

House of Commons Public Bill Committee – Leasehold and Freehold Reform Bill

Written Evidence from Propertymark

January 2024

Background

1. Propertymark is the UK’s leading professional body of property agents, with over 17,800 members representing over 12,500 branches. We are member-led with a Board which is made up of practicing agents and we work closely with our members to set professional standards through regulation, accredited and recognised qualifications, an industry-leading training programme and mandatory Continuing Professional Development.¹

Executive summary

2. Propertymark welcomes the Leasehold and Freehold Reform Bill. Further reforms to the leasehold system in England and Wales have been long anticipated and the Bill will bring much needed protections for leaseholders. It is important that implementation is well planned and managed as these reforms are significant and must ensure no leaseholder is left behind.

Written evidence

3. Research conducted by Propertymark in 2018 on the impact of leasehold on home buyers and follow up research in 2023 outlines the need for reform of the leasehold system.² The issues regarding a lack of understanding around ground rent increases is partially due to poor and inconsistent knowledge from consumers when buying a leasehold property. Many are unaware of the difference between leasehold and freehold and are unaware of the intricacies of ground rent and when it increases. This can be offset when independent professionals such as solicitors and property agents chosen by the buyer can read through contracts with them. However, in the majority of cases, at least through Propertymark research in 2018, 78% of leasehold house owners bought their home directly from a developer, with 65% using a solicitor their house builder recommended. Furthermore, 15% of leaseholders were not even informed that they were buying a leasehold property, which indicates a level of conflict of interest between providing the full range of information that a buyer needs to make an informed choice. As a result, 62% of leaseholders felt they were mis-sold leasehold and entered into a contract that is unclear and does not provide clear service.
4. Since 2018, Propertymark members have reported there has been an increase in consumer awareness. Propertymark’s 2023 report, Leasehold 2023: Has anything changed? highlighted that 60% of buyers ask for information about the lease before they view a property and 72% of agents believe that homebuyers are more aware of the issues surrounding leasehold property.³ However, issues remain as 54% of agents who sell property on behalf of developers

¹ <https://www.propertymark.co.uk/>

² <https://www.propertymark.co.uk/resource/leasehold-a-life-sentence.html>

³ <https://www.propertymark.co.uk/resource/leasehold-2023-has-anything-changed.html>

report that they do not always provide all the pertinent leasehold information that consumers should receive. While improvements have been made, it is important to stress that this does little to support leaseholders who have already regretted buying a leasehold property and are stuck paying ground rents as well as service charges and other costs.

5. Selling property is one of the key issues for leaseholders, who are often unable to sell their property despite no longer wishing to live in it. Our 2018 research indicated that 70% of leaseholders were worried that they will not be able to sell their homes because they are leasehold. This continues to be the case, if not worse due to growing awareness of leasehold practices, as our 2023 research showed that 78% of Propertymark agents reported that leasehold properties with escalating ground rent will struggle to sell, even if priced correctly.

Key recommendations to strengthen the Bill

6. To improve the UK Government's proposals and give more rights and protections to homeowners, reform is needed in the following areas. This will ensure the legislation is workable and evidence based.

Part 1 – Leasehold enfranchisement and extension - developers should not build on land that they do not own the freehold to.

7. Due to the 'right of first refusal' only applying to buildings containing flats under the Landlord and Tenant Act 1987, developers selling new homes as leasehold are not legally obliged to tell the purchaser if they have sold the freehold to an investment company.⁴ The UK Government should ensure that these clauses are prohibited so leaseholders looking to purchase their freehold are not at a disadvantage. By ensuring that leaseholders don't build on land where they do not own the freehold, leaseholders will be able to more easily buy the freehold. For example, a leaseholder who bought a new build house and was told that their freehold would cost £4,000 to enfranchise, but within a year (and with the freehold been sold on) this had escalated to between £15,000 and £35,000. This has added significance because of the right of first refusal only applying to flats, but not houses, developers selling new homes as leasehold are not legally obliged to tell the purchaser if they have sold the freehold to an investment company. Many purchasers of new build leasehold houses have planned, as the law allows, to buy the freehold after two years, but because of the developer selling the freehold, the costs have significantly increased by quotes far higher than the original builder had set out.

Part 2 – Other rights of long leaseholders – introduce a mechanism through redress membership to identify freeholders.

8. Property agents report difficulties in getting hold of the freeholder during sales processes or when leaseholders need to get in contact with the freeholder to approve home alterations or to discuss issues with the lease which slows down the sales process. To this end, freeholders

⁴ <https://www.legislation.gov.uk/ukpga/1987/31/contents>

of leasehold properties should all be required to sign up to a redress scheme. An absent freeholder can cause several problems for leaseholders in a building. The most common ones are the management of the building, the sale of a leasehold property and the need for a new lease or lease extension. Currently, there is no requirement for freeholders of leasehold property where they are not using a managing agent to register with a redress scheme. As a result, only leaseholders and freeholders dealing with property managers will be able to complain to an independent body about the service they have received. By guaranteeing that freeholders of leasehold properties are all required to sign up to a redress scheme this will ensure that leaseholders have access to redress where there is no managing agent, and the freeholder is self-managing the property.

Part 3 – Regulation of leasehold - introduce overarching statutory regulation of property agents.

9. Currently, for sales, lettings, managing agents and sales staff selling property for building developers there are no minimum standards to work in the sector and there are no statutory rules to ensure those buying, selling and managing leasehold property are suitably qualified. To further empower leaseholders, the UK Government must introduce overarching statutory regulation of the property sector. Leaseholder properties can be bought and sold directly from a developer or through an estate agent. Consequently, the UK Government must include the proposals set out in the Regulation of Property Agents working group report⁵ to letting agents, managing agents and sales agents as well as housebuilders' sales staff who do not meet the definition of an estate agent under the 1979 Estate Agent's Act.⁶ Central to the issues consumers face is the lack of understanding between buying a freehold and leasehold during the buying process and even once they have moved into the property. Ensuring those involved in the house buying and selling process are suitably qualified and meet minimum competency standards is the only way to drive up standards of service for consumers. Consumers currently benefit from property professionals who already choose, voluntarily, to belong to a professional body, and in doing so adhere to high standards and professionalism. The focus on a new regulatory regime must be on ensuring the same consumer protections exist across the whole industry rather than being provided solely by those working in the sector who have chosen to be regulated through a professional body.

Part 3 – Regulation of leasehold - all developers must adhere to the Consumer Code for Home Builders.⁷

10. The UK Government need to consider the consistency across warranties and guarantees provided by home builders so all consumers can be guaranteed a fair and transparent process and experience. Consequently, all developers must adhere to the Consumer Code for Home Builders. The Code covers every stage of the homebuyer process from pre-contract, exchange of contract and during occupation of the property. The Code covers a range of customer service requirements including clear and truthful advertising and marketing materials,

⁵ <https://www.gov.uk/government/publications/regulation-of-property-agents-working-group-report>

⁶ <https://www.legislation.gov.uk/ukpga/1979/38>

⁷ <https://consumercode.co.uk/>

contract information including termination rights and sufficient pre-purchase information to help consumers make an informed decision about their purchase. Where developers are not registered members of the Code, consumers have no guarantee of receiving minimum standards of customer service or redress. By ensuring that developers sign up to the Consumer Code for Home Builders, all purchasers of new build homes will be fully informed about their purchase and their consumer rights before, during and after they move in.

Part 3 – Regulation of leasehold – extend Flood Re to the leasehold sector and Private Rented Sector

11. Flood Re is a levy and pool system in the UK, which replaced the Statement of Principles agreed between the UK Government and insurance companies to provide flood insurance coverage to domestic properties deemed at significant risk of flooding. The Flood Re obligation currently excludes the Private Rented Sector as well as blocks of more than three flats. The exclusion of leasehold properties is of particular concern. Building cover on leasehold flats must be arranged on a block basis to ensure that the whole building is covered. However, the insurance industry views such cover as ‘commercial’, even though the premiums are entirely paid for leaseholders via their service charges, and as such leasehold blocks have been excluded, effectively discriminating against homeowners who live in a flat and not a house. The legislation as it is means that smaller leasehold blocks, smaller Private Rented Sector landlords, and SMEs in flood risk areas may not find affordable cover. It is a requirement of all mortgages that the borrower insures the building, including for flood.

Part 4 – Regulation of Estate Management - implement a code of practice and disclosure document concerning Event Fees in specialist retirement developments as drafted by the Law Commission in March 2017.

12. Companies that own or manage specialist retirement properties, usually flats owned on a long leasehold basis, often include a clause in their lease agreements requiring owners to pay an “exit” or “transfer” fee when they wish to sell or rent out their homes. The UK Government should approve and put on the statute the Law Commission’s drafted Code of Practice for Event Fees in Retirement Properties to protect consumers and prevent them from being charged in unexpected circumstances.⁸ Event fees are payments under a term of or relating to a residential lease of a retirement property on certain events such as resale or subletting. The fees are common in specialist housing for older people and the fee can be up to 30% of the property’s resale price. Problems arise because people aren’t always being told about the fees before they purchase the property, and, in many cases, buyers hear about the fee when they hire a solicitor to read the lease. The draft Code of Practice limits the circumstances in which event fees can be charged and the amount that can be charged. The Law Commission also proposed that clear information about event fees should be provided to customers in a standard disclosure document and any advertisement that mentions the price of the property must specify that an event fee is also payable. The UK Government must introduce the Code of Practice and disclosure document to ensure that consumers have accurate information and can make informed decisions.

⁸ <https://lawcom.gov.uk/project/event-fees-in-retirement-properties/>