

FAO: The Chairs and Members
The Leasehold and Freehold Reform Bill Committee
House of Commons
London
SW1A 0AA
15 January 2024

By email: scrutiny@parliament.uk

Dear Sirs,

Call for Evidence – The Leasehold and Freehold Reform Bill - Public Bill Committee

This is a response to the Call for Evidence for the above Bill submitted on behalf of ALEP - the Association of Leasehold Enfranchisement Practitioners.

ALEP is a politically neutral, not-for-profit membership association which represents solicitors, surveyors, barristers, managing agents and project managers practising in the field of leasehold enfranchisement. Our members represent both leaseholders and freeholders in equal measure.

Our purpose in responding to the Call for Evidence is to offer not only the views of our members, but also to offer to assist in the technical implementation of this Bill. One of the lessons of previous legislation in this area, be that the Commonhold and Leasehold Reform Act 2002, and /or the Building Safety Act 2022 has been that there have been unintended consequences from the legislation that have caused difficulty and hardship in practice. These have affected leaseholders adversely.

As technical experts specialising in this area of law and valuation, we believe that our members have valuable input and insight that may be called upon. Much of the parliamentary focus to date has been on 'righting the wrongs of leasehold' and ALEP's position is one of neutrality. We make no comment on the political objectives of the Bill in terms of making it 'cheaper and easier' or in 'rebalancing' or indeed 'reversing' the position between leaseholders and freeholders. However, we believe that the points we raise here (and in other areas of consultation/comment) should be considered in the interests of balance and foresight to ensure the success of the Bill.

In this letter we submit a summary of our members' responses to some key questions that we asked of them in response to the Call for Evidence.

We also have a more detailed summary of the responses received which we will make available to the Department.

We would be pleased to provide any such further information as the committee may require and /or appear to provide oral evidence if required.

Yours sincerely,



Mark Chick
Director
For and on behalf of ALEP

Association of Leasehold Enfranchisement Practitioners (ALEP)

Points arising from our survey of the views of our members in relation to
the Call for Evidence for the Leasehold and Freehold Reform Bill

- 1. The position of Enfranchising Tenants who have purchased and contributed towards their freehold cost including marriage value for non-participants**
 - 1.1 Whilst we respect the decision that has been taken by the legislature to seek to remove marriage value from the compensation calculation our members are aware of a significant number of collectives who have purchased freeholds and contributed towards the cost of paying for (hope of) marriage value for non-participant flats.
 - 1.2 As the Bill currently stands, these parties will lose out and will not recover any of the marriage value that they have paid to acquire these non-participants' shares. This seems to be an unintended consequence of the legislation and one that is likely to cause hardship and cost to a good number of leaseholders who have exercised enfranchisement rights under the existing legislation.
 - 1.3 Is it intended that there will be any kind of 'carve out' or saving provision in respect of these situations?
 - 1.4 We are aware that the Law Commission considered taking the status of an individual into account of this when making its recommendations on marriage value and considered making the payment of marriage value contingent upon status. This has not been brought forward into the draft bill and we consider this point should be given further thought so to avoid unintended negative consequences for leaseholders.
- 2. The removal of marriage value generally**
 - 2.1 The removal of 'marriage value' from the compensation calculation will hand a significant one-off windfall to all leaseholders who may be homeowners, investors or private property owners. Once the change has been introduced, this value will have been transferred and for those with a 'short' lease (under 80 years) there will be a one-off benefit. Once this value has been transferred, the leaseholder will then be free to sell their property at an enhanced market value.
 - 2.2 Many leasehold properties are based in London and South East and may well belong to individuals who own additional or multiple properties. When considering the impact of the removal of marriage value, to state the obvious, the most significant value will be transferred in the case of the highest value properties.

- 2.3 A good proportion of flats are owned by buy-to-let investors and multiple owners. It seems perhaps strange that this one-off windfall will benefit (amongst others) a number of particularly well-off individuals, in particular perhaps many of those who are non-resident and who may well have additional tax sheltering.
- 2.3 Whilst we appreciate the objective of making it ‘cheaper and easier’ for leaseholders to extend their leases or to enfranchise, is the unlimited nature and scope of this proposed universal change appropriate?
- 3. The proposals to restrict/ limit the level of ground rent that can be recovered and the knock-on effect on intermediate landlords**
- 3.1 Whilst not dealt with directly in the Bill as it stands, it is clear from the current Consultation on restricting ground rents that it is the intention of government to look to restrict, cap or ban ground rent under existing leases. It is not clear whether this may come as part of a later amendment to the Bill, or as part of separate legislation, dependent on the outcome of the Consultation.
- 3.2 A number of our members have voiced concerns that if further or extreme restrictions are placed on the ability of landlords to collect ground rent that this will have a knock-on consequence in terms of the willingness of landlords to retain or own freeholds. In addition, and more specifically there are concerns for intermediate leaseholders who will see their income drop to zero.
- 3.3 Many blocks have an intermediate landlord that fulfils management functions on behalf of the freeholder. They also often have a liability to pay a rent to the freeholder or superior landlord under the terms of their lease. If the ability to receive a ground rent from the leaseholders is reduced to zero or severely restricted, the intermediate landlord will still have a liability to pay rent to the ultimate freeholder or immediate landlord, but will not have any income to do this with.
- 3.4 Where the intermediate leasehold reversion is particularly short, (as is often the case) and there is no other additional value in the hands of that landlord, there is significant risk that these landlords will simply hand back their interests and/or in the case of corporate entities simply put the entity into insolvency/liquidation.
- 3.5 If this happens, leaseholders whose leases sit under the head lease will have ‘defective title’ will and will need to buy out the head lease. Until this is achieved, they will face significant difficulty selling their flats. They will also incur significant costs in the restoration of the intermediate leasehold interest.
- 3.6 We would therefore urge caution in any radical progress towards the complete elimination of ground rent without specific provisions to ensure this does not become the case.
- 4. The valuation of intermediate leasehold interests**
- 4.1 Similar points may apply in relation to intermediate leasehold interests following the proposed changes to the valuation of these.

- 4.2 These interests will drop significantly in value and in many cases or very little or nil value. As there is no marriage value to share on any lease extension or acquisition of their interest, there will be very little paid for them.
- 4.3 The owners of these interests may consider that there is no further point in owning them and at which point circumstances similar to those described above may arise, in which these assets may be abandoned, causing further issues for flat owners who own under leases.
- 4.4 There are also issues in a minority of cases where the intermediate landlord has a significant reversion. With no costs recovery (see below) and with the abolition elsewhere of 'relativity' used to value short leases, it may become very costly for intermediate landlords to dispute their share of any premium. This means the abandonment becomes more likely even where there is a reversion.
- 5. The proposal to remove costs in enfranchisement claims**
- 5.1 In their responses to our survey, many of our members expressed the view that it seems inequitable in a situation such as the compulsory purchase of their asset under the enfranchisement legislation, that the freeholder's costs will not be covered. This seems to be anomalous with other compulsory purchase regimes.
- 5.2 Whilst there is no disagreement with the suggestion that recoverable costs should be subject to control as they are currently under the enfranchisement legislation (under sections 33 and 60 of 1993 Act and section 9 of the 1967 Act), a number of our members raised concerns that those who are faced with an enfranchisement claim may incur costs on a repeated basis, with no reimbursement.
- 5.3 In the Bill (as drafted) there will be no restriction on bringing subsequent claims if a claim is withdrawn or discontinued. Our members expressed the view that in the case of an individual freeholder who perhaps lives in the property, or only has one or a very few freeholds, that there may be a risk that their ability to access to appropriate advice may be prejudiced by their reluctance or inability to incur costs. As a result of an unwillingness to take advice and/ or incur costs, they may well lose out financially in respect of the compensation that they might otherwise receive and/ or if they live in the property, be deprived of rights and/ or value in their own home.

Association of Leasehold Enfranchisement Practitioners (ALEP)

Summary views from our members' survey in response to the Call for Evidence for the Leasehold and Freehold Reform Bill

Below we summarise the overview of the responses received to our member survey

Question 1: Please provide your views and opinions on the proposal to: increase the standard lease extension term for houses and flats to 990-years (up from 90 years in flats, and 50 years in houses), with ground rent reduced to a peppercorn (zero financial value) upon payment of a premium.

Positive: 90%

Negative: 10%

Question 2: Please provide your views and opinions on the proposal to: remove 'marriage value', which makes it more expensive to extend leases close to expiry.

Positive: 10%

Negative: 65%

Neutral: 25%

Question 3: Please provide your views and opinions on the proposal to: remove the requirement for a new leaseholder to have owned their house or flat for two years before they can benefit from these changes.

Positive: 95%

Negative: 5%

Question 4: Please provide your views and opinions on the proposal to: increase the 25% 'non-residential' limit preventing leaseholders in buildings with a mixture of homes and other uses such as shops and offices, from buying their freehold or taking over management of their buildings – to allow leaseholders in buildings with up to 50% non-residential floorspace to buy their freehold or take over its management.

Positive: 30%

Negative: 35%

Neutral: 35%

Question 5: Please provide your views and opinions on the proposal to: make buying or selling a leasehold property quicker and easier by setting a maximum time and fee for the provision of information required to make a sale (such as building insurance or financial records) to a leaseholder by their freeholder.

Positive: 85%

Negative: 10%

Neutral: 5%

Question 6: Please provide your views and opinions on the proposal to: require transparency over leaseholders' service charges

Positive: 70%

Negative: 30%

Question 7: Please provide your views and opinions on the proposal to: replace buildings insurance commissions for managing agents, landlords and freeholders with transparent administration fees.

Positive: 72%

Negative: 6%

Neutral: 22%

Question 8: Please provide your views and opinions on the proposal to: extend access to "redress" schemes for leaseholders to challenge poor practice.

Positive: 83%

Negative: 6%

Neutral: 11%

Question 9: Please provide your views and opinions on the proposal to: end the presumption for leaseholders to pay their freeholders' legal costs when challenging poor practice.

Positive: 50%

Negative: 35%

Neutral: 15%

Question 10: Please provide your views and opinions on the proposal to: grant freehold homeowners on private and mixed tenure estates the same rights of redress as leaseholders by extending equivalent rights to transparency over their estate charges, and enable them to challenge the charges they pay by taking a case to a tribunal.

Positive: 95%

Negative: 5%

Question 11: Please provide your views and opinions on the proposal to: build on the legislation brought forward by the Building Safety Act 2022, ensuring that freeholders and developers are liable to fund building remediation work.

Positive: 47%

Negative: 5%

Neutral: 47%

Question 12: Please provide your views and opinions on the proposal to: ban the sale of new leasehold houses so that - other than in exceptional circumstances - every new house in England and Wales will be freehold from the outset.

Positive: 90%

Negative: 5%

Neutral: 5%