clearly integrated into early drafts of information guidance.

Individual freehold acquisitions

Question 6. Do you support or oppose a 50% non-residential limit for individual freehold acquisitions?

More information: Please refer to Chapter 2: The non-residential limit for collective enfranchisement, Section: Interdependent proposals - Individual freehold acquisitions, paragraphs 25 – 29.

a. Strongly support

b. **Support**

c. Neither support nor oppose

d. Oppose

e. Strongly oppose

If response Strongly support or Support - What are the benefits of a 50% non-residential limit for individual freehold acquisitions? (Max 500 words)

- We cautiously support these measures, to bring them in line with **collective** enfranchisement proposals and avoid a fragmented system that could lead to more confusion.
- We would also note that scale is no barrier to disputes. And that individual freehold concerns can possibly be more distressing for consumers acting more on their own.
- Due to these concerns we would recommend a particular focus on the drafting and dissemination of clear information on any proposals that emerge on individual freeholds.
- This would help mitigate the risk of conveyancers or other advisors, landlords and leaseholders being inadvertently impacted by gaps in guidance.

Question 7. What are the potential impacts of introducing a 50% non-residential limit for individual freehold acquisitions? (Max 500 word)

- Alongside the issues noted above, there is inevitably a risk of uncertain outcomes in any transition period when a new system is being rolled out.
- We would encourage the Department, in liaison with other government organisation such as the Land Registry, to undertake a separate impact analysis on this question, as it affects individuals who may not have the wider support network of other leaseholders, and to share the findings widely .It should include the benefits noted above (see response to Question 20).

Mandatory Leasebacks

Question 8. Do you agree or disagree that mandatory leasebacks to landlords as part of the collective enfranchisement process will reduce the cost of purchasing a freehold?

More information: Please refer to Chapter 2: The non-residential limit for collective enfranchisement Section: Interdependent proposals – Mandatory leasebacks, paragraphs 30 – 33.

a. Agree

b. Disagree

c. I don't know

Question 9. Do you support or oppose mandatory leasebacks to landlords as part of the collective enfranchisement process?

a. Strongly support

b. Support

c. Neither support nor oppose

d. Oppose

e. Strongly oppose

If response Strongly support or Support - What are the benefits of mandatory leasebacks as part of the collective enfranchisement process, on the presumption of a 50% non-residential limit? (Max 500 words)

- We believe the main advantage of this proposal is that it helps ensure collective enfranchisement could realistically work in a wider range of scenarios.
- We would agree with the Law Commission, who noted that without this specific mechanism (i.e. the ability to require the landlord to take leasebacks) the increase to the non-residential limit is less likely to be of benefit to leaseholders due to costs.¹
- We would note that a large or varied estate would, all things being equal, be more likely to require leasebacks to the landlord.

¹ <https://www.lawcom.gov.uk/project/leasehold-enfranchisement/>

- These would require more detailed agreements and we would encourage the use of pilots and engagement with all sides to ensure the forms and administrative steps around that minimise burdens on consumers or businesses. Again, there could be scope for exploring integration with current or planned digital tools.

The non-residential limit in right to manage claims

Question 10. Do you agree or disagree that increasing the non-residential limit for the right to manage from 25% to 50% meets government's aims of addressing the historic imbalance of rights between freeholders and leaseholders?

More information: Please refer to Chapter 3: The non-residential limit in right to manage claims

- a. **Agree**
- b. Disagree
- c. I don't know

Question 11. Do you support or oppose a 50% non-residential limit for right to manage claims?

- a. **Strongly support**
- b. Support
- c. Neither support nor oppose d. Oppose
- e. Strongly oppose

If response Strongly support or Support - What are the benefits of increasing the non-residential limit for right to manage from 25% to 50%? (Max 500 words)

- We believe that this is a pragmatic and reasonable proposal.
- It offers a more nuanced approach to the realities that may emerge, particularly in instances where high barriers to entry (into this particular market) or unequal impacts are more likely to exist. For example, in situations where lower-income leaseholders could not forward high levels of enfranchisement, they could still possibly pursue this option. It would be particularly beneficial for vulnerable or other consumers who are dealing with rogue landlords.

- We would note that getting the contractual agreements right, over obligations, rights and transition arrangements. [And there is scope for partnerships across all those contributing to this consultation response to engage with templates and approaches to that.

Voting Rights

Question 12. Do you agree or disagree that right to manage company voting rights should be amended to ensure leaseholders continue to have effective control of decisions?

- a. **Agree**
- b. Disagree
- c. I don't know

Question 13. Do you support or oppose capping the total votes allocated to landlords in right to manage companies to one-third of the total votes of qualifying tenants (Law Commission's Option 3)? More information: Please refer to Chapter 3: The non-residential limit in right to manage claims, Section: Interdependent proposals – Right to manage voting rights, paragraph 44.

- a. Strongly support
- b. **Support**
- c. Neither support nor oppose
- d. Oppose
- e. Strongly oppose

If response Strongly support or Support - What are the benefits of capping the total votes allocated to landlords in right to manage companies to one-third of the total votes of qualifying tenants? (Max 500 words)

- As above, we believe these proposals only work if looked at totally in the round, and lose effectiveness if some are not carried forward. If this measure is not pursued, it would risk a disjointed and unclear system, one that is not as efficient as it could otherwise be, and which could risk both confusion and a drop in both consumer and market confidence in the reforms.

Commonhold voting rights for shared ownership properties

Question 14. Do you support or oppose that, where Shared Ownership providers are liable for paying for repair and maintenance during the 'Initial Repair Period' of a new Shared Ownership lease, they should have the right to vote on matters relating to these works and their costs?

a. Support strongly

b. **Support**

c. Neither support nor oppose

d. Oppose

e. Oppose strongly

If response Strongly support or Support - What are the benefits of allowing Shared Ownership providers the right to vote on matters relating to the works and costs for which they are responsible during the "Initial Repair Period"? (Max 500 words)

- Further assessments of why this period is 10 years would be beneficial.
- We would like to further understand if this time period is due to:
 - An average lifecycle of expected repairs?
 - And if so, if this based on mean, mode or median data?
 - Evidence from England and Wales, or whether it includes Scotland and Northern Ireland (where harsher weather can lead to more repairs, and the housing stock has a different mix)?
 - Whether the data from England and Wales covers the same period?

Question 15. Do you support or oppose that, where Shared Ownership providers wish to delegate this right over decision-making to the shared owner, they should be able to do so?

a. Support strongly

b. **Support**

c. Neither support nor oppose

d. Oppose

e. Oppose strongly

If response Strongly support or Support - What are the benefits of allowing Shared Ownership providers to delegate this right over decision-making to the shared owner? (Max 500 words)

- We agree with the Law Commission that where a shared ownership lease is in place (before conversion to a commonhold), the provider should be able to delegate voting rights to the shared owner.

Home buying and selling: Commonhold

Question 16. What should be the maximum fee (£) for issuing a Commonhold Unit Information Certificate (CUIC)?

- a. 151 - 200
- b. 101 - 150
- c. **51 - 100**
- d. 0 - 50
- e. Other (Please specify) £ Variable

Why do you think your chosen maximum fee (£) is most suitable? (Max 500 words)

- We provisionally believe the price charged for a new CUIC should be low. It should be fairly easily calculated in most circumstance, with the business burden being reasonably low, and most of the work required being standard-level due diligence.
- At any given time, it is also fair to assume an effective organisation would have such figures to hand, or could obtain them w
- As such, it would not pose a large administrative task, and may well encourage best practise in some firms on their arrears (if it is known these can be asked for in a time-limited CUIC).
- As such it would also have the benefit of removing risks to their own business operations, via providing an incentive for the identification and resolving of unclear or contentious issues.

Question 17. Do you support or oppose a sanction on the commonhold association that no fee is payable, if the deadline for the CUIC's provision is missed?

- a. Strongly support

b. **Support**

c. Neither support nor oppose

d. Oppose

e. Strongly oppose

If response Strongly support or Support - What are the benefits of placing a sanction on the commonhold association that no fee is payable, if the deadline for a CUIC is missed? (Max 500 words)

- Our general approach echoes points in our response to the government's earlier consultation, 'Strengthening consumer redress in the housing market' in April 2018.
- <https://www.clc-uk.org/wp-content/uploads/2017/12/CLC-Response-to-DCLG-Call-for-Evidence-Improving-the-home-buying-and-selling-process-20171214.pdf>
- The related issue (Question 20) was linked to response times to leaseholders.
- In our reply we stated that, 'To a large extent this is dependent on the resources of the managing agents/freeholders, but a time limit could give buyers and sellers greater confidence in the process. Ideally this information would be available as the property begins to be marketed.'
- On a wider policy point, we would also encourage the ongoing international review of commonhold property and how relevant management agreements and lessons may apply here, to the benefit of consumers and the wider market. For example, the Danish *andelsboliger* system, where, rather than buy an apartment, people purchase a share in an association that owns the apartment building, equal to the value of the apartment. (And once they move out, they leave with roughly what they have put in over the years).