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| BSA response to MHCLG consultationImplementing reforms to the leasehold system in EnglandRestricted06 November 2018 |
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Introduction

The Building Societies Association (BSA) represents all 43 UK building societies. Building societies have total assets of over £396 billion and, together with their subsidiaries, hold residential mortgages of over £312 billion, 23% of the total outstanding in the UK. They hold over £276 billion of retail deposits, accounting for 18% of all such deposits in the UK. Building societies account for 37% of all cash ISA balances. They employ approximately 40,000 full and part-time staff and operate through approximately 1,550 branches.

The BSA has prepared this response in consultation with its members. We have provided answers to the questions that are most relevant to our members.

General Comments

1. We remain broadly supportive of the proposals in the consultation. The BSA has long been an advocate for leasehold reform. In 1984, we published a report by a working group of building societies, entitled ‘Leaseholds – Time for a Change?’.

2. Our response to the tackling unfair practices in the leasehold market consultation outlined our support for the Government’s proposal to restrict the creation of new build leasehold houses.

In our previous response, we stated:-

3. “It is important that any changes the Government makes do not blight existing leaseholders exacerbating the problem for them.”

4. We remain concerned about existing leasehold properties for both flats and houses and that any change could create a blight on properties where occupants have extended the lease on a voluntary basis and have maintained the ground rent. We need clear reform and guidance on the enfranchisement process otherwise any change is likely to depress the value of existing leasehold properties which could affect the willingness of lenders to lend. The prohibition, therefore, needs to go hand in hand with simplification and reform of the enfranchisement provisions while addressing ground rent escalation issues.

5. In the summary and response paper to the Tackling unfair practices in the leasehold market consultation, Government recognised the issue for existing leaseholders:

*“We will also consider how we can support existing leaseholders. Many developers have introduced schemes to compensate individuals, but these must go further and faster. The Government wants to see this support extended to all those with onerous ground rents, including second-hand buyers, and for customers to be proactively contacted. We will be keeping a close eye on progress and will consider measures that could be pursued to take action if necessary.”*

6. Is “keeping an eye on progress” a sufficient response to address this major issue? We would suggest action is necessary and it is disappointing the plight of existing leaseholders has been largely ignored in this paper.

7. The summary response went further, stating that:-

*“This alone will not address all the abuses that have occurred, with some consumers reporting that they were mis-sold a leasehold house, or that their conveyancer acted negligently. It is right that individuals are compensated where compensation is due. To help consumers access justice we will work with the redress schemes and Trading Standards to provide leaseholders with comprehensive information on the various routes to redress available to them, including where their conveyancer has acted negligently. We will also work with the Law Commission to consider whether unfair terms apply when a lease is sold on to a new leaseholder. This will help resolve the current ambiguity around this, and provide better protection for leaseholders.”*

8. We would be interested in more clarity on how the government supports and ensures a simple, quick and effective solution.

9. Concerning enfranchisement, the summary stated:-

*“We also want to make it easier for leaseholders to be able to exercise their right to buy their freehold, or extend their lease, and for this right to be available as soon as possible. The Government will prioritise solutions for lessees of houses. We will work with the Law Commission on this and consult on introducing a prescribed formula that provides fair compensation to the landlord, while also helping leaseholders avoid incurring additional court costs. And we will also consider introducing a Right of First Refusal for the house lessees. We will aim to bring forward solutions by summer recess 2018 and new legislation when Parliamentary time allows.”*

10. We are aware of the Law Commission consultation and are broadly supportive of its proposals about improving the enfranchisement process. Government figures from 2016 indicate there are over 4.1 million leasehold properties, which includes over a million leasehold houses. Improving on the existing situation for these leaseholders must be central to the proposed reforms.

11. As there is no retrospective action proposed in these reforms, it is crucial that a simple, cost-effective process for enfranchisement is available at the same time or before the ban of leasehold houses. Even if this were achieved, there would still be the significant challenge of leaseholder inertia to overcome. We are aware of one major developer offering to convert leasehold houses to freehold at no cost to the consumer but still struggling to get many of these leaseholders to engage. This example is further evidence of the lack of awareness around leasehold and points the finger at the legal advice given to these leaseholders on the purchase of the properties.

12. Without retrospective changes it is highly likely a two-tier market will be created, this brings challenges for lenders, valuers and existing leaseholders. The question then will be “who pays?” for enfranchisement especially where the freeholds have been sold on. In most cases this should still be the developer (after all it is they who have benefitted from selling on) although more questions should be asked of the conveyancers involved, after all, their job was to check out the terms of purchase and make sure that their clients understand the issues. They should expect to be held to account if they have failed to do this.

a. On the implementation of these changes, lenders will inevitably review policy from a credit risk perspective to assess the impact of the changes on the saleability of existing leasehold houses. Lenders may choose not to accept remortgage applications on leasehold houses unless the purpose of the remortgage is to acquire the freehold. Some people with leasehold homes are already finding it challenging to remortgage due to excessive ground rent increases and charges that are being levied by the companies that own the freehold for giving consent to changes to the property.

b. To help consumers and achieve a more consistent approach to lending policy and valuations we feel there would be some value in defining “onerous” ground rent and this could be achieved by working with lenders and valuers.

13. If our members resist changing their policies they would end up having charges on properties that borrowers could struggle to re-mortgage or sell, meaning the value of these properties would be depressed which would also affect saleability in the event that they need to repossess.

a. In order to avoid possibly becoming “mortgage prisoners,” leaseholders need to buy their freehold via enfranchisement as soon as possible. However, buying the freehold currently is expensive, time-consuming and complicated due to legislation.

b. The consultation asks for views on timelines for implementation and further transitional arrangements. We agree there should not be delays in this as Government’s intentions were made very clear in previous papers. However, to limit the effect of blight, there should be sufficient time to ensure a simple, cost-effective process for enfranchisement is apparent to all leaseholders. Another point to consider would be the pipeline of existing leasehold homes with “agreed sales”, a transitional period of 6 months may be suitable as to affect these sales adversely.

c. The proposal to cap ground rents is sensible, but we question how the £10 figure has been arrived at and why a lower alternative has not been provided. It also raises the issue of existing leases, many of which could have been extended via the “informal” route therefore in some instances retaining a ground rent far beyond the £10 figure. These properties would be less attractive therefore depressing value. Where individuals have already spent significant funds in extending their lease, they would understandably be reluctant in further expenditure.

d. Transactions involving leasehold properties can take weeks longer than those involving freehold only. Leasehold information needs to be made available much earlier in the process. We agree with the approach of setting fixed time frames and maximum fees for managing agents and freeholders to provide this information. We see no reason why this information cannot be provided in less than 10 working days, this would help speed up completion for many customers. Concerning the cost of delivering and updating this information, we appreciate freeholders would have an administration cost which should be covered however there should not be any additional profit from this transaction.

Questions

**Question 1: Do you have views on any further means to implement the ban on unjustified new residential long leases being granted on non-exempt houses? [Yes/No] If you do, please explain.**

Yes. We remain concerned about existing leasehold houses and flats.

In the consultation ['Tackling unfair practices in the leasehold market'](https://www.gov.uk/government/consultations/tackling-unfair-practices-in-the-leasehold-market), Government recognised the issue for existing leaseholders, stating that it wanted support extended to all those with onerous ground rents, including second-hand buyers. In addition to looking for customers to be proactively contacted, it stated that it would be "keeping a close eye on progress" and consider measures that could be pursued to take action if necessary.

We would argue that "keeping a close eye on progress" is not a sufficient response to address this significant issue and action is necessary. It is disappointing that the plight of existing leaseholders has been largely ignored in this paper.

Clear reform and guidance is needed on the enfranchisement process otherwise this change is likely to depress the value of existing leasehold houses, which could affect the willingness of lenders to lend.

The prohibition outlined in the paper, therefore, needs to go hand in hand with simplification and reform of the enfranchisement provisions while addressing ground rent escalation issues.

It is crucial that a simple, cost-effective process for enfranchisement is available at the same time or before the ban of leasehold houses.

There would still be the significant challenge of leaseholder inertia to overcome. We are aware of one major developer offering to convert leasehold houses and flats to freehold at no cost to the consumer but still struggling to get many of these leaseholders to engage.

This is further evidence of the lack of awareness around leasehold and points the finger at the legal advice given to these leaseholders on the purchase of the properties.

Without retrospective changes it is highly likely a two-tier market will be created, creating challenges for lenders, valuers and existing leaseholders.

The question then will be “who pays?” for enfranchisement especially where the freeholds have been sold on.

In most cases, this should still be the developer as have benefitted from selling on. Likewise, the conveyancing industry should also expect to be held to account if they have failed to provide adequate guidance on a purchase for their clients and make sure they understand any issues.

**Question 2: Do you have any views on how to provide appropriate redress for the homeowners should (a) a long-lease be incorrectly granted upon a house or (b) a long-lease be allowed at a ground rent in excess of the cap after the legislation has taken effect? If you do, please explain.**

We do not foresee this as being a major issue as essentially there will be a triple layer of security through lenders solicitors and land registry due-diligence. We, therefore, believe this resource would be better served if directed at rectifying previous unsuitable leasehold sales of houses and flats. Given the concerns outlined above and argument that a simple and cost-effective process for enfranchisement is available at the same time as any ban is applied, we would argue that the developer or conveyancer should provide appropriate redress.

**Question 3: To ensure there is a workable definition of a 'house', we would welcome your views on the type of arrangements and structures which should.**

We don't have a comment.

**Question 4: With the exception of community-led housing, do you agree that any exemptions provided which allow the continued granting of new long leases on houses should have their ground rents restricted as proposed? [Yes/No] If you do not agree, please explain why.**

Yes.

**Question 5: Are there any other conditions that should be applied to exemptions from the leasehold house ban to make them acceptable to consumers? [Yes/No] If yes, please explain what these conditions are.**

We agree with the principle of an exemption for shared ownership for a leasehold house ban. However, the exemption should be contingent on either registered providers or private shared ownership providers adhering to the lease terms set out in Homes England's standard lease.

The BSA has had reports from members about shared ownership that do not adhere to the terms of the standard lease set out by Homes England.

For example, one member has received a small number of post-offer queries they have received from solicitors regarding higher/escalating ground rents. Some are where the ground rent is greater than 0.1% of the value/marginally higher. In these instances, the society has agreed to proceed. However, the society has also encountered some variations to the shared ownership standard lease, which it has pushed back on, but found the registered provider unwilling to negotiate. The society also reports that they have encountered a small number of cases where the ground rent doubles every 25 years.

Where register providers receive grant funding from Homes England, the terms of the standard lease must adhere. Anecdotally, we have been told that where grant funding is not received, in particular on Section 106 negotiations, variations in the terms of shared ownership leases can occur.

For any leasehold house ban to apply to shared ownership, we would argue that it should be contingent on the shared ownership provider (whether a Registered Provider or private) adhering to the lease terms set out in the standard lease.

**Question 6: Do you agree that there should be an exemption for shared ownership houses? [Yes/No] If you do not agree, please explain why including what alternatives to leasehold arrangements could be employed to fulfil the requirements of shared ownership houses.**

Yes – albeit with the exception outlined above, i.e. t that the terms of the standard lease should adhere.

**Question 7: Do you agree that there should be an exemption for community-led housing developments such as Community Land Trusts, cohousing and cooperatives? [Yes/No]**

Yes.

**Question 9: Do you agree that there should be an exemption for land held inalienably by the National Trust and excepted sites on Crown land? [Yes/No] If you do not, please explain why, including what alternatives to leasehold arrangements could be employed to fulfil the requirements of the National Trust and owners of Crown land.**

Yes.

**Question 10: Do you agree that the law should be amended to allow the inclusion of newly created freeholds within existing estate management schemes? [Yes/No] If you do not agree, please explain why.**

Yes.

**Question 11: Are you aware of any other exceptional circumstances why houses cannot be provided on a freehold basis that should be considered for an exemption, in order to protect the public interest or support public policy goals? [Yes/No] If yes, please state what further exemptions may be required and why and, if possible, provide examples or further evidence. Please include your evidence of how prevalent this issue may be (for example, the number of developments/units likely to be affected) and why alternative arrangements to leasehold cannot be employed, as well as how such a development might be defined for the purposes of an exemption.**

No.

**Question 12: Do you agree that there should be no further transitional arrangements after the commencement of the legislation to permit the sale of leasehold houses? [Yes/No] If not, please explain why transitional arrangements are needed and what they should be.**

We would argue a six-month window for sales agreed would be necessary to avoid any ongoing purchases/sales falling through due to the changes.

**Question 13: Are there justifiable reasons why ground rents on newly created leases should not be capped as a general rule at a maximum value of £10 per annum, but instead at a different financial value? [Yes/No] If so please explain (a) what that rate should be and (b) your reasons in support of that value. Please provide any evidence to support your reasons.**

We agree with the principle, but question why a peppercorn rent not been selected rather than the value of £10? The risk with this figure is that it would not be cost-effective for freeholders to collect these funds and leaseholders may over-look payment of this nominal sum. The consultation clearly indicates that ground rents have no intrinsic value. Therefore why value it at £10?

It also raises the issue of existing leases for flats, many of which could have been extended via the “informal” route therefore in some instances retaining a ground rent far beyond the £10 figure. These properties would clearly be less attractive therefore depressing value. Where individuals have already spent significant funds in extending their lease they would understandably be reluctant in further expenditure.

**Question 14: Are you aware of separate ground rent being charged in addition to a rent on the retained equity in shared ownership leases? [Yes/No] If so, do you know how much ground rent is charged? Can you say how widespread this practice is? If known, what is the justification for such a practice?**

No.

**Question 15: Do you represent a community-led housing provider which does not rely on ground rent income? [Yes/No] If so, what alternative methods of funding have proved successful and could be replicated elsewhere?**

No.

**Question 16: Do you agree there is a case for making specialist arrangements permitting the charging of ground rents above £10 per annum for properties in new build retirement developments? [Yes/No] Please give your reasons.**

It depends. We understand the argument that there should be provisions for new build retirements, but there need to be strict guidelines to avoid gaming of the system. We also question whether the charging of a lease is the right mechanism to fund the specialist nature of retirement housing and whether a more explicit alternative is available.

**Question 17: What positive or negative impacts does paying ground rents have on older people buying a home in the retirement sector? Please give your reasons and if you think the impacts are negative explain what measures might mitigate them.**

We do not have a comment.

**Question 18: Do you agree with our approach to the treatment of mixed use leases? [Yes/No]**

Yes.

 Question 19: Are there any other circumstances in which mixed use (a) should be within the scope of the policy or (b) excluded from the scope of the policy?

We do not have a comment.

**Question 20: Do you agree with the circumstances set out above in which a capped ground rent will apply in replacement leases? [Yes/No] Are there any other circumstances in which it should or should not apply? Please explain why.**

Yes, we agree with the principle but it will still create blight for existing leaseholders.

**Question 21: Do you agree there should be no further transitional period after commencement of the legislation permitting ground rents above £10 per annum? [Yes/No] If not, please explain why.**

Yes.

**Q22: Should we provide freeholders with a right to change the management of the services covered by an estate rent charge or contained within a deed of covenant arrangement? We do not have a comment.**

Yes.

**Q23: What will be the impact of these proposals (paragraphs 4.8 to 4.10) on companies or bodies that provide the long-term management of communal areas and facilities?**

We have no specific comment, but there needs to be a means to ensure that properties are adequately maintained.

**Q24: What would constitute a reasonable deadline for managing agents and freeholders to provide leasehold information?**

Less than 10 working days – it is vital that any information is provided as quickly as possible to avoid any untoward delays.

**Q25: What would constitute a reasonable maximum fee for managing agents and freeholders to provide leasehold information?**

No specific cost. It seems fair that a managing agent and freeholder should cover the cost of any administration, but they should not seek to make a profit from this transaction

**Q26: What would constitute a reasonable fee for managing agents and freeholders to update leasehold information within six months of it first being provided?**

No specific cost. As above, the fee should cover the cost of any administration, but not provide an additional profit.

Conclusion

1. While these proposals are well overdue and seem to tackle the issue for consumers looking to buy in the future, there is a great danger that those existing leaseholders who have been badly treated and exploited in the past will be in a worse position. It is vital the policy reform effectively addresses the issue of blight.

2. The BSA welcomes the opportunity to input through this government consultation, and we are happy to engage further on the matters raised above.

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|  | www.bsa.org.ukThe Building Societies Association (BSA) is the voice of the UK’s building societies and also represents a number of credit unions.We fulfil two key roles. We provide our members with information to help them run their businesses. We also represent their interests to audiences including the Financial Conduct Authority, Prudential Regulation Authority and other regulators, the Government and Parliament, the Bank of England, the media and other opinion formers, and the general public.Our members have total assets of over £387 billion, and account for 22% of the UK mortgage market and 18% of the UK savings market. |