MISALIGNED INCENTIVES

THE UNIQUE PROBLEM WITH FLATS IN ENGLAND AND WALES ...

... AND WHAT TO DO ABOUT IT

COMMONHOLD NOW
END LEASEHOLD FOR REAL HOMEOWNERSHIP

A Commonhold Now policy paper, written on behalf of the 5.2 million leasehold households in England and Wales

BY HARRY SCOFFIN

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COMMONHOLD NOW

END LEASEHOLD FOR REAL HOMEOWNERSHIP

Harry Scoffin, who leads Commonhold Now, is a housing campaigner and journalist who has been telling leaseholders' stories for half a decade. His videos taking him across England going into people's homes and hearing how the leasehold scandal is ruining their finances, mental health and lives are racking up between 20,000 to 100,000 views on X, formerly Twitter. Follow him @HarryScoffin.

He is personally invested in ending leasehold tenure, living in his family home where the building is falling into disrepair and service charges have skyrocketed £10,000 in five years. In the last two years alone, his Mum's service charges have increased nearly 40 per cent. The block's freeholder is one of Britain's richest men. Harry is deputy chair of his residents' association. He has lived under strata title in Asia and believes that a mass shift to commonhold, the English equivalent, will stop the routine financial abuse exercised by remote freeholders, largely beyond homeowners' control, and is a vital, pro-democracy campaign. In 2022, the International Building Press shortlisted him for Housing Journalist of the Year.

The author would like to thank everyone who peer reviewed this document. The final report and conclusions therein remain the responsibility of the author.

EXECUTIVE SUMMARY

Everyone agrees that England and Wales are burdened by a housing crisis, but everyone seems to disagree on what to do about it. This report puts leasehold, an archaic and arcane tenure unique in the world to England and Wales, at the centre of the housing debate.

It argues that action against leasehold is a necessary, but not sufficient, condition for solving the housing crisis. The report shows how the misery and injustices faced by leaseholders intersect with wider issues such as the lack of suitable and quality housing, the inability to build enough homes for owner-occupiers and renters alike, the poor quality of new homes as well as the lack of maintenance of existing multi-occupancy housing. It is time to comprehensively reform and defang the leasehold system.

The current generation of homeowners caught in this feudal system must be liberated, and for future generations, new-build flats should be sold on a commonhold or share-of-freehold basis only. Current generations and prospective homeowners deserve to be masters of their own home.

This report first states the problem of leasehold as a misalignment of incentives and imbalance of power, which permits freeholders to exploit leaseholders through unjust rent-seeking.

It then goes on to present 32 concrete policy recommendations for existing leaseholders and for the development of new homes in the future. These recommendations are made in the spirit of what we believe is politically feasible today, building on work already done by the Law Commission. Our policy recommendations are second-best to the ultimate, and in our view morally just, solution of leasehold abolition. But they would go a long way to give leaseholders control of their own home, and to liberate them from rent-seeking by freeholders.

Finally, the report rebuts the most common and strongest-held objections to leasehold reform by the vested interests.

The solutions proposed in this report do not cost taxpayers a penny, they lead to liberation of leaseholders without confiscation of freeholders' legitimate property rights, and they offer freedom of choice, not compelled conversion to a new system. Leaseholders have waited long enough; now is the time for bold action.

1 November 2023

"Leasehold is a scam. My colleague, Heather Wheeler, is doing great work in this area." Prime Minister Rishi Sunak, then Minister for Local Government, speaking to the author in a Bethnal Green living room, 7 June 2018

"I don't believe leasehold is fair in any way. It is an outdated feudal system that needs to go. And we need to move to a better system and to liberate people from it." Michael Gove, Secretary of State for Levelling Up, Housing and Communities, 30 January 2023

"At the moment, people are being completely ripped off and they feel that. The balance isn't correct." Angela Rayner, Shadow Secretary of State for Levelling Up, Housing and Communities, 6 October 2023

INTRODUCTION

Home ownership – and affordability – are rapidly rising up the political agenda in Britain. The pain is particularly acute among young people; a 2021 study by the independent think-tank, Resolution Foundation, found that home ownership rates among those aged 25 to 34 have broadly halved from their peak of 51 per cent in 1989 to 28 per cent by 2019. For the poorest two-fifths of those in this age group, the ownership rates have more than halved to only 11 per cent of the population.[1]

Affordability is not merely a concern for the young. A variety of surveys show that middle-class, home-owning parents are also concerned about whether they will be able to help their adult children 'get a foot on the property ladder' by dipping into their own savings to make a deposit on a first home.

And while rising interest rates aimed at controlling inflationary pressures are hitting hopeful homebuyers in many countries in Europe and the US, England and Wales have an unusual legal structure for land ownership which is clearly exacerbating the problem and preventing high density housing in our cities from taking off.

That is, in these two jurisdictions, it is legally possible to separate ownership of a home from ownership of the land it sits upon. This arrangement gives unusual powers to landowners to extract income from occupiers.

No wonder England is home to the largest number of people living in households that spend more than 40% of their income on housing in Europe, at 11.3 million, which is one in five people.[2]

Moreover, from a legal perspective, the purchaser of a leasehold flat or house is not buying a property. What is being purchased is the right to occupy a property, subject to terms and conditions, fees and charges. The UK Government and its Department for Levelling Up, Housing and Communities acknowledge this reality in guidance to buyers: "Leasehold is a type of long-term tenancy; it is not the same as outright

[1] Adam Corlett and Felicia Odamtten, *Hope to buy: the decline of youth home ownership*, Resolution Foundation, December 2021 https://www.resolutionfoundation.org/app/uploads/2021/12/Hope-to-buy.pdf
[2] *Housing horizons: examining UK housing stock in an international context*, Home Builders Federation, October 2023 (p. 5) https://www.hbf.co.uk/documents/12890/International_Audit_Digital_v1.pdf

ownership. When you 'buy' a leasehold property, you do not become the owner of the property: you acquire the right to occupy it for the amount of time that is remaining on the lease."[3]

Where the leasehold is in the form of a flat in a multi-occupancy building, the fees and charges will include costs associated with the maintenance, upkeep and repair of the building. These may be spelled out in the wording of the actual lease or may simply be implied. Common limitations on leaseholder use of the flat include ability to sub-let or make any structural changes without permission or a prohibition against owning pets and use of the facility as a business premise, which the UK Government have recently suggested is even hampering childminding.[4]

Leasehold is a tenure derived from Mediaeval times, when the feudal overlord or freeholder was able to control and compel his serfs. He owned the fruits of their labour. Freeholders today have that same ability to control and compel, via the proportion of leaseholders' incomes they are able to extract from in service charges and other costs, over which they have no control. Leasehold on homes is a form of taxation without representation. But what has made the tenure especially toxic is the fusing of a feudal-style arrangement with 21st century economics. This allowed the aggressive commercialisation of people's homes over the past 20-30 years.

We know we have a problem when an editor of the Financial Times, the self-styled paper of capitalism, takes to X / Twitter, in a debate on falling living standards, rising inequality and depressed productivity, calling on the UK Government to get on with "scrapping leasehold and replacing it with commonhold, removing an entire unnecessary rent-extraction industry from the economy".[5] Telegraph columnist and parliamentary sketchwriter Madeline Grant observes the system has literally stopped her friend from starting a family: "I am so with Michael Gove on leasehold; a hustle, the mere illusion of homeownership. A friend is a leaseholder, hoping to have a baby soon and keen to extend their flat. But he and his wife can only do so with freeholder permission, and it looks as if they'll say no. So no baby."[6]

Before World War 2, flats were rented either from local councils or from private landlords. Leasehold on multi-occupancy buildings was limited to historic estates and one-off mansion blocks. The concept of 'buying' flats with mortgages did not exist. The first step in proliferating leasehold flats came in the 1970s, with the break-up of large Victorian and Edwardian houses into three or four units to accommodate the country's expanding population.[7] A flurry of leasehold reforms followed in the 1980s and 1990s while work on a superior system, commonhold, to enable a bespoke, statutory scheme

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[3] *How to lease: A guide for current and prospective leaseholders in England*, HM Government, June 2022 (p. 4) https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1084594/How_to_Lease_July_2022.pdf

[4] Kaya Burgess, 'Let childminders work in their own homes, landlords are urged', *The Times,* 21 August 2023 https://www.thetimes.co.uk/article/let-childminders-work-in-their-own-homes-landlords-are-urged-prqqlwsmw

[5] Jonathan Eley, X / Twitter post, 7 September 2023, 10:54am https://x.com/JonathanEley/status/1699722894861906215?s=20

[6] Madeline Grant, X / Twitter post, 8 February 2023, 6:33pm https://x.com/Madz_Grant/status/1623389575757328385?s=20

[7] Chris Hamnett and Bill Randolph, *Cities, Housing and Profits: Flat Break-Up and the Decline of Private Renting* (Oxon: Routledge, 2021); Chris Hamnett and Bill Randolph, 'The Rise and Fall of London's Purpose-Built Blocks of Privately Rented Flats: 1853–1983', *The London Journal*, Volume 11, Issue 2, 1985, pp. 160-175. DOI: https://www.tandfonline.com/doi/abs/10.1179/ldn.1985.11.2.160

of resident-controlled freehold flats operating without leases and ground landlords, continued.

But it wasn't until the opening years of this century that the high-rise residential towers of Asia and America became a dominant feature of our cities, with the arrival of developers like Ballymore, Galliard and Manhattan Loft. Flats became 'apartments', some with pools, gyms and even the luxuries of hotel living, from room service to dry cleaning. High-rise living was brilliantly marketed. "Sit back and enjoy the views, we'll do the managing for you. Nothing to worry about." Leasehold tower blocks were soon sprouting like mushrooms from every square meter of spare city land. The leaseholder population boomed like never before.

Then came the financial crisis and the pumping of vast sums into Western economies. Assets like bonds and cash languished. Investors looking round for alternatives quickly spotted the advantages of freeholds, which offered guaranteed returns via ground rents, permission fees, lease extensions, major works and commissions from the placing of insurance contracts. British homes were snapped up by international investors, who seemed barely aware that the freeholds they had bought came with actual human tenants.

It was only when the Grenfell Tower tragedy struck and the fall out concerning dangerous and poorly built private blocks of flats that the precarious position of leaseholders became a matter of public knowledge. The role of freeholders, the so-called noble custodian landlords, came under ferocious scrutiny.

But the captive nature of leaseholders, who pay but have no say or control over their homes and charges, has been well known in political, legal and property circles for years.

As a 1992 paper pointed out, "In October 1985, the Nugee Committee produced a well-received Report. It drew attention to a number of diverse problems relating to the management of leasehold flats, most especially those faced by lessees [leaseholders]. These were said to include excessive delays in carrying out repairs, complaints as to the level of service charges and difficulties in the enforcement of lessors' [landlords'/freeholders'] obligations. It goes without saying that the slow and inevitable structural deterioration which inevitably takes place as a building 'ages' will risk being accelerated by any dilapidations caused by the neglect of the lessor [landlord/freeholder] regularly to comply with his repairing obligations. In this and similar circumstances of mismanagement (such as a failure regularly to collect service charges) the value, credit-worthiness and saleability of the lessees' [leaseholders'] interests are all put at risk."[8] In 1998, the UK Government concluded that "the existing residential leasehold system is fundamentally flawed. It has its roots in the feudal system and gives great powers and privileges to landowners."[9]

[8] P.F. Smith, 'A nasty measure – Part I Landlord and Tenant Act of the 1987', *Legal Studies*, Volume 12, Issue 1, March 1992, pp. 42-53. DOI: https://doi.org/10.1111/j.1748-121X.1992.tb00456.x

[9] Lord Chancellor's Department and Department of the Environment, Transport and the Regions, *Commonhold and Leasehold Reform: Draft Bill and Consultation Paper*, August 2000 https://web.archive.org/web/20050624004258/http://www.odpm.gov.uk/stellent/groups/odpm_housing/documents/page/odpm_house_601594.pdf

Perhaps Martin Davey, an Honorary Research Fellow at the University of Manchester, put it best, writing in 2006:

> "But what does ownership of the freehold mean to the landlord (especially where the flat leases have a long period to run?) Its capital value is low, so why would anybody want to be a landlord in these circumstances? The answer lies in the management of the services. In other words, the freehold is a source of income, and, as such, has an investment value. But this suggests, of course, that for the business to be profitable, leaseholders must be paying through their service charge for more than the cost of the services to the landlord including their management expenses. In other words, the 'management' is likely to include a profit element … ***New computerised accounting systems have aided this 'farming' of freeholds. They permit the generation of regular demands, together with intimidating threats, in the event of non-payment.***"[10] (emphasis added)

Of course, England and Wales are hardly the only jurisdictions to have permitted private sector investment in multi-occupancy housing, particularly in densely-populated urban areas in recent decades. However, in most other countries, the legal structure for consumer homebuyers of flats is that they are able to purchase their dwellings outright and automatically acquire a share of the common parts of the building in which the property is situated. They have land capital. That gives all occupiers a shared interest in maintaining, and paying for, routine maintenance and essential repairs for what is often the biggest investment of their life. There is no commercial freeholder or outside landlord with control of the homeowners' money and services.

These resident-controlled systems of multi-unit housing go by a variety of names, including "tenement", "condominium", "co-operative", "strata title" and "sectional title". The Anglo-Welsh equivalent, "commonhold", finally hit the statute books in 2002. Understood by policymakers to provide the complete answer to the problems of "fundamentally flawed" leasehold, commonhold never became common as it was introduced as a voluntary scheme and the property development sector preferred the familiar over the unknown, together with the lucrative income streams that are standard in leasehold.

In England and Wales, leasehold is the predominant form of tenure for flats and other interdependent buildings with shared services. An independent investor, who has no occupancy interest in the premises, is typically the owner. This 'owner' typically has invested no more than 3-5% of the capital value in a block, although pro-leasehold lobby group, the Residential Freehold Association, suggests it is closer to 2.5%.[11] Freeholders have little direct interest in occupancy (especially when the property may be leased out for as long as a millennium, at 999 years), but instead hold a monopoly on the provision of management and maintenance costs. Although it is leaseholders who must pay these costs, freeholders can control expenditure through the appointment of managing agents and other firms. Because these companies are appointed by freeholders (and not by the paying leaseholders), they have little or no

[10] Martin Davey, 'Long Residential Leases: Past and Present', in *Landlord and Tenant Law: Past, Present and Future* ed. by Susan Bright (Oxford: Hart Publishing, 2006), pp. 147-169 (pp. 161-162)
[11] The Residential Freehold Association: What is the leasehold system?
https://residentialfreeholdassociation.co.uk/what-is-the-leasehold-system/

incentive to seek 'value for money' in the choice of those whom they select to provide services. In fact, freeholders and their acolytes are incentivised to enlarge the bills of captive leaseholders. The problem of freeholders and crony contractors was raised over a decade ago, in a London Assembly report by the Planning and Housing Committee, *Highly charged: Residential leasehold service charges in London*. The report said "... there is evidence that some large property companies have awarded contracts to subsidiaries of their own company at inflated prices".[12]

This places the leaseholder in a potentially damaging 'double bind' according to a 2000 paper by Professor Ian Cole, Professor of Housing Studies at the Centre for Regional Economic and Social Research at Sheffield Hallam University, and Dr David Robinson, Professor of Housing and Urban Studies at the University of Sheffield. Confusion over the legal status of a leaseholder also spills over into the perception of buyers themselves who have wrongly assumed they actually own the flat they occupy, the article notes.[13]

In recent months, leasehold has become a hot button political issue, with Labour calling an opposition day debate in Parliament following media reports that Secretary of State for Levelling Up, Housing and Communities, Michael Gove, had been overruled by Number 10 on radical 'abolition' plans to convert existing leaseholds into commonholds for real homeownership. Labour pledged to bring forward legislation tackling leasehold within the first 100 days if it forms the next government, "replac[ing] private leasehold flats with a workable commonhold system".[14] The party, crucially, also confirmed that developers would be banned from building future flats as leasehold tenancies.[15]

Since the replacement of Lisa Nandy as shadow housing secretary in September 2023 threw into doubt Labour leasehold plans,[16] Nandy's successor Angela Rayner used her speech to party conference the following month to confirm that Labour will "end the mediaeval leasehold system, with root and branch reforms"[17]. In an interview with The Guardian ahead of her address to party faithful, Rayner confirmed that a Bill against leasehold tenure would feature in the first King's Speech of a Labour government should the ruling Conservatives not legislate for their own package before the general election. "At the moment people are being completely ripped off and they

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[12] *Highly charged: Residential leasehold service charges in London*, London Assembly Planning and Housing Committee, March 2012 (p. 12) https://www.london.gov.uk/sites/default/files/gla_migrate_files_destination/Highly%20charged%20report%20March%202012.pdf

[13] Ian Cole and David Robinson, 'Owners yet Tenants: The Position of Leaseholders in Flats in England and Wales', *Housing Studies*, Volume 15, Issue 4, 2000, pp. 595-612. DOI: https://www.tandfonline.com/doi/abs/10.1080/02673030050081122

[14] Lisa Nandy, "Time to end leasehold scandal", *Wigan Today*, 27 May 2023 https://www.wigantoday.net/news/politics/lisa-nandy-mp-time-to-end-leasehold-scandal-4155556

[15] Kiran Stacey, "House prices need to fall relative to income, Keir Starmer says", *The Guardian*, 17 May 2023 https://www.theguardian.com/politics/2023/may/17/house-prices-need-to-fall-relative-to-income-keir-starmer-says

[16] Tom Scotson, "Housing advocates want government to reform 'medieval' leasehold system", *PoliticsHome*, 19 September 2023 https://www.politicshome.com/news/article/housing-campaigners-want-reforms-medieval-leasehold-system; Emilio Casalicchio, "London Playbook PM: Keir and Macron do prezzies", *Politico.eu*, 19 September 2023 https://www.politico.eu/newsletter/london-playbook/london-playbook-pm-keir-and-macron-do-prezzies/

[17] Angela Rayner, Speech at Labour Party Conference 2023, The Labour Party, 8 October 2023 https://labour.org.uk/updates/press-releases/angela-rayner-speech-at-labour-party-conference/

feel that. The balance isn't correct," she added.[18] Rayner's leasehold push forms part of a wider offensive to steal Conservative 'party of homeownership' clothes by Keir Starmer's Labour, taking advantage of the relative silence on the issue at the Conservative Party Conference in Manchester. Being seen to own housing policy and, in doing so, signalling that Labour is *the* vehicle for aspirational working people is reported to be fundamental to its bid to win government after 13 years in the wilderness, allowing it to marry its established pro-growth message with a new one centred on spreading opportunity in an 'age of insecurity'. The swing voters that Labour need to win consider housing to be the third most important issue in deciding on who to back in the election, behind only the economy and healthcare, found recent polling by Redfield and Wilton.[19] From the Labour perspective, leasehold tenure is a driver of inequality, helping wealth concentrate in the hands of the few rather than the many; involves offshore tax-dodging fat cats leeching off of tenants; and is a symbol of rentier capitalism holding back the UK economy and society.

Liberal radical former prime minister, David Lloyd George, famously told a Limehouse audience in 1909 that leasehold "is not business, it is blackmail". His successor party, the Liberal Democrats, who are seeking a raid on Tory-held Blue Wall seats at the polls next year, used their party conference in September 2023 to commit to leasehold abolition, not mere reform, promising a commission to devise a feasible plan for transition.[20] With a majority of Blue Wall voters supporting the scrapping of leasehold in a mass shift to commonhold and 72% of Lib Dem 2019 voters also in agreement, according to recent polling by Opinium, becoming the party of full blown leasehold abolition could well pay dividends for the party thought to have recovered from the coalition years and tipped to hold the balance of power should Labour unexpectedly fail to win a majority or a convincing one. This is, of course, a policy agenda close to the heart of leader Sir Ed Davey, who co-founded the all-party parliamentary group on leasehold and commonhold reform. Deputy leader Daisy Cooper now co-chairs the caucus for the Lib Dems and was unrelenting over the cladding and building safety crisis. The Green Party are the only other mainstream political party in England to have pledged leasehold abolition involving existing homes.[21]

Meanwhile, in clarifying comments to Kiran Stacey, of The Guardian, Gove has confirmed that there will be a Bill in the King's Speech on 7 November 2023. He added that while "it will still be the case that the legal existence of leasehold will still be there … people will effectively be liberated and leasehold will effectively be ended". (emphasis added) We, at Commonhold Now, are here to map out what that should look like. ***Getting rid of leasehold, or at least turning it into a mere technicality, is not a sufficient condition to solve the country's housing crisis, but it is a necessary one.***

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[18] Pippa Crera, 'Labour would oversee 'biggest boost in affordable housing in a generation'', *The Guardian*, 6 October 2023 https://www.theguardian.com/society/2023/oct/06/labour-would-oversee-biggest-boost-in-affordable-housing-in-a-generation

[19] Chloe Chaplain, 'Analysis: Housing will be a key election battleground', *The i Paper,* 6 October 2023 https://inews.co.uk/news/politics/keir-starmer-labour-plan-housing-crisis-taxing-developers-new-towns-2670360

[20] Ruby Hinchliffe, 'Lib Dems vow to bring back eco rules for landlords', *The Telegraph*, 26 September 2023 https://www.telegraph.co.uk/money/property/lib-dems-landlords-leasehold-system-second-homeowners/

[21] *Greens pledge to bring democracy to private sector housing and end feudal leaseholds*, The Green Party, 22 May 2023 https://www.greenparty.org.uk/news/2023/05/22/greens-pledge-to-bring-democracy-to-private-sector-housing-and-end-feudal-leaseholds/

Ducking reform or tinkering at the edges as we have for 50 years are no longer options. We need change that goes further than anything yet proposed. Yes, what we will advocate is radical by the standards of recent reform, but three things should reassure you:

1. ***Our proposals don't need to cost taxpayers a penny.***
2. ***We favour liberation, not confiscation. Freeholders would be paid compensation for their legitimate property interests.***
3. ***There would be no outright leasehold abolition or forced nationwide conversion to commonhold. Genuinely professional freeholders and managing agents providing a fair service for a fair price have nothing to fear as their leaseholders won't opt to take control and switch service providers.***

To achieve the sort of reform that will bring an end to the problems of leasehold once and for all, the tenure and all its effects need to be understood in depth and in detail. That knowledge can come only from the true experts – us, the five million plus households stuck living in leasehold.

We have tried very deliberately in this report to avoid reiterating policies that the UK Government has already pledged. We fully support long trailed commitments including a ban on new leasehold houses, abolition of marriage value, a new statutory right for leaseholders to extend their leases by 990 years, and the ability to extinguish the ground rent without paying to extend. In a recent briefing paper, the Commons Library superbly set out the leasehold reform commitments made by the Conservative government so far.[22] These are:

- Reform the process of enfranchisement valuation used to calculate the cost of extending a lease or buying the freehold.
- Abolish marriage value.
- Cap the treatment of ground rents at 0.1% of the freehold value and prescribe rates for the calculations at market value. An online calculator will simplify and standardise the process of enfranchisement.
- Keep existing discounts for improvements made by leaseholders and security of tenure.
- Retain the separate valuation methodology for low-value properties known as "section 9(1)".
- Give leaseholders of flats and houses the same right to extend their lease agreements "as often as they wish, at zero ground rent, for a term of 990 years".
- Allow for redevelopment breaks during the last 12 months of the original lease, or the last five years of each period of 90 years of the extension to continue, "subject to existing safeguards and compensation".
- Enable leaseholders, where they already have a long lease, to buy out the ground rent without having to extend the lease term.

In April 2023, Secretary of State Michael Gove wrote to Nikhil Rathi, chief executive of the Financial Conduct Authority, which has found bribes and kickbacks to be endemic

[22] Wendy Wilson and Cassie Barton, *Leasehold and commonhold reform*, House of Commons Library, 22 September 2023 https://commonslibrary.parliament.uk/research-briefings/cbp-8047/

in leasehold buildings insurance as part of a probe, announcing that the government "will take action to ban managing agents, landlords and freeholders from taking commissions and other payments when they take out buildings insurance, replacing such payments with more transparent fees."[23]

In July 2023, Rachel Maclean, the sitting housing minister, announced in Parliament that the government will ensure "leaseholders are not subject to unjustified legal costs and, where appropriate, can claim the legal costs from the landlord … Currently, if set out in the lease, leaseholders might be liable to pay their landlord's legal costs regardless of the outcome of a dispute – even if they win the case. That is a classic case of heads you win, tails you lose. Also, the circumstances in which a leaseholder can claim their own legal costs from a landlord are currently very limited. That may lead to leaseholders facing higher bills than the charges being challenged in the first place and can deter leaseholders from taking their concerns to the courts or property tribunal."[24]

[23] Rt Hon Michael Gove MP, *Response to the Financial Conduct Authority's (FCA) report on the buildings insurance market for multiple-occupancy residential buildings*, 30 January 2023 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1132886/230130_FCA_Report_Interim_Update_SoS_DLUHC_to_FCA.pdf

[24] Rachel Maclean, *Freehold and Leasehold Reform – Hansard – Volume 375*, 5 July 2023 https://hansard.parliament.uk/commons/2023-07-05/debates/E02E226D-06CC-4197-AB47-97215AC80682/FreeholdAndLeaseholdReform#contribution-3426D362-AF04-45F1-AAA8-2AAF60247C25

THE PROBLEM

The problem with leasehold simply stated is the conflict of interest and incentives between the leaseholder and freeholder, and how the current law, legal practice and economic power allow the latter to extract unjust and financially crippling economic rents from the former. This, in turn, puts anyone but the most affluent first-time buyers on the horns of an unjust dilemma. ***They can keep renting in a market where a structural lack of supply is driving up prices, or they can buy on the lower rung of the housing ladder made toxic by leasehold properties, risking the inability to move up the ladder when their life circumstances change.***

The problem goes beyond simply stating the fact that a leaseholder is in fact not a homeowner, but a tenant in law. ***The conflict of interest inherent in leasehold means that the value of a long lease can be seriously undermined by decisions made by your freeholder, which you have no control over.*** Indeed, in many cases, it might even be in the freeholder's narrow economic interest to make such decisions, and the fact that the value of long leases fall in response is, from the point of view of leaseholders' current rights, simply par for the course.

The current leasehold system robs people of the control over their home that we see as fundamental to proper and just homeownership. Some of the worst examples of this conflict of interest and warped incentive structure are:

- A freeholder has an incentive to skimp on routine and preventive maintenance to maximise income. The freeholder can then wait for the ability to issue a major works claim to leaseholders, which they must pay under threat of forfeiture, a mechanism that seizes the home without compensation or equity returned.

- Before the Building Safety Act 2022, and still in many cases for unqualifying leases, the freeholder has a perverse economic incentive to pursue a risk-averse fire safety approach because the cost of all remediation and temporary measures – waking watch fire wardens – can be passed on as service charges. If leaseholders can't pay, they can lose their home.

- The insurance scandal shows how freeholders, by being vertically integrated with the insurance broker, can earn huge commissions and kickbacks by selling insurance to leaseholders at grossly inflated premiums. Again, if leaseholders can't pay, the risk is forfeiture.

- Escalating and doubling ground rents have become a huge ball and chain around leaseholders' ankles in the wake of the government's Leasehold Reform (Ground Rent) Act 2022, banning ground rents on future leases, which has created a two-tier market. This has put the financial interest of freeholders in direct opposition to the financial and economic security of leaseholders, to such an extent that many existing long leases are now virtually un-sellable and un-mortgageable.

- Uncapped and uncontrollable service charges are becoming major outgoings for leaseholders, especially overleveraged ones who have seen their mortgage payments rise exponentially. Service charges can rise so high that leases

become unsaleable or can only be offloaded to investors at a massive loss, something that cannot be countenanced by young first-time buyers. Estate agency Hamptons has set up its own Service Charge Index and estimates that a crippling £7.6 billion will be paid by England's leaseholders in service charges alone this year.[25] How much of that is really warranted to pay for maintenance and repair of buildings when there should be economies of scale?

Leasehold is effectively a financial monopoly in which the very rights of freeholders to extract economic rents – from homes they have, in many cases, already sold at a significant profit – comes at the specific and explicit expense of the value of leaseholders' homes. The freeholder, or landlord, sets the cost of everything. Leaseholders have no option but to pay or risk losing their homes without compensation or any equity returned to them. Freeholders have power, assets and rent-seeking rights with precious little responsibility. Leaseholders have responsibility and liability, with no power.

And it is not just leaseholders and their allies sounding the alarm. Increasingly, buyers are boycotting the leasehold tenure. Flat values and sales are trailing those of (freehold) houses. "Across the country, houses are now valued at just over twice the price of flats. This is the highest price difference for 20 years," according to Richard Donnell, executive director of Zoopla.[26] David Fell, senior analyst at Hamptons, argues it is the worst differential in 30 years, adding that the "gap between people losing money on a house versus a flat has also never been larger. This means that while flats make up about 20 per cent of sales across England and Wales, last year flat sellers accounted for 51 per cent of people who lost money [in absolute terms] when selling their home."[27]

Some have gone further, making explicit the link between toxic leasehold tenure and flatlining demand for flats. Award-winning data journalist John Burn-Murdoch, of the Financial Times, has observed that sale prices for flats in England and Wales are trailing houses, a phenomenon that is not present in Scotland, Northern Ireland, Ireland or the US, which have commonhold systems, "cutting out the middleman and keeping fees in line with maintenance costs".[28] The independent variable? It is leasehold. "Despite paying hundreds of thousands of pounds to become 'homeowners', leaseholders in England and Wales do not fully own their property, are subject to arbitrarily determined service charges whose increases sometimes far exceed inflation, and can spend years tied up in disputes with the property owner over building repairs and maintenance." Similarly, leading property analyst, Neal Hudson, has concluded that the messy fallout from the Grenfell disaster might mean the leasehold flats market is "irreversibly harmed … increas[ing] focus on the position of leaseholders in English law and highlighted the lack of control they have over building

[25] Hamptons, Service Charge Index press release, June 2023 https://mr1.homeflow-assets.co.uk/files/site_asset/image/5861/8668/Hamptons_Service_Charge_Index_-_June_2023.pdf
[26] Alexandra Goss, 'Britain is falling back in love with flats (and here's where to buy yours)', *The Telegraph*, 15 July 2023 https://www.telegraph.co.uk/money/property/flats-apartments-where-buy-britain-inflation-mortgage-rates/
[27] Hugh Graham, 'House prices 2022: why it is harder to trade up the property ladder', *The Sunday Times*, 5 June 2022 https://www.thetimes.co.uk/article/house-prices-2022-why-it-is-harder-to-trade-up-the-property-ladder-0nrnlr099
[28] John Burn-Murdoch, 'How England's flats turned into second-class housing', *The Financial Times*, 19 May 2023 https://www.ft.com/content/df25ccc7-5dcf-446e-8a07-332ad5612f09

repair costs, service charges and ground rents."[29] He cautioned that, in the case of England, flats are not an effective stepping stone to a house and tend to be a poor investment in terms of capital appreciation.

Without radical reform of leasehold to give rightful control to leaseholders, so those actually paying the bills and living in the properties for which they paid a premium, and to end the extractive power of freeholder rentiers, this trend will continue, punishing existing leaseholders, crippling the housing market and contributing to inflation of house prices, too.

Leaseholders won't be the only tenants negatively impacted from the placing of yet more legislative sticking plasters on leasehold. Spiralling and uncontrollable service charges will keep driving up rents, as buy-to-let landlords pass down costs from their overcharging freeholders, while renters cannot get their landlords, who are leasehold tenants with no management control, to sort the plant room to return hot water or prevent common parts leaks due to a sweat-the-asset building owner skimping on maintenance and not replacing those pressure reducing valves.

The more money is hoovered out of the real economy via leasehold and into the pockets often of offshore investors, the less is available for people to spend building the families and businesses the country needs. Leasehold negatively impacts our productivity by making flats unattractive to buyers and disincentivising efficient land use. The agglomeration effects of people living in cities are immense. Urban flat living reduces costly and sapping commutes. Living closer to work and being on top of public transport networks is better for the environment by reducing car usage. Perhaps most importantly, residing much closer to sites of leisure and culture can also improve our citizens' quality of life, allowing them to participate more fully in the consumption economy. But the UK has the second lowest proportion of flats of any European country.[30] Only Ireland is worse off in this respect, and they too struggled with leasehold tenure, a legacy of British rule. Our continental friends all use fairer, resident-controlled commonhold systems for flat ownership. Not one of them is seriously considering a mass shift to our leasehold model. It's also no coincidence that we have some of the lowest-rise cities in Europe.[31]

Almost every challenge we face today – from inequality to urban consolidation in a post-Covid world, productivity, net zero, childcare and mental health – intersects with leasehold.

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[29] Neal Hudson, 'Why buying a flat might not be such a good idea', *The Financial Times*, 18 May 2022 https://www.ft.com/content/febf2512-675a-463e-8876-b5347135dbf6

[30] Eurostat, 'House or flat: where do you live?', 13 May 2020 https://ec.europa.eu/eurostat/web/products-eurostat-news/-/ddn-20200513-1

[31] Neil O'Brien, *Green, pleasant and affordable: Why we need a new approach to supply and demand to solve Britain's housing problem,* Onward, June 2018 https://www.ukonward.com/wp-content/uploads/2018/06/220618-Green-Pleasant.-Affordable-Web-ready.pdf; Valentine Quinio and Guilherme Rodrigues, 'Cities need to become denser to achieve net zero', Centre for Cities, 6 July 2021 https://www.centreforcities.org/reader/net-zero-decarbonising-the-city/cities-need-to-become-denser-to-achieve-net-zero/

THE SOLUTION

The laws brought in by successive governments with the supposed aim of liberating leaseholders by offering enfranchisement rights and better access to legal redress fall short. A tyranny of thresholds prevents many leaseholders from accessing what has been promised by Parliament to buy their freeholds or take over management through Right to Manage. Most absurdly, conversion to commonhold currently requires 100% unanimity from the freeholder landlord, all leaseholders and all mortgage lenders.

Meanwhile, freeholders' actions can have devastating consequences for the few rights leasehold tenants actually have in their homes. This points to a cynicism on behalf of those who drafted the legislation and subsequent reforms, or a lack of courage. We urge politicians to face down the vested interests and be bold.

The legal basis of the current government's reforms is the Law Commission reports of 2020. However the Commission's remit was limited compared to that of the Scottish Law Commission, who grappled with a similar problem north of the border two decades earlier. The Scottish remit was:

> To publish "by the end of 1999, a report with draft legislation ***to abolish and replace the feudal system***".[32] (emphasis added)

This report was laid before the Scottish Parliament on February 11th 1999. By June the following year, the recommendations had duly been enacted and a leasehold equivalent in Scotland was gone.

The English Law Commission's terms make no mention of abolition or of the wholesale conversion of residential leasehold tenancies in England and Wales to commonhold. The brief was simply to "promote transparency and fairness in the residential leasehold sector and to provide a better deal for leaseholders as consumers".[33] We believe this was a serious mistake. While the result is a very solid piece of work, new legislation has to go further on a number of key areas. Our report builds on the policies contained within the Law Commission reports from 2020 to ensure that as many leaseholders who want to be liberated can be liberated.

We have recommendations for existing leaseholds and for future builds. But the issue in both cases is control, and freedom from extractive rent-seeking. Where people buy properties in communal buildings they must own their units with a share of the land and they must control, alongside other unit owners, the management of the block and the estate as a whole and its costs. This is the only true home ownership. What does it say about our national character and the quality of our governments, if this task of delivering commonhold for the masses is deemed too difficult or too controversial? Every other country on the planet has managed to create perfectly workable commonhold systems for communal living. There is no plausible excuse for England and Wales not to do so. And every day that we fail, the damage worsens.

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[32] *Report on Abolition of the Feudal System (SLC 168),* Scottish Law Commission, February 1999 https://www.scotlawcom.gov.uk/files/1712/8015/2730/26-07-2010_1458_725.pdf

[33] *The Law Commission: Residential Leasehold Law Reform Terms of Reference*, the Law Commission, January 2019 https://s3-eu-west-2.amazonaws.com/cloud-platform-e218f50a4812967ba1215eaecede923f/uploads/sites/30/2019/01/Residential-leasehold-terms-of-reference.pdf

Whoever governs this country over the next few years cannot afford not to be bold. The existing leasehold system must be comprehensively defanged and reformed, and future housing should be free of leaseholds and rent-seeking freeholders altogether. Anything less is a betrayal.

EXISTING LEASEHOLDERS

Control is the issue. In the first instance, this should be achieved via schemes of collective enfranchisement and commonhold conversion, which need to be made easier, cheaper and more widely available. Currently, for many, the pathways to share of freehold and commonhold have been closed off completely by provisions in the Building Safety Act 2022 which deprive leaseholders of statutory protections against remediation costs if they opt to buy their freehold (which retains the leasehold structure) or upgrade to commonhold. These punitive clauses must be removed.

We also have to stop the unethical trade in other people's homes with effective measures to regulate freehold sales. Policymakers know that Right of First Refusal needs a complete overhaul if we are to move away from leasehold in the existing stock. In 2019, the Commons housing select committee suggested it to the UK Government.[34] In reply, DLUHC, then known as MHCLG, said:

> "Introducing the Right of First Refusal for leasehold house owners will help to rebalance power between freeholders and leaseholders, provide parity with the rights of leasehold flat owners and improve transparency so that sales of freeholds cannot be sold behind leaseholders' backs. As part of this work we will consider the need to address legal loopholes within the existing Right of First Refusal for flat lessees, as identified by the Select Committee, and whether these loopholes could also affect house lessees."[35]

The last Labour government had been working on reform of the regime. In a November 1998 consultation paper, there were proposals concerning Part I of the Landlord and Tenant Act 1987 to expand its scope to include leasehold houses within the right of first refusal, and to extend the 6-month time limit for prosecutions against freeholders who did not abide by the provisions.[36]

But firstly, leasehold must be diluted through an end to draconian forfeiture. The current right of forfeiture provides a perverse incentive to freeholders: they can demand any amount of service charge (however unreasonable) and force leaseholders to pay their legal costs in defending against unreasonable demands. This happens because if the freeholder brings a claim to recover the debt, it is usually referred to the First-tier Tribunal (or Leasehold Valuation Tribunal in Wales). The freeholder can usually charge its legal costs for the FTT / LVT challenge, even if the leaseholder wins. In cases where a mortgage is secured against the property, the

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[34] *Leasehold Reform, Twelfth Report of Session 2017–19 (HC 1468)*, House of Commons Housing, Communities and Local Government Committee, March 2019 (p. 24) https://publications.parliament.uk/pa/cm201719/cmselect/cmcomloc/1468/1468.pdf

[35] *Implementing reforms to the leasehold system in England: Summary of consultation responses and Government response*, Ministry of Housing, Communities & Local Government, June 2019 (p. 17) https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/812827/190626_Consultation_Government_Response.pdf

[36] Anthony Radevsky and Wayne Clark, *Tenants' Right of First Refusal* (Bristol, LexisNexis, 2017) (p. 2) https://www.lexisnexis.co.uk/store/__data/assets/pdf_file/0009/433287/TFFR-Introduction.pdf

freeholder can usually ask the bank to pay. This then usually means the leaseholder cannot challenge the service charge for reasonableness, because the bank's payment is deemed an admission on the part of the leaseholder.

A system of forced sale whereby equity is returned to the departing leaseholder makes logical sense and is a great deal fairer than allowing freeholders to enjoy windfall gains. We know that the UK Government have asked the Law Commission to update its 2006 review of forfeiture law, *Termination of Tenancies for Tenant Default*, to account for wider leasehold reforms currently under way, but no proposals on forfeiture have been forthcoming from the body. The Law Commission published a draft bill in 1994 to implement such a system, although the costs provisions need work.[37]

Recommendation 1

To abolish forfeiture in leasehold housing and to ensure that where debts are owed and have not been paid that there are mechanisms in place for forced sale whereupon the leaseholder's remaining equity is returned to them less the charge. Forfeiture replacement scheme to include relief for leaseholders willing to settle payments in court and caps on landlord legal costs.

Recommendation 2

To provide immediate financial relief to leaseholders, reduce the appeal of residential freeholds as an asset class, and to slash the cost of collective enfranchisement, cap ground rents on all existing leases at £250 per annum, as proposed by the Commons housing select committee in 2019 and Eddie Hughes MP, who that same year moved a private member's bill to legislate for the proposal before becoming the housing minister who, in 2022, abolished ground rents on leasehold new-builds.[38]

Recommendation 3

Introduce the Law Commission's proposed second generation commonhold scheme to help leaseholders gain full and successful ownership and control of their homes, charges and estates.

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[37] Landlord and Tenant Law: Termination of Tenancies Bill (February 1994) Law Com No 221 https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2021/06/LC.-221-Landlord-and-Tenant-law-TERMINATION-OF-TENANCIES-BILL.pdf

[38] *Leasehold Reform, Twelfth Report of Session 2017–19 (HC 1468)*, House of Commons Housing, Communities and Local Government Committee, March 2019 (p. 43) https://publications.parliament.uk/pa/cm201719/cmselect/cmcomloc/1468/1468.pdf; Harry Scoffin, 'Tory MP Eddie Hughes moves private member's bill to cap existing ground rents at £250', *Leasehold Knowledge Partnership*, 25 June 2019 https://www.leaseholdknowledge.com/tory-mp-eddie-hughes-moves-private-members-bill-to-cap-existing-ground-rents-at-250-pounds/

In the alternative, reform the commonhold tenure as laid out in the 2002 Act by liberalising the overly restrictive 100% unanimity rule for conversion to ensure that 50% of leaseholders are able to convert without having the freeholder or lenders allowed to play the role of veto player, in line with the threshold already operating on collective enfranchisement for freehold purchase. To allow leaseholders in mixed-use and multi-block developments to convert and make commonhold function better, allow for 'sections' to distinguish between residential and commercial premises, and other interests.

In July 2023, Commonhold Now used the pages of The Sunday Times to float a major enhancement to the Law Commission's proposed revamped Right to Manage regime.[39] That is, to lower the restricting 50% participation threshold, which the body refers to as the "participation requirement". Given that RTM does not involve the forced sale of the freeholder's interest in the property and is merely regulating use of the property to provide democratic, resident control, an RTM claim should not need half of all leaseholders in a block to be valid. Indeed, in 2016 leading landlord and tenant barrister Philip Rainey KC came out in support, saying 50% could at least become 35% given the 'no-fault' nature of the scheme.[40] In its 2012 review of leasehold, the London Assembly's Planning and Housing Committee recognised the threshold as a "particular legislative barrier" to achieving Right to Manage: "the existence of large numbers of absentee landlords that make achieving the 50 per cent of residents figure problematic".[41]

Why should there be a 50% support requirement for something as basic as homeowners appointing a managing agent, a service provider they all pay for and whose performance has major implications for the biggest purchase of their lives, when there is no similar restriction on who gets to form the government? You have to go back as far as 1931 to find a UK general election where one political party has won a 50% share of the popular vote. Slashing the 50% RTM participation threshold would be a totemic pro-homeownership policy that would liberate countless leaseholders and give them control over their homes and money while sidestepping the freeholder lobby argument about their 'human rights' being hurt through leasehold abolition. As we wrote in The Sunday Times:

> "Any number of owners can set up an RTM company, but at least half the flats in a building must be company members before it can take over management. The Law Commission's 2020 report recommends keeping this threshold, but with developments mushrooming to 1,000 apartments in a single building, it is almost impossible to marshal 50 per cent of residents.

[39] Harry Scoffin and Jane Hewland, 'How to solve a problem like leasehold properties', *The Sunday Times*, 9 July 2023 https://www.thetimes.co.uk/article/how-to-solve-a-problem-like-leasehold-properties-6vgsbgfhv
[40] *Further leasehold reform – radical thinking?,* Philip Rainey KC, 29 January 2015 https://www.tanfieldchambers.co.uk/upload/files/PCR%20Leasehold%20reform%20Jan%202015.pdf
[41] *Highly charged: Residential leasehold service charges in London*, London Assembly Planning and Housing Committee, March 2012 (pp. 44-45) https://www.london.gov.uk/sites/default/files/gla_migrate_files_destination/Highly%20charged%20report%20March%202012.pdf

> "We believe that 15 per cent of leaseholders should be required to take back control under a 'universal right to manage' — the same level of shareholding you would need to block decisions under company law … If the government wants to go further, RTM could be made automatic. Leaseholders would have to actively opt out. All leaseholders subject to a residential service charge would become members of an RTM company that would control spending."[42]

Government could go further and turn the existing approach on its head, encouraging Right to Manage to be the default option on existing leasehold blocks by mirroring the principle for organ donations. If we do not record a decision, it is assumed that we gave permission to offer our organs to someone who needs them. Given that the government have already taken this quite major decision to interfere with our bodily autonomy, it should be fairly simple to change leasehold law to a similar basis. All leaseholders could claim Right to Manage in respect of a building with two or more flats. This company would appoint a professional managing agent and control spending. If leaseholders in any block or development didn't want that responsibility, they end their participation in the "Universal Right to Manage" scheme providing a clear majority, say 50 per cent of them, agree. A 50 per cent level would help fortify the RTM regime from being dissolved because of freeholder gameplaying.

This Universal Right to Manage regime could require a single leaseholder to start off the process by applying for the whole block, mirroring the fact that a single leaseholder can already apply to First-tier Tribunal for a section 24 manager under the Landlord and Tenant Act 1987, a vital scheme for replacing troublesome freeholders but one which nonetheless risks embroiling leaseholders in a years-long legal dispute. This single leaseholder would then need to file a Notice Inviting Participation ('NIP') on all remaining leaseholders to ensure wider awareness of the push for self-governance and solicit backing from neighbours. While the Law Commission recommends that NIPs be dropped altogether since they have sometimes been used by freeholders to scupper legitimate RTM claims, we believe they would be needed for any Universal Right to Manage regime, which is more radical than reducing the 50% RTM participation threshold to 15%.

Recommendation 4

Adopt the Law Commission's proposed Right to Manage scheme on the basis its 50% participation requirement is reduced to 15 per cent of leaseholders – consistent with UK companies law needed for corporate decision-making. In the alternative, impose a residency requirement so that the right to vote is limited to leaseholders who occupy the flats as their only, or main, home. This will make it easier for large sites with large buy-to-let populations to achieve the Right to Manage. The current 50% requirement is an outlier because a single leaseholder can apply for a section 24 manager. It makes no sense for a single person to be able to remove the freeholder's right to manage via a Tribunal appointment but require that same leaseholder to get 50% of his block for 'no-fault' Right to Manage.

[42] Harry Scoffin and Jane Hewland, 'How to solve a problem like leasehold properties', *The Sunday Times*, 9 July 2023 https://www.thetimes.co.uk/article/how-to-solve-a-problem-like-leasehold-properties-6vgsbgfhv

Recommendation 5

Refuse the Law Commission's recommendation that membership of an RTM company falling below 50% can be used as a ground by a freeholder for a section 24 court-appointed manager.

Where leaseholders in trouble do not qualify to buy the freehold or claim Right to Manage (for instance, they have more than 25% non-residential, including commercial, floorspace in the premises but less than 50%) and they are suffering poor block management by a predatory, amateur or absentee freeholder, there is recourse in the Landlord and Tenant Act 1987 with a section 24 court-appointed manager. This scheme allows a single leaseholder to apply to Tribunal to take management out of the hands of a problematic freeholder and hand it to an officer of the court. This s24 manager and a management order designed to provide a supporting rulebook, overriding leases and other features of existing freeholder-controlled arrangements, are installed where the Tribunal is convinced such an intervention is 'just and convenient' to do. The onus is on the leaseholder(s) to prove fault against the freeholder for incompetent, corrupt or neglectful management, but section 24 management has served as a lifeline for residents facing persistent issues with freeholders failing to fulfil their responsibilities.

However, the Building Safety Act 2022 ('BSA') has introduced a far reaching amendment to section 24 of the Landlord & Tenant Act 1987, sparking concerns about the future manageability of certain buildings and developments. The amendment, seemingly intended to ensure the new Building Safety Regulator is not usurped by the Tribunal system, appears to bar a section 24 manager from assuming the role of an Accountable Person in a Higher-Risk Building (over 18 metres). This amendment, effective from 6 April 2023, raises vital questions about the future of section 24 managers and their necessity when dealing with freeholders who repeatedly fail to meet their obligations.

Under the BSA amendment to section 24, which did not receive the usual parliamentary debate and scrutiny, the court-appointed manager, responsible for Landlord and Tenant Act 1987 duties, may be forced to coexist with a manager overseeing building safety functions under Part 4 of the BSA. These functions are now more complex and intertwined, making it difficult to differentiate between them. The bifurcation of management also jeopardises the independence and strategic autonomy of a s24 manager, who very often has been brought in to turn around a delinquent site, similar to a team moved into a hospital put under special measures, after fault has been proved against the freeholder who, under the BSA, is now seemingly allowed a reserve domain of control over a building via the Accountable Person / Principal Accountable Person dutyholder role. There is also a material risk that fewer professional managers will be willing to take on s24 appointments, which were already a major commitment, fraught with legal, reputational and cost risks. Rogue freeholders may use the amendment to ground down effective and independent management in a show of force or to collapse a s24 scheme entirely and regain full control of leaseholders' homes and monies. Indeed, Commonhold Now is already aware of one case going through the First-tier Tribunal where the freeholder is using this relatively obscure legal change to argue against the renewal of an otherwise successful s24 scheme on a cladding site involving major remediation works and government grant funding.

Ultimately, the presence of an Accountable Person and the potential for two separate managers may deter tribunals from appointing new managers in Higher-Risk Buildings undergoing urgent cladding remediation or which are not blighted by fire safety problems but nonetheless are in jeopardy due to recalcitrant rentier freeholders scrimping on maintenance and sweating the asset, letting the block fall into disrepair and/or hiking service charges to onerous levels and failing to provide leaseholders with financial transparency. This profound change to the s24 scheme could disrupt ongoing projects and exacerbate existing management struggles.

The recent amendment to section 24 of the Landlord and Tenant Act 1987, under the Building Safety Act 2022, has introduced complexities and uncertainties in building management. It is essential to recognise the significance of section 24 managers as a last resort to protect the interests of leaseholders, particularly in cases where recalcitrant freeholders persistently fail to meet their obligations. The safety and wellbeing of residents should always remain a top priority in the ever-evolving landscape of building safety regulations. We hereby urge the UK Government to change the law to allow section 24 managers to take up the Accountable Person / Principal Accountable Person dutyholder role. Even with simpler, cheaper and more accessible Right to Manage, collective enfranchisement and commonhold conversion schemes, leaseholders still deserve the choice of s24 court-appointed management.

Recommendation 6

Amend section 110 of the Building Safety Act 2022 to ensure that the FTT / LVT can still appoint a section 24 manager to a higher-risk building in cases of unreasonable service charges, historic neglect and other landlord failings. Section 110 as currently drafted means a freeholder who is an accountable person cannot be removed from the management of a building unless the Building Safety Regulator applies for a special measures order. The Building Safety Regulator is concerned only with safety, not with whether leaseholder money is being handled effectively, or whether the building is being kept in good condition in ways that affect value but not safety. Leaseholders in higher-risk buildings now face shouldering the burden of persuading both the Building Safety Regulator and the Tribunal of the need for a manager to be appointed.

It makes no sense for leaseholders in higher-risk buildings to be stuck with an unscrupulous freeholder merely because the freeholder happens to be an accountable person. The section 110 loophole can be closed by requiring the FTT to designate any section 24 manager as the principal accountable person when making any order.

Recommendation 7

This recommendation should be directed at the courts and tribunals. No demand for payment for services shall be considered legally binding unless it can be documented by the freeholder or managing agent that the service has actually been contracted and paid for.

In the case of planned, but as yet not undertaken services, a formal estimate on the providers' own stationery should be submitted. No claim for service charges shall be deemed to be legally binding without full and verifiable documentation.

Recommendation 8

Introduce a new statutory requirement on commercial freeholders to take all reasonable steps to achieve 'Duty of Best Financial Value'. By the end of the period of 3 months beginning on the day the Act is passed, the Secretary of State must issue statutory guidance on Duty of Best Financial Value.

Recommendation 9

Introduce the right for leaseholders to claim interest on service charges found to be unreasonable, to run from the date the freeholder applies the charges to the relevant service charge account. The rate of interest should be the higher of (a) any commercial rate specified in the lease or (b) the Judgments Act rate applied under section 69 of the County Courts Act 1984. Currently leaseholders can be kept waiting for months, if not years, for freeholders to pay back money even when they succeed at the FTT or LVT. The freeholder incurs no cost in delaying payment because interest can only be claimed in County Court proceedings. Introducing a power for the FTT / LVT to add interest would encourage freeholders to avoid disputes and to pay up in a timely fashion. It would also provide a disincentive for freeholders to levy unreasonable service charges in the first place.

Recommendation 10

Amend section 19 of the Landlord and Tenant Act 1985 to introduce an automatic right of set-off against future service charge demands for leaseholders who succeed in service charge disputes at the Tribunal. This will force the freeholder to pay back unreasonable charges in a reasonable timeframe, which will be no longer than the next demand made after a successful Tribunal judgment. The freeholder's right could be protected by seeking a stay of any Tribunal determination, which will be a judicial discretion. This would avoid the need for leaseholders to incur the cost and expense of separate County Court proceedings to enforce Tribunal determinations, as is the case now. To ensure that freeholders are no longer incentivised to appeal and engage in lawfare, the law must also be changed to force them to pay their own legal fees, with leaseholders having the right to recover their costs if they win. A fixed recoverable costs regime could be introduced to achieve this goal.

Recommendation 11

For any future legal disputes, ban freeholders from recouping their legal and professional fees from leaseholders and introduce a right for leaseholders to claim their costs from the freeholders. This would mean freeholders and leaseholders would pay their way and freeholders would be incentivised to reduce disputes by boosting the quality of their service provision. Allied to this, introduce an opt-out collective action regime in the FTT so that decisions on service charges and costs are binding on all leaseholders under the same freeholder unless a leaseholder opts-out of the case. Currently, freeholders face no effective consequences because they are not obliged to account to non-participating leaseholders even when a case is won.

Recommendation 12

Modify the Money Claim Online service to enable leaseholders who succeed in Tribunal service charge disputes to seek the registration of the Tribunal's decision without the need to issue a separate claim. This will make it easier to enforce Tribunal determinations against freeholders without the need to start a fresh claim.

Recommendation 13

Abolish the right of freeholders to obtain dispensation from consultation except in cases of bona fide emergency. Amend section 20ZA of the Landlord and Tenant Act 1985 to reverse Daejan vs Benson and make it clear that consultation is a valuable benefit in its own right independent of the right to challenge service charges for reasonableness. Abolish the right of freeholders to seek retrospective dispensation from consultation without paying compensation to the leaseholders, except in the case of genuine error or bona fide emergency that is not the fault of the freeholder.

Recommendation 14

Introduce (i) daily damages and (ii) the right to seek an injunction against freeholders who fail to comply with leaseholders' information rights (such as the right to see the insurance terms and proof of payment, the right to receive an account of service charges, the right to see supporting documents for an account of service charges). All too often the rights leaseholders have are simply ignored by freeholders and managing agents, meaning leaseholders cannot see what is going on with their money.

Recommendation 15

Require separate trust bank accounts by bringing in force Leasehold Reform Act 2002 Section 156 or a version of it, alongside new legal requirements for leaseholders to see all debits and credits of reserve and sinking funds. This will boost financial transparency, narrow the opportunities for service charge fraud and empower leaseholders as consumers.

As Christopher Howarth, a senior researcher in the House of Commons, called for in 2017: "leaseholders to have the money for their sinking fund and expenses kept in a separate bank account to which they are allowed to see the statements. This would reduce the scope for money moving between properties, cross-subsidising a landlord's properties or simply disappearing."[43]

Recommendation 16

Introduce statutory requirement for an online database of all service charge ledgers and expenditure for sites above a certain size (say 20 flats) to provide true transparency for leaseholders, put pressure on providers to achieve value for money and guard against routine financial abuse.

Recommendation 17

Introduce compulsory licensing and registration for ground rent investors and managing agents. A small managing agent or a small ground rent investor with, say, a dozen small blocks of flats with common services can have access to hundreds of thousands of pounds of leaseholder money. Currently there is no effective client money regulation scheme as, for example, would apply to solicitors or FCA regulated entities. Anyone can open up a firm of managing agents, or buy up the rights to ground rents, without any external check of their character or suitability to occupy a fiduciary role. The industry self-regulation schemes have failed because they have no effective means of penalising freeholders and managing agents who do not act appropriately with leaseholder money. There is also no sanction for freeholders and managing agents simply ignoring the rights leaseholders already have, for example to see documents and receipts supporting the service charge account. An effective scheme of licensing and regulation could impose effective client money protection, driving the unscrupulous operators out of the industry.

[43] Christopher Howarth, 'It's time to end the great leasehold service charge rip-off', *ConservativeHome*, 8 August 2017 https://conservativehome.com/2017/08/08/christopher-howarth-its-time-to-end-the-great-leasehold-service-charge-rip-off/

Recommendation 18

> ***To deal with leaseholders currently trapped and to protect them from new investors acquiring the freeholds to their homes, government must introduce a new Right of First Refusal scheme, covering leaseholders in both houses and flats, that closes all known loopholes, including the company share transfer and transfer between trustee companies.***
>
> ***The minimum window by which leaseholders have to participate in a claim to be extended from 2 months, as is the current position, to at least 6 months to give residents adequate time to organise themselves, get legal advice and fundraise for freehold buy-out. The statute of limitations on developer/freeholder non-compliance must be made to run for 30 years, and not the current 6 months.***

In April 2022, the then housing minister, Stuart Andrew, announced in Parliament "that the Government will consult on how best leaseholders in collectively enfranchised and commonhold buildings and other special cases can be protected from the costs associated with historical building safety defects. The consultation will allow the Government to understand fully the position regarding leaseholder-owned buildings with historical defects and identify whether further measures are appropriate to address specific circumstances in which leaseholders may unintentionally be exposed to disproportionate costs."[44] As of October 2023, a whole year and a half later, no consultation has been forthcoming from DLUHC.

For us to see mass buy outs of freeholds and a wholesale move to commonhold in England, the UK Government must revisit the position of 'unqualified' leaseholders (also known as the non-qualifying) under the Building Safety Act 2022 and dismantle the punishment regime. While the BSA has helpfully extended the window to sue the original developer for build defects via a Defective Premises Act claim from 6 to 30 years, such litigation can be immensely expensive, high risk and protracted. A DPA claim will be out of reach for all but the most affluent of leaseholders. When leaseholders acquire their freehold or convert to commonhold, liability for defects should be with the original developer or the departing commercial freeholder, or a combination of the two, which is not the position currently. Government grants may be required for condemned sites where the original developer and freeholder are no longer in business. Leaseholders are blameless and cannot be expected to pay for legacy build problems. There may even have to be buy-backs of flats as part of demolition projects, as we have seen with Cardinal Lofts in Ipswich and Citiscape in Croydon.

[44] Stuart Andrew, 1.45pm, Commons Chamber Volume 712: debated on Wednesday 20 April 2022 https://hansard.parliament.uk/Commons/2022-04-20/debates/dc8447af-42bd-493f-b8d3-25447ce7fe09/CommonsChamber#contribution-9AAE5D5C-9281-4F74-8B0C-80906DB6DEAA

Recommendation 19

Revisit the position of unqualified / non-qualifying leaseholders under the Building Safety Act 2022 by launching the long promised government consultation and, specifically, end the BSA disincentives to collective enfranchisement and commonhold conversion by moving liability for historic defects away from blameless leaseholders seeking land ownership and self-governing schemes of management. This could be done by requiring new freehold valuation methodology to account for the cost of any remedial works and deduct from the price. In particularly blighted blocks, departing freeholders may have to hand over the freehold for free, or even pay the leaseholders to take the asset (and, with it, the liabilities) off them.

Recommendation 20

A reasonable formula must be devised that can be applied across the board to value freeholds. The algorithm that goes through the UK Government's promised online calculator must put weight on the fact that leaseholders have already paid a large premium for their leases and collectively hold the majority of the financial value, especially where ground rents are low or non-existent and where the leases are over 200 years. Freeholders typically hold only 3-5% of the capital value in a block of flats. Given these facts, the cost of lease extension and freehold purchase should be made as affordable as possible while respecting the UK's human rights obligations. Any windfall payments to freeholders, including 'marriage value', must be stripped out of the new valuation.

Recommendation 21

The formula should compensate freeholders only for the loss of income to which they are legally entitled to. This includes ground rents, lease reversions and development value (unless leaseholders covenant not to redevelop, which should be a new right as proposed by the Law Commission).

But it does not include loss of potential payments in the form of commissions on insurance policies purchased or for other purchases of goods and services for which the freeholder or managing agent has become accustomed to taking a cut.

The valuation methodology for freehold purchase must also explicitly refuse to account for any flats that have been constructed, or could be constructed in future, under the two-storey permitted development right snuck through Parliament under the cover of Covid.

In the middle of the pandemic, the government gifted building owners the right to add two storeys to freestanding blocks of flats built between 1948 and 2018 and up to 30 meters (or around ten storeys) high. Even if the two extra storeys aren't built and this 'air right' isn't exploited, the mere potential raises the value of thousands of existing freeholds. One analysis suggests this furtive law change has gifted £41 billion pounds to freeholders. At the same time, it has devalued the leases of the flats in all those buildings and made the cost of acquiring the freeholds prohibitively expensive for affected leaseholders.

Recommendation 22

The enfranchisement and commonhold conversion processes must provide for leaseholder discounts in cases of major block disrepair. Freeholders and leaseholders should appoint independent surveyors and M&E experts to determine the extent of poor maintenance and how much it will cost for leaseholders to put right as freeholders.

Recommendation 23

As first proposed by the Law Commission, launch government loans scheme to help leaseholders with freehold purchase and commonhold conversion, especially for lower income households and those with short leases where the enfranchisement costs could be too much to pay upfront. Government should be lender of last resort for mass move away from leasehold with commercial freeholders controlling people's homes and charges.

The Swedish arrangement is well worth considering. Land, common parts and commercial premises are acquired by the commonhold company via a loan. The loan is then paid off by the flat owners collectively as part of their service charge, over 20-30 years, removing the 'free-rider problem' of some unit-holders paying for non-participants.

Recommendation 24

Ban freeholders from recouping their legal and professional costs in any enfranchisement or commonhold conversion claim. Both sides must pay only their own costs.

Recommendation 25

Introduce the Law Commission's proposed revamped freehold purchase and Right to Manage regimes with regards to a simple 50% majority of residential floorspace for leaseholders to qualify, ending the 25% rule on non-residential premises (including commercial

space) barring many leaseholders in mixed-use schemes from taking control of their homes, charges and service providers.

Recommendation 26

Scrap any legal requirement in qualifying criteria for freehold purchase, commonhold conversion and Right to Manage that there can be no shared services or that the residential premises must be 'self-contained', 'structurally independent' or 'entirely detached' from the commercial space to further help leaseholders in mixed-use schemes gain liberation.

Recommendation 27

To ensure that freehold purchase is viable to those with flats in mixed-use blocks by reducing premium to be paid, introduce a new right for leaseholders to require the departing freeholder to take 999-year leasebacks of units not let to leaseholders participating in the claim, including the commercial premises, as put forward as a recommendation by the Law Commission.[45]

Even under leaseholder-controlled RTM arrangements, freeholders are levying license and permission fees. To end the extractive power of freeholders and further diminish residential freeholds and ground rents as an asset class, Parliament must intervene on license and permission fees and cap them. While such a move was proposed in a government-commissioned report from the Lord Best chaired Regulation of Property Agents working group in July 2019, DLUHC has yet to formally respond to its recommendations.[46] In June 2019, in a response to the Commons housing select committee's report into leasehold housing, the Department committed to setting a maximum fee of £200+VAT for producing leasehold information in the form of a LPE1 pack, with a mechanism to vary the fee to reflect inflation. It also pledged to set a maximum fee of £50 for updating leasehold information.[47] Over four years on, neither change has come into force.

At one development, Commonhold Now has established sales packs are being charged at £3,000 a pop by the freeholder, which is the product of the law's current silence on license and permission fees and leaseholder reluctance to brave the expensive and risky tribunal system on a point of principle, especially when they are eager to sell up, exit leasehold and get their life back.

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[45] Recommendation 21 of *Leasehold home ownership: buying your freehold or extending your lease*, Law Commission, June 2020 (pp. 282-286) https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2020/07/ENF-Report-final.pdf

[46] *Regulation of Property Agents: working group report*, GOV.UK, 18 July 2019 https://www.gov.uk/government/publications/regulation-of-property-agents-working-group-report

[47] *Implementing reforms to the leasehold system in England: Summary of consultation responses and Government response*, Ministry of Housing, Communities & Local Government, June 2019 (pp. 42-43) https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/812827/190626_Consultation_Government_Response.pdf

<u>Recommendation 28</u>

For the government to change the law prescribing what can and cannot be charged as a license and permission fee.

Freeholder demanded costs of assigning a lease, permitting a change of rental tenant, permitting internal renovations should be regulated and capped at fixed amounts so leaseholders have peace of mind and are not subject to ransom demands. The list of permissible charges should be made publicly available on a government website.

FUTURE BUILDINGS

Recommendation 29

> ***Commonhold Now urges a ban on the creation of any more leasehold homes, whether houses or flats, where the freehold is not held collectively by all residential unit-owners, with the law changed to require that all future multi-owned residential property must be built and sold as part of a commonhold or share of freehold development, including mixed-use schemes with residential units.***
>
> ***Whichever they chose, developers would be compelled by law to create a residents management company and vest all freehold interest in every part of the estate to that RMC. No individual or entity would be permitted any involvement in the freehold-owning RMC other than the unit buyers who would appoint any managing agent, determine budgets and control all costs. (No tripartite leases, no auctioning off of embedded management rights to the current army of shady companies who queue to snap them up.)***

The argument we hear whispered against abolition, even for new-builds, is that compelling commonhold is "not the English way". People should be given choices. Once they have alternatives, the feudal leasehold option will wither naturally away. This is exactly the argument that persuaded the Labour government, when it drafted the Commonhold and Leasehold Reform Act 2002. People – which meant builders, developers, lawyers, banks and everyone except the actual homebuyers – were allowed to choose between leasehold and commonhold tenure for new developments. The result? Only 20 Commonhold properties have been created in the twenty years since the Act was passed.

The sector will point to problems with the detail of the legislation, but there is one very simple reason that leasehold exploded between 2002 and 2023, while commonhold never took off. Money! Leasehold, as we have demonstrated, offers landowners and developers major income streams in perpetuity. Commonhold does not. So as long as the current system of leasehold is an option, it will always be preferred. Commonhold – or any efficient alternative you put up – will wither on the vine again, just as it did with the 2002 Act. We believe that, if Labour hadn't ducked reform 20 years ago, if they had mandated commonhold and sunset-ed the conflictual, costly and inefficient leaseholder/freeholder model, we might have avoided the misery in which today's housing market is mired.

While we have a strong preference for commonhold tenure, we are not purists at Commonhold Now. For communal ownership of residential blocks, we do believe that commonhold is vastly superior to leasehold and even betters leasehold with share of freehold.

But the issue is ownership and the control that comes with it. Five million plus leasehold households are suffering enough. It would be utterly immoral to add thousands more to their number by the creation of new leaseholds, while we indulge in years more of erudite debate about the pros and cons of one system over another.

Leasehold with the freehold held by a developer or third-party investor on new-builds has to go now.

As Professor David Clarke wrote in 2006, "this proposal is not as radical as it sounds. We already have legislation permitting a collective enfranchisement, and providing for the grant of a new lease for any number of further terms of 90 years at a peppercorn rent, and granting a right to manage to leaseholders without any payment to the reversioner. ***So why not go to the obvious conclusion and require developers to transfer the 'whole value' of the land and buildings to the new leaseholder/owner at the outset? There is no justification for permitting a developer to retain at the start what Parliament has indicated can be taken away at any time in the future.*** The developer cannot complain. The full capital value of the freehold, or of the lease for 999 years at a peppercorn rent, will be paid at the first sale. Theoretically, the buyer of the new home might pay a little more by way of initial purchase price, but in practice, any extra sum will be small".[48] (emphasis added) Professor Clarke wryly concluded that his recommendation "sounds a bit like aiming to achieve the benefits of commonhold, but under the guise of a leasehold". Not necessarily a bad thing if government refuses to compel commonhold. We can still ban having developers and outside investors in other people's homes on flatted developments going forward and mainstream resident control of block management and service charges.

In October 2023, leading conservative think-tank, Policy Exchange, proposed a sunset clause on residential leasehold tenure and compulsion of commonhold on future flatted developments as part of a Leaseholder Enfranchisement Bill for the upcoming King's Speech.[49] Policy Exchange, while supporting in principle the Law Commission's proposed sweeping reform for a second generation commonhold, recommended some relatively modest changes to commonhold as laid out in the 2002 Act, perhaps conscious of how the current government is running out of time to successfully translate a 640-page report and its 121 recommendations into law. Policy Exchange focused on how mixed-use can be accommodated to remove a key practical difficulty in making commonhold the default system on multi-unit schemes. We support their elegant approach but would add that alongside proposed changes to enable mixed-use development, the Law Commission's recommendation that all commonholders have a right to vote on service charge budgets must be brought into force if this Conservative administration lacks the time or bandwidth to deliver the full Law Commission blueprint for commonhold 2.0. Policy Exchange should also be applauded for urging the UK Government to introduce "a mechanism for the expeditious enfranchisement of a leaseholder on a compulsory, no-fault basis" to ensure more citizens have "a sense of stake and security that only genuine property ownership provides". This will guard against a two-tier market in flats from opening up and is the morally correct course of action, too.

A week after Policy Exchange's intervention, PricedOut, the vociferously pro-housebuilding grassroots campaign group influential in Westminster, came out for commonhold and, like Policy Exchange, argued for tweaks to the tenure as laid out in the 2002 Act so as to ensure any compulsion does not jeopardise new flatted developments coming onto the market. The group's desired changes were also

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[48] David Clarke, 'Long Residential Leases: Future Directions', in *Landlord and Tenant Law: Past, Present and Future* ed. by Susan Bright (Oxford: Hart Publishing, 2006), pp. 171-190 (pp. 186-189)
[49] Iain Manfield, *What do we want from the King's Speech?*, Policy Exchange, October 2023 (pp. 48-50) https://policyexchange.org.uk/wp-content/uploads/What-do-we-want-from-the-Kings-Speech.pdf

focused on providing for mixed-use commonholds. We note that PricedOut deplores the leasehold system in "encompassing several inherently exploitative elements in practice", including "responsibility for home maintenance fall[ing] upon a disinterested third party … lead[ing] to negligence." "Commonhold offers a more efficient approach to building management" and common interest properties, indeed. We thank PricedOut for recommending leasehold reform and a shift to commonhold tenure in their manifesto to solve the housing crisis.[50]

Within our framework based on the principle that consumer flat-buyers in England and Wales are best placed to oversee the management of their homes, appoint service providers they pay for and control the costs they will have to bear, we suggest measures to ensure the proper maintenance of these estates.

- Buildings or estates larger than a set number of units – perhaps ten, certainly 20 – should be required to appoint a professional managing agent.
- Buildings should have a ten or even twenty year Capital Expenditure (CapEx) plan in place on completion.
- Buildings should be required to establish a Reserve Fund from the outset with regular contributions based on the CapEx plan.
- To deal with the difficulties of non-payment of charges by individual unit owners, the commonhold or share of freehold company should be required to give permission for any sale and should have the ability to establish new buyers' financial standing.
- The company should also have rights, similar to those of lenders, to repossess units and re-sell units. But whereas under forfeiture the leaseholder is given no compensation, under commonhold or share of freehold, the unit's original owner would receive any balance left over once outstanding charges have been settled.

But of course none of this will work, given the state of existing fire safety and other new-build problems, unless the government also tackles something that doesn't appear on anyone's current reform agenda – quality control and consumer protection.

Ultimately, without addressing the inherent costs of repairs, a shoddily constructed new-build block that will cost unit-owners gargantuan amounts of money to remediate or litigate can quickly destroy the promise of the autonomy and control that commonhold affords.

Recommendation 30

Reinstatement of rigorous independent quality control of all new-builds. Developers should no longer be able to pay private building inspectors to mark their homework. They should still pay for the inspection process. But the process must be under the control of the local authority and Building Safety Regulator. The build needs to be monitored and regulated at all stages, with proper detailed records created, which are distributed to all interested parties including every unit buyer.

[50] Tom Spencer, *The PricedOut Manifesto*, PricedOut, October 2023 https://www.pricedout.org.uk/wp-content/uploads/2023/10/Manifesto_pages.pdf

Recommendation 31

There must be a national insurance scheme, state-underwritten if necessary (as for travel and holidays). The scheme would cover the remediation of all defects during the first twenty years of a building's life.

Recommendation 32

There must be a recognised process for agreeing when a building is not capable of remediation and a compensation formula that can be routinely applied.

The National House Building Council (NHBC) scheme, which covers the vast majority of new-build homes, is proving of limited use. Raising concerns surrounding the comprehensiveness of the body's warranties and its independence, The Guardian reported that developers may have been incentivised by NHBC to suppress legitimate claims through annual million pound 'no-claims' bonuses.[51] Most existing warranties are hedged about with so much legal red tape, that claiming against them is an impossibility. Such a national guarantee should be funded by all actors in the housing market – materials manufacturers and suppliers, builders and developers.

We look on with awe at the policies that have recently been rolled out in New South Wales, Australia, including the Strata Building Bond & Inspections Scheme which compels developers to put 2% of the total price paid or payable of all contracts for the building away in escrow.[52] This money can then only be released when an independent inspector is happy there are no defects at the development. If there are defects, the money is surrendered to fund the remedial works.[53] A ratings platform of builders and developers has been introduced to empower consumers with greater information before they buy into a multi-unit scheme.[54] Like in England, politicians and regulators were facing "a swath of appalling buildings riddled with complex challenges, and innocent homeowners inhabiting a world of pain"[55]. However, they have used their building quality crisis to protect flat owners, to crack down on phoenix companies and developers who shirk their obligations, and to drive up standards in the construction industry through the Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020, Project Initiative and a fearless Building Commissioner in David Chandler. Early inspections and audits of schemes are

[51] Graham Ruddick, 'New homes warranty firm pays millions to leading homebuilders', *The Guardian*, 5 February 2017 https://www.theguardian.com/business/2017/feb/05/new-homes-warranty-firm-pays-millions-to-leading-homebuilders

[52] New South Wales Fair Trading, Stata Building Bond & Inspections Scheme https://www.fairtrading.nsw.gov.au/housing-and-property/strata-building-bond-and-inspections-scheme

[53] The Strata Collective, Changes to building defects and bonds https://www.thestratacollective.com.au/news/changes-to-nsw-strata-building-defects-building/

[54] Julie Power, 'Show me your stars: Apartment buyers start pulling deposits after new rating system', *The Sydney Morning Herald*, 3 July 2022 https://www.smh.com.au/national/nsw/apartment-buyers-start-pulling-deposits-after-commissioner-rates-developers-20220613-p5atcq.html

[55] David Chandler, 'Bad developers have left a trail of misery, but our reforms are cleaning them out', *The Sydney Morning Herald*, 22 July 2023 https://amp.smh.com.au/national/nsw/bad-developers-have-left-a-trail-of-misery-but-our-reforms-are-cleaning-them-out-20230720-p5dpy0.html

becoming established practice and developers with non-compliant buildings are being issued Stop Work Orders before they can ensnare buyers.[56]

It goes without saying that, if building inspection has been properly carried out, post completion guarantees should hardly need to be relied upon. Developers with regular calls on the scheme would be disciplined by having to pay higher premiums to cover their builds. They could also be denied future planning permissions.

Such a system would align incentives correctly, so that it would be in everyone's interest to behave as they ought. At present, developers are able to create SPVs, dissolve them when the build is done, sell on the development, and then slink off into the shadows, leaving the buyers of their flats and freeholds to clean up the mess. As the campaign group Ipswich Cladiators has put it, too many new-build homes are currently "built to sell, not to last". Extending the window to sue your developer from 6 years to 30 under the Defective Premises Act 1972, as the government have done with the Building Safety Act 2022, relies on new-build buyers litigating, possibly for years on end. The case of Dan Bruce, who with his neighbours has been quoted half a million pounds to bring a DPA claim and cannot afford such a sum, shows that rights to sue are simply not good enough.[57] New-build homebuyers need proper consumer-style protections including cast-iron guarantees.

[56] Amber Schultz, 'Second development given stop work order under Building Commissioner's audit', *The Sydney Morning Herald*, 23 July 2023 https://www.smh.com.au/national/second-development-given-stop-work-order-under-building-commissioner-s-audits-20230720-p5dpvo.html

[57] Melissa York and Harry Scoffin, 'Fixing our shoddy new-build homes could bankrupt us', *The Sunday Times*, 6 November 2023 https://www.thetimes.co.uk/article/fixing-our-shoddy-new-build-homes-could-bankrupt-us-nkb3f2gjf

THE OBJECTIONS

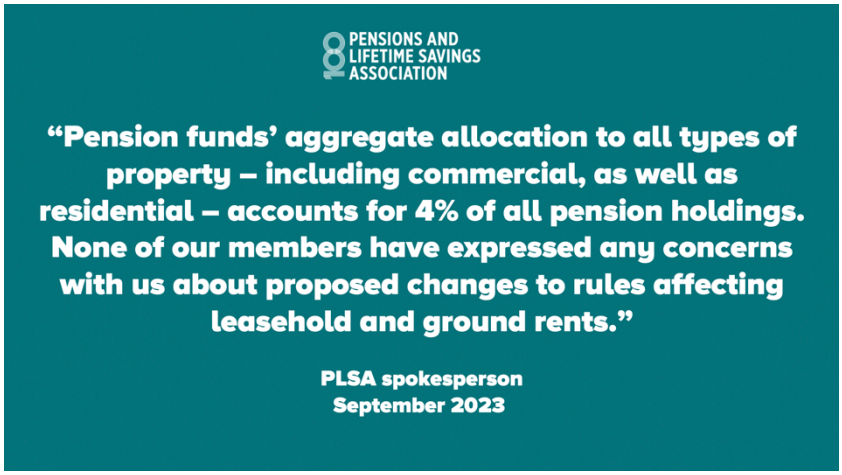
A bold reform agenda will always face opposition. In the case of leasehold reform, freeholders, their lobby groups and other associated interests will invariably field a number of reasons why bold reform is impossible.

Reform will violate freeholders' property rights.

Commonhold Now believes in liberation, not confiscation. Freeholders should be compensated for their legitimate interests, but making it easier and cheaper for leaseholders to obtain a 999 year lease with zero ground rent and/or the actual share of their freeholder, should be a cornerstone of any reform. Leaseholders have rights, too, but in the current system, their rights are being devalued in direct proportion to the passive rent extraction by freeholders. That makes no economic or political sense. Ground rent portfolios that offer investors an inflation-protected passive income at the expense of leaseholders, and whose home values are inversely correlated with the size of this stream, is an unproductive and socially toxic asset class. It should be regulated out of existence. Freeholders will perhaps sue the government, but the government must be bold and follow the lead from the Law Commission's work that it is indeed legally sound to go further than the current framework.

Granny gets it. Pensions will be wiped out.

This is a spurious and desperate claim, which does not survive a meeting with the most rudimentary empirical evidence. UK funds are only marginally invested in residential property. By far the biggest components of pension fund investments are bonds followed by shares. Property of any kind makes up only 3-5% of portfolios across the board, according to the Pension Protection Fund's Purple Book. And the bulk of that investment is in commercial real estate – offices, retail, industrial. Residential freeholds are a small fraction of a small fraction. Get out your magnifying glasses! Don't take our word for it. Here is what the Pensions and Lifetime Savings Association, the trade association for our biggest pension funds, provided as a statement to Commonhold Now in September 2023:



What's more, since the fire safety crisis, many of the biggest investors like Railpen and Grounds Rents Income Fund PLC have stopped buying freeholds or announced that they are exiting the sector altogether. Even the king of ground rent grazers, the £1.6 billion Long Harbour is busy diversifying into Build to Rent, where consumers are under no illusion they own anything.

In short, the government would be kicking in an open door by making it easier and cheaper for leaseholders to acquire their freeholds and extinguish ground rents.

Buildings will fall to rack and ruin without freeholder custodians.

This is a hollow claim for leaseholders. Too many buildings are already falling into disrepair, as freeholders fail to spend money on maintenance. They have an incentive to let this happen, since they can institute expensive major works when things run down. The idea that freeholders are professionally qualified while leaseholders are not is just nonsense. There's no qualification for the job. You can buy a freehold at auction with a criminal record. And finally, the notion that freeholders have the financial substance to step in and rescue a building when something goes wrong has been blown apart by the building safety crisis. Where has their money been for the past six years? Even after the Building Safety Act, even after signing remediation pledges with the government, too many are just sitting on their hands while leaseholders' lives are in limbo.

Commonholders, on the other hand, will invest in maintaining their homes, just as they would when buying and owning a freehold house. This is the most important purchase of their lives. If they fail, they know perfectly well their own asset values and rental incomes will fall. Besides, there are perfectly simple measures that can be taken to protect buildings. Compel ten or twenty year CapEx reports and the creation of adequate Reserve Funds, as other countries have done.

The only study we could find that threw any weight behind the leasehold model with institutional freeholders was a paper called "What is the future of high-rise housing? Examining the long-term social and financial impacts of residential towers".[58] This February 2023 document featured contributions from a number of sector insiders including a property developer and two former housing association directors and was published under the aegis of the London School of Economics.

The report's funding came from architectural firms. Its chief concern, quite naturally, is the maintenance and long term health of buildings, which, as it points out, are complex and expensive. The writers advocate long term CapEx plans, compulsory Reserve Funds and further research into the experience of our country's high-rise residents, particularly those living in privately owned developments. We agree.

The key point for us, however, is that this report looked into whether economies of scale are provided by large corporate freeholders that don't exist for single building resident management companies. Insurance and utilities could be bought and repairs carried out more cheaply across a portfolio of estates, so the lobby line goes. Yet the authors go on to conclude that there is no evidence that such economies of scale have delivered any benefits to leaseholders. The opposing view would be that these are 'economies of rip off', for which they found plenty of evidence from the leaseholders they had surveyed. Yes, the institutional freeholder can acquire services more cheaply, but instead of passing these benefits to the service charge, freeholders simply use them to increase their own profit margins.

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[58] June Barnes et al., *What is the future of high-rise housing? Examining the long-term social and financial impacts of residential towers* (London: Tall Residential Buildings Research Group, February 2023) http://www.high-rise-housing.co.uk/uploads/5/0/0/1/50014965/high-rise_housing_report_digital.pdf

Jobs would be lost in the building managing industry.
The suggestion is that commonholders would take building management into their own hands, if they gained control. They'd be on their hands and knees in riser cupboards, while managing agencies and contactors of all kinds would go out of business. This is nonsense. Buildings of any size would employ professional managing agents. Again this could be compelled. Australia's strata title (commonhold) system provides work for over 10,000 property management professionals and tens of thousands of tradespeople, engineers, plumbers, decorators and electricians.[59]

Leaseholders will fall out and fight with no freeholder to hold the ring.
As long as there is human nature there will be fallings out. No housing system can prevent that. But to argue that leaseholders have to be held apart by an impartial landlord is an argument against democracy itself. Leasehold as a system fosters dispute, because it puts parties' interests in opposition. Under commonhold or share of freehold, interests will generally align. All that would be needed is the sort of dispute mediation scheme that every other commonhold system in the world has set up. If that is beyond our abilities to sort out, one has to wonder about the quality of government in this country.

Leaseholders don't want and can't handle the responsibility.
In January 2023, almost half of all Britons confirmed to YouGov that they support abolishing leasehold, with just 8% of those living in London, which has the highest concentration of the tenure in the country, saying they oppose moves to scrap it. In March, a poll by Opinium commissioned by Commonhold Now established that 73% of leaseholders want leasehold replaced with commonhold. 60% of Conservative 2019 and Labour 2019 voters back the policy, while 72% of Liberal Democrat 2019 voters endorse it.

Even the leading pro-leasehold lobby group, the Residential Freehold Association (RFA), has found that 67% of leaseholders Savanta polled for their members said Yes to "If there was the option to own the freehold on your building(s), would you want it?", with just 16% opposed and 17% not sure/don't know.

When those same leaseholders were warned that buying the freehold could mean they become the "Accountable Person" under onerous post-Grenfell regulations, which would then open them up to prosecution if a major structural or fire safety problem emerged at their resident-led block, 51% of respondents said yes, 33% no, while 15% said they didn't know. However one words the question, leaseholders' desire to be in control of their buildings and bills is irrepressible.

[59] Hazel Easthope et al., *Australasian Strata Insights 2022* (Sydney: City Futures Research Centre, June 2023) https://cityfutures.ada.unsw.edu.au/documents/717/2022_Australasian_Strata_Insights_Report.pdf

CONCLUSION

Now is the time for bold and decisive policy action.

It is vital to refresh commonhold and make this democratic, internationally-accepted tenure the default on new-build flats to allow for real homeownership and the dignity, security, autonomy and control that flows from it. Simultaneously, to liberate millions of existing leaseholders, a mass shift to commonhold aided by government loans is desperately needed.

Only then will England and Wales finally join the modern world.

Ending leasehold is a necessary condition for getting to grips with the multidimensional housing crisis faced by the UK economy and society. Piecemeal reform is no longer possible, nor viable. Wholesale changes are needed. This report has identified the root problem of leasehold tenure, has put forward 32 concrete proposals for legislative and judicial reform which can be delivered at this late stage of a five-year parliament, and it has rebutted the objections we know the property and legal establishment will field against radical change to benefit captive leaseholders. Now is the time for policymakers to act.

And, if this administration cannot provide leasehold abolition and commonhold now to unshackle the millions of existing leaseholders, we must at least gain rightful control of our homes and our money to stop this serfdom.

That means radically reducing the barriers to Right to Manage, freehold purchase and commonhold conversion, so that service charges and other fees can be democratically controlled by paying residents, estates are lovingly looked after, and there is no two-tier market.

Leasehold tenure has to be reduced to a harmless, homeopathic element of our housing market.

Liberty – and common sense – demands it.