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 19th January 2022

The RT Hon Michael Gove MP

Secretary of State

Department for Levelling Up, Housing and Communities

2 Marsham Street,

London

SW1P 4DF

**Dear Mr Gove,**

**RE: LEASEHOLD REFORM PROPOSALS**

We hope you are enjoying such a challenging and important role within the Government. It has been reassuring to see Government taking a more active role in resolving the issues effecting the consumers of the property industry, for example the consultation issued on 11th January 2022 on reforming the Leasehold and Commonhold Systems in England & Wales.

We are all delighted to be working with, and to be able to continue to support, the Department’s aims to improve the home-moving process. As part of this, it is key we resolve the unfairness and exploitation of owners of leaseholds and managed freehold property.

We, along with many others across the property industry, have worked with the Department to develop policies which will lead to real-world improvements, and we have publicly welcomed announcements in a number of areas.

However, we are disappointed the Government has yet to implement these measures given the exploitation continues and increases with every passing day. We would therefore urge you to include the already-announced measures in future legislative plans as soon as possible to avoid further blighting of leasehold and so-called ‘fleecehold’ property.

The research undertaken by, and on behalf of, the Government has delivered generally non-contentious recommendations many of which the Government has publicly supported. However, without the legislation to deliver the improvements, consumers continue to be impacted by the exploitation of their homes by third parties.

The Conveyancing Association and Home Buying & Selling Group (HBSG) consumer surveys in both 2017 and 2021 indicated buyers were not provided with material information, though 98% of them do want it, which has resulted in the mis-selling of property.

We therefore call upon the Government to deliver the implementation of:

1. The Law Commission Reports dated 21st July 2020 on:

* + Leasehold enfranchisement.
	+ Right to Manage.
	+ Commonhold.
1. Regulation of Property Agents report dated 18th July 2019.
2. Delivery of previously announced legislation:
	* Leasehold Reform
		+ Removal of the ability to convert to an Assured Shorthold Tenancy under the Housing Act for ground rent over £250 (£1,000 inside London) pa on long leases.
	* Reasonable fees and reasonable timescales for administrative activities:
		+ LPE1 maximum fee of £200 plus £50 refreshment fee.
		+ LPE1 response within 10 working days of payment.
		+ Jurisdiction for enforcement of the reasonable fee and timescale.
	* Managed Freehold (‘Fleecehold’):
		+ Freehold owners having the same rights as leasehold owners, for example, to challenge unreasonable service charges/take on the right to manage.
		+ Removal of estate rentcharge owner’s right to create a long lease where there are rentcharges unpaid whether requested or not.
3. Legislate for the provision of material information by the seller of property, prior to offer.

A full breakdown of proposals and reasoning behind them is attached. To provide clarity, we are in full support of the Building Safety Bill so long as the impacted leaseholders are adequately supported.

We would welcome the opportunity to discuss the issues outlined here in person with you, in order to get to the outcomes we all want to see as quickly as possible. We look forward to hearing from you, and thank you in anticipation of your assistance in this matter.

Yours sincerely



**Nicky Heathcote**

**For and on behalf of the following property industry organisations**





  

 

   

**APPENDIX TO LETTER**

* 1. **Reasonable Fees for Administrative Activities**
	2. A requirement for reasonable fees for any administrative activity in any tenure - leasehold, freehold or commonhold.
	3. A tariff of fees for quantifiable activities, managed and set by an appropriate organisation such as RICS or by the Secretary of State within regulations, just as solicitor charging rates are set within the Civil Procedure Rules.
	4. Requirement for standardised documents to be created and mandated to reduce costs and delay generally in respect of notice of assignment, notice of charge, stock transfer, deed of covenant and certificate of compliance.
1. **Reasonable Timescales for Administrative Activities**
	1. Create obligations for the lease administrator to provide the information required for the sale, for example, as set out in the Leasehold Property Enquiry Form (LPE1) to enable those marketing the property to comply with the Consumer Protection from Unfair Trading Regulations.
	2. Services and information to be provided within a reasonable period from receipt of payment, for example, 10 working days and if over that then to provide free of charge.
	3. If a required compliance certificate is not received within 10 working days of the conveyancer complying with the requirements then the conveyancer may complete a form at Land Registry to confirm they have complied and Land Registry will register the amendment to the register. This will reduce the registration gap and save wasted time and resource for Land Registry, the conveyancer, the lender and the lease administrator.
2. **Enforcement**
	1. Mandatory requirement for all freehold management or lease administrators to be part of a fit for purpose redress scheme.
	2. To enable HM Land Registry to disapply restrictions requiring a certificate of compliance confirming compliance with the terms of the lease, where a conveyancer can provide evidence of compliance in some other way or the terms of the lease are void, for example, a post-1995 lease requiring a deed of covenant.
3. **Unfair Lease Terms**
	1. No new-build should have an initial lease term of less than 250 years.
	2. Rent review clauses should allow for no more than 50% increase in rent, or the difference in the RPI, each 10 years; whichever is the lesser. While it is argued that where there are shared facilities or maintenance requirements it is advantageous to keep the landlord on the scene and provide them with a return on the basis that an absent or insolvent landlord makes it hard to enforce covenants and sell properties, in fact it would be better if leaseholders had the automatic right to manage and acquire the freehold where a landlord has become absent.
	3. Unless there is a genuine requirement for shared maintenance, houses should not be leasehold and where they are should have rent set at a peppercorn level.
	4. Existing leases with unfair terms around escalating ground rents or unreasonable fees should retrospectively comply with the above requirements to prevent blighting the properties.
	5. Exit/event or transfer fees should only be recoverable where they will be directly credited to the reserve fund for that block. An exit or transfer fee which goes in part or in whole to the landlord, with no tangible benefit to the block in return, should be unenforceable.
	6. An estimate of the amount of the exit fee should be stated on the end of each service charge demand to try to keep owners and beneficiaries up to date as to what it means to them.
	7. Disapply the provisions of the Housing Act in respect of possession under Ground 8 of Schedule 2 of the Housing Act 1988 in long leases. This would bring it into line with the intentions of s.167 of the Commonhold and Leasehold Reform Act 2002 to prevent forfeiture for prescribed small amounts or over prescribed short periods.

1. **Overhaul of Tenure**
	1. Review of Commonhold Regulations to make a viable alternative, with the protections equivalent to those afforded to leaseholds, for example, in respect of service charge dispute procedure implemented by the Landlord and Tenant Act 1985, with a view to outlaw leasehold and require Commonhold in newbuild and conversions when fit for purpose.
	2. Simplification of the process to extend the lease and buy the freehold, in the same way that the Long Leases Scotland Act 2012 converts leases with initial terms over 175 years - with 100 years left to run - into freeholds, leasehold houses could convert to freehold where there is no shared amenity element which would require a leasehold tenure.
	3. Lease extensions cause delay and abortive transactions. Extending leases outside of the Act means you are at the mercy of landlords who can charge above the going rate, impose unreasonable terms (for example, rent increase etc). Therefore, require standard and reasonable terms on lease extensions and set timescales for each step in the process.
	4. Bring the protections for owners of leasehold houses in line with those of leasehold flats, for example, provide for owners of leasehold houses to have the right of first refusal when the freehold is offered for sale.
	5. The consideration for a lease extension should be determined by one pre-set formula.
	6. Each party should bear their own costs for a lease extension or enfranchisement where there is a premium payable.
	7. Review Right to Manage to make it easier for tenants to take the responsibility on if a landlord won’t do their bit. It should not be necessary to involve a managing agent until the First Tier Tribunal has approved the right to manage in principal. The current system is too expensive for most developments.
	8. If a management company fails for leasehold flats and houses, the tenants should have the right to create a Right to Manage Management Company, failing which the landlord should take on the obligations of the management company until a new company can be established.
	9. Section 20 notice levels to be reviewed in line with inflation and thereafter set each year by RICS in line with inflation. This will reduce the administrative burden on managing agents which should reduce the cost of management.
	10. Housing Associations and Local Authorities to be required to comply with the same levels of reasonableness and fairness for administration fees and service charges, and their leases should be capable of statutory extension.
	11. Managed freehold property to be treated the same as leasehold in respect of the above points and the managed property form (FME1) to be mandatory.
2. **Buildings Insurance**
	1. All landlords with obligations contained in the lease to insure should be required by statute to insure comprehensively for the full reinstatement value (for which they may obtain a surveyor’s opinion every five years) and for the risks identified in the UK Finance and Building Society Association Mortgage Lenders’ Handbook or their replacement. This will avoid the need for deeds of variation where there is a clause which is not compliant with the Lender’s Handbook which severely slows down transactions, increases costs and can lead to transactions falling through due to the inability of the buyer to satisfy the lender’s requirements.
	2. Lease Administrator to obtain at least three quotes from rated insurers for insurance to achieve the best premium possible, the quotes to be shared with the leaseholders and should contain a statement as to whether or not the insurance complies with the requirements of the Lenders’ Handbook.
3. **Management Regulation**
	1. Regulations should be created for the protection, investment, management and calculation of the reserve fund on every leasehold or freehold management block.
	2. A reserve fund should be in place for any leasehold scheme containing two or more properties to ensure sufficient funds accumulate for foreseeable major works based on a five-year asset management plan.
	3. Management charges should be limited to 10% of routine service charges, or in the case of exceptional charges be proportionate to the work to which they relate, excluding payments into the reserve fund.
4. **Marketing of Properties**
	1. Anyone marketing a Leasehold Property should order on listing, and provide as soon as possible to potential buyers, upfront information on:
5. The remaining term of the lease and potential financial impact of it.
6. The amount of ground rent payable.
7. The nature of rent review clauses.
8. The amount of the annual service charge.
9. A menu of the charges imposed by the lease administrator for services in connection with the sale, ongoing ownership and purchase of the property, including any exit or transfer fee payable.
10. The existence of a lease clause requiring exit or transfer fees on disposal

For all property the seller should also provide:-

1. The Buying and Selling Property Information, the Title and documents referred to in it, the Local Authority and Drainage & Water Authority and locality dependant searches and environmental information, along with the digital identify verification for the seller to prevent fraud.

**NB THE EQUIVALENT PROTECTIONS SHOULD BE APPLIED TO ESTATE RENTCHARGES, FREEHOLD MANAGEMENT SCHEMES AND COMMONHOLD.**