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# Research into the Sale and Use of Leaseholds in Wales

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## Research into the Sale and Use of Leaseholds in Wales

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## Glossary

<u>Acronym/Keyword</u>	<u>Definition</u>
<b>Buy-to-let mortgages</b>	Mortgages aimed specifically at property investors who intend to let their properties on the rental market.
<b>Collective Enfranchisement</b>	The right for leaseholders to buy the freehold of their building together. This is subject to certain qualifications/restrictions.
<b>CMA</b>	Competition and Markets Authority: An independent non-ministerial government department which promotes competition for the benefit of consumers - see: <a href="#">Competition and Markets Authority</a>
<b>Commonhold</b>	This is an alternative form of ownership to leasehold in England and Wales where the freehold of each flat is owned by individual unit holders and the common parts by all unit holders collectively as members of a 'commonhold association'. The commonhold association manages the common parts in accordance with a commonhold community statement.
<b>Common Areas</b>	Those parts of a building not specifically owned by a leaseholder but over which a leaseholder has rights (e.g., access). The upkeep of which the leaseholder pays for through the leaseholder's contributions by means of a Service Charge (see below).
<b>Condominium</b>	Condominiums are apartments in buildings which are owned individually with common areas jointly owned by the owners of the apartments which are regulated by means of a homeowner association. Condominiums do not exist in the UK but are common in the USA.
<b>Covenant</b>	A legal agreement commonly found in leases between leaseholders and their landlords and vice versa to perform certain obligations or to withhold from certain activities.
<b>DCLG</b>	Department for Communities and Local Government: A UK Government department set up on 5 May 2006 with responsibility for, amongst other matters, housing. It was renamed on 8 January 2018 as the Ministry for Housing, Communities and Local Government (MHCLG).

<b>Forfeiture</b>	A legal mechanism which enables a landlord to bring a lease to an end for breach of a covenant by the leaseholder, e.g., non-payment of rent.
<b>Freehold</b>	A form of property ownership which is legally superior to leasehold. It lasts indefinitely and the freeholder has theoretically unlimited control over the property. This can be contrasted with leasehold tenure (see below) which is time-limited and subjects the leaseholder's control to any requirements set out in the lease, e.g. restrictions on use of the property and having to seek permission to carry out alterations.
<b>FTT (PC)</b>	First-tier tribunal (property chamber) is the specialist tribunal in England which makes decisions about residential leasehold disputes. Its Welsh equivalent is the LVT (see below).
<b>Ground Rent</b>	A sum payable by a leaseholder to a freeholder usually on an annual basis. Some ground rents can be for a nominal amount (a peppercorn). Other ground rents can be for much more than this and increase year on year (rising ground rents).
<b>Help to Buy - Wales</b>	A Welsh Government scheme whereby, subject to certain qualifying conditions, the Welsh Government provides a loan of up to 20% of the purchase price of a property in return for a 20% stake in the property until repayment of the loan.
<b>Housing Association</b>	A social landlord which offers homes to rent and/or purchase at below-market rates or through alternative models (e.g., shared ownership). In England such an organisation is registered under Part 2 of the Housing and Regeneration Act 2008 and regulated by the Regulator of Social Housing. In Wales such an organisation is registered under Part 1 of the Housing Act 1996 and is more commonly referred to as a Registered Social Landlord (RSL). In Wales, RSLs are regulated by the Welsh Ministers through the Welsh Government's Housing Regulation Team.
<b>Housing Health and Safety Rating System</b>	A system set out in the Housing Act 2004 for assessing health and safety risks in the home. High risks are assessed as Category 1 and local authority environmental health officers are required to take action to ensure those risks are reduced. They also have powers to deal with lower category risks.
<b>Land Registry</b>	A non-ministerial government department which deals with the registration of land ownership in England and Wales.
<b>Leasehold</b>	Leasehold is a form of time-limited ownership of property where control of the property is determined by the terms of

	the lease and is typically limited by the freeholder: see Freeholder, above. The lease is for a set term (e.g., 99 or 999 years) which is carved out of a freehold. Any lesser tenure of land carved out of a leasehold is called an underlease or sub-lease: see Sub-letting below.
<b>Letting Agents</b>	Those who are engaged by landlords to advertise their properties, negotiate tenancies and/or help the landlord to manage the property and tenancy on an ongoing basis.
<b>LEASE</b>	The <a href="#">Leasehold Advisory Service</a> is an executive non-departmental public body which provides free and independent legal advice on leasehold law. It is staffed by lawyers who have extensive knowledge of leasehold law.
<b>LKP</b>	<a href="#">Leasehold Knowledge Partnership</a> : A lobby group which advises leaseholders in dispute with their landlords whilst also acting as the secretariat for the All-Party Parliamentary Group on leasehold and commonhold reform.
<b>LVT</b>	Leasehold Valuation Tribunal: A tribunal in Wales which hears disputes concerning leasehold property. See also under FTT (PC) above.
<b>MHCLG</b>	Ministry of Housing Communities and Local Government formerly known as the Department for Communities and Local Government between 5 May 2006 until it was renamed on 8 January 2018, with responsibility for housing in England. Housing is devolved in Wales and is the responsibility of the Minister for Housing and Local Government in the Welsh Government.
<b>Managing Agents</b>	Agents in the leasehold sector who provide services to freeholders and collect certain fees and charges on the freeholder's behalf.
<b>Management Company</b>	The organisation which deals with the running of a block of leasehold property. It is commonly responsible for collecting service charges and ground rent from leaseholders and arranging repairs and maintenance to the Common Areas (see above) as well as organising the insurance for the building.
<b>NAEA</b>	National Association of Estate Agents: A professional membership body comprised of estate agents providing education and training to its members.
<b>National Leasehold Campaign</b>	A <a href="#">campaign</a> which began in 2017 for the abolition of new build leasehold properties in England and Wales and for the ultimate abolition of leasehold in its entirety, with the belief that houses should be freehold and flats commonhold.

<b>Onerous terms</b>	Terms in a lease from which the leaseholder derives no real benefit but where the financial burden increases disproportionately to the detriment of the leaseholder, e.g., provisions which allow for the doubling of Ground Rents. There is no statutory definition of this term.
<b>Permission fees</b>	Payments made by leaseholders to landlords for consent to undertake certain activities which the lease provides can only be carried out with prior approval, e.g., making alterations to a leasehold property.
<b>Property Agents</b>	An umbrella term for Estate Agents, Letting Agents and Managing Agents.
<b>Quintile</b>	One fifth of a set of data.
<b>Residents' Association</b>	There are two types: (1) a Recognised Tenants' Association set up pursuant to the provisions of s.29 of the Landlord and Tenant Act 1985 whereby an association of qualifying tenants (long leaseholders) for the purposes of that Act either get written notification from their landlord of the existence of the association or obtain a certificate to that effect from the First Tier Tribunal (see FTT above) or LVT (see LVT above); (2) a residents group made up leaseholders unofficially consulted or otherwise recognised by a landlord. The latter is much more common than the former.
<b>Retirement Housing</b>	Housing built either for sale by way of lease or for rent aimed at older people.
<b>RICS</b>	<a href="#">Royal Institution of Chartered Surveyors</a> : A professional body which regulates and provides educational and training facilities for its members.
<b>RMC</b>	Resident Management Company: some leases have a tripartite structure of the freeholder, the leaseholder and a management company. When the lease allows/requires the management company to be owned by the leaseholders in the building it is known as a Resident Management Company.
<b>RTM</b>	Right to Manage: under the provisions of Commonhold and Leasehold Reform Act 2002 qualifying leaseholders (those with leases of more than 21 years and owning between them not less than two thirds of the total number of flats in a building) may apply to have the management functions of a building transferred to a Right to Manage company. The company is controlled by the qualifying leaseholders but is a separate entity and the management of the building is through the company and not the leaseholders. Therefore, the residents are involved in the management but via a different means.

<b>Sales Agents</b>	A catch-all term for agents who help with the sale and purchase of property; whether on a freehold, leasehold or commonhold basis. Also known as estate agents.
<b>Service Charge</b>	Payments made by leaseholders in a block of flats typically in respect of insurance premiums and for maintenance and repairs.
<b>Shared Ownership</b>	Aimed at first time purchasers who cannot afford to purchase at 100% market value. Purchasers pay a mortgage on the share of the property they own and rent from a Housing Association or local authority on that portion of the property which they do not own. The legal mechanism to achieve this through leasehold.
<b>Sinking Fund</b>	Sinking funds may be required by the lease. Leaseholders have to pay sums of money in anticipation of major expenditure on a building which is likely to occur infrequently during the term of the lease, e.g. on account of repairs to the roof of the building. Technically a sinking fund is different from a reserve fund which relates to payments on account to cover unexpected expenditure that the service charge budget could not account for, e.g., overspend on the cost of painting the exterior of the building and the common areas. However, often the terms are used interchangeably.
<b>Social Housing</b>	Both local authority housing and Housing Association (referred to as Registered Social Landlords in Wales) housing (see Housing Association above).
<b>Strata Title</b>	A form of land tenure analogous to commonhold (see above) commonly seen in Australia.
<b>Sub-letting</b>	A process whereby a Tenant lets property for a term to somebody else for a period less than his own (see Leasehold above).

## 1. Introduction

- 1.1 This research investigates the sale and use of leasehold in Wales. It was commissioned by the Welsh Government to provide information about how leasehold operates in Wales and to provide insights into the impact that leasehold has on people and households.

### The policy context

- 1.2 The research is one of a number of Welsh Government initiatives which it has taken following widespread criticism of poor practice in the leasehold sector.
- 1.3 In a [Ministerial Written Statement](#) issued on 6 March 2018, the then Minister for Housing and Regeneration announced that the Welsh Government had:
- 1.4 Reached an agreement with major house builders that they would no longer build houses for sale on a leasehold basis;
- 1.5 Set new criteria for Help to Buy - Wales requiring developers to present a genuine reason for a house to be marketed as leasehold. No support from Help to Buy - Wales is available for leasehold houses without a valid reason;
- 1.6 Introduced a requirement that the leases of all leasehold residential properties, whether flats or houses, comply with minimum standards before support from Help to Buy - Wales is available. The minimum standards include:
- Limiting the initial ground rent to a maximum of 0.1% of the property's sale value. Any future increases are to be no more than a Government recognised inflation index such as the Retail Price Index; and
  - Minimum terms for leases of 125 years for flats and 250 years for houses.
  - Established the Help to Buy - Wales Conveyancer Accreditation Scheme to ensure all purchasers have access

to good quality independent advice. The use of an accredited conveyancer is compulsory for those purchasers using Help to Buy - Wales support and is promoted to all other home purchasers;

- The setting up of a multi-disciplinary Task and Finish Group to expedite the development of policy.

1.7 The Task and Finish Group commenced work in July 2018 with its primary purpose being to advise the Minister for Housing and Local Government on leasehold reform, including the reform of practices carried out by Property and Estate Management Agents.

1.8 Particular objectives of the group included:

- Identifying the failings in the leasehold system in Wales and how they impact on leaseholders; and
- Making recommendations to the Welsh Government on addressing the failings identified above.

1.9 The Task and Finish Group produced its report in July 2019.<sup>1</sup>

1.10 In a Ministerial Written Statement issued on 6 February 2020, the Minister for Housing and Local Government announced that the Welsh Government was prioritising two particular recommendations of the Task and Finish Group: the development of an accreditation scheme for companies involved in the management of leasehold properties and improving awareness amongst potential purchasers of the implications of leasehold ownership.

1.11 The Welsh Government identified a need for further research into the implementation and use of leaseholds. Its reasons are twofold. Firstly, because housing policy is devolved, any proposals for reform need to be supported by evidence and data on the current prevalence and potential

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<sup>1</sup> The [Task and Finish Group Report](#) is discussed further in Chapter 3 of this report.

problems with leasehold in Wales. This includes those which may be made by the Law Commission in so far as they relate to Welsh housing policy.

- 1.12 Secondly, it is likely that information currently available about leasehold in the UK would be difficult to manipulate in order to isolate Wales-only data, and as such, is likely to be dominated by those areas where leasehold is prevalent – the large urban centres and particularly London and the South East of England. Such data would therefore be potentially unreliable and inaccurate in demonstrating the use and problems of residential leasehold in Wales.
- 1.13 This research is designed to provide timely and reliable information on leasehold tenure in Wales and inform the development of policy.
- 1.14 The principal research questions this report seeks to answer are:
- What do we know about leasehold ownership in Wales?  
Including:
  - How is the leasehold housing sector distributed geographically?
  - What is the proportion of flats/houses with leaseholds?
  - What are the characteristics/profile of those homes and leaseholders?
  - What are leaseholders' views on and experiences of purchasing and living in leasehold properties? This includes questions covering purchasing of leaseholds, knowledge of leasehold prior to purchase as well as questions about service charges, permission fees and ground rents.
  - What are the advantages/disadvantages of owning a leasehold property?
  - What are the views of stakeholders on leasehold in Wales?



## **Leasehold**

- 1.15 Leasehold is a form of time-limited ownership of property where control of the property is determined by the terms of the lease and is typically limited by the freeholder. Long leasehold refers to residential leases of more than 21 years. Generally residential leases are granted for periods of either 99 years or 125 years but can vary in length and last up to 999 years.
- 1.16 At the end of a lease the property reverts to the freeholder although there are, in some circumstances, statutory rights to extend the lease upon payment of a premium.
- 1.17 Residential long leaseholders are in a paradoxical position, simultaneously owner-occupiers and tenants of their freeholders.
- 1.18 Leasehold is the standard tenure for flats. It is much less common for houses although certain areas of England and Wales – the North West and North East of England in particular – appear to have had a ‘tradition’ of leasehold houses. There has also been a recent increase in the number of leasehold houses across the UK (CMA, 2020:11). Chapter 2 of this report looks at evidence about the prevalence of leasehold houses in Wales as well as the extent of leasehold flat ownership.
- 1.19 Leasehold ownership is more generally on the increase across the UK. Long-term trends can be identified; for instance, flat ownership is on the rise because of increasing urbanisation and densification assisted by planning rules that favour increasing housing density and ‘sustainable’ development. Flats are also more affordable than houses and are therefore attractive to first time buyers and for those seeking to downsize.
- 1.20 The leasehold form is also useful for a number of specialist forms of housing because of its flexibility. Both shared ownership and specialist housing for older people are dependent upon the leasehold form. There are strong policy reasons for encouraging both of these types of housing provision. Shared ownership is a useful method for extending access to home ownership (Cowan *et al*, 2018) and evidence considered in the House of Commons

Community and Local Government Committee *Housing for Older People Second Report of Session 2017 -19* suggests that health outcomes are better in specialist housing for older people in England.

- 1.21 A report from the Housing Learning and Improvement Network prepared for the Welsh Government and published in January 2020 suggested a shortage of retirement housing for sale of around 5000 units by 2035 (Housing LIN, 2020). As a result, it may be socially valuable to ensure that service and other leasehold charges and restrictions on use are proportionate and do not deter potential consumers.
- 1.22 Leasehold also appears to support innovation in housing provision. For instance, a number of Community Land Trusts use long leases to ensure that the property remains within the intended community in perpetuity. There are over 225 Community Land Trusts in England and Wales and these have provided approximately 3000 affordable homes to date.
- 1.23 The Welsh Government in 2010 indicated its support for Community Land Trusts particularly as a model for increasing the availability of affordable housing in rural areas. One particular example is the Pembrokeshire Community Land Trust, a pilot project set up in 2019 to investigate the need for affordable rural housing, housing for an ageing population and the need for more permanent housing in coastal communities.
- 1.24 The contemporary crisis in housing affordability is also relevant. Leasehold homes may be attractive to first-time or marginal homeowners because they appear to be more affordable. The Competition and Markets Authority (CMA) agrees that leasehold houses, for instance, sell for less than freehold houses. However, it also points out that, in instances where ground rents are high, there is 'no persuasive evidence that home prices have been significantly reduced when compared with equivalents with peppercorn ground rents' (CMA, 2020:26).

- 1.25 The Help to Buy - Wales shared equity loan scheme,<sup>2</sup> launched in Wales in January 2014, is designed to assist with the affordability of home ownership at a time of high demand and limited supply. The scheme allows the purchase of a home with only 5% deposit and provides up to 20% of the purchase price via a shared equity loan.
- 1.26 The properties available under Help to Buy – new-build and priced under £300,000 – are likely to be particularly attractive to first-time buyers, who may have only limited knowledge of property ownership and for whom it may be only marginally affordable. Many users of Help to Buy are likely to have purchased leasehold properties. Interestingly, the CMA research shows a correlation between increasing sales of leasehold houses and the introduction of Help to Buy (CMA, 2020:12). But the report notes that around the time of the introduction of the Help to Buy scheme, sales of all property types (freehold houses, leasehold houses and leasehold flats) had also increased.

### **The reputation of leasehold**

- 1.27 Despite the prevalence of leasehold as a tenure, it has a longstanding reputation for complexity, unfairness and disputes which has led to numerous reports and piecemeal reforms over the last 50 years or so (Blandy and Robinson, 2001). Blandy and Robinson (2001) point to the reactive nature of statutory interventions.
- 1.28 For instance, the Leasehold Reform Act 1967, which provided the opportunity for leaseholders to purchase the freehold to their home, was explained in the House of Commons at the time as being in part a response to the imminent expiration of the 99-year leases owned by over a quarter of a million South Wales homeowners. Their homes were sold by way of leasehold tenure because houses had to be built near the pit, or the mill or

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<sup>2</sup> A similar scheme was also launched in England in April 2013.

the factory, and the landowners had used their monopoly power to allow only leasehold development (HC Deb 07 March 1967 vol 742 cc1272).

- 1.29 One of the most significant attempts to modernise the tenure was the introduction of commonhold in the Commonhold and Leasehold Reform Act 2002, which failed (Xu, 2015). There are a variety of explanations for this failure in the literature including a lack of incentives for developers to use commonhold, a reluctance for lenders to advance money on commonhold developments and a lack of flexibility in the legal rules on commonhold.
- 1.30 The Law Commission, as part of its broader project on leasehold and commonhold law reform, has been tasked by the UK Government and Welsh Government to consider ways to 'reinvigorate' commonhold across England & Wales. This is discussed further in Chapters 3 and 6.
- 1.31 Other UK Government reforms have had more impact in both Wales and England. These include: (1) the development of a specialist tribunal, the Leasehold Valuation Tribunal (LVT); (2) the establishment of a statutory advisory body specialising in leasehold problems (LEASE); (3) a statutory power for lessees to challenge the reasonableness of service/administrative charges; (4) a requirement that freeholders consult about major works and; (5) extended rights for leaseholders to individually or collectively enfranchise or collectively manage their leasehold property.
- 1.32 Despite reforms, the problems of leasehold persist; there is no avoiding the fact that for leaseholders the lease is a wasting asset, the value of which reduces over time. Moreover, leaseholders lack the autonomy and control traditionally associated with property ownership.
- 1.33 As the Law Commission points out, there is, at the heart of the relationship between landlord and leaseholder, a conflict of interests:

'The landlord may see leasehold solely as an investment opportunity or a way of generating income, while for leaseholders the property may

be their home, as well as a capital investment' (Law Commission, 2018:2).

- 1.34 An additional point may be made here; there may be a conflict of interests between leaseholders who are owner occupiers of their leasehold properties and those who have bought leasehold properties as buy-to-let investments. Leaseholders who are resident in their properties may be more prepared to pay for improvements than those who do not live there.
- 1.35 There is evidence of new problems emerging. For instance, in both England and Wales, lessees argue that excessive charges are being demanded for permissions within leases and that barriers are erected to enfranchisement and collective management (PropertyMark, 2018). There is also particular concern about the increasing use of accelerating ground rents and a spike in the sale of leasehold houses (House of Commons Library, 2019).
- 1.36 Research by the CMA shows that sales of new build leasehold houses began to rise from 2009 to 10% of new-build transactions between 2015-2017, despite holding steady between 1995 and 2009 at 5% of new build property transactions (around 5000 per annum) (CMA, 2012). Following adverse publicity and government interventions there was a sharp drop in sales of leasehold houses in 2018 to below 5% (CMA, 2020:12).
- 1.37 Buyers also complain about poor legal advice, which is of particular concern as this advice is critical to ensuring that buyers understand the nature of the leasehold relationship, any restrictions on use and any potential expenses that may be incurred. The particular concern is that solicitors recommended by developers – a common practice in new-build conveyancing – may not act with the requisite honesty, integrity and independence. As noted above, the Welsh Government, through its conveyancer accreditation scheme has taken steps to address this concern.
- 1.38 There also appears to be reluctance for leaseholders to use the tribunal service. The House of Commons briefing paper on leasehold reform suggests that the perception of a balance of power weighted towards

landlords, together with leaseholders risking liability for the freeholder's costs, are significant barriers (House of Commons Library, 2019: 63). Although tribunal provision is different in Wales, there is no evidence to suggest that it is perceived differently from the tribunal service in England.

- 1.39 The National Leasehold Survey 2016 (Brady Solicitors, 2016), which ran across England and Wales, reported that 57% of leaseholders regretted purchasing leasehold property and that 40% of leaseholders strongly disagreed that service charges represented good value for money.
- 1.40 Following the tragedy at Grenfell Tower there is also significant concern about the ability of leaseholders to deal with building defects. This was raised in the Westminster Hall debate on leasehold and commonhold reform on 21 December 2017 in the context of the need to replace defective cladding (HC Deb. vol. 633 cols. 1272-1395, 21 December 2017).
- 1.41 The Leasehold Knowledge Partnership (LKP), a pressure group which has a very effective online presence, uses the strap-line, 'Advising leaseholders. Avoiding disasters. Stopping forfeiture. Exposing abuses. Urging reform ...'. The LKP has strong political links via the All-Party Parliamentary Group on Leasehold Reform (formed in 2016) and works to ensure that the problems of leasehold receive publicity and the attention of policymakers.
- 1.42 The UK Government acknowledges that leasehold has 'far too many problems including disproportionate costs to extend leases; poor value property management; and a slow and costly sales process' (DCLG, 2017b:2). The DCLG published its response to its own consultation on 'Tackling Unfair Practices in the Leasehold Market' in December 2017 (DCLG, 2017b) and a consultation on 'Implementing reforms to the leasehold system' in October 2018 (MHCLG, 2018b).
- 1.43 We have already outlined the actions taken by the Welsh Government in response to its concerns about leasehold.

### **A consumer approach?**

- 1.44 The broader policy environment in England and Wales indicates that there is a move to place housing law on a consumer footing which stresses the need for informed choice and regulatory interventions designed to protect consumers. This is exemplified by the Renting Homes (Wales) Act 2016 which requires the use of standard form contracts ensuring tenants are fully aware of their rights and responsibilities.
- 1.45 Considering leasehold from a consumer perspective it is argued that there is an asymmetry in transparency, information and rights between freeholder and leaseholder. This may mean that interventions are required to address and give effect to a consumer framework. Legislating from a consumer perspective would have the advantage of avoiding previous reactive responses to leasehold problems.
- 1.46 The shift to a consumer perspective is very clear in England. The UK Government's Housing White Paper, *Fixing our broken housing market* (DCLG, 2017a), included a commitment to 'improve consumer choice and fairness in leasehold' for homeowners in England. Its consultation, *Strengthening consumer redress in housing* (MHCLG, 2018a), included questions about whether there should be a compulsory redress scheme for leasehold properties and its call for evidence, *Considering the case for a Housing Court* (MHCLG, 2018c), specifically mentions concerns about the ability of leaseholders to access the tribunal to enforce their rights effectively.
- 1.47 The actions already taken by the Welsh Government, in setting up an accredited conveyancing scheme and developing information about leasehold targeted at prospective purchasers as well as prioritising the professionalisation of managing agents, indicate a similar consumer approach.
- 1.48 There may be limits to a consumer approach to leasehold law. Any suggestion, for instance, that people *choose* to purchase leasehold homes has to be treated with caution. It may well be that because of limited housing supply, leasehold was the only property available at the time of purchase.

Indeed, what was said in 1967 by the then Housing Minister in the Parliamentary debates on the Leasehold Reform Bill remains pertinent:

- 1.49 ‘the reality now facing many owner-occupiers who bought their houses when they were particularly scarce, on setting up home immediately after the war. It is callous to say that they did so with their eyes open. In the first place this is not true, and in the second place, houses were scarce and they had no choice’ (HC Deb 07 March 1967 vol 742 cols. 1272-3).
- 1.50 The findings from this research set out in Chapter 5 provide some insight into the role of choice in leasehold from the perspective of those who have purchased leasehold homes. In the knowledge review in Chapter 3 some scholarly work suggests more holistic approaches to leasehold reform could be used alongside a consumer focus.

### **Devolution**

- 1.51 Currently, legislation relating to leasehold covers both England and Wales. However, housing is a devolved matter and for that reason the UK Government’s proposals for legislation to implement leasehold reform will only apply to England. Yet, because leasehold law involves property law issues and property law is part of private law and not devolved, the situation is more complex. The Welsh Senedd (Parliament) can only modify private law if the modification has a purpose (other than modification of the private law) which does not relate to a reserved matter. The complexities of the devolution settlement will need further consideration at the implementation stage of any policy proposals related to leasehold but were beyond the scope of this research project.

### **Structure of Report**

- 1.52 Following this Introduction, Chapter 2 of the Report provides information on the scale and distribution of leasehold ownership in Wales.
- 1.53 Chapter 3 reviews current knowledge on leasehold including a summary of the relevant policy reports and practitioner and academic findings.



- 1.54 Chapter 4 explains the methodology and sets out the findings relating to the purchase of leasehold homes and Chapter 5 sets out our findings relating to the use of leasehold homes.
- 1.55 Chapter 6 sets out participants' views on Law Commission proposals for leasehold reform and other reform proposals. Chapters 4 – 6 mainly reflects the views of leaseholders in Wales because of the partial nature of the data from stakeholders.
- 1.56 Chapter 7 sets out conclusions and makes recommendations arising from the research.

## **2. Scoping the use of leasehold in Wales**

2.1 In this Chapter evidence is presented to answer the following research questions:

- What is the proportion of flats/houses with leaseholds and therefore how important is it to the market?
- How is the leasehold housing sector distributed geographically?

2.2 In Wales, it is not currently possible to identify the extant number of leasehold homes in Wales with the data available. In England, MHCLG (2019b) used Land Registry and English Housing Survey 2017/18 data to estimate the number of leasehold homes (i.e., let on a lease of more than 21 years) in England. This analysis identified a figure of around 4.3 million leasehold homes, forming 18% of all homes. Of these, 55% were in the owner-occupied sector, 39% the private rented sector and the remaining 6% were owned by social landlords. Two thirds (69%) of all leaseholds were flats and one third (31%) houses. MHCLG estimated that 54% of all flats were leaseholds. The remaining were largely let on short tenancies primarily in the social rented sector. Of houses, 8% were leasehold during 2017/18. Limited data resources in Wales make repeating that detailed exercise challenging. The Land Registry are currently developing a leasehold data set which will contain details of the property along with the term and start date of the lease and the rent which will go some way to filling this data gap regarding the stock of leasehold homes in the future.

2.3 Nonetheless, the Valuation Office Agency (VOA) provide council tax and property type data from which the proportion of properties that are occupied on a leasehold basis may be inferred. In 2019, these data suggest that 24% of the stock of properties registered as independent dwellings and registered for council tax purposes in England were flats and 14% in Wales (Table 2.1). It can be assumed these flats were mostly held on a leasehold basis. This could mean that the figure implied by these council tax data for England are higher than the 18% leasehold MHCLG estimated in 2017/18. A total of 14%

of the council tax registered housing stock were flats in Wales. However, many flats will be held by social housing providers on a freehold basis and a smaller proportion of private sector flats will be held on a shared freehold (or even commonhold) basis.

Table 2. 1: **Property types by country, 2019**

	<b>Houses</b>	<b>Flats</b>	<b>Total</b>
England (n)	18,326,700	5,669,460	23,996,160
England (%)	76.4	23.6	100.0
Wales (n)	1,222,670	198,280	1,420,950
Wales (%)	86.0	14.0	100.0

Source: Valuation Office Agency Council Tax records

2.4 The Land Registry (LR) sales data, discussed later in the Chapter, suggests that 3.6% of house sales were leasehold and 4.6% of flats were sold on a freehold basis (see para 2.10, below). We can use these sales data to adjust the VOA council tax data to estimate the total stock of leaseholds in Wales (Table 2.2). If it is assumed that all existing homes are held on the same basis as the homes sold during the period 2004/5 to 2018/19, we can therefore estimate that 16.3% of properties in Wales are held on a leasehold basis (very approximately 235,000 properties). This is only slightly below the MHCLG’s English estimate of 18% in 2017/18.

2.5 As we have made clear, this is an estimate built on a number of assumptions and whilst it is as accurate as possible, it would be useful to have more precise information about the extent of the leasehold properties in Wales. This would enable better identification of new trends in leasehold and may prevent problems emerging in the future. We therefore recommend that **the Welsh Government should consider a mechanism that quantifies and records the distribution of leasehold homes in Wales accurately (Recommendation 1).**

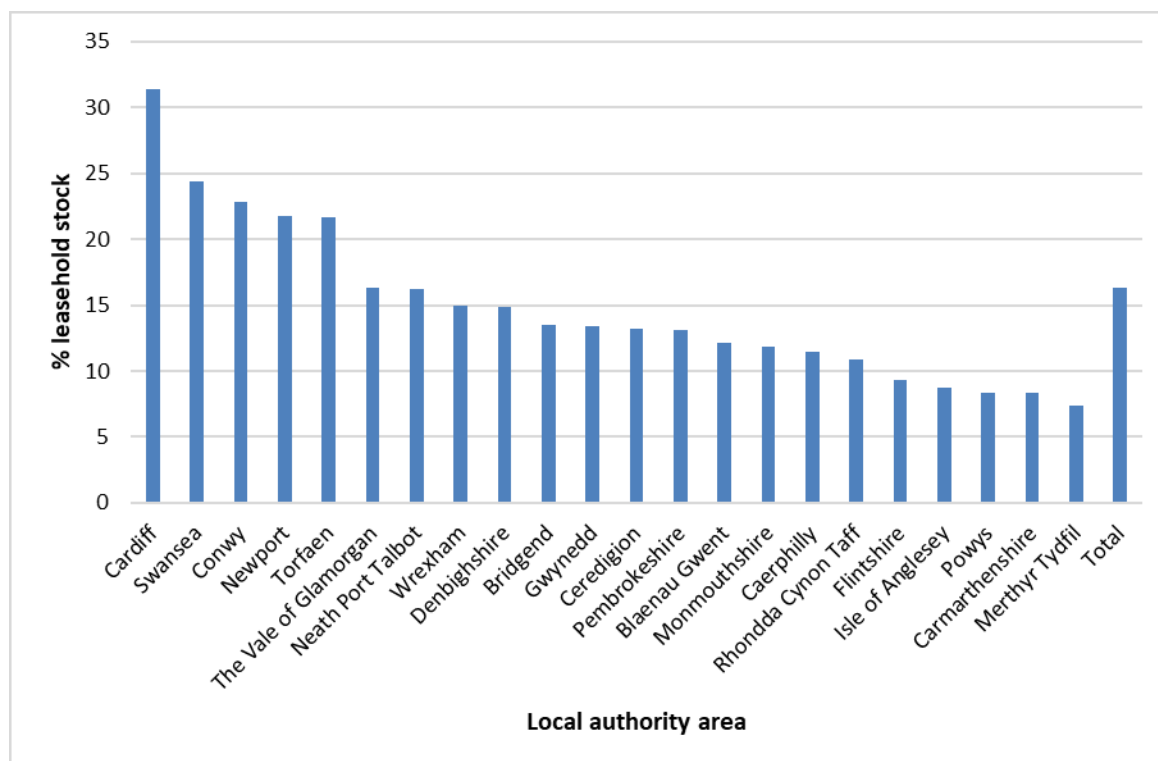
**Table 2. 2:** Estimates of the stock of leasehold property in Wales

	<b>Houses</b>	<b>Flats</b>	<b>Total</b>
VOA council property tax data (n)	1,222,670	198,280	1,420,950
VOA council tax property data (%)	86.0	14.0	100.0
% freeholds (LR sales data)	96.4	4.6	100.0
% leasehold (LR sales data)	3.6%	95.4%	12%
<b>Stock estimate of leaseholds (n)</b>	<b>44,016</b>	<b>189,159</b>	<b>235,175</b>
<b>Stock estimate of leaseholds (%)</b>	-	-	<b>16.3%</b>

Source: Valuation Office Agency and Land Registry Price Paid Data (authors' calculations)

2.6 This estimated stock of leasehold properties is distributed unevenly across Welsh local authorities (Figure 2.1; Annex A). For example, in Cardiff, almost one third of housing stock is estimated to be leasehold property (31.4%), double the average across Wales (16.3 %) and more than four times the 7.3% in Merthyr Tydfil.

**Figure 2. 1:** Estimate stock of leasehold properties by local authority (%)



Source: Stock data from Valuation Office Agency Council Tax records; Sales flow data Land Registry Price Paid Data 2004/5 -2018/19

2.7 The VOA data is limited in what else can be inferred about the leasehold market in Wales, so we turn now to explore the Land Registry Price Paid Data<sup>3</sup> to provide further insight into the character and distribution of the flow of leasehold homes sold in Wales. This dataset provides information on residential property sales in England and Wales, sold for full market value<sup>4</sup> and lodged with the Land Registry. The Land Registry records whether the land is held as a freehold or leasehold, but there are two things to note. Firstly, the Land Registry title may relate to several individual plots in

<sup>3</sup> Contains HM Land Registry data © Crown copyright and database right 2019. This data is licensed under the Open Government Licence v3.0.

<sup>4</sup> Sold for full market value means that the homes were not transacted at discounted prices. For example, they were not homes transferred between family members or built and sold by developers to housing associations at a reduced price as part of planning obligations.

different ownership and may contain multiple individual properties, and secondly, not all land sales need to be registered and these may include leases that are for a term of seven years or less. This may be an issue when interpreting some of the analysis below (i.e., a block of flats may be registered as a single title and owned by a single freehold landlord and therefore be registered as freehold flats)<sup>5</sup>.

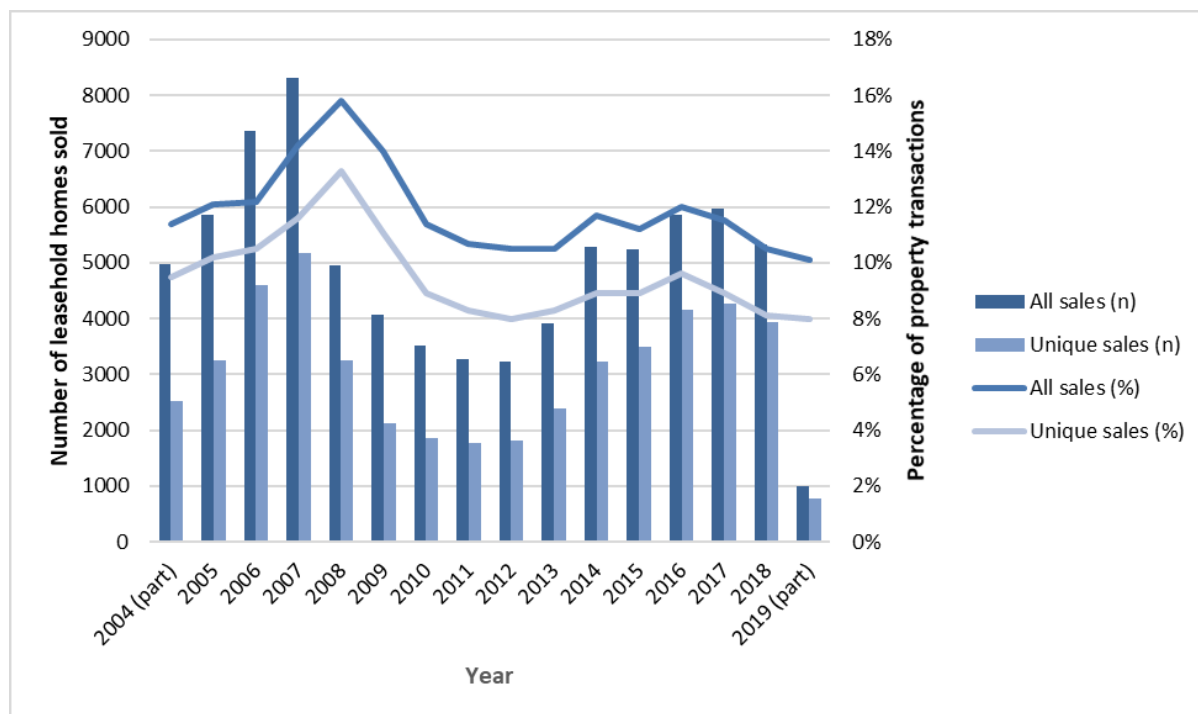
### **Importance of leasehold to Welsh property market**

- 2.8 The Land Registry Price Paid Data for all sales transactions in Wales for the period 2004/5 to 2018/19 shows that there were 654,115 residential recorded property transactions, involving 522,188 unique properties. Leasehold formed 11.9% of all property sales during this whole period, involving 72,128 leasehold sales. Discounting multiple sales of the same property during the period, leaseholds formed 62,613 sales of individual or unique homes or 9.5% of the stock of houses sold at least once during 2004/5 to 2018/19. The analysis below is based on these transactions.
- 2.9 Over time the number of leasehold homes sold in the market has changed, comprising a larger part of the market particularly before the financial crisis of 2008/9 (15.8% of all sales or 13.3% of first unique sales) and more recently peaking again during 2016 (12% of all sales and 9.6% of unique sales). In the first months of 2019, leaseholds formed 10.1% of all sales and 8.0% of unique sales (Figure 2.2).

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<sup>5</sup> There were 1560 freehold flats sold in Wales during the period 2004/5 to 2018/19. A total of 14.5 percent were new build properties. The proportion of new build freehold flats changed through time with greater proportions being sold during the run up to the financial crisis 2007. Looking at some of the properties sold in 2018, some are regular homes, some in premises above shops or public houses and some identifying as freehold may also be registered incorrectly. In addition, when considering that some freehold flats may be blocks of flats registered in one Land Registry title, caution must be exercised when interpreting data relating to this category of property sales.

**Figure 2. 2:** Leasehold homes sold and as proportion of all sales and all first unique property transactions, 2004/5 to 2018/9.



Source: Land Registry Price Paid Data

### Property type

2.10 Table 2.3 illustrates the distribution of homes across freehold/leasehold and property type. This analysis removes repeat sales as flats were sold slightly more frequently during the study period and this would inflate the proportion of flatted leasehold homes (by a small amount, with 63% of houses being sold only once during this period compared with 61% of flats). The table shows that during the period 2004/5 to 2018/19, 9.5% of all unique sales<sup>6</sup>

<sup>6</sup> The Land Registry Price Paid Data set includes repeat sales of the same dwelling during the period under consideration. Where the home had been bought and sold more than once (this accounted for 22% of all sales) the analysis in this report included only the first sale of each dwelling. We refer to this as a unique sale to avoid inflating the proportions of *properties* held on a leasehold or freehold basis.

were of leaseholds and 90.5% were of freehold homes. In addition, 3.6% of houses sold were leasehold and 4.6% of flats were freehold.

**Table 2. 3:** Unique properties sold 2004/5 to 2018/19 by tenure and property type (% tenure)

		Freehold	Leasehold	Total
Houses	Number	459,380	17,350	476,730
	%	96.4	3.6	100.0
Flats	Number	1,506	31,260	32,766
	%	4.6%	95.4%	100.0
Total	Number	460,886	48,610	509,496
	%	90.5%	9.5%	100.0

Source: Land Registry Price Paid Data (NB: May not sum to 100 due to rounding)

2.11 Most leasehold properties (64.3%) sold during the period 2004/5 to 2018/19 were flats with houses comprising 35.7% of all leaseholds sold (Table 2.4), although the proportion of different leasehold property types has changed over time with houses more recently comprising a smaller proportion of leasehold sales (Figure 2.3). Houses formed 37% of leasehold sales in Wales in 2004 but by 2019 this proportion had reduced to 27%. The proportion of flats increased towards the peak of the market cycle in 2007/8 and, after a slight fall following the financial crisis, has been maintained at a relatively steady level comprising of almost three-quarters of all leasehold sales. Semi-detached and terraced houses have reduced slightly from the period prior to 2007/8 forming around 15% each in 2004 but 9 and 12% respectively by 2019.

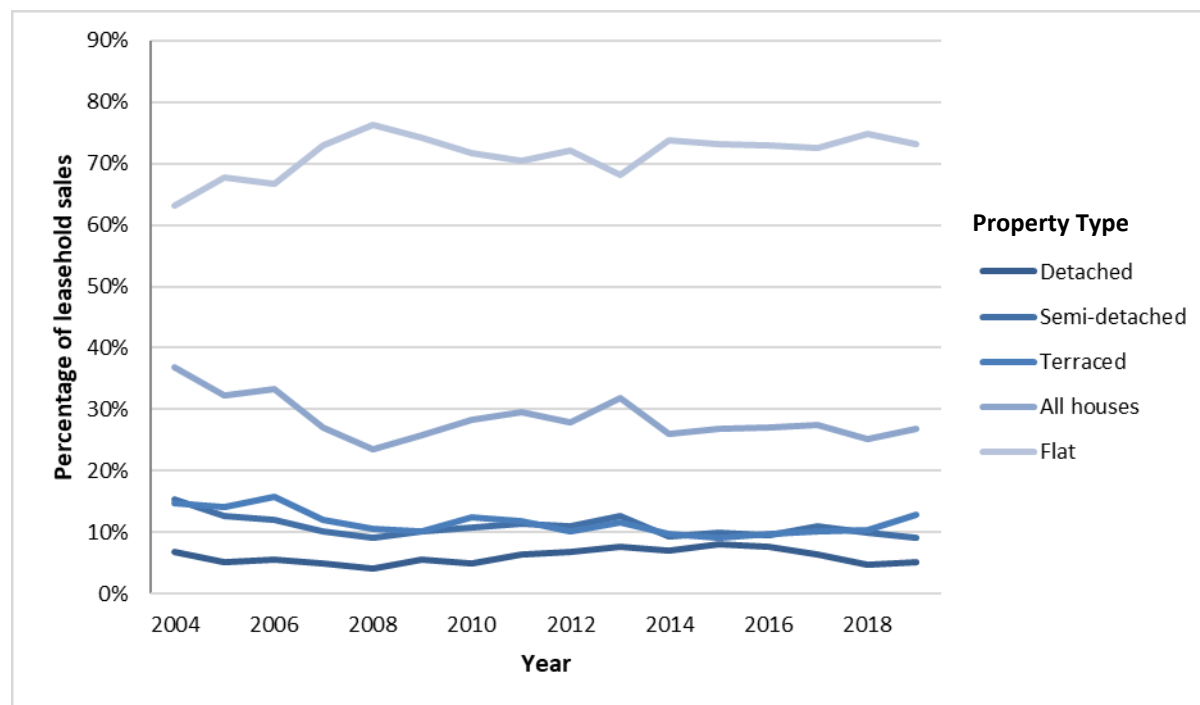


**Table 2. 4:** Unique leasehold properties by expanded property type sold 2004/5 to 2018/19 (% leaseholds)

	Number	%
Detached	3,684	7.60%
Flats	31,260	64.30%
Semi-detached	6,968	13.80%
Terraced	6,698	14.30%
Total	48,610	100.00%

Source: Land Registry Price Paid Data

**Figure 2. 3:** All leasehold sales by property type and year sold 2004/5 to 2018/19

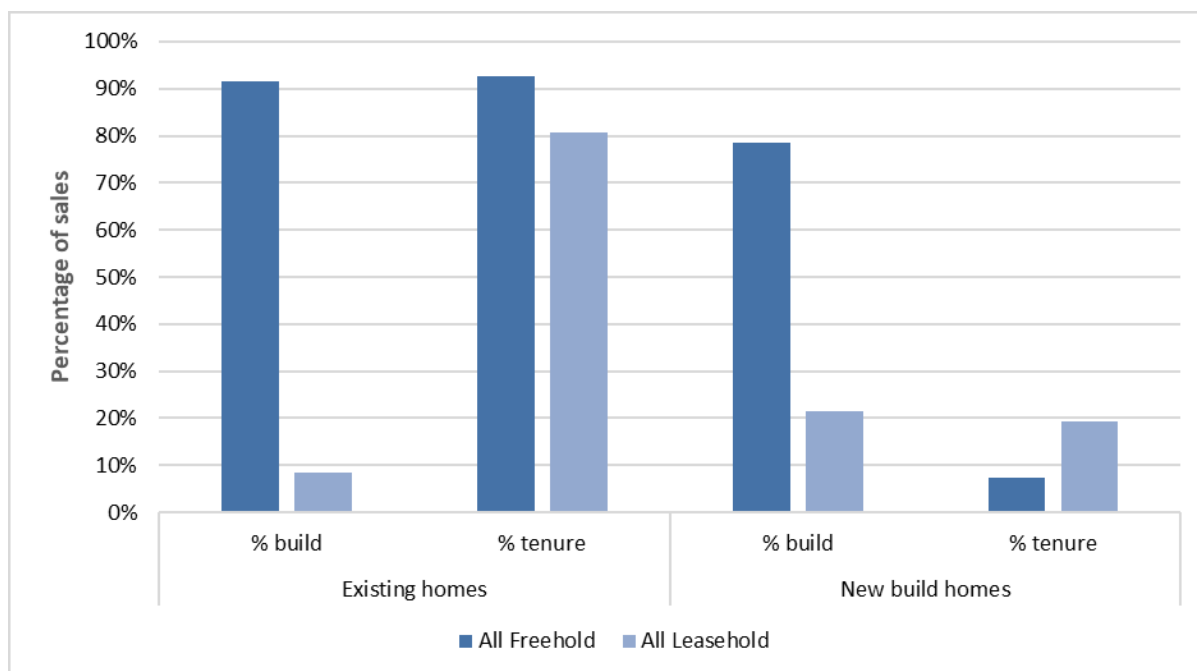


Source: Land Registry Price Paid Data

## Existing and new stock

2.12 Across all sales transactions in Wales during the period 2004/05 – 2018/19, 8.5% were new build homes and 91.5% were sales of existing homes (Figure 2.4). A greater proportion of new build sales were leasehold (21.4%) compared with only 8.4% of existing homes sold and 19.2% of all leasehold homes were new build compared with only 7.4% of freeholds sold. New homes are therefore more likely to be leasehold than freehold as more flats have been built in recent years. A total of 22.2% of new build homes were flats during this period, whereas flats formed only 6.4% of existing homes sales.

**Figure 2. 4:** All sales by tenure and whether new build or existing homes status



Source: Land Registry Price Paid Data

2.13 Table 2.5 shows the composition of the whole residential sales market during the study period. It shows that 83.5% of all residential sales in Wales were of existing freehold houses, 6.7% were new build freehold houses and 4.8% were existing leasehold flats. New build leasehold houses formed less than 1% of all sales, while leasehold new build flats formed 1.4% of the total sales market of individual unique homes. Of *all sales* in the market, including

repeat sales, both new build flats and existing flats comprised a larger proportion (Table 2.6).

**Table 2.5:** Unique property sales in Wales by property type and build type 2004/5-2018/19

	Existing home		New build		Total
	House	Flat	House	Flat	
Freehold (n)	425,388	1,313	33,992	193	460,886
Leasehold (n)	14,984	24,311	2,366	6,949	48,610
Total (n)	440,372	25,624	36,358	7,142	509,496
Freehold (%)	83.5	0.3	6.7	0.0	90.5
Leasehold (%)	2.9	4.8	0.5	1.4	9.5
Total (%)	86.4	5.0	7.1	1.4	100.0

Source: Land Registry Price Paid Data

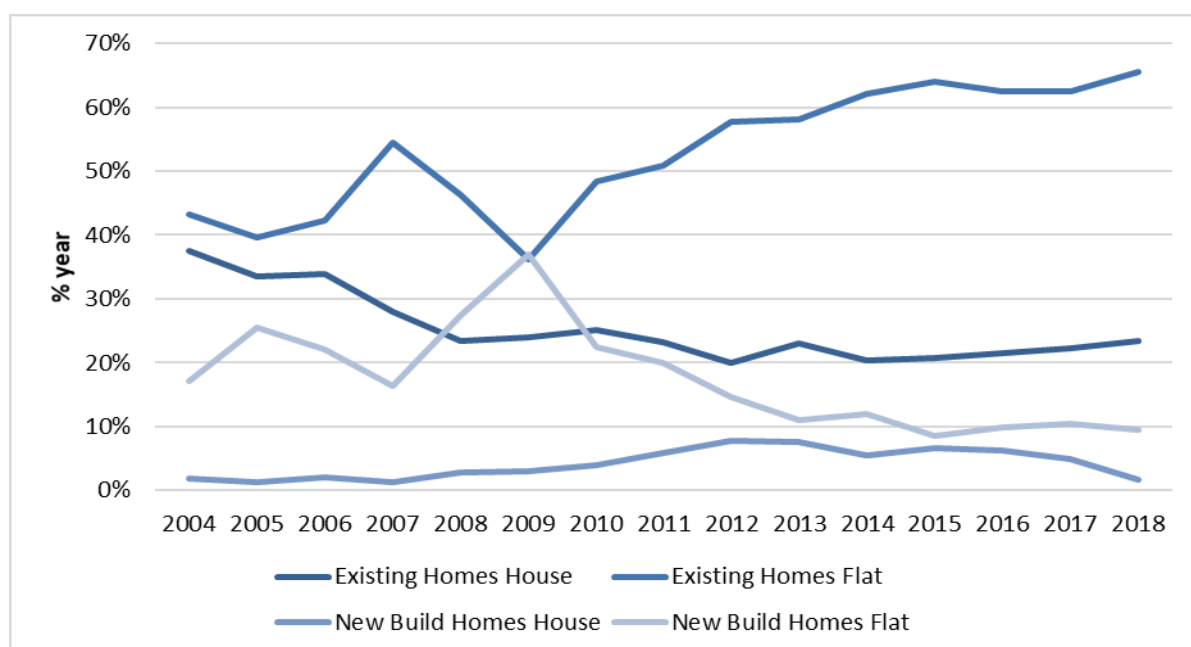
**Table 2.6:** All Residential property sales in Wales by property type and build type 2004/5-2018/19

	Existing home		New build		Total
	House	Flat	House	Flat	
Freehold	530,429	1,707	43,576	272	575,984
Leasehold	20,236	41,569	2,947	13,376	78,128
Total	550,665	43,276	46,523	13,648	654,112
Freehold	81.1	0.3	6.7	0.0	88.1
Leasehold	3.1	6.6	7.1	2.1	11.9
Total	84.2	6.6	7.1	2.1	100.0

Source: Land Registry Price Paid Data

2.14 The composition of market sales has also changed over time (Figure 2.5). In 2004, leaseholds mainly comprised of existing houses and flats and just under a fifth were new build flats with very few new build houses. Overall, new build sales have, as a proportion of the leasehold sales market, fallen during this 2004/5 – 2018/9 period. New build flats comprised a larger proportion of the homes sold in Wales prior to the financial crisis 2008/9, peaking at 37% of all leaseholds sold in the market during 2009. New build houses rose from 1.9% of all leasehold sales in 2004 to nearly 8% of all leasehold sales during 2012 but have since fallen back to their 2004 levels. This suggests an earlier move away from building leasehold houses in Wales than the finding of the CMA report (2020) where this trend only changed in 2017 (see para. 1.32).

**Figure 2. 5:** All leasehold sales by property type and year sold 2004 to 2018 in Wales



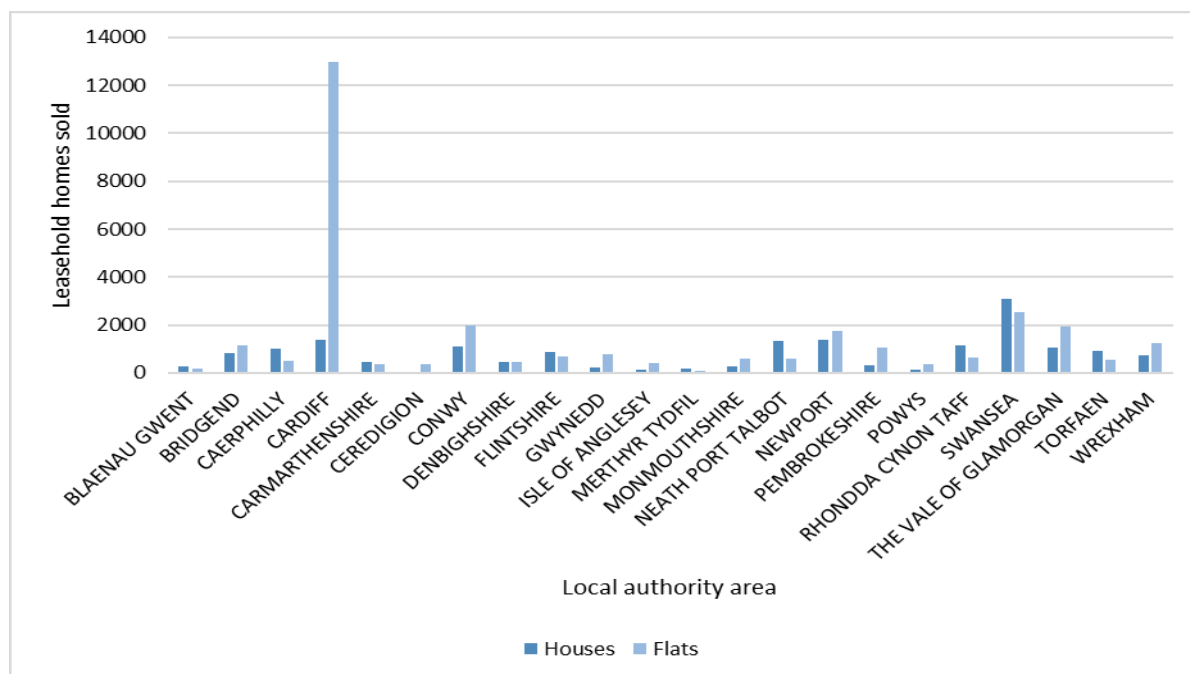
Source: Land Registry Price Paid Data

### Geography

2.15 The distribution of leasehold homes in Wales is related to the number of homes in each local authority (based on the dwellings counts derived from the Valuation Office Agency), with proportionately more leaseholds in local

authorities with more homes<sup>7</sup>. There is some geographical variation in the balance between leasehold houses and flats. Figure 2.6 and 2.7 illustrate the absolute number of leasehold sales and the sales of leaseholds as a proportion of all sales in each local authority area in Wales. These charts show that Cardiff has the most unique sales of leasehold flats with 12,987 sold during 2004/05 – 2018/19 that formed 20.4% of all local market sales, and Swansea the most sales of leasehold houses with 3,074 sold that formed 8.4% of all local market sales.

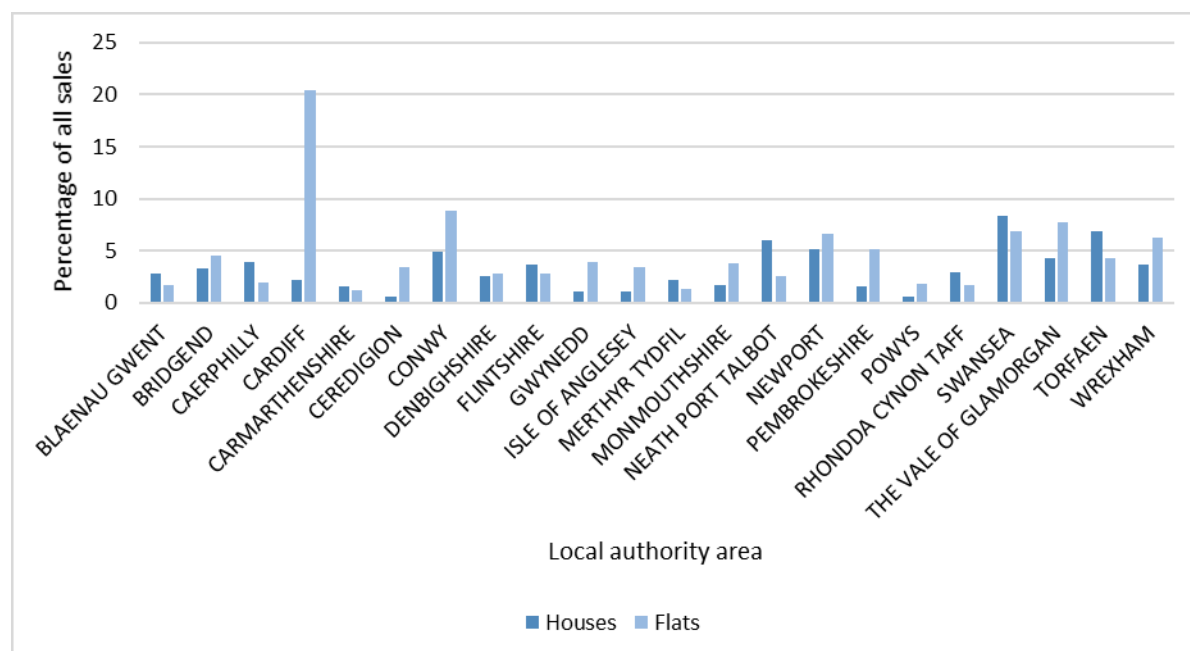
**Figure 2. 6:** Unique leasehold homes sold by property type and local authority area, 2004/5 to 2018/19 (Number)



Source: Land Registry Price Paid Data

<sup>7</sup> Statistical tests were applied to estimate the strength of the relationship. Pearson's correlation test results were 0.64 for leasehold houses and 0.73 for leasehold flats when compared with the number of dwellings on council tax records for each local authority district. Numbers near 0 show very little relationship, and numbers nearer 1 show a very strong relationship. In this case, therefore, the values indicate a relatively strong association between the number of leaseholds and the number of homes in a local authority area. The relationship is not perfect (does not equal one) and therefore we do see some geographical variation in the distribution of leasehold houses and flats.

**Figure 2. 7:** Unique leasehold homes sold by property type and local authority, 2004/5 to 2018/19 (% of all sales)



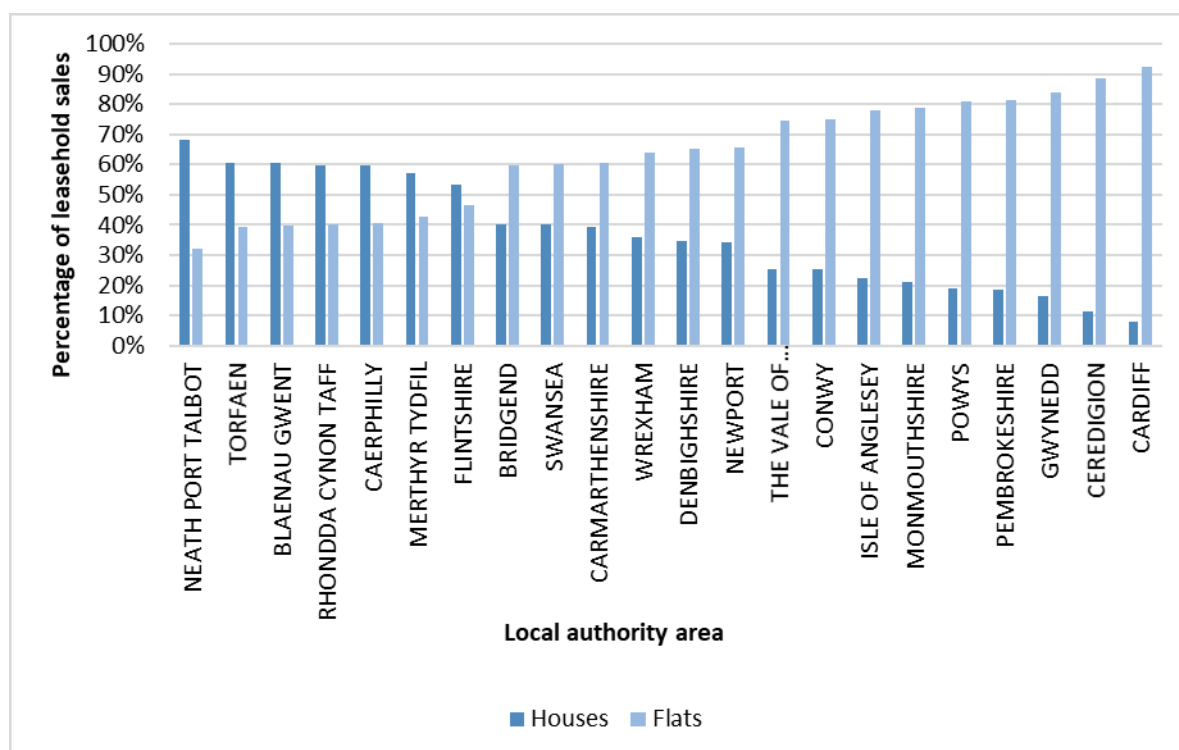
Source: Land Registry Price Paid Data

2.16 There is a geographical difference between the proportion of leasehold houses or flats in each local authority district (Figure 2.8). The size of the local housing market differs in each local authority area so in absolute numbers terms the distribution of all leasehold houses and flats looks slightly different. For example, in Blaenau Gwent the 293 leasehold houses sold were 61% of all leasehold homes sold in the area, but in Cardiff the 1575 leasehold houses sold represented only 9% of all leasehold homes sold. Almost two thirds of leasehold sales in Neath Port Talbot, Torfaen, Blaenau Gwent, Rhondda Cynon Taf, Caerphilly and Merthyr Tydfil were houses whereas flats were the dominant proportion of leasehold sales in the other local authorities. The ONS Area classifications<sup>8</sup> indicate these are areas that have a mining legacy, which could sit behind the disproportionate incidence of leasehold houses in these areas. Neath Port Talbot had the largest

<sup>8</sup> See further the classifications: [ONS Area Classifications](#)

proportion of leasehold houses sold (68% of all leasehold transactions) and Cardiff had the largest proportion of leasehold flat sales (92% of all leasehold transactions).

**Figure 2. 8:** Unique leasehold sales by property type and local authority district, 2004/5 to 2018/19 (% of all leaseholds sold)

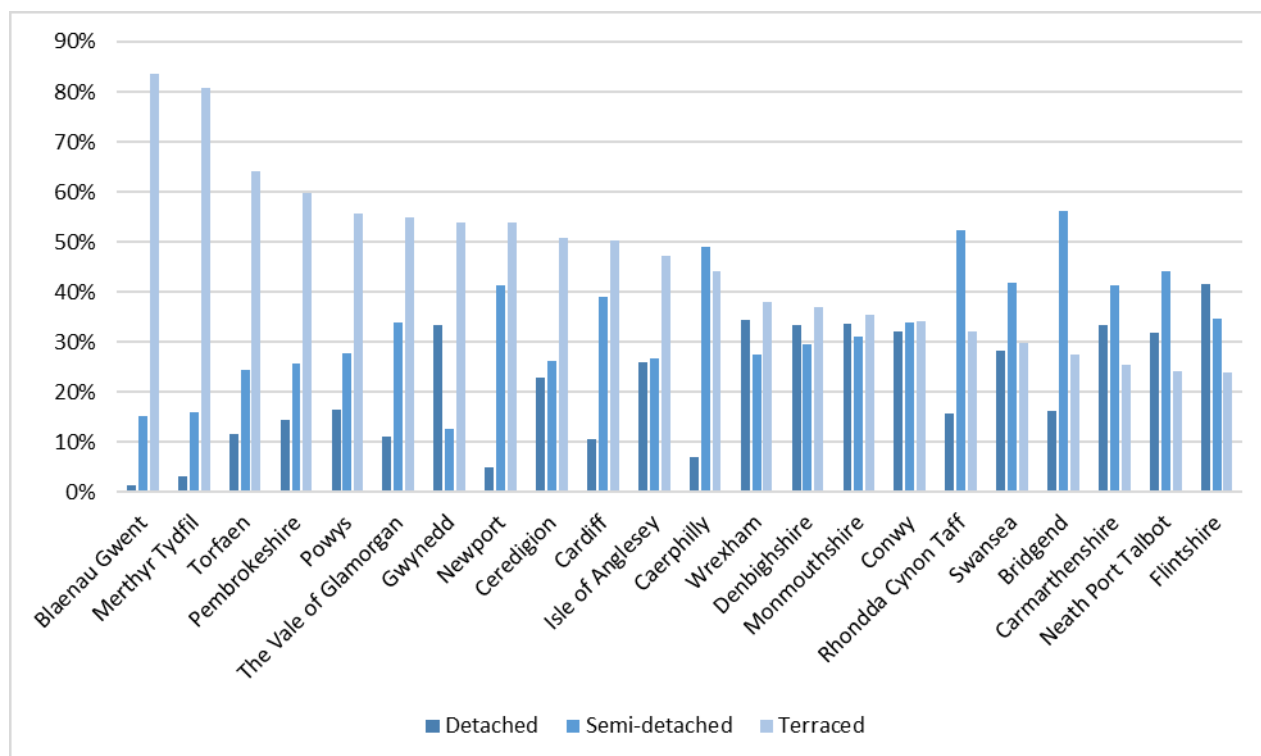


Source: Land Registry Price Paid Data

- 2.17 The higher density of leaseholds in more densely populated conurbations, such as Cardiff, aligns with the academic literature on the use of leaseholds. For example, Easthope et al. (2014) points to the increasing use of multi-title arrangements, such as flats on leases, to allow for the creation of privately owned properties in high-density urban settings.
- 2.18 Leasehold houses in Wales are predominantly terraced homes (40.2%), while 38.6% are semi-detached and 21.2% detached homes. In those local authorities where the proportion of leasehold houses exceeded the proportion of leasehold flats the most, the leasehold houses are predominantly terraced homes (Blaenau Gwent 83.5%, Merthyr Tydfil 80.8% and Torfaen 64.4%), but the relationship is not clear (Figure 2.9). Rural

districts like Powys also have a high proportion of terraced homes (55.7%) and in some authorities, leasehold homes are predominantly semi-detached homes (Rhondda 52.4%, Bridgend 56.3% and Swansea 41.9%).

**Figure 2. 9:** Leasehold houses (%) by property type and local authority

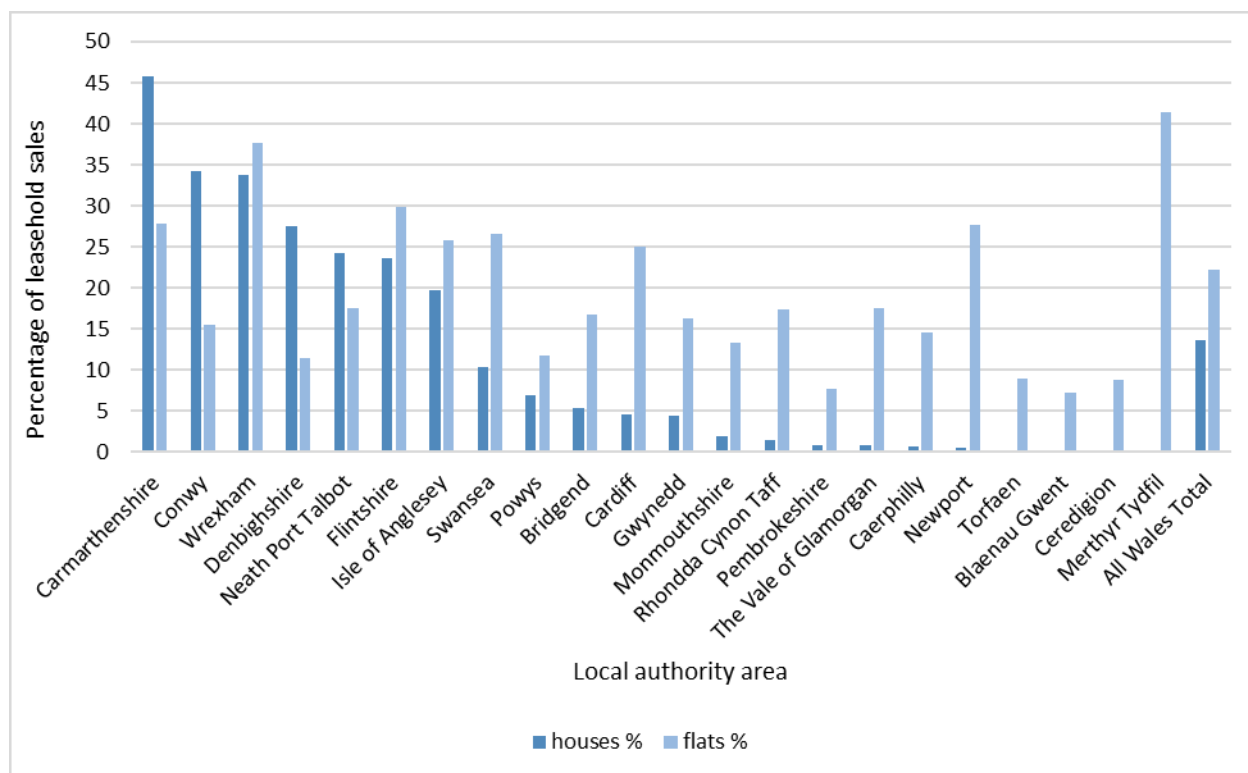


Source: Land Registry Price Paid Data

2.19 Leasehold house sales were a mixture of existing and new build homes and varied by geography. Overall, in Wales 13.6% of leasehold house sales were new build and 22.2% sales of leasehold flat sales were new build (Figure 2.10). There were marked differences in the proportion of new build houses across local authorities, with 45.7% of leasehold houses being new build in Carmarthenshire, compared with some local authorities where there were no new build leasehold houses. Similarly, the proportion of new build flat sales varies, with 41.4% of flats in Merthyr Tydfil being new build compared with only 7.3% in Blaenau Gwent.



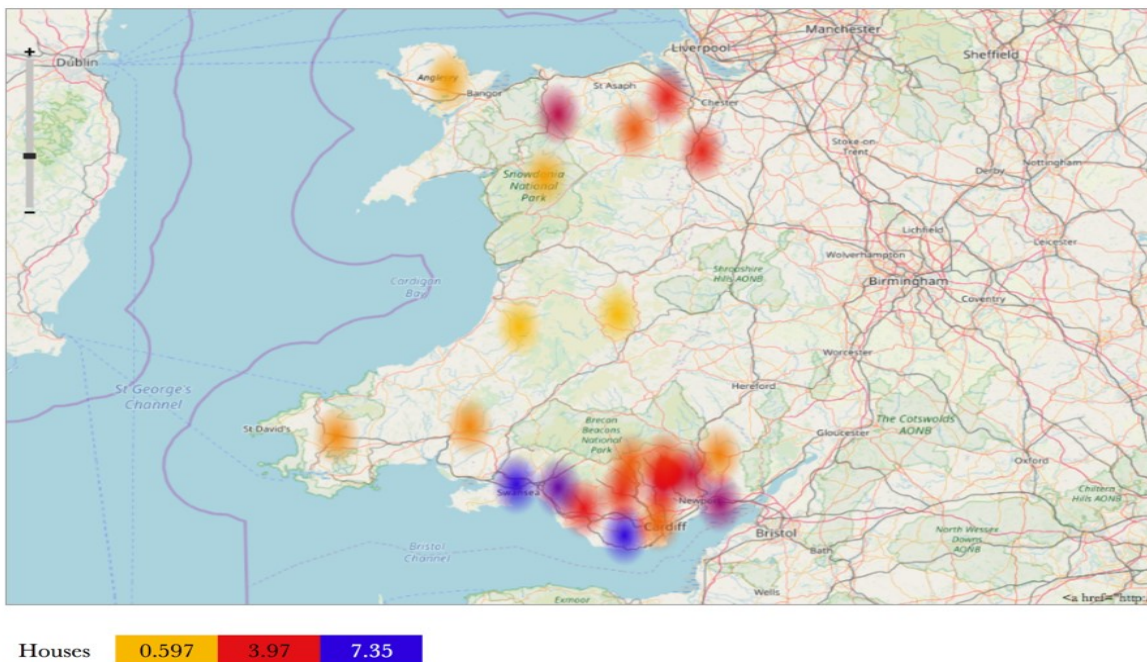
**Figure 2. 10:** Leasehold sales of houses and flats by new build and local authority



Source: Land Registry Price Paid Data

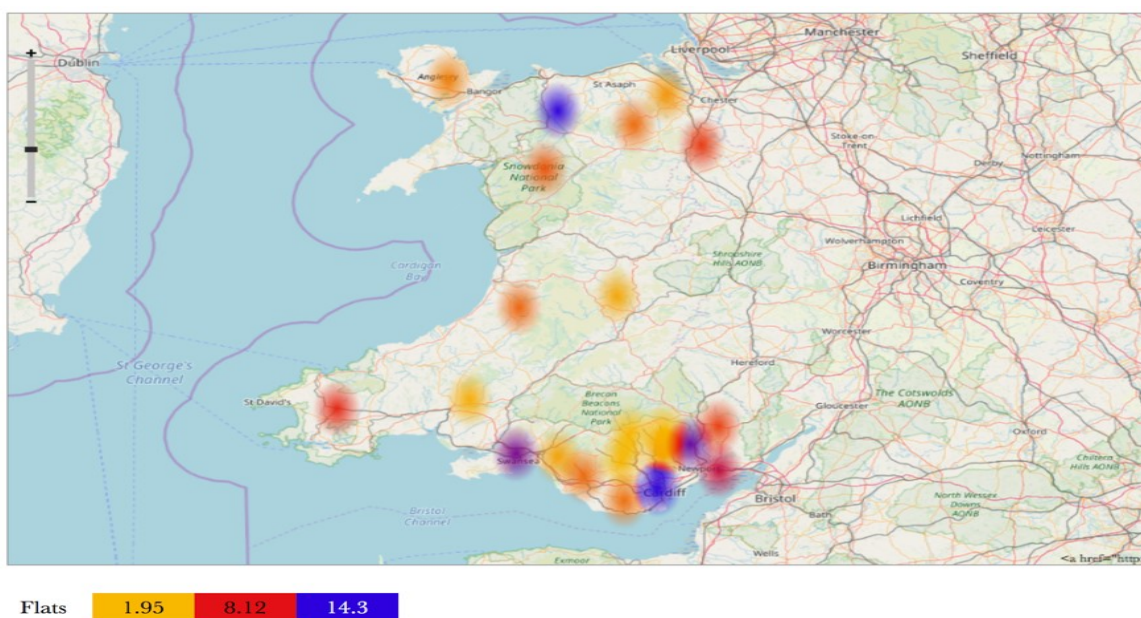
2.20 Figures 2.11 and 2.12 represent the local incidence of leasehold houses and flats as a proportion of all sales in each local authority district during the study period. The darker colours indicate higher incidence of leasehold houses or flats in that area.

**Figure 2. 11:** Heatmap of unique leasehold houses sold, 2004/05 and 2018/19 (% of all unique sales in local authority district)



Source: Land Registry Price Paid Data (Created with OpenHeatMap)

**Figure 2. 12:** Heatmap of unique leasehold flats sold, 2004/05 to 2018/19 (% of all unique sales in local authority district)



Source: Land Registry Price Paid Data (Created with OpenHeatMap)

## Property values

2.21 Leasehold homes in Wales regularly achieve lower market values than freehold homes. The mean average sales price for a freehold property sold in Wales during 2018 was £184,317 and for a leasehold property was £147,536 (Table 2.7). This price differential holds for all property types, with the only exception to this being freeholds flats, where there were much fewer freehold flats sold representing less than 1% of all freehold homes.

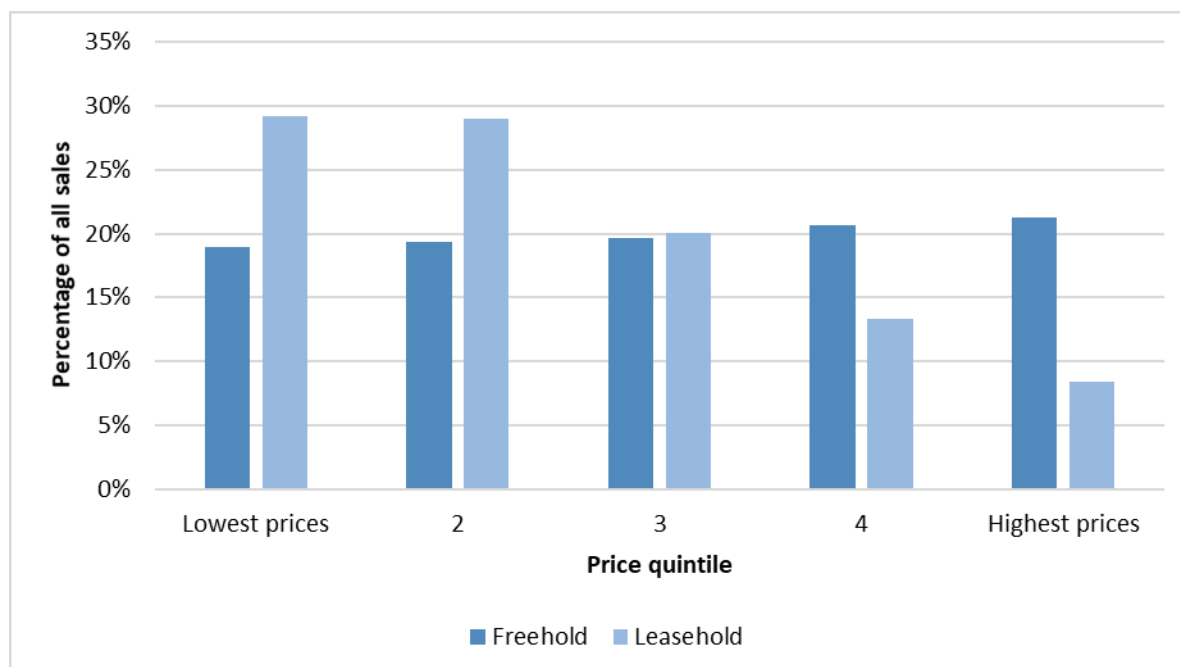
**Table 2. 7:** Sales price by tenure and property type, 2018 (£)

	Leaseholds			Freeholds		
	Mean	Median	N	Mean	Median	N
Detached	232,862	220,000	261	266,522	240,000	14720
Flats	144,008	121,498	3996	131,271	115,000	141
Semi-detached	159,304	147,000	511	163,284	149,260	14062
Terraced	122,426	112,500	565	129,175	115,000	16445
<b>Total</b>	<b>147,536</b>	<b>125,000</b>	<b>5333</b>	<b>184,317</b>	<b>158,950</b>	<b>45368</b>

Source: Land Registry Price Paid Data

2.22 Figure 2.13 depicts the distribution of all 2018 sales through five equal price bands (quintiles). The graph shows that leasehold properties skew towards the lower house price bands, whereas the proportion of freeholds are slightly more represented among the higher price bands. A total of 29.2% of leasehold sales were in the lowest price band with only 8.4% in the highest price band. In contrast, the proportion of freehold sales in the lowest and highest price bands was 18.9% and 21.3%.

**Figure 2. 13:** Proportion of all sales (%) by price quintiles and tenure, 2018



Source: Land Registry Price Paid Data

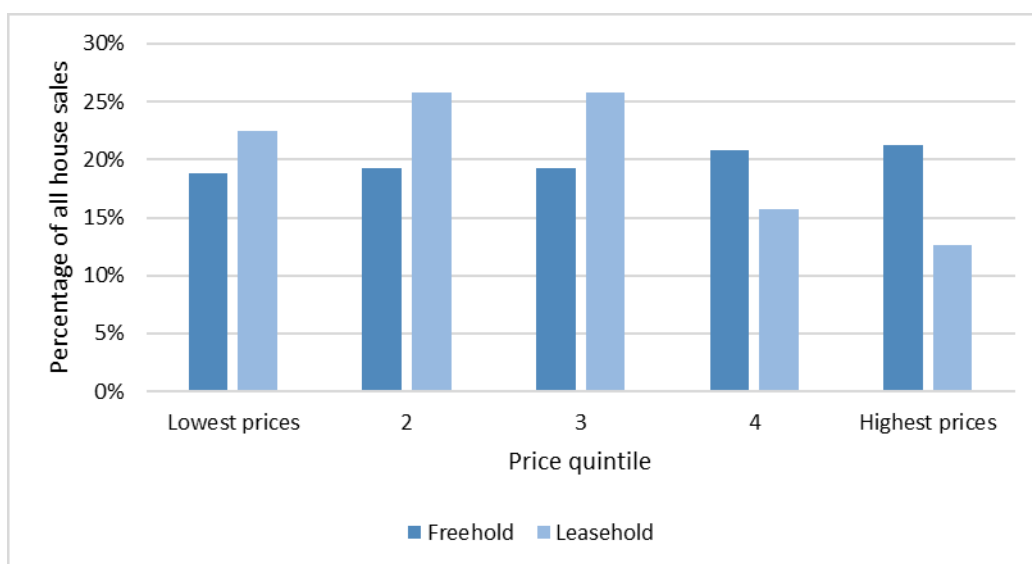
2.23 As most leasehold sales are flats, they tend to have fewer bedrooms and command a lower price. Figures 2.14 and 2.15 show the price distribution for houses and flats. Here, it can be seen that most leasehold houses sold in Wales during 2018 were in the low to mid-price bands (1-3). There were few leasehold properties in the higher price bands. This evidence does not show whether the houses were comparable in size or style (apart from the leasehold/freehold difference) but note the finding of the *Competition and Markets Authority update report* (see further para 3.51):

‘...on a number of estates we have seen evidence of houses that are essentially the same being sold for the same price whether leasehold or freehold.’ (CMA 2020, 26)

2.24 This suggests that leasehold difference does not lower the price for comparable houses in terms of size or style.

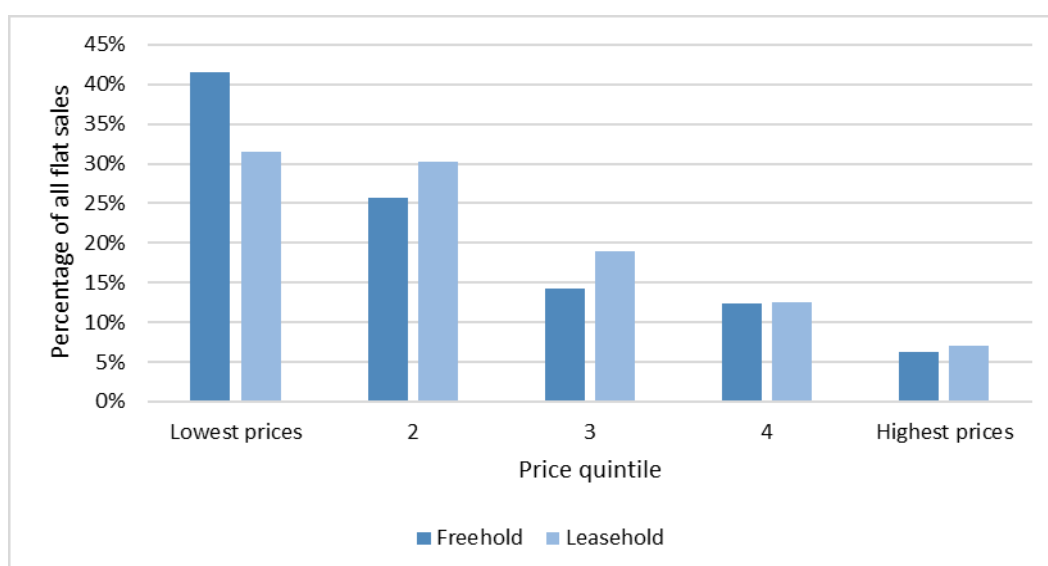
2.25 For flats the pattern was different. Leasehold and freehold flats were most represented in the lowest price band, but a greater proportion of the freehold flats were in this price band (41.8%) than leasehold flats (31.5%). This result for flats may have been down to the mix of homes that were sold during that period as there are few freehold flats in other price bands although the dataset reflects all sales and is not a sample.

**Figure 2. 14:** Proportion (%) of all house sales by price quintiles and tenure, 2018



Source: Land Registry Price Paid Data

**Figure 2. 15:** Proportion of all flat sales by price quintiles and tenure, 2018



Source: Land Registry Price Paid Data

2.26 Table 2.8 shows average values for homes sold in 2018 by local authority district and tenure. Leasehold homes have typically had lower values than freehold homes and are potentially more available for buyers with lower incomes. Accordingly, the research team sought to investigate if leaseholds are clustered in areas of deprivation. There is only a weak association between leasehold and deprivation. Comparing the proportion of leasehold homes as a proportion of the total unique homes sold in each local authority to deprivation indicators produces a weak but positive association between leasehold houses and deprivation in Wales (Pearson's correlation = 0.33) but a weaker and negative association between flats and areas of deprivation ( $p=0.13$ ).

**Table 2. 8:** Median sale prices by local authority district and tenure, 2018 (£)

		<b>Freehold</b>	<b>Leasehold</b>	<b>All sales</b>
Blaenau Gwent	house	99,710	64,547	98,627
	flat	38,000	43,158	42,667
	Total	99,584	56,419	97,482
Bridgend	house	166,945	158,339	166,742
	flat	103,532	109,417	108,736
	Total	166,584	126,805	164,066
Caerphilly	house	144,602	119,868	143,688
	flat	135,813	100,172	103,828
	Total	144,572	111,142	142,423
Cardiff	house	259,150	207,791	257,986
	flat	174,514	152,225	152,508
	Total	258,793	155,880	232,050
Carmarthenshire	house	155,481	135,338	154,971
	flat	71,057	96,191	93,175
	Total	155,310	121,103	153,972

Ceredigion	house	202,556	145,000	202,438
	flat	300,000	125,633	128,492
	Total	202,656	126,258	198,093
Conwy	house	185,807	190,520	185,981
	flat	110,059	136,027	134,841
	Total	185,127	145,216	177,788
Denbighshire	house	171,053	154,752	170,789
	flat	239,950	135,069	136,289
	Total	171,100	139,403	168,897
Flintshire	house	182,921	176,719	182,788
	flat	120,875	100,729	102,058
	Total	182,762	129,225	179,812
Gwynedd	house	178,392	217,167	178,715
	flat	136,643	112,457	113,790
	Total	178,229	124,091	174,441
Isle of Anglesey	house	194,721	230,691	195,055
	flat	144,400	203,193	199,998
	Total	194,486	206,028	195,444
Merthyr Tydfil	house	112,634	73,808	111,956
	flat	88,750	61,529	67,578
	Total	112,569	69,510	111,425
Monmouthshire	house	288,474	224,248	287,547
	flat	180,000	444,478	434,860
	Total	288,157	409,520	298,372
Neath Port Talbot	house	122,800	135,881	123,378
	flat	115,500	75,385	76,318
	Total	122,796	116,632	122,405

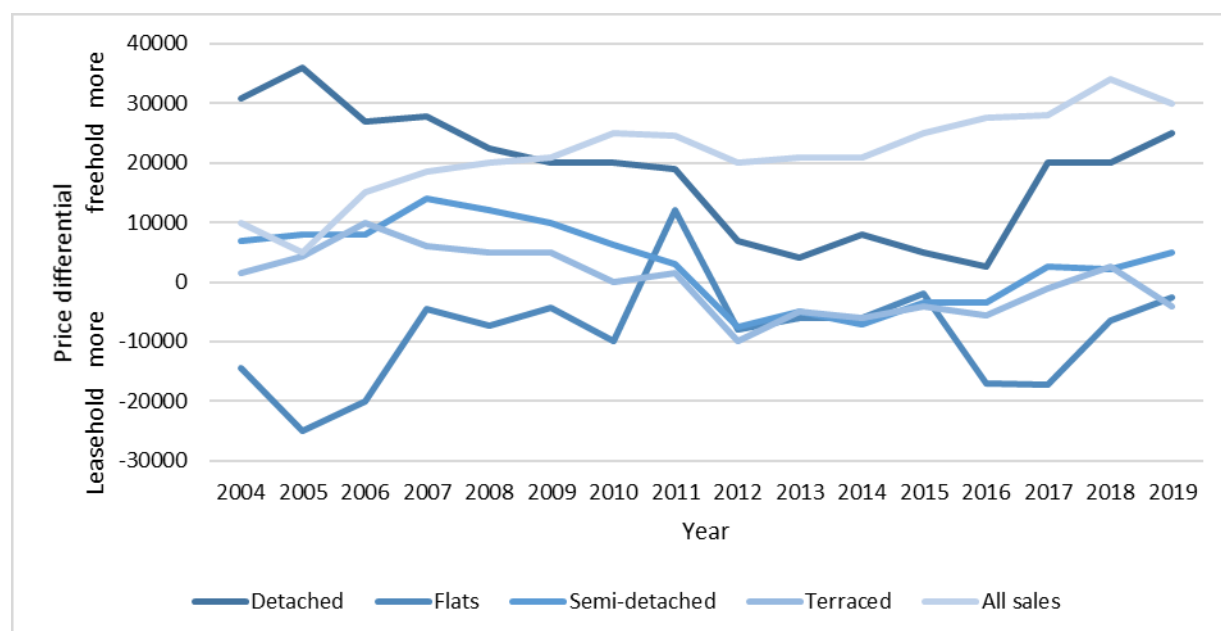
Newport	house	198,001	141,779	195,258
	flat	106,562	100,689	101,090
	Total	197,256	113,597	185,596
Pembrokeshire	house	193,636	125,819	192,883
	flat	105,000	145,184	144,843
	Total	193,593	142,002	190,295
Powys	house	209,943	113,990	209,692
	flat	235,450	74,512	87,923
	Total	210,010	77,802	205,977
Rhondda Cynon Taff	house	122,755	129,929	122,879
	flat	65,278	86,458	85,182
	Total	122,679	106,382	122,080
Swansea	house	175,251	169,962	174,851
	flat	126,571	148,180	147,796
	Total	175,137	156,603	171,911
The Vale of Glamorgan	house	269,929	206,044	267,500
	flat	197,667	153,656	154,557
	Total	269,726	165,517	254,274
Torfaen	house	174,484	127,087	171,856
	flat	149,995	83,478	84,782
	Total	174,468	111,054	169,084
Wrexham	house	180,334	169,928	180,081
	flat	129,500	95,123	96,052
	Total	180,274	122,683	176,628
<b>Total</b>	<b>house</b>	<b>184,482</b>	<b>158,079</b>	<b>183,724</b>
	<b>flat</b>	<b>131,271</b>	<b>144,008</b>	<b>143,574</b>
	<b>Total</b>	<b>184,317</b>	<b>147,536</b>	<b>180,448</b>



Source: Land Registry Price Paid Data

2.27 The price differentials between leasehold and freehold properties has held over the 2004/5-2018/19 time period (Figure 2.16). Although the difference between the sale prices for freehold properties over leasehold has shifted in value over time, in almost all types of property the freehold premium was maintained across the study period. Generally, freehold houses have achieved slightly higher values in the sales market than leasehold flats, but in the period up to the financial crisis 2008/9 and from 2016 to 2018 freehold homes were worth less than leasehold flats. This may be a function of the proportion of new build flats that came to market during this period, as new build traditionally commands a premium anyway. In addition, the price differentials between leasehold and freehold houses or flats may be due to varying geographical locations.

**Figure 2. 16:** Price differentials between freehold and leasehold property types 2004-2019



Source: Land Registry Price Paid Data

### Limitations of data and summary

2.28 The analysis aimed to understand the extent and geographical distribution of the leasehold housing sector across Wales, but the research team were

unable to draw upon an accurate and up-to-date dataset to provide a snapshot of current tenures across Wales. The existing Land Registry data is limited insofar as it is reliant on Land Registry Price Paid Data, which provides information on property sales in Wales, as an indirect indicator of the extent and spread of leaseholds across Wales. Nonetheless, estimates of the stock of leaseholds in Wales were made using Valuation Office Agency Council Tax Records data, with the central assumption that the same proportion of existing stock is held on a leasehold basis as the property that were sold during 2004/5 to 2018/19.

2.29 The estimates in this report suggest that:

- The number of leasehold properties in Wales is around 16% of all properties. This is very approximately 235,000 properties.
- Land Registry Price Paid Data indicates that leaseholds account for 12% of all property transactions in Wales including repeat sales (para 2.7), with the majority of these transactions (64.3%) involving flats (para 2.11).
- It appears that there are generally more leasehold properties in densely populated conurbations, with Cardiff and Swansea being the Welsh 'hotspots' for leasehold transactions. These findings chime with the broader literature on the use of leaseholds, including Easthope et al. (2014), who conclude that multi-titled property, such as leasehold flats, has become a standard planning response to increased urbanisation and urban densification (see further Chapter 3).
- Leasehold houses comprised a larger proportion of the leasehold market in districts with a mining legacy.
- New homes are more likely to be leasehold as the proportion of flats has increased.

- Leasehold homes are generally cheaper than freehold homes but there is a weak link between leasehold and deprivation.

2.30 There has been a recent decline in the sale of new build leasehold houses demonstrating the effectiveness of Welsh Government interventions.

### **3. Knowledge Review**

- 3.1 This Chapter does not set out to answer the research questions directly. The purpose of the knowledge review is to provide the policy and academic context for the answers to those research questions.
- 3.2 The knowledge review is in three sections. The first section considers the UK and Welsh Governments' official policy papers and reports which have significantly contributed to the current debate about leasehold reform.
- 3.3 The major Welsh report in this section is *Residential Leasehold Reform: A Task and Finish Group Report (TFG, 2019)*. To ensure that it is understood in its context, the research team has placed it chronologically with other reports.
- 3.4 The second section of the report focuses on trade and consumer survey and reports.
- 3.5 The majority of the work referred to in the first and second section is focused on England. However, the current legislative framework in Wales is largely identical to that of England and the research team considered that there was value in summarising current thinking chronologically on leasehold to inform the empirical research and contextualise the empirical research and findings in the rest of the report.
- 3.6 The third section of the knowledge review considers academic work, based on a search of legal databases and the pragmatic use of the expertise extant within the research team. The work considered is not confined to the UK nor to leasehold law. The research team have also drawn on work from leading property law scholars in peer reviewed articles. This related to condominium

and strata title law in so far as such work provides insights into designing legal frameworks for multi-owned properties.<sup>9</sup>

- 3.7 The work of the Law Commission on leasehold reform also provides an important context for this research. The work of the Law Commission is considered in Chapter 6 alongside what participants in our research told us about law reform.
- 3.8 Table 1 in Annex B of this Report provides an overview of the most important of the reports published between 2017 to 2020 together with a summary of major recommendations and territorial reach. The table identifies particular issues that have either been of direct concern to policymakers or have been raised by the participants in our research. It includes web links to the reports.

### **Government and Official Reports**

- 3.9 Tackling Unfair Practices in the Leasehold Market (DCLG, 2017b)
- 3.10 *Tackling Unfair Practices in the Leasehold Market* published in December 2017 was the Department of Communities and Local Government report in response to a consultation of the same name which took place from 25 July 2017 – 19 September 2017. The consultation sought views on prohibiting the sale of new-build leasehold houses, limiting ground rents and protecting leaseholders from possession orders.
- 3.11 The references to legislation within the report are to proposals for legislation for England.
- 3.12 The report proposed:

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<sup>9</sup> The research team have drawn on scholarship from Australia, Canada and the United States. Its focus was not the legal details of other legal regimes governing multi-owned properties but scholarship which provides conceptual/strategic analyses of those regimes.

- The prohibition of new residential long leases on houses, whether new-build or existing freehold houses, except in exceptional circumstances.
  - Where there is an exceptional rationale for leasehold houses, their provision must be on terms acceptable to the consumer.
  - Active discouragement of the use of Help-to-Buy shared equity loans for the purchase of leasehold houses pending legislation.
  - The introduction of legislation ensuring that, in the future, ground rents on newly established leases of houses and flats are set at a peppercorn rate (zero financial value).
  - The encouragement of developers to provide compensation schemes to leaseholders with onerous ground rents, including second-hand buyers, and for customers to be proactively contacted in connection with this.
  - The provision of comprehensive information on the various routes to redress available to them, including where their conveyancer has acted negligently.
- 3.13 The report indicated that MHCLG would work with the Law Commission for England and Wales to improve leasehold law. The work of the Law Commission is discussed in Chapter 6, below.
- 3.14 The report also indicated that the UK Government intends to legislate to close a technical loophole in housing legislation in England. The current position in England is that where ground rents exceed £250 per year or £1,000 per year in London, a leaseholder is classed as an assured tenant. This means that a leaseholder with even the smallest arrears of ground rent could be subject to a mandatory possession order.
- 3.15 The Renting Homes (Wales) Act 2016 avoids this problem as Schedule 2 paragraph 8(1) of the Act specifically excludes leaseholds of more than 21 years from the legal regime covering occupation contracts (the Welsh

replacement for assured tenancies). However, this legislation has yet to be enacted in Wales.

3.16 In addition, the report included commitments from the UK Government to:

- professionalise managing agents
- tackle unfair service charges
- give consumers greater choice over who their agent is
- ensure landlords are signed up to a redress scheme
- modernise the home buying process including the particular challenges of leasehold
- introduce a minimum lease term for flats

*The House of Commons Housing Communities and Local Government Committee Report Leasehold Reform (House of Commons, 2019)*

3.17 Fifteen months later, in March 2019, the House of Commons Housing Communities and Local Government Committee published a report on Leasehold Reform in England. This was prompted, in particular, by the emergence of concerns about onerous ground rents and the increase in the number of leasehold houses.

3.18 Major questions considered by the Committee were whether the proposals in *Tackling Unfair Practices in the Leasehold Market* (DCLG, 2017b) went far enough and how existing leaseholders should be compensated and/or their position improved.

3.19 The Committee made a number of recommendations which went further than the UK Government's proposals. In particular, it argued that:

- A standardised key features document should be provided at the start of the sales process by a developer or estate agent which should clearly outline the tenure of a property, the length of any lease, any

ground rent or permission fees and — where appropriate — a price at which the developer is willing to sell the freehold within six months.

- The financial incentives to persuade a customer to use a particular solicitor should be prohibited.
- Existing ground rents should be limited to 0.1% of the present value of a property, up to a maximum of £250 per year and should not increase above £250 over time, by RPI or any other mechanism.
- Ground rents on newly established leases should be set at a ‘peppercorn’ (i.e., zero financial value).
- Legislation should restrict onerous permission fees in existing leases.
- There should be a standardised form for the invoicing of service charges.
- There should be a new statutory consultation process in connection with major works in leaseholds. A threshold of £10,000 per leaseholder should be established, above which works should only proceed with the consent of a majority of leaseholders in the building.

#### *The Government Response (MHCLG, 2019a)*

3.20 The UK Government Response to the report was published in July 2019. In general, it noted the alignment of the Committee’s recommendations with its own programme of reform for leasehold in England.

3.21 In response to the proposal that legislation should be used to reduce existing onerous ground rents, the UK Government indicated that it was concerned about interfering with existing contracts, Article 1 Protocol 1 implications<sup>10</sup> and reducing legal certainty. At this stage it was monitoring the effectiveness of industry’s action to correct the problem the industry had created.

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<sup>10</sup> I.e. under the European Convention on Human Rights, Article 1 Protocol 1 that protects the right to property.



*Residential Leasehold Reform: A Task and Finish Group Report (TFG, 2019)*

- 3.22 In 2018 the then Minister for Housing and Regeneration in the Welsh Government established a Task and Finish Group to review concerns relating to leasehold and to develop recommendations aimed at securing a stable future for leasehold residents.<sup>11</sup>
- 3.23 Although given a steer by the Minister, the Task and Finish Group was independent, and membership comprised a range of stakeholders deemed expert in their field.
- 3.24 Membership included the Association of Residential Management Agents, the Chartered Institute of Housing Cymru, Citizens Advice Cymru, Community Housing Cymru, the Law Society (representing solicitors dealing with leasehold matters) and Leasehold Advisory Service (LEASE).<sup>12</sup>
- 3.25 The Report of the Task and Finish Group was published on 17 July 2019. In response to the report's findings, on 6 February 2020, the current Minister for Housing and Local Government announced that the initial focus of Welsh Government would be on developing an accreditation scheme for managers of leasehold properties and improving understanding of leasehold amongst purchasers. The accreditation scheme is intended to be voluntary in the first instance with a view to it becoming mandatory in the future.
- 3.26 The Task and Finish Group worked via 4 sub-groups, 3 of which worked on leasehold issues. Below we provide a summary of the findings and recommendations from the Group relating to leasehold.
- 3.27 The findings of the first sub-group, tasked with identifying failings in the leasehold system, were:

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<sup>11</sup> The Task and Finish Group's remit included estate charges for freehold homes. Consideration of these is excluded from the remit of this report and therefore we do not discuss those aspects of the Task and Finish report relating to these.

<sup>12</sup> For a complete list see [Appendix 4](#) to the Task and Finish Group Report

- There is a lack of education and easy access to information in relation to leasehold tenure.
- There is a need to implement measures to improve how leasehold properties are sold.
- There should be a licensing or accreditation scheme for managing agents which should, *inter alia*, mandate a suitable level of Client Money Protection.
- There should be mandatory and free online education of all directors associated with the management of a building or estate regardless of whether they employ a professional managing agent or are managing the property themselves.
- There should be a statutory ban on the unjustified use of leasehold in new build houses although there may be exceptions.
- Onerous ground rents should be banned, and future ground rents should be reduced to a nominal financial value.
- The second sub-group was tasked with developing Codes of Practice in relation to leasehold. It proposed the following:
  - The creation of an umbrella online portal for all Welsh Government home/housing schemes and advice services.
  - The immediate updating of Codes of Practice in Wales.
  - The development of a consolidated single Code for Wales linked to a licensing or accreditation scheme.
  - A requirement that any development using, or intending to use, current or future Welsh Government schemes such as Help to Buy - Wales appoint an accredited Managing Agent.
  - The encouragement of mortgage providers to lend only on properties for which the managing agent is accredited.

- The rebranding of the Help to Buy - Wales accreditation for conveyancers.
- The creation of an accreditation for estate agents to include minimum standards for information provided to purchasers of leasehold.
- Major developers should voluntarily agree to appoint only accredited managing agents.
- Managing agents can only be accredited if they employ staff working to professional qualification status.
- The final subgroup was concerned with education, training and raising awareness of leasehold issues. It proposed the following:
  - The Welsh Government should develop and publish a Welsh 'How to buy and live in leasehold guide' which estate agents should provide alongside property particulars and managing agents should issue the guide with ground rent and service charge demands.
  - Lenders/Valuers should value property with the correct leasehold information.
  - Managing Agents should be qualified in a range of skills including technical, safety, customer liaison, ethics and behaviours.
  - There should be an appropriate licensing and education regime for anyone who is self-managing a leasehold property.

3.28 There is a considerable overlap between the proposals from the Welsh Government's Task and Finish Group and those of the UK Government. In particular, the Task and Finish Group stressed the importance of education and training of potential purchasers and those involved in the management of property, of clear information being available throughout the conveyancing process and the need for the professionalisation and accreditation of managing agents. There was less focus on problems that might arise during the lifetime of the lease, such as service charges and permission fees.

- 3.29 The Task and Finish group shared with the UK Government a commitment to ending the sale of leasehold houses, except in exceptional cases.
- 3.30 The Task and Finish group were firmer than the UK Government on the need to end onerous ground rents. Its work on Codes of Practice in Wales demonstrated an attention to practical detail that in the UK context is matched only by the work of the Regulation of Property Agents Working Group whose report we discuss below.

*The Regulation of Property Agents Working Group Report (Lord Best, 2019)*

- 3.31 In its response to the Select Committee Report, the UK Government made a number of references to the work of the Regulation of Property Agents Working Group chaired by Lord Best. This had been set up to advise on a regulatory regime and Code of Practice for property agents.
- 3.32 The term ‘property agent’ is used generically in the report as an umbrella term that covers letting agents, managing agents and sales/estates agents.
- 3.33 The devolution settlement means that the proposals it makes for those property agents who are letting and managing agents would apply only in England, but proposals for those property agents who are estate agents would apply across the United Kingdom.
- 3.34 The report notes the importance of any new UK regulator having an effective working relationship with its Welsh counterpart for lettings. In responding to this Report, the work done in Wales through Rent Smart Wales<sup>13</sup> for agents managing short tenancies may provide a model moving forward.
- 3.35 The report identified two key reasons for problems within the property agents market:
- ‘The first is that residents, while affected by agents’ behaviour, do not choose and cannot easily remove an agent. It is the owner – the landlord,

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<sup>13</sup> See [Rent Smart Wales](#)

freeholder or seller – who hires the agent rather than the tenant, leaseholder or buyer. When choosing an agent, owners will be concerned principally with whether their agent meets the owner’s needs which do not necessarily align with leaseholders’ needs’.

- 3.36 The second reason is that owners do not always have the right information to negotiate effectively with agents or hold them to account. Sales and lettings are complicated tasks governed by complex areas of law. It can be difficult for an inexperienced owner to know whether their agent is acting lawfully and in their best interests; and if not, how to switch to one who will.
- 3.37 The Report strongly endorses the UK Government’s view that a new approach – property agent regulation – is needed and reaches similar conclusions to those of the Welsh Government’s Task and Finish Group. In its opinion, regulation provides the best opportunity to prevent bad practice and drive cultural change, focusing on prevention rather than enforcement after the event.
- 3.38 The Report’s recommendations include:
- The regulation of all property agents broadly defined together with a list of activities that can only be carried out by a regulated property agent.
  - All property agents, of whatever type, will be required to hold and display a licence which will only be granted on the basis that the agent has passed a fit and proper person test and has complied with all legal requirements.
  - All property agents will be required to comply with a Code of Practice that will include principles such as agents must act with honesty and integrity; ensure all staff are appropriately qualified; declare conflicts of interest; and have an effective complaints procedure in place.

- The new regulator should be given a statutory duty to ensure transparency of leaseholder and freeholder charges and should work with the sector to draw up the detail of the regulatory codes.
- The new regulator should take over from the First-tier Tribunal the power to block a landlord's chosen managing agent where the leaseholders have reasonably exercised a veto.
- The new regulator should have a role in enforcing compliance with any new requirements that are introduced that apply to managing agents.
- In addition to its work on regulation of property agents, the Working Group made recommendations aimed at improving processes for charges levied on leaseholders and managing agent performance.

3.39 The Welsh Government may wish to take particular note of these recommendations as this area was not covered by the Task and Finish Group. Moreover, there is a correlation between the recommendations and the concerns raised by the participants in our surveys and interviews.

3.40 The Report recommended a mandatory standard form for service charges. In addition to basic information about charges it considered that the mandated form could potentially include additional information, for instance the number of years left on the leases, planned future works and associated costs and reminders of important restrictions in the leases. It also considered standard cost codes that could be developed to allow leaseholders to make comparisons on costs. It considered that the requirements of a standard form should be consulted upon.

3.41 It reflected upon the current operation of statutory consultation on major works and considered that there should be consultation on reforms to the system.

3.42 It considered that both good practice and the law should aim to ensure that major works should, as far as possible, be planned several years in

advance. It therefore recommended that the UK Government consider making sinking funds mandatory in both new and existing leases, and freeholds on private or mixed tenure estates.

- 3.43 Where a sinking fund is used, it recommended that the UK Government consider how to ensure that it is effectively funded, such as being underpinned by a professionally certified asset management plan.
- 3.44 The report paid attention to the need to protect leaseholders' money. It noted that whilst legislation was introduced in 2002 to regulate such funds (sections 42A and 42B, Landlord and Tenant Act 1987), the sections had not been implemented. It recommended that the UK Government should reconsider implementation of the provisions.
- 3.45 The Working Group considered permission fees and the increasing costs that appear to be imposed upon leaseholders in connection with consents for activities, including the keeping of pets, subletting and the making of structural alterations. It noted that challenging the reasonableness of such fees in the Tribunal can be disproportionately costly and time-consuming.
- 3.46 It recommended that the UK Government consider consulting on the principle of establishing a statutory prescribed list of fees for inclusion into new leases – and on what should be included on the list. Any fees that were not on the prescribed list could not be added to a lease nor charged to leaseholders.
- 3.47 It also considered the UK Government should consult on a set of tariffs of leaseholder and freeholder fees which would be applicable to both new and existing leases.
- 3.48 It considered problems caused by restrictive covenants in leases and recommended that the UK Government implement the recommendations of the Law Commission set out in its report 'Making Land Work' (Law Commission, 2011).

- 3.49 In relation to appointing, switching and/or vetoing managing agents, the report suggests there is a need to rebalance the relationship so that the managing agent appointed is satisfactory to both landlord and leaseholders. It suggests a carefully worded veto power for leaseholders which does not allow for arbitrary veto.
- 3.50 In addition, the report recommended there should be a review of the existing power of Tribunals to appoint a manager and that the new regulator should have the power to intervene when a managing agent's performance is inadequate.

*The Competition and Markets Authority update report (CMA, 2020)*

- 3.51 The Competition and Markets Authority (CMA) launched an investigation into consumer law practices in the leasehold market in June 2019. The investigation focused on two main areas of concern, whether there has been mis-selling in the leasehold market and whether there are unfair and/or onerous terms in leasehold property. Consumer protection is a reserved matter in the devolution settlement and so this report covers England and Wales.
- 3.52 It published its initial report on 28 February 2020. It identified problems in connection with ground rents, for instance the inclusion in leases of terms under which ground rents, which may initially be high, increase significantly over time. This is exacerbated because the amount of increase may be unclear or uncertain.
- 3.53 Other problems identified included the possibility that high ground rents may lead to leases becoming assured tenancies reducing the lessees' security and, finally, problems that may be caused by linking ground rent to Retail Prices Index. The report also highlighted poor sales practices, probably amounting to mis-selling in relation to leasehold houses. It also noted



problems relating to high charges made in connection with permission fees, especially when there is no contractual basis for charging such a fee.

3.54 Importantly, the CMA expressed concerns that the checks and balances, that ought to have protected homeowners from potentially harmful terms and practices, such as independent legal advice, have not been effective.

3.55 The CMA provided useful insight into what might be meant by the term onerous. It suggested that there were two ways to think about onerousness: 'First, whether under the lease clause in question the cost to the homeowner exceeds the benefit received by the homeowner. Secondly, whether the clause affects the marketability or saleability of property. Lenders and developers tended to see what is onerous as that which affects marketability or saleability' (CMA, 2020:15).

3.56 It pointed out that a clause in a lease may be onerous in different ways and there was little value in a single definition or approach. So, for instance: 'For ground rent, because it is an annual charge arising out of the terms of the lease, a number of questions may arise – what does it pay for? Is there a fair exchange of value or legitimate cost recovery? What are the consequences of the obligation to pay? What are the consequences of non-payment? In relation to service charges and permission fees, items that are not annual charges on property but are instead either representative of maintenance or other costs incurred by the landlord it seems relevant to ask whether the charge that arises represents value for money – is a charge necessary and does it represent a fair exchange of value or cost recovery having regard to the matter that caused the cost to be incurred?' (CMA, 2020:40).

3.57 This approach to ground rent would, it suggests, align 'onerousness' with the legal test of 'reasonableness' as found in consumer regulation. This provides a practical basis upon which to implement the recommendation of the Task and Finish Group, that onerous ground rents should be banned.

- 3.58 However, the CMA also made clear that its remit is unfair contract terms:  
'A term in a consumer contract is unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations under the contract, to the detriment of the consumer. Our investigation has therefore focussed on lease terms which we think are or may be unfair for the purposes of consumer protection law' (CMA, 2020:16).
- 3.59 The interim report indicated that the CMA is preparing to take enforcement action to address mis-selling and problems faced by homeowners from high and increasing ground rents and intends to publish information to assist homeowners to understand their rights.
- 3.60 It also recommends that the UK Government:
- reforms the system of redress for leaseholders, to make it simpler and less costly for them to contest permission fees and service charges they think are unreasonable or excessive;
  - legislates to address the assured tenancy 'trap' which reduces leaseholders' security of tenure and negatively affects the mortgageability of a property;
  - improves the quality of information available to consumers early in the buying process, including about the tenure of the property they are interested in and the annual cost of ownership.

### **Related Trade and Consumer Organisations' Reports**

- 3.61 The extent of public interest in government activities on leasehold reform has been remarkable. The UK Government's consultation that preceded *Tackling Unfair Practices in the Market* received more than 6000 responses.
- 3.62 The introduction to the House of Commons Select Committee report reflects on the strength of feeling about leasehold issues amongst the public. The Committee stated that the response to its inquiry was unique. 'We received over 700 written submissions, the vast majority of which were from

leaseholders who wanted to tell us about their personal experiences of living in a leasehold property' (House of Commons, 2019: para. 5).

- 3.63 The Law Commission reported that it had received over 150 responses to its consultation on its 13<sup>th</sup> Programme of Law Reform from a wide range of stakeholders which supported a review of one or more aspects of residential leasehold law.
- 3.64 As Sajid Javid, then Secretary of State for Communities and Local Government, pointed out in the introduction to *Tackling Unfair Practices in the Leasehold Market; The (UK) Government's Response*: 'It's telling that people with experience of buying and living in a leasehold property are the keenest proponents for change' (DCLG, 2017b). There is no reason to think that the position is any different in Wales, as the responses from Assembly Members to the Member Debate on Leasehold Residential Contracts on 31 January 2018<sup>14</sup> illustrate.
- 3.65 There is more evidence of leaseholders' strength of feeling in the following surveys. The findings/recommendations of these surveys are set out in tabular form at Table 2 of Annex B to this report.

#### *National Leasehold Survey 2016*

- 3.66 The first survey is one to which this report has already referred, The National Leasehold Survey 2016 (Brady, 2016). This was conducted by Brady Solicitors, who have extensive experience in leasehold law, in conjunction with LEASE whose website is visited by around 900,000 people annually.
- 3.67 This survey was targeted at leaseholders and the directors of Resident Management Companies (RMC) in England and Wales. It was completed online by 1,244 people from 11 January to 29 April 2016. Less than 2% of the responses were from Wales and therefore analysis cannot be

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<sup>14</sup> See: [Record Assembly Wales](#)

disaggregated to create a picture of the Welsh situation. Responses were dominated by lessees from London and the South East.

- 3.68 Responses from RMC company directors of 163 blocks of flats indicated that they were older than 50, with 76% being over 51 and tended to have been in post for some time. Whilst, in general, RMC directors were satisfied with their role sitting on the board of a RMC, a substantial proportion were not, and 62% said that the work took up more time than they had anticipated. There were significant challenges, for instance, in dealing with late service charge payments from neighbours.
- 3.69 Respondents to the survey noted that it was increasingly difficult to persuade others to take on the role of director. The challenge was finding leaseholders willing to fulfil the role and equipping them with the knowledge, tenacity and time to carry out the role. In addition to legal and technical expertise, respondents pointed to the importance of 'soft skills' such as collaborative working, project management and leadership.
- 3.70 More generally, the survey reported considerable leaseholder dissatisfaction, from both leaseholders and RMC directors with the level of services provided by managing agents, with 68% disagreeing with the statement that the managing agent was able to resolve issues efficiently and effectively. In addition, 66% of leaseholders responding to the survey somewhat or strongly disagreed that the overall service provided by their managing agent was good.
- 3.71 Whilst over half (51%) strongly or somewhat agreed that a change of managing agent would benefit the block, there seemed to be some fear of embarking upon the process - 56% felt somewhat or strongly that it would be a difficult process.
- 3.72 There was also considerable dissatisfaction with the level of service charges; 40% of respondents strongly disagreed that the service charge is value for money.

- 3.73 Whilst 52% of respondents agreed that they knew their rights and responsibilities when they purchased their leasehold property, a surprisingly large minority, 35%, felt they did not have enough knowledge. This suggests that the current policy drive to improve the quality of information is appropriate.
- 3.74 However, the empirical evidence from this research project suggests that even when leaseholders consider they had sufficient technical knowledge of leases at the time of purchase, their knowledge of the lived realities of leasehold was deficient. Overall, the findings of this survey are reflected in this project's empirical work in Wales.

*Leasehold a Life Sentence (PropertyMark, 2018)*

- 3.75 In September 2018, a report was published by PropertyMark, which is an arm of the UK-wide National Association of Estate Agents. The Report, 'Leasehold a Life Sentence', set out the results of a survey of over 1,100 people who had purchased leasehold houses directly from developers over the previous ten years.<sup>15</sup> The aim was to explore the extent of the problems they faced.
- 3.76 It found that 94% of respondents regretted buying a leasehold house, 62% of respondents felt they were mis-sold their leasehold property and 93% would not purchase another leasehold property.
- 3.77 65% used the solicitor their house builder had recommended and 57% did not understand what being a leaseholder meant until they had already purchased the property. 48% of leasehold homeowners were unaware of escalating ground rents.
- 3.78 It also reported that 10% of those surveyed had faced permission charges to carry out alterations to their property. The charges included, for instance, charges for adding an extension, the most expensive alteration, with an

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<sup>15</sup> No detail of the sample or methods is included in the Report.

average charge of £1,597, charges for installing new bathroom units (£1,472) and making structural changes (£1,348).

3.79 The experiences of house leaseholders reported in this survey chimes with those surveyed/interviewed in Wales for this research project.

3.80 The Report made the following recommendations:

- All developers should adhere to the Consumer Code for Home Builders<sup>16</sup>.
- Purchasers of new build homes should have access to an ombudsman scheme.
- Freeholders of leasehold properties should all be required to sign up to a redress scheme.
- Developers should not build on land when they do not own the freehold.
- When the freehold is sold:
- Homeowners should get first refusal.
- The freehold then should not be sold unless homeowners are consulted and given a choice – and must be transparent about what it means for ground rent, etc.
- Consumers need to be better educated in the type of property they are looking at.
- Ground rents should be capped.
- There should be a digital logbook for each property that is bought and sold.

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<sup>16</sup> The [Consumer Code for Home Builders](#) was developed by the home-building industry with the aim of making the home buying process for new homes fairer and more transparent for purchasers.

- Overarching statutory regulation of the whole sector is needed.
- More should be done to promote the benefits of using a professional estate agent.<sup>17</sup>

*Conveyancing Satisfaction Survey (NLC, 2019)*

- 3.81 The most recent report is the National Leasehold Campaign (NLC) Conveyancing Satisfaction Survey which was carried out between 10 April and 10 June 2019. It received 1,496 responses. Its focus was the conveyancing process, and it was particularly concerned with the effectiveness and independence of legal advice. In part, it was prompted by what it considered to be an overly positive review of the conveyancing process by the Solicitors Regulation Authority (SRA 2019).
- 3.82 The vast majority of responses were from the owners of leasehold houses. This was because the main population target for the survey was the closed NLC group initially set up for new build leasehold house purchasers. However, the NLC stated that many flat owners had joined the group in order to press for law reform.
- 3.83 There was some acknowledgement that the sample may have been distorted or biased as many of the people who joined the NLC group did so in part because of concerns about advice received from their conveyancers. The authors of the report suggest that they mitigated bias by also marketing the survey via social media platforms including Twitter, the NLC website and email contacts.
- 3.84 The responses revealed that leaseholders had experienced very poor conveyancing services. The findings are summarised as follows:
- 89% of 1,488 respondents were not informed of the difference between freehold and leasehold by their solicitor.

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<sup>17</sup> It must be recognised that PropertyMark is professional body for estate agency personnel.

- 91.4% of 1,486 respondents were not informed about the contractual obligations of estate rent charges/maintenance fees by their solicitor.
- 96.4% of 1,498 respondents were not informed of the long-term financial implications of leasehold (or 'fleecehold').
- 84.3% of 1,488 respondents were not informed that the freehold could be sold on to a third-party investor by their solicitor.
- 81.5% of 1,493 respondents were not informed about the legal right to enfranchise by their solicitor.
- 87% of 1,492 respondents either did not know or could not remember receiving information on their solicitors' complaints procedure.
- 82% of 1,492 respondents either did not or could not remember receiving a client care document from their solicitor.
- 76% of 1,492 respondents did not feel fully informed and supported by their solicitor during the conveyancing process.
- 91.6% of 1,488 respondents would not buy their leasehold (or 'fleecehold') property now with the exact same tenure and legal conditions.

3.85 The Report also found that 37.8% of 1,473 respondents were offered incentives to use the developer's recommended solicitor. It also reports on comments made by the respondents of covert or overt threats, of loss of deposit or loss of property if recommended solicitors were not used.

3.86 Although questions could be raised about the validity of the findings in view of the biases of the respondent group, there is no doubt of the strength of feeling demonstrated by the survey. The findings chime with the findings of the empirical work in Wales undertaken for this research project. They also point to the significance of the Welsh conveyancing initiative, particularly if trust in leasehold as a tenure is to be re-established. Independent and



knowledgeable conveyancers are critical to providing the necessary consumer protections for prospective purchasers of leasehold properties.

### **Academic and Practitioner Knowledge**

- 3.87 Practitioner articles on residential leasehold tend to focus technical issues in leases, relief against forfeiture and particular court decisions. They illustrate the complexity of the law.
- 3.88 The decision of the Supreme Court in [Daejan Investments Ltd v Benson \[2013\] UKSC 14; \[2013\] 1 W.L.R. 854](#) has probably attracted the most comment in recent years.<sup>18</sup> It concerned the circumstances in which tribunals should allow landlords retrospective dispensation from the statutory consultation process on major works and whether leaseholders should receive compensation for failure to consult. The Supreme Court decided that tenants bear the burden of proving prejudice as a result of any defect in the landlords' consultation, rather than compensation automatically arising from a breach in consultation requirements.
- 3.89 The decision represented a reduction in the protections provided to tenants by the statutory procedures and arguably reflects a tendency of the common law to emphasise contractual obligations as opposed to statutory rights. Prior to the decision, breaches of the consultation requirements limited the amount that a freeholder could claim for works to a nominal sum. Since the *Daejan* case, it has become very difficult for leaseholders to prove the prejudice that the Supreme Court decided was required.

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<sup>18</sup> Commentary includes: John De Waal QC 'Some reflections on the decision in *Daejan Investments Limited v Benson*' *J.H.L.* 2013, 16(3), 45-48; Phillip Sissions 'Is talk cheap? After *Daejan Investments Ltd v Benson* can landlords buy themselves out of consulting with tenants under s.20 of the Landlord and Tenant Act 1985 and what should be the price of doing so?' *Daejan Investments Ltd v Benson* [2013] UKSC 14' *Conv.* 2014, 2, 156-164; Kate Simmons, 'Consultation requirements - refusal of dispensation - tenant prejudice: *Stenau Properties Limited v Leek*' *L. & T. Review* 2012, 16(2), 71-72.

- 3.90 This dilution of the effectiveness of the statutory protections provided by consultation procedures by the courts is something that should properly be taken into account in any review of major works consultations. It may be that policy makers, in order to restore trust in leasehold tenure may wish to reinstate clear and meaningful penalties for breaches of statutory requirements that have in effect been removed by the judgement of the Supreme Court. **A recommendation that consultation requirements are considered in a broader law reform project is made in Chapter 7 of this report (Recommendation 3(iv)).**
- 3.91 To date, leasehold reform has attracted relatively little comment from practitioners – no doubt because recent legal proposals have not yet been finalised. However, the *Conveyancer and Property Lawyer* published a special issue on the leasehold estate in 2019 in response, in part, to the Law Commission work.
- 3.92 In his article *Discharge or modification of leasehold covenants*, Russel Hewitson, Associate Professor at Northumbria University and a former property law practitioner, explored the circumstances in which the courts can vary or discharge leasehold covenants (Hewitson, 2019). Hewitson refers in particular to covenants prohibiting residential use of a block and ones preventing subletting which have been the subject of recent litigation. The article illustrates that it is very difficult to vary or discharge leasehold covenants. This was identified by the Regulation of Property Agents Working Group Report (Lord Best, 2019) as a concern (see para. 3.47, above) and as something which prevents the modernisation of leasehold terms.
- 3.93 Susan Bright, Professor of Land Law at Oxford University, and Philip Morrison, a practising barrister and property law researcher, contributed an article to the special issue that considers the circumstances in which terms

of leases can be varied by the First Tier Tribunal in England.<sup>19</sup> The same law applies in Wales. They point out that ‘the power to order non-consensual contractual modifications is unusual and sits uncomfortably alongside the idea of contracts as voluntary undertakings’ (Bright and Morrison, 2019: 333).

- 3.94 After an examination of tribunal decisions, they propose an extension of the statutory powers, further limiting the idea of leases as contract decisions by equal parties and enabling the variation of leases to facilitate adaptations that reflect contemporary social and policy concerns. They particularly emphasise contemporary concerns with fire safety, improvements to the property, energy efficiency and ‘green’ upgrades.
- 3.95 If this idea was enacted this might mean that leases could be varied to enable the installation of solar panels, for instance, or to upgrade insulation.
- 3.96 Bright, in particular, has focused on the inflexibility of the leasehold framework which works as a barrier to achieving the reductions in energy consumption to which the UK is committed.
- 3.97 With Weatherall, she explains how leases prevent energy efficiency improvements in *Framing and Mapping the Governance Barriers to Energy Upgrades in Flats* (Bright and Weatherall, 2017). She argues that the complex private law regimes within multi-owned buildings must be considered when designing energy efficiency interventions.
- 3.98 Bright has also been concerned with the problems faced by leaseholders seeking to remedy fire safety defects following the Grenfell fire tragedy. In the prestigious annual property law lecture, ‘Property Voices in the Shadow of Grenfell’, held at Liverpool University in February 2020, she argues that the governmental approach of expecting freeholders to be good stewards for tenants was, in general, misplaced (Bright, 2020). The bill for remedying

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<sup>19</sup> The relevant statutory terms are set out in Part IV of the Landlord and Tenant Act 1987. In Wales applications to vary leases are heard by the LVT.

defects overwhelmingly falls to leaseholders who face crippling costs and potential bankruptcy while being trapped in leaseholds they cannot sell, as they are essentially valueless.

3.99 Overall, Bright's work points to the need for a more holistic approach to leasehold reform, something that reflects the life cycle of buildings, including potential emergency events, and accommodates the necessary interdependency of unit owners in multi-owned buildings. This approach is explored further when considering the work of Easthope below.

3.100 The final article in the special issue the *Conveyancer and Property Lawyer*, which is of particular interest to this knowledge review, is by Professor Nick Hopkins, the Law Commissioner in charge of the Law Commission's projects on leasehold reform, and Jonathan Mellor, a Research Assistant at the Law Commission. The title "'A change is gonna come": reforming residential leasehold and commonhold' certainly suggests that radical outcomes are anticipated from the reform project.

3.101 The article outlines the current work of the Law Commission (which is discussed at para. 6.05). In addition, it refers to the importance of a change in attitudes.

'The reform of leasehold, and particularly the reinvigoration of commonhold, bring about a need for cultural change, and for all participants in the housing market to re-think fundamental assumptions on which the market currently operates' (Hopkins and Mellor, 2019: 329).

3.102 If commonhold is to succeed they suggest that those who own homes in multi-occupied properties must also change:

'While commonhold is about empowering and giving responsibility to owners of flats, it is also about owners of flats being ready to accept responsibility and therefore being ready to take on that cultural change' (Hopkins and Mellor, 2019: 329).

3.103 There is no exploration in the article of how cultural change can be achieved amongst leaseholders. These issues are discussed in the context of other jurisdictions below.

*Socio-legal literature*

3.104 A relatively small number of housing and property law scholars in the UK have taken a more socio-legal and empirical - as opposed to a doctrinal - approach to the problems of leasehold. Their concerns are with power dynamics and social relations within leasehold, the meaning of ownership in multi-owned developments and the implications of legal form as opposed to legal interpretations of the words of a lease.

3.105 Professor Blandy, one of the first UK socio-legal scholars to research leasehold, has focused particularly on the role of power in leasehold arrangements and how best efforts to tilt the balance of power in favour of residents can be frustrated. In 2006, in a co-authored article based upon research into recent housing developments in the UK and New Zealand,<sup>20</sup> she tracks the exercise of power and rights through a series of critical legal events, to expose those aspects of the legal arrangements which contribute to residents' feelings of powerlessness (Blandy, Dixon and Dupois, 2006). The conclusions, set out below, resonate with the empirical findings from this research project.

3.106 The three events considered to be critical are:

- the initial contractual relationship between developer and managing agent, that precedes the sale of properties and excludes prospective lessees;

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<sup>20</sup> In New Zealand flats in developments are generally owned on unit title ownership, similar to commonhold. There are some leasehold properties, representing around 15% of properties. Flats can also be owned on what is called a cross lease, where the flat owner owns a share of the freehold title in common with the other cross leaseholders and a leasehold interest in the particular area and building that they occupy. This is similar to arrangements in England and Wales where leaseholders collectively own the freehold.

- the purchase arrangements which generally include limited information about ownership and management arrangements; and,
- the transfer of the freehold to the management entity.

- 3.107 The themes introduced in the article are developed further in an international and interdisciplinary edited collection (Blandy *et al*, 2010). Academics from a range of jurisdictions, including England and Wales, Scotland, China and Australia, and a range of disciplines such as planning, sociology and law, reflect upon how ‘apparently neutral legal frameworks can disguise a real imbalance of power, usually at the expense of the residents, in different jurisdictions’ (Blandy *et al*, 2010:3).
- 3.108 Particular problems identified in different jurisdictions include explorations of developers’ hold on power (Blandy, 2010; Robertson, 2010; Wang, 2010; Sherry, 2010); limited effective provision for long term maintenance costs (Alterman, 2010); exclusion of minority owners (Christaduson, 2010); lack of participation in collective management (Yip, 2010); and barriers to achieving sustainable design improvements (Dixon and Van Roon, 2010). All demonstrate that there is no easy panacea to managing multi-owned buildings, whatever the legal framework is.
- 3.109 Other socio-legal scholars have taken a particular interest in what leasehold reveals about contemporary understandings of ownership. So, for instance, Carr (2011) argues that the democratisation of ownership via the Right to Buy exposed the stratification and inequalities within home ownership in England and Wales. Ownership is not the same experience for everyone and those who struggle to afford home ownership, who are frequently leaseholders, can enjoy a particularly impoverished form of ownership. Former tenants who bought leasehold flats in local authority tower blocks, she argues, can suffer acutely from lack of control making them liable for very high charges for maintenance and repairs. They can also be excluded from decision making, without necessarily reaping the benefit of an

appreciating asset. Although the RTB has now been abolished in Wales<sup>21</sup> and guides on major works for social landlords and their leaseholders are now available<sup>22</sup>, the point that Carr makes on the different experience of ownership for poorer flat owners is important.

- 3.110 Cowan *et al* (2018) reached similar conclusions in relation to shared ownership, arguing that shared owners experience simultaneously a pride in owning their home because of the autonomy it provides and deep frustrations when it comes to disrepair or neighbour problems. For Cowan *et al* (2018) this demonstrates the fluidity inherent in ownership. The problematic meaning of ownership in the context of shared ownership is underscored by Bright and Hopkins analysis, particularly in the context of possession proceedings (Bright and Hopkins, 2011).
- 3.111 These findings contradict deeply engrained social understandings of property ownership as representing autonomy and control, but they resonate with the realities faced by many leaseholders, including the respondents to this empirical research project. The gap between the rhetoric of property ownership and its lived realities for leaseholders is particularly undermining of the tenure.
- 3.112 Douglas Harris , a Canadian academic working in Vancouver on its legal framework for multi-owned buildings, suggests that condominium ownership: ‘enabled fuller rights of ownership to attach to a single unit in a multi-unit building than possible in common law or through cooperatives or residential tenancies. It is, at least in part, the opportunity to hold this fuller bundle of property rights that has brought people into the city as residents or investors’ (Harris, 2011:721).

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<sup>21</sup> By the Abolition of the Right to Buy and Associated Rights (Wales) Act 2018 since 26 January 2019.

<sup>22</sup> Funded by the Welsh Government, and available at: [Lease Advice Major Works Good Practice Guides](#)

- 3.113 As well as considering the impact of condominiums on the urban landscape, Harris is concerned with the impact that condominiums have on notions of ownership. In a 2016 article, he looks at judicial decisions to evict condominium owners who have perpetrated anti-social behaviour in Vancouver. His conclusion is that eviction orders not only reconstruct ownership by reducing the owner's security but are 'also redistributing property within condominium, for the enhanced ownership that some enjoy is won through the diminished security of property that others suffer' (Harris, 2016:58). The point here is that those owners involved in managing the building are able to exercise power against more vulnerable owners.
- 3.114 Harris also reflects, in a further article discussing majority as opposed to unanimous decisions to dissolve strata titles and realise the value of the shared asset, on the changes that laws on multi-owned buildings make to understandings of ownership. He suggests that recent court decisions in British Columbia demonstrate a move from individual autonomy to a notion of collective best interest. He also notes the destabilising potential of such a shift, as well as the possibility of significant unfairness for those owners who, for a variety of reasons, oppose the dissolution (Harris, 2017).
- 3.115 Leasehold reform in Wales provides an opportunity for a different approach to the difficulties that Harris identifies which are the consequences of judicial interventions into the law on multi-owned buildings in Vancouver. The problems would arguably be better resolved by statutory reconsideration of the meaning of ownership in the leasehold context, perhaps giving greater weight to collective best interests and the need for effective stewardship of property whilst remaining mindful of the possibility of unfair consequences for particular individuals. This could be achieved by a more holistic review of the leasehold regime.
- 3.116 Socio-legal scholars in the UK have also considered the legal form of the lease. Hunter (2016) for instance, whilst reflecting on the legal obstacles facing lessees of a particular property seeking to install solar panels,



suggests that the lease is 'a legal aesthetic generating a particular legal form, which becomes a hardened technology to be used in a variety of contexts with no thought for its content' (Hunter, 2016:146). This is significant; the conservatism of the legal profession and its desire for legal certainty and a legal 'completism' prevents the lease evolving into a more democratic and modern instrument.

- 3.117 Cowan *et al* (2018) also consider the role of the lease, in their work on shared ownership, noting how it was chosen to replicate the disciplines of ownership and how the lease 'becomes invested with the hopes, fears, anxieties and consciousness of the entities by and through which it is selected as the appropriate technique, drawn, re-drawn and interpreted' (Cowan *et al*, 2018:74).
- 3.118 Outside of the UK the growing phenomenon of multi-owned buildings and developments has led to relatively extensive legal and sociological research. For instance, Lippert and Steckle (2016), Lippert and Treffers (2016), Sherry (2016), Johnston and Too (2018), Lippert (2019).
- 3.119 Most recently, Easthope has published a monograph: *The Politics and Practices of Apartment Living* (2019). This provides a rich sociological investigation into the problems of living in multi-owned and multi-unit buildings across seven countries: the USA, Canada, Australia, England, Singapore, Hong Kong and South Africa.
- 3.120 Although Easthope's work is most concerned with condominiums, she observes that the law in England and Wales has been developed 'to make it possible for a leasehold to operate in effect like a condominium. The leaseholders can take over the freehold title to land [collective enfranchisement] and set up an owner's corporation to manage the properties' (Easthope, 2019:30). Her analysis is therefore relevant to leaseholder owned freeholds and RTM properties as well as commonhold.
- 3.121 Easthope's comparative work enables her to observe that:

'Irrespective of context or their precise legal form, condominium ownership continues to result in tensions between individual desires and collective responsibilities. Condominium owners own their individual unit, but they are also jointly responsible for the management of the building. Condominium owners must constantly negotiate the tensions between their individual desires regarding their property and their collective responsibilities as co-owners' (Easthope, 2019:35).

- 3.122 This is a helpful reminder that the outcome of the reform process, however radical, will not remove all problems, as some are inherent in this form of tenure.
- 3.123 Easthope also reminds us of the inequalities that are often hidden within multi-owned buildings. Residents are divided between those who own and those who rent, with the latter excluded from control of the building. There are also inequalities between 'older long-term owners with constrained incomes and newer owners who have paid considerably more for their properties and are interested in property upgrades' (Easthope 2019:10). There are also likely to be inequalities between those leaseholders who are owner-occupiers and those who have bought for investment purposes. These inequalities are borne out by the evidence of our empirical research and suggest that policy initiatives should avoid thinking of leaseholders as a homogeneous group.
- 3.124 The scope of Easthope's work enables her to highlight good practice. So, for instance she points to an Australian practice of strata title reports, which are commissioned by prospective purchasers of apartments. These reports include information about insurance, record keeping, maintenance, levies (contributions), finances and loans, by-laws (rules) and recent by-law infringements, history of disputes, maintenance and building defects, as well as basic information on the number of units in the property, the undivided shares, registration date, the name of the developer and condominium manager and the age of the development. As well as providing critical

information, which is not covered by legal advice, these reports could provide a useful evidence that the speedy and proportionate resolution of disputes can help preserve the value of the property.

- 3.125 As part of any proposed programme of leasehold reform, we recommend that the Welsh Government should consider the merits of introducing a similar property title report for leasehold properties in Wales **(Recommendation 3(iii))**.
- 3.126 She also observes that in the jurisdictions she has considered education programmes for residents have expanded. She adds that despite the likelihood that people will be busy and therefore less receptive to education programmes and campaigns at the point when they are looking for and purchasing a property, such programmes do play an essential part in rebalancing the relationship between developers and purchasers.
- 3.127 Easthope (2019) develops her analysis around the life cycle of an apartment building, arguing that it is important ‘to be aware of how it was built and how its governance structures were set up. It is also important to consider how the politics and practices of apartment living can change over time as people come and go and the building ages’ (Easthope, 2019:11).
- 3.128 The focus on the life cycle of a development raised by Easthope (2019) resonates with the work of Blandy (discussed above), as well as Bright’s concern with environmental improvements and a holistic approach to leasehold reform. The opportunity offered by the final report of the Hackitt Review Building a Safer Future Independent Review of Building Regulations and Fire Safety (MHCLG, 2018d) which advocates a principled and systematic approach to building safety, can be utilised to develop an approach which integrates the public management of developments with the private management contained within the lease.
- 3.129 Easthope (2019) structures her analysis around five particular stages in the life cycle of a building or development. The first four stages are

development, handover, early years and later years. The final stage, redevelopment, is of limited significance to this research project.

- 3.130 In relation to the development stage of condominiums, Easthope (2019) suggests that regulation could work towards aligning the interests of developers and the needs of apartment dwellers and points to Germany to suggest the possibilities of resident led developments. She observes that the potential for disputes between residents, for instance around noise, could be designed out at the development stage. At the same time opportunities for social interaction between residents, energy efficiency and easy maintenance of common parts could be designed in. Careful regulation at this stage could improve the quality of buildings and reduce future repair bills. Questions could be put by potential residents to developers about the affordability of the property, in particular taking into account the possibility of design failure.
- 3.131 The next stage Easthope (2019) identifies, the handover stage, can be a stage where serious long-term problems emerge as a result of the actions of developers, and the lawyers, accountants and condominium managers they employ. At this stage decisions are made about budgets, contracts and operational and governance structures. Lack of regulatory oversight of this stage can, in the worst cases, result in 'the exploitation of poorly informed purchasers for the short-term financial gain of unscrupulous developers' (Easthope, 2019:65).
- 3.132 The first ten years of the development Easthope (2019) describes as the 'early years'. This is the period when the condominium may need to be shored up physically, financially and socially. If this is not achieved the implications for the ongoing operation of the development and the well-being of its residents can be serious. Owners have to be recruited to the board, who may be inexperienced and face management structures that are not helpful to their interests. A competent manager who is sympathetic to the

needs of residents has to be appointed and the inevitable initial building defects have to be identified and resolved.

- 3.133 Easthope (2019) spends some time identifying the reasons for residents' reluctance (which appears to be widespread) to participate in the management of their building. She suggests that municipal interventions to encourage, support and educate board members is an important element in recognising the significant social contribution that effective boards play in urban society.
- 3.134 The subsequent, later years, of the development involves the management and resolution of disputes. Easthope (2019) comments that while the three 'P's of disputes (pets, parking and parties) are common all over the world, she quickly realised:
- 'that disputes in condominiums are usually not just about the topic of the dispute itself (Bob's barking dog is driving me mad), but about relationships (Bob never says hello) and ideas about the type of place a condominium should be (Bob doesn't really fit in here)' (Easthope, 2019:111).
- 3.135 Easthope (2019) notes that, even in the best-run condominium, it is likely that there will be some disputes over resident behaviour and disagreements over financing repairs and improvements. These challenges are usually more acute in condominiums with changing resident and owner profiles, and condominiums located in areas that are experiencing significantly shifting housing markets and socio-demographic profiles (Easthope, 2019:130).
- 3.136 She suggests that managers have to be pro-active in managing diverse owner profiles and take active steps to communicate with all residents, including renters. Realistic financial planning is also necessary and this can be problematic with owners who intend only to own for a short period unwilling to contribute to long term plans.
- 3.137 Easthope (2019) concludes by reflecting on the fundamental tension between individual rights and collective responsibility (2019:151). As she

points out, such tensions are not unfamiliar, 'but what is unique about to multi-owned buildings is the way in which these societal tensions between the individual and the collective are institutionalised within this form of property ownership' (Easthope, 2019:152).

- 3.138 She does suggest, however, that if the governance of multi-owned buildings can be got right, which will involve effort from individual owners, developers, government, property managers and other stakeholders, the multi-owned building has a positive role to play in the future viability of cities.
- 3.139 Drawing on the academic research we recommend that longer term, the Welsh Government should consider exploring more radical reforms to leasehold, adopting a more holistic and sustainable approach **(Recommendation 5)**.
- 3.140 This approach moves beyond the binary relationship of leaseholder and freeholder and understands the economic and social role played by leaseholds in multi-owned properties, particularly in urban environments and areas of high housing demand. This should involve:
- A recognition that ownership of a home in a multi-owned building is always going to be a different experience from ownership of a home that is a house and that expectations of homeowners need to be adjusted accordingly.
  - A recognition of the need to balance the different interests of different stakeholders in multi-owned property. This might mean giving greater weight to collective best interests and the need for effective stewardship of property whilst remaining mindful of the possibility of unfair consequences for particular individuals.
  - Responding to the different regulatory needs that arise at different stages of the life cycle of a building.

- Leasehold regulation taking into account the social, economic and environmental concerns of those living in and around multi-owned buildings and that these will change during the lifetime of a building.
- The alignment of the private law regulation of a building with public law regulation, so for instance leasehold regulation should consider planning and health and safety requirements.

### **Gaps in research**

- 3.141 Whilst the academic literature is relatively wide-ranging two significant gaps in the research can be identified. First, there is no research that explores the implications of a jurisdiction running two forms of tenure for multi-owned buildings in UK. This is for the obvious reason, that because take up of commonhold to date has been extremely limited, this remains uncharted territory. It may be that two forms of tenure offers choice, although not necessarily to residents. It is equally possible that one form of tenure, if it was successful, could undermine confidence and the value of the alternative.
- 3.142 The second gap is research into disputes and dispute resolution in those leaseholds that have taken up the RTM or have enfranchised. There is an assumption that this will ameliorate disputes, but it is arguably just as likely to exacerbate them with owners' disputes focused between leaseholders not with an external 'enemy' of the freeholder. This gap was raised by one of the stakeholders interviewed for this research project (discussed in Chapter 5).
- 3.143 Research into the effectiveness of dispute resolution on leasehold in Wales was outside of the remit of this research specification. **We recommend the Welsh Government consider the need for further research to understand the effectiveness of the current system of dispute resolution, including the LVT, the (dis)benefits of resident management and how the current dispute resolution procedures respond to these problems (Recommendation 4).**

## Summary

- 3.144 This knowledge review has considered several governmental/policy reports, trade and consumer surveys and reports, and academic/practitioner research.
- 3.145 It has noted the focus of governmental policy approaches which seek to end abuses, enhance education and information and professionalise the sector by treating leaseholders as housing consumers.
- 3.146 It has also noted that expert working groups such as the Regulation of Property Agents Working Group are producing increasingly detailed proposals for reform and urging a broader review of leasehold law, suggesting that those most experienced in the sector would support a more ambitious programme of reform.
- 3.147 The research team also note the strength of feeling of campaign groups, which demonstrates a lack of trust in leasehold as a form of tenure. Governmental responses to leasehold reform will have to take that strength of feeling into account in producing reform proposals whilst at the same time keeping in mind that proposals must not undermine the viability of the sector.
- 3.148 Academic research urges a more holistic approach to leasehold reform, highlighting for instance the need for different understandings of ownership in multi-owned buildings, noting the lack of homogeneity of leaseholders, and suggesting that there is potential in aligning the private regulation of the lease with public regulation.
- 3.149 Academic research also suggests that focusing on the life cycle of multi-owned buildings, starting from the development stage, may prove a more productive approach than one limited to eliminating abuse.



## **4. Experiences of leaseholders and stakeholders: methods and purchasing the home**

4.1 This and the following Chapter report on the project research data from:

4.2 Stakeholder views from focus groups and interviews;

- Legal analysis of terms in leases;
- An online survey of leaseholders;
- In-depth telephone interviews with leaseholders.

4.3 This Chapter focuses on the research methodology before reporting on the views and experience of the process of purchasing leasehold homes. This includes questions covering purchasing of leaseholds and knowledge of leasehold prior to purchase. In Chapter 5 the research team considers the data on living in leasehold properties.

### **Methodology**

#### *National stakeholder views focus groups and interviews*

4.4 To ensure the position of non-resident stakeholders in Wales is understood and assist in identifying Welsh views on leasehold the research team undertook two focus groups at the beginning of the project. The topic guide is at Annex C. The attendance at the focus groups fell below the number planned in the research design and accordingly the research team supplemented them with a number of interviews.

4.5 Two focus group sessions took place in Cardiff and Wrexham with a total of five respondents across the two sessions. The participants comprised of solicitors involved with conveyancing and leasehold disputes and property agents from across the region. The property professions were contacted due to their role in Wales and the availability of their contact details. All were approached on the basis of their experience in this area. The purpose of the focus groups was to elicit responses to questions dealing with the efficacy of dealing with leasehold dispute resolution in Wales; whether commonhold

was preferable to leasehold and whether there was a specifically Welsh agenda in this respect; issues concerning leasehold houses; rising ground rents; permission fees; the reputation of leasehold tenure; mis-selling; forfeiture; enfranchisement and extension; information packs for leaseholders; and standardised key features documentation.

- 4.6 In addition, to supplement the small focus groups, a small number of unstructured stakeholder interviews were also undertaken; one with a further property agent, one with a member of the Leasehold Valuation Tribunal and with two members of the Welsh Government's *Task and Finish Group* (see para. 3.18, above), who represented both some landlords and property agents. The format of the interviews followed the format of the focus group discussions.<sup>23</sup>

#### *Legal analysis of terms in leases*

- 4.7 The relationship between the freeholder and the lessee is primarily determined by the terms of the lease, although statute adds particular rights and responsibilities. In multi-owned properties the lease will also govern the relationship between the leaseholders.
- 4.8 In effect, whilst statute provides for rights such as RTM, lease extensions etc. and provides remedies to protect lessees from unreasonable service charges and administrative costs, the terms of the lease provide a private law regime which governs the use of the property. It is the lease that governs relationships between those with interests in the property and/or the rest of the building, the wider estate or development.
- 4.9 Respondents to the survey and the leaseholder interviews (see para. 4.9 and 4.21, below) were asked to send the researchers copies of their leases. Twelve leases were received, 11 of the leases related to flats and one was the lease of a house. The leases were diverse in terms of the length and

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<sup>23</sup> All members of the TFG were invited to participate in the focus groups

terms; see Annex D which sets this out in more detail. Whilst the leases represent only a tiny proportion of Welsh leases, and indeed a very small proportion of those who were surveyed, they cover a wide range of types of properties and relationships. It is however worth noting that lessees were more likely to send us leases when there were problems with the terms and so the sample is likely to be distorted. The leases cannot be seen as typical – it is the view of the research team that there is no evidence that there is a ‘typical’ lease.

#### *On-line survey of leaseholders*

- 4.10 Two separate surveys were created: one for leaseholders of flats (see Annex E) and one for leaseholders of houses (see Annex F). Each had an English and Welsh language version. The research team constructed the survey on Qualtrics software. The flat leaseholder survey was piloted with a leaseholder known to the research team. The surveys went live on the York Law School website on 27 September 2019 and closed on 20 December 2019.
- 4.11 The survey was publicised through the LEASE and Leasehold Knowledge Partnership (LKP) websites. It was also advertised on the websites of some Welsh MPs and AMs using contacts of the research team. E-mails were sent to Registered Social Landlords in Wales requesting them to circulate details of the survey to leaseholders.
- 4.12 In total 129 responses were received (Flats 69; Houses 50). Cleaning the data to remove responses that had not completed any of the substantive questions left 80 survey responses (Flats 50; Houses 30). This report is based on these 80 survey responses. Not all respondents answered all questions. A number of the questions allowed respondents to provide open text answers. The report includes verbatim quotes from some of those answers.
- 4.13 *Who were the respondents?* The original research design for this project included using the Family Resources Survey (FRS). FRS is a continuous

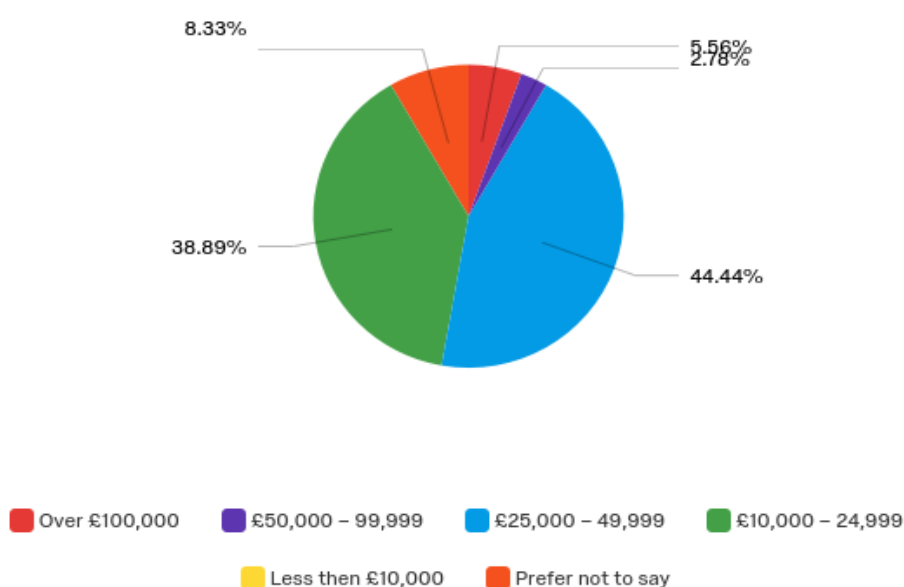
survey undertaken for the Department of Work and Pensions across the UK and provides comprehensive details of householders' circumstances and finances. The FRS surveys approximately 900 people per year in Wales and it was hoped that it would provide a sufficient number of leaseholders three- or five-years' data to be pooled to provide a robust sample to facilitate finer-grained analysis of the attributes of leaseholders, the properties and places they reside. This would have provided a way to compare the respondents to the survey with leaseholders more generally. However, the data from the FRS did not provide a clear way to identify leaseholders from other owner-occupiers.

- 4.14 Instead, the research team asked the survey respondents for some details about themselves, their circumstances and property. This data is set out here.
- 4.15 *Use of the property* - the vast majority of the respondents lived in the flat or house as their home. Only four of the flats and one of the house respondents either rented it out on a short-term tenancy or on a different basis (e.g., as a holiday home).
- 4.16 *Date of purchase* - for the house leaseholders, all 30 had purchased the lease after 2000 with only two before 2014. For the flat leaseholders there was a wider spread of dates starting from 1986 to 2019 with a majority purchased since 2010.
- 4.17 The research team were interested to find out if the leaseholders had bought the lease under any particular scheme, specifically: shared ownership, retirement housing, Help-to-Buy Wales, right to buy from a local authority, right to acquire from a housing association, and buy-to-let mortgages. The vast majority (75%) of the flat leaseholders in this research had not purchased under any of these schemes. The only notable numbers were 5 respondents of flats who lived in retirement housing. For the house leaseholders (n=30), 14 had not bought under any scheme, but 13 had

bought under the Help-to-Buy Wales scheme and 3 under a shared ownership scheme.

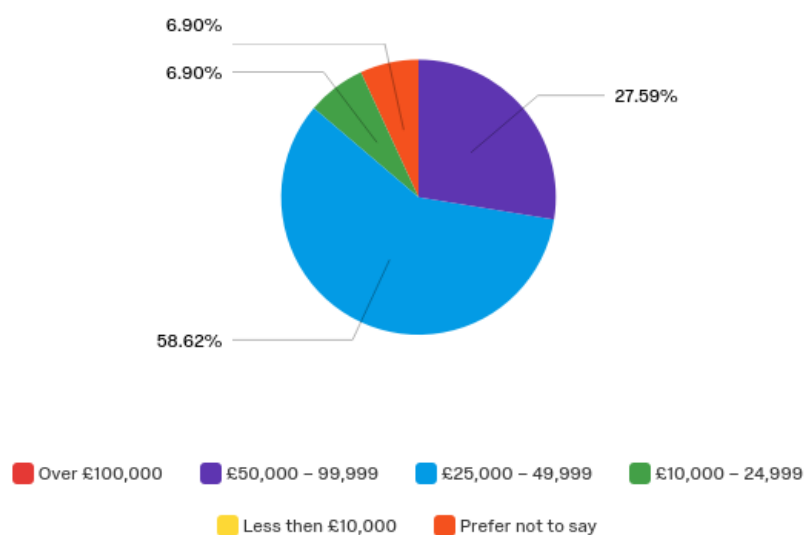
- 4.18 Age - the flat leaseholders in this research ranged from 22 to 85 with an average age of 57. The house leaseholders ranged in age from 29 to 70 with an average of 42. The lower average age of the house leaseholders may be explained by the fact that the flat leaseholders included five respondents who lived in retirement schemes.
- 4.19 Family members - reflecting the different age profile, the house leaseholders had a higher proportion of children under the age of 18 (houses 30%; flats 4%). More of the house leaseholders had partners when compared to the flat leaseholders participating in this research.
- 4.20 Income – the house leaseholders in the research had higher household incomes than the flat leaseholders. This could be explained by the age and also the difference in price for flats and houses. Of respondents who disclosed their income, all bar two had a net annual household income of less than £100,000 (shown in Figure 4.1 and 4.2).

**Figure 4. 1** Flats: Approximately, how much is the net annual income of your household?



Source: Survey of flat leaseholders (n=50)

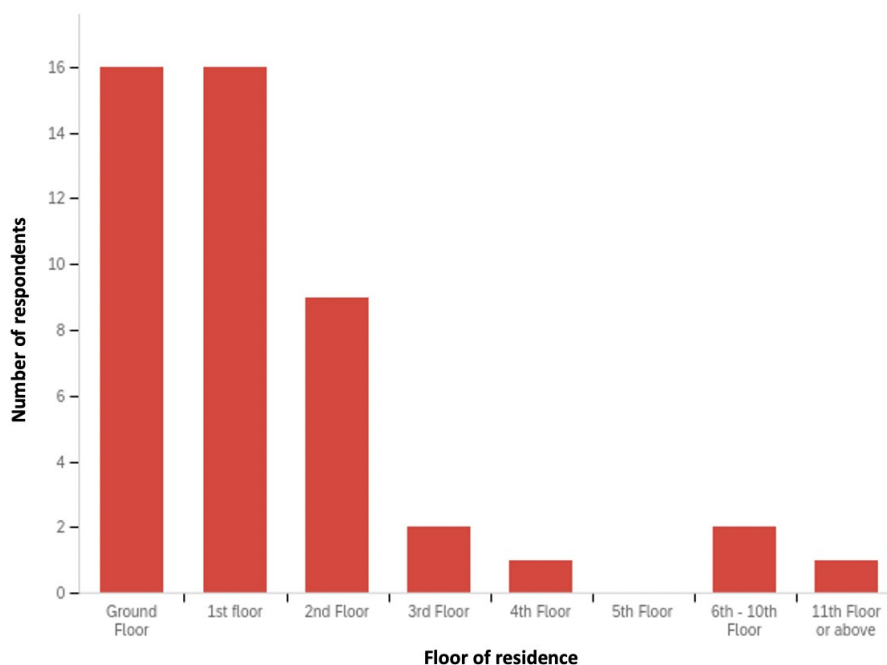
**Figure 4. 2** Houses: Approximately, how much is the net annual income of your household?



Source: Survey of house leaseholders (n=30)

4.21 Additional questions were asked to flat leaseholders about the flats and the block in which it was situated. When asked whether the flat was a converted house or originally built as a flat, 74% of respondents owned a purpose-built flat (34 out of 46). Across the respondents the size of the blocks varied from two flats to 300. Similarly, the number of floors in the block varied from two to over 11, although 67% (31 out of 46) were three storeys or fewer. Given this, it was not surprising that amongst the respondents more lived on the Ground to Second floor.

**Figure 4. 3:** Flat respondents: Which floor do you live on?



Source: Survey of flat leaseholders (n=46)

#### *In-depth telephone interviews with leaseholders in Wales*

- 4.22 All respondents to the survey were invited to take part in a telephone interview and 27 interviews were completed. Of these, 23 were flat leaseholders and four house leaseholders. Of the flat leaseholders, three lived in retirement housing. This is a larger proportion than the survey respondents and more than is likely to be resident in the general population of leaseholder of flats. The leaseholders came from across Wales. Nine of the flat leaseholders (out of 23) were based in Cardiff. Given the number of sales of flats in Cardiff compared with other districts of Wales (see para. 2.15, above), this reflected the national picture.
- 4.23 The vast majority of interview respondents (70%, n=19) lived in properties owned by a commercial freeholder, where the freehold was held by a corporate entity on a commercial basis. Fifteen percent of the interviewees

(n=4) lived in properties where the freehold was held by a housing association. One of the interviewees had exercised their right to collectively enfranchise their property, and the remainder (n=3) had an individual freeholder, who either lived on site or had some other close connection with the property.

- 4.24 All of the interviews were carried out in English, although respondents were offered an interview in Welsh. The interviews lasted between 45 minutes and 1 hour.
- 4.25 The interviews were conducted using a topic guide. The matters covered by the topic guide mirrored those in the survey but placed more emphasis on the experience of being a leaseholder and the relationship with the freeholder and managing agent (if any) (see Annex G).
- 4.26 Given the fact that they were a sub-set of the survey respondents (see para. 4.09), the nature of the sample must be acknowledged. The sample had more experience of problems with their leasehold property than would be expected amongst the typical leaseholder.
- 4.27 The interviews were transcribed and subsequently imported to the NVivo qualitative data analysis software.
- 4.28 The data was then subject to a thematic analysis. The approach taken draws on the staged approach proposed by Braun and Clarke (2006). The approach taken within this study can largely be described as 'deductive' - the initial codes and themes for the interview analysis were developed from those distilled from the survey data analysis. These themes were then reviewed in light of the interview data to map their prevalence and check whether any additional themes were generated by the new data.

### *Limitations*

- 4.29 It is important to acknowledge that the research underpinning this work had several limitations that may have had an impact on its findings.



- 4.30 The research team took steps to ensure a geographical spread of stakeholder focus groups by holding sessions in both North and South Wales. Although the research team wrote to many solicitor firms and estate agents, participation in the focus groups was below what was anticipated in the research design. Accordingly, the partial nature of the data from stakeholders must be acknowledged. Despite this, the quality of the data collected from the focus groups was sufficient to allow the research team to construct a detailed account of some stakeholder views. Consequently, this research project does not reflect all stakeholders' views.
- 4.31 For the qualitative work involving leaseholders, a key limitation here was the reach of the recruitment strategy for participants. The main thrust of the strategy involved advertising the online survey through existing channels, including the LEASE and LKP website. It is clear that participants also shared the survey on the NLC Facebook page. Though efforts were made through Housing Association mailing lists, the research team recognise that the majority of the participants found the survey through dedicated leasehold channels. The impact of this is twofold. Firstly, those leaseholders are likely to be more 'active' and knowledgeable about leasehold policy issues than the average leaseholder. Secondly, the sample is likely to be issue-based and to be skewed in favour of respondents with problems with their leasehold tenure.
- 4.32 The response rate for both the survey and subsequent interviews fell below what was expected in the initial research design. Previous studies, including the *National Leasehold Survey 2016* have received proportionally fewer responses from Welsh leaseholders (see 3.67). Aside from the acknowledged limitations of the recruitment strategy, these issues may point to less well-developed knowledge distribution channels amongst Welsh leaseholders.
- 4.33 In line with the guidance provided by Huberman *et al.* (1994), the data collected was of high quality and of sufficient depth and detail to reach the

standard of saturation necessary to ensure quality within qualitative research (Fusch and Ness, 2015).

### **The process of purchasing**

- 4.34 This section reports on the experience of purchasing a leasehold property, taking the data from the leases, the survey and interviews with leaseholders. In addition, where appropriate, the research team have also included the views of the participating stakeholders.

#### *Understanding of the lease: the role use of solicitors and conveyancers*

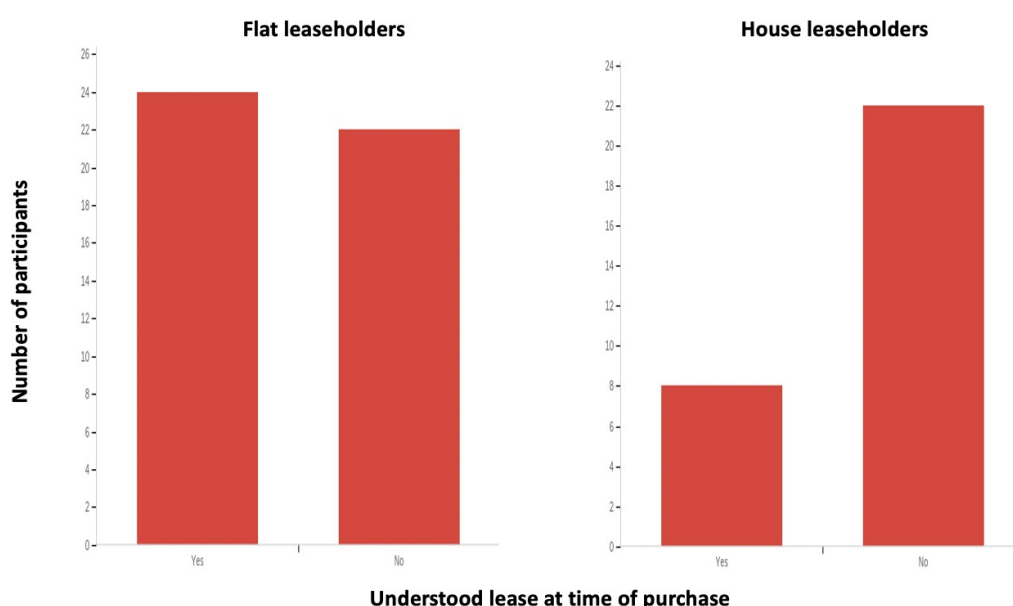
- 4.35 In England, both the UK Government, through Tackling Unfair Practices in the Leasehold Market (MCLG, 2017) (3.06, above), and the House of Commons, through the Housing Communities and Local Government Select Committee Report on Leasehold Reform (House of Commons, 2019) (3.13, above), have pointed to problems in the conveyancing process. In particular, the House of Commons report included recommendations for the prohibition of financial incentives to persuade a customer to use a particular solicitor when buying a new build leasehold property.
- 4.36 In Wales, the *Report of the Task and Finish group* (TFG, 2019) also identified a need to improve how leasehold properties are sold. This was echoed by participating stakeholders. In their view, lawyers need to explain effectively leasehold tenure to clients in order to avoid confusion in order to assist with enhancing the reputation of the tenure. In relation to onerous terms, this was exacerbated by poor advice.
- 4.37 In Wales, some members of the focus group felt the Help to Buy – Wales requirement to use an accredited conveyancer is improving understanding of leases. Moreover, this is only a section of the leasehold market, and participants did not think that, to date, the accredited conveyancer scheme has been wholly successful (see further para. 4.39). However, there were no other sources of evidence available to support either of these views. Stakeholder participants raised the role of mortgage companies in

preventing unfair terms that diminish the value of the asset they lend against. It was suggested by stakeholders that if mortgagees refused to lend it would help prevent onerous terms. Presumably, this suggestion related to new leases only as otherwise leaseholders with onerous terms would struggle to find buyers for their property.

- 4.38 Again, on the issue of lawyers and mortgagees, it was pointed out that the Council for Mortgage Lenders has strict compliance criteria concerning residential leases, but it was felt that conveyancers do not adhere to these as rigorously as they should. It was suggested by participants that there should be a specific set of requirements in respect of leasehold properties that conveyancers ensure are complied with (e.g., ground rent capped, mortgagee protection clauses) in order to improve best practice.
- 4.39 Leases are long documents written in complex legal language. It may be that some of this complexity cannot be avoided – leases have to govern relationships and financial arrangements over a long period of time. Typically, lawyers who draft leases are concerned with ensuring the lease is comprehensive rather than comprehensible.
- 4.40 Participant stakeholders suggested that it is the role of solicitors to ensure purchasers understand the terms of the lease. Stakeholders did not perceive any particular Welsh angle in respect of this issue and felt that there is scope in both England and Wales to do things better (see 4.37, above). In this respect, stakeholder participants considered that the Welsh approved conveyancer scheme could be improved; they believed it is very easy to gain accreditation and suggested a scheme with higher standards is required.
- 4.41 Participant stakeholders suggested that leaseholders simply do not understand the basic legal situation: they are paying a premium for a time limited interest with covenants attached, instead, leaseholders may feel they have bought their flat and own it. The research team probed the understanding of the survey respondents when they bought the property. The responses must be seen in the light of the time that has elapsed from

purchasing (see para. 4.15, above). There was a greater difference between the flat and house leaseholders in terms of understanding the lease when they purchased the property. More than half of the flat leaseholders stated that they understood the lease but 73% of house leaseholders stated that they did not (Figures 4.04 and 4.05).

**Figures 4.4 and 4.5:** Numbers understanding of leases at purchase - Flat leaseholders and House leaseholders



Flats (n=46)

Houses (n=30)

Source: Surveys of flat and house leaseholders

4.42 The interviews probed this further and found that the majority of participating leaseholders felt that they understood, at the time of purchase, that there was a difference between freehold and leasehold. A common theme amongst participating leaseholders was that although the interviewees understood that there was a legal or technical difference in purchasing a leasehold property, there was a significant lack of appreciation of the qualitative day-to-day difference between freehold and leasehold tenure. As one leaseholder explained:

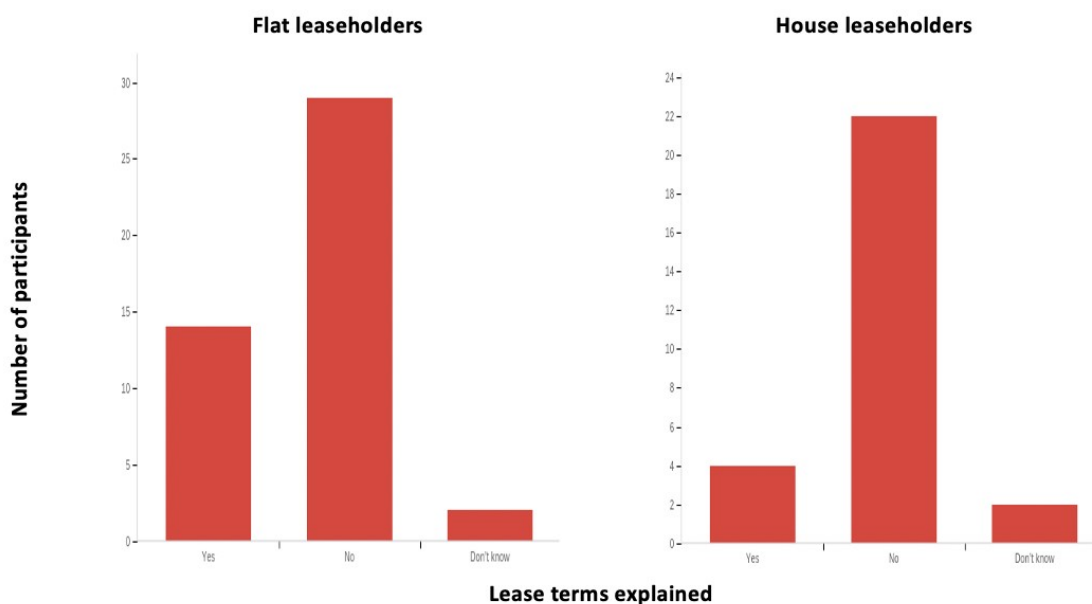
‘Most of the time I do feel like I own my flat but then when there are issues... I would like to replace some of the windows cos the double-glazing’s gone in them, I have to get permission to do that; and that’s when it sort of feels a little... like, there’s a lease. So yeah, it can be a bit frustrating sometimes.’

*Flat leaseholder, Cardiff.*

4.43 Nearly all of the survey respondents had used a solicitor or conveyancer in the purchase. There was some difference between the experiences of the flat and house leaseholder participants in terms of whether the solicitor or conveyancer had explained the terms of the lease. It was more common for the flat leaseholders to have had the terms of the lease explained to them than house leaseholders (see Figure 4.06 and 4.07). However, even for this group of participants, 65% stated that the terms were not explained (n=29).

**Figures 4.6 and 4.7:** Whether the terms of the lease were explained - Flat and house leaseholders

4.44



Flats (n=45)

Houses (n=30)

Source: Surveys of flat and house leaseholders

4.45 For many interviewees, their solicitor or conveyancer did not spend time explaining the legal implications of leasehold to them. Of those who did receive advice, the level of advice received appears to have been issue driven and dependent on the level of scrutiny and questioning asked for by individual leaseholders interviewed. As one leaseholder explained:

‘I had to go back to them with, with questions. [...] So there was lots of things on there that I was having to say to them “Guys, I really don’t understand this, can you help me and tell me is this my responsibility?” [...] [T]he solicitor will only tell you what you ask them and there, there, there’s lots of stuff in there that you just don’t really understand. And so I took it on the basis that lots of people in the UK have got leasehold properties, you know the numbers type thing.’

*Flat leaseholder,  
Cardiff.*

4.46 One leaseholder expressed concerns about the limited nature of the advice:

‘When a normal working person contracts a solicitor you think they’re acting in your interests but I’ve since been told that conveyancers don’t actually act in your interests, all they do is look at the lease to check that the lease is “satisfactory” they don’t have to advise you that leases are, are not gonna be in your favour in the long run.’

*Flat leaseholder, Swansea.*

4.47 The interview data also appears to indicate concerns amongst some leaseholders around the ability of their solicitors or conveyancers to provide the necessary level of advice and support. This appeared to be particularly the case where leases were somewhat unusual, e.g., leases of housing association retirement properties:

‘I’d read leases before, and my wife was a legal secretary, but there was lots of questions, having read the lease, and the solicitor acting for them in [North Wales], again very experienced, she wasn’t aware or

she found strange some of the, well the manner in which it was being sold. There isn't enough practical experience of dealing with a housing association selling a leasehold property with this thirty percent subsidy, if you like. We were telling solicitors and estate agents what they should be asking and what they should be telling us. And the thing is [...] we weren't the only ones; once we moved in here I started to get to know people here, they've [...] come across similar problems, so it's common.'

*Flat leaseholder, Conwy*

- 4.48 Without expert advice it is not surprising that purchasers do not understand their leases. The leases analysed for this project were long, varying from 12 to 44 pages. Each lease is set out differently. The language was frequently difficult and arcane, and it was challenging, even for experienced lawyers, to locate all the obligations imposed upon lessees. Even the language to describe the parties is different in different leases: lessor/landlord or lessee/tenant.
- 4.49 One lease analysed did include a useful index of the clauses in the lease. Two leases included summaries of key clauses that in the view of the research team did not help the reader navigate the document.
- 4.50 An example of the complexity of language used was: 'a moiety (coextensive with and contiguous to) the Apartment block in each case and severed vertically of internal divisions walls which serve to enclose the apartment and the garage hereby demised...' (Lease 8). This was from a description of the 'demise' and explains the extent of the wall that is the responsibility of the leaseholder. This sort of description may not be read by a prospective lessee but may prove to be significant in the future, perhaps because there is a need to establish who is responsible for repairs.

## *Management*

- 4.51 The *Report of the Task and Finish Group* (TFG, 2019) in Wales made a number of recommendations about managing agents as did the *Regulation of Property Agents Working Group Report* (Lord Best, 2019). Leaseholders also reported dissatisfaction with the level of service provided by managing agents in *the National Leasehold Survey 2016* (Brady, 2016). The research team were interested to understand what the management arrangements were and how much leaseholders know about their freeholders and, if there was one, the manager.
- 4.52 In the more complex leases analysed it was very difficult to understand management arrangements. This is not surprising; such arrangements are probably better diagrammed rather than described in words.<sup>24</sup> The research team is not aware of that ever being done in leases, but Easthope (2019) uses diagrams to explain different arrangements. In the absence of them, for lessees, it can be difficult to discern the details of the governance structure of the property and the restrictions on use. Diagrams would be particularly helpful in complex lease arrangements and we think there is merit in the Welsh Government exploring this approach. **We therefore recommend the Welsh Government introduce mandatory template leases for new developments which could for instance include diagrammatic representations of management structures (Recommendation 3(ii))**
- 4.53 There is no standard system for managing developments across England and Wales, as the leases indicated. Recent years have seen the proliferation of leases relating to flats located on developments with extensive common parts as is shown in a number of the leases. Easthope *et al* (2014) discuss the attractions of these schemes for developers as they enable 'residential land use and provide for higher order urban services facilitated by

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<sup>24</sup> Anecdotally, a participant in our qualitative interviews provided a diagram setting out a 'chart of legal title and relationships' governing their flat as they felt that this was the most straightforward way to explain the complex connections between various legal entities.

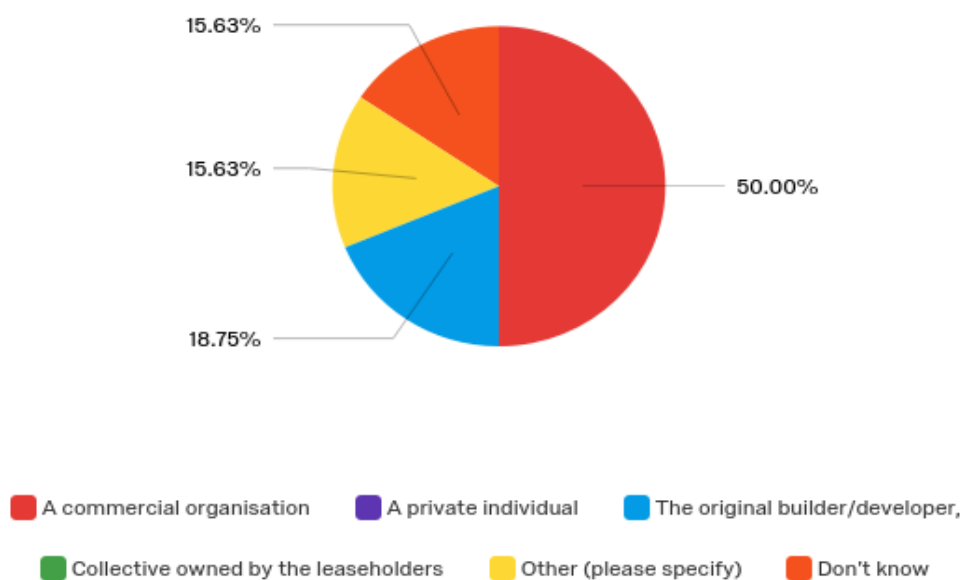


economies of scale resulting from heightened population densities' (Easthope *et al*, 2014: 290).

- 4.54 Such development schemes include provisions for the management of common spaces and the management of the behaviour of residents. The schemes all included a management company – a pattern that the research team saw in the leases of new built developments analysed in this project. However, the governance of the management company was very different across the leases. For some the company was set-up by the landlord/developer and the tenants had no control. In others the control was shared, and in some it was completely in the control of the tenants.
- 4.55 The relationships between the various parties are made even more complicated where there is a management company and/or managing agents in place. The lease may simply allow the freeholder to use management agents. Or the lease may be a tripartite lease, with a freeholder, a management company (that may use an agent) and the leaseholder. Without very clear explanation it may be difficult for a leaseholder to understand how responsibilities are shared between freeholder (often the developer), management company and managing agent. Blandy *et al* consider that the opacity of management arrangements is a key contributory factor to residents' feelings of powerlessness (Blandy, Dixon and Dupois, 2006).
- 4.56 Easthope *et al* (2014) also point out that the marketing of such developments may not reflect long term costs of running the development, so underestimating the levels of service charges and sinking funds etc.
- 4.57 Such developments also attract investment purchasers, and the assured shorthold tenants who live in the buy-to-let properties have relatively low security of tenure. This can lead to a high level of residential churn with subsequent impacts on community development and governance capacity and can lead to extensive dissatisfaction for owner-occupiers (Easthope *et al*, 2014: 297).

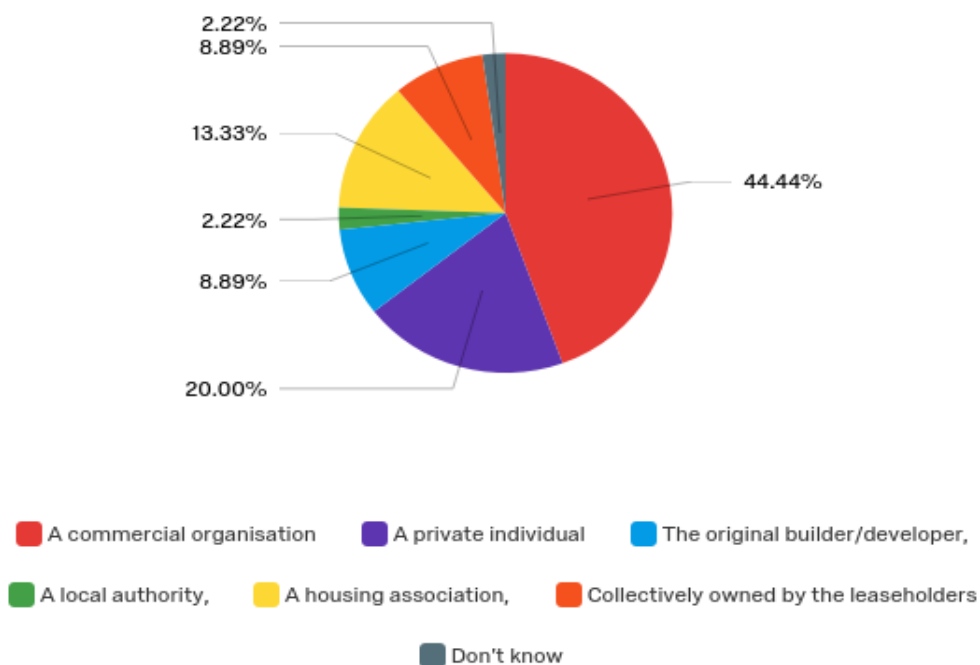
- 4.58 On the other hand, it should not be assumed that only lessees on large developments with management companies are dissatisfied. One of the sample leases analysed was of a property comprising two flats within a house, where the freeholder occupies the ground floor flat. Although there are no common parts, the interview with the leaseholder indicated that the landlord has interpreted the terms of the lease in an onerous way, requiring, for instance, an inspection of internal decorating works.
- 4.59 To explore what leaseholders understood about the other parties to the lease, the research team first asked respondents to the survey who their freeholder was and, additionally for flat leaseholders, their manager. Figure 4.08 shows for participating house leaseholders 16% did not know who their freeholder was.
- 4.60 For half of participating house leaseholders (16 out of 32), the freeholder was a commercial organisation. The position for flats was different, with participants having much more knowledge of the identity of their freeholder and a wider spread of freeholders (Figure 4.09). It seems likely that knowing the identity of the freeholder is more common because of the need within flats to interact more with the freeholder on matters such as management issues or buildings insurance.

**Figure 4.8:** House leaseholders: who is your freeholder?



Source: Survey of house leaseholders (n= 30)

**Figure 4.9:** Flat leaseholders: who is your freeholder?

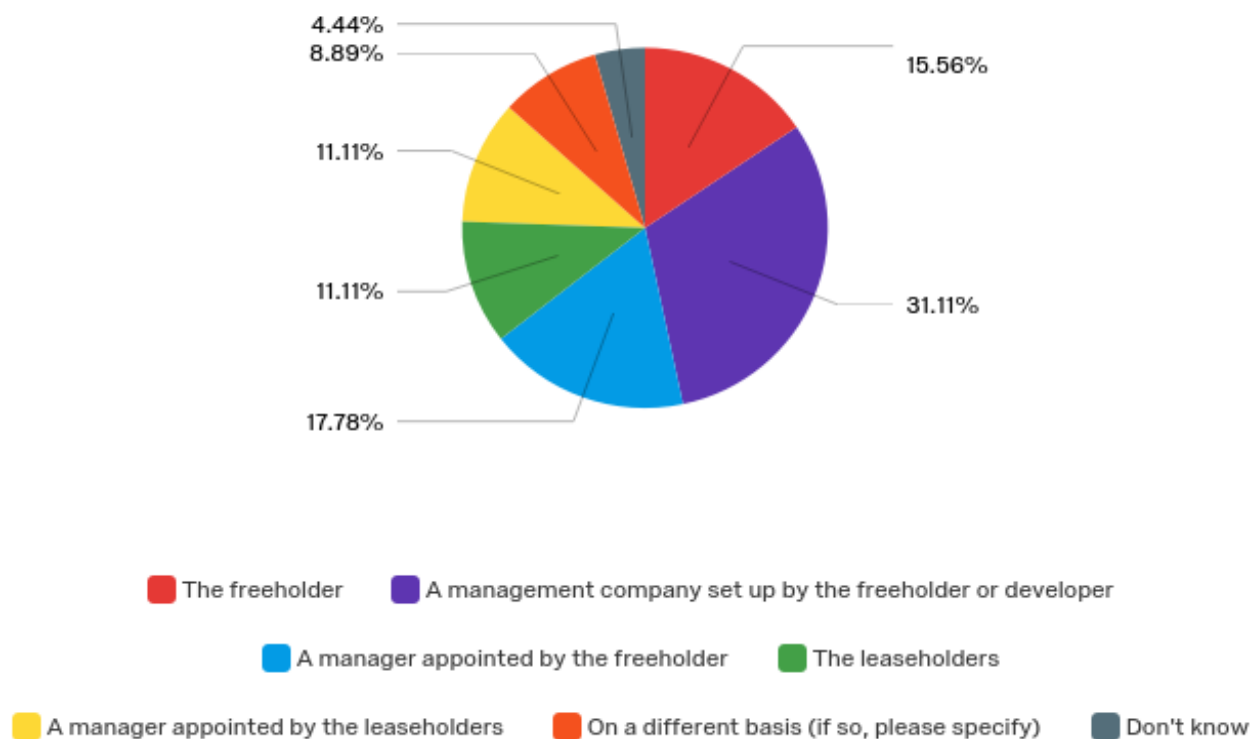


Source: Survey of flat leaseholders (n= 30)

4.61 All 27 of the interviewees, whether flat or house owners, knew who their freeholder was – indicating that they were more knowledgeable than the survey respondents. The majority of interviewees also had a commercial organisation as their freeholder (17 out of 27).

4.62 In terms of management of the building for flat leaseholders, the most common model (31%) amongst survey respondents was a management company set up by the freeholder or developer (Figure 4.10). There was more uncertainty amongst these participants as to the identity of the manager, compared with knowledge of the identity of the freeholder.

**Figure 4.10:** Flat leaseholders: Who is your building managed by?



Source: Survey of flat leaseholders (n=46)

4.63 This pattern was mirrored amongst interviewees in the qualitative study. 44% (n=12) of interviewees stated that their manager had been appointed by their freeholder. There were also a number of examples (19%, n=5) where management was undertaken by a management company established by

the freeholder but where residents comprise the majority of directors and/or shareholders. Such resident management structures are often built into the legal leaseholder/freeholder relationship, as was illustrated by the leases sent to the research team (see Annex D: Leases 3, 5 – 8, 10, 11).

#### *Responses to leaseholders' lack of understanding*

- 4.64 The reports considered in Chapter 3 identified several recommendations to improve the understanding of purchasers of leasehold homes. These included:
- 4.65 A standardised key features document should be provided at the start of the sales process by a developer or estate agent which should clearly outline the tenure of a property, the length of any lease, any ground rent or permission fees, and —where appropriate — a price at which the developer is willing to sell the freehold within six months (*The House of Commons Housing Communities and Local Government Committee Report Leasehold Reform*, House of Commons, 2019) and,
- 4.66 'How to buy and live in leasehold guides' which estate agents should provide alongside property particulars and managing agents should issue the guide with ground rent and service charge demands (*Residential Leasehold Reform: A Task and Finish Group Report*, TFG, 2019).
- 4.67 Echoing the TFG proposal, the stakeholder participants considered that there needs to be greater awareness/education about the realities of leasehold. Participants were supportive of the TFG recommendation that the Welsh Government create a single point of access for anything leaseholders need to know about their home.
- 4.68 Stakeholder participants discussed whether developers should issue a sheet of key features of leasehold for purchasers - clearly outlining the tenure of a property, the length of any lease, any ground rent or permission fees, and — where appropriate — a price at which the developer is willing to sell the freehold within six months. Views were mixed on this issue. Some

stakeholder participants felt that a standardised key features document would help, while others did not believe that this would be particularly helpful and highlighted the role of conveyancers or solicitors: they should be advising and explaining leasehold and potential problems to clients.

### **Summary**

- 4.69 This Chapter reports on the experience of purchasing a leasehold property. There is some overlap with the findings from the survey of leaseholders undertaken for this project, and evidence from trade and consumer organisations' reports (paras. 3.61 – 3.86).
- 4.70 The language in the leases analysed was frequently difficult and arcane, and it was challenging, even for experienced lawyers (as members of the research team are). Stakeholder participants suggested that leaseholders simply do not understand the basic legal situation and the survey and interviews bore this out to some extent. However, at the point of purchase, survey and interview participants revealed that although most leaseholders understood on some level that there was a legal difference between leasehold and freehold tenures, there remains a significant lack of a *qualitative* appreciation of what being a leaseholder entails.
- 4.71 The stakeholder participants considered that there needs to be greater awareness/education about the realities of leasehold to limit information asymmetries. However, there was no consensus on how to provide information.

## **5. Experiences of leaseholders and focus group members: living in leasehold properties**

5.1 Using the research data from both the leaseholders and the focus group members, this Chapter considers the data on living in leasehold properties.

In particular it covers:

- Ground rent
- Service and insurance costs
- Reserve or sinking funds
- Permissions and other charges
- Advice after buying
- Disputes

5.2 Finally, it turns to the general reputation of residential leaseholds to probe the research question: What are the advantages/disadvantages of owning a leasehold property?

### **Ground Rent**

5.3 A number of the reports in Chapter 3 criticised provisions in leases which allow for disproportionate increases in ground rents (see paras 3.18, 3.51 and 3.79). In the selection of leases analysed for this research, ground rents varied from a 'peppercorn rent' to £438 per annum. Reflecting the literature (see CMA, 2020 in particular), there is no obvious reason for the difference in the ground rents.

5.4 Several of the more recent leases analysed had clauses enabling ground rents to rise via a formula either relating the rise to RPI – which has been identified as problematic by the Competition and Markets Authority (CMA, 2020, see para. 3.52, above), or varying in relation to the value of the building.

5.5 Although stakeholder participants suggested that there is no good reason why ground rents should not be set at nominal sums; responding to the House of Commons report (2019), some questioned what constitutes a nominal sum, and were very concerned about setting caps too low, which would end institutional freehold investment. In this respect it was suggested by stakeholder participants that ground rents are a cheap way of ensuring effective and responsible estate management, but that the rent needed to be at a level sufficient to attract investors. No evidence was, however, given by the stakeholder participants for this. Stakeholder participants felt that an annual £150/£200 per annum outside London, and £400/£450 annum in London, with RPI increases, would achieve effective stewardship of buildings. In line with the Welsh Task and Finish Group (2019), participating stakeholders felt that doubling clauses are wrong and the index should be RPI. It is important to note that the CMA and *The House of Commons Housing Communities and Local Government Committee Report Leasehold Reform* had concerns about index linked rises in ground rent and did not support this approach.

5.6 Turning to the survey respondents, not all respondents knew the amount of their ground rent. For flat leaseholders the median rent was £150 and three leases specified 'peppercorn' ground rents. The range amongst participating flat leaseholders was from 'peppercorn' to £3000 pa. The respondent with the £3000 pa ground rent noted:

'They tried to raise it by 47% in 2014 (11 years after lease commenced) even though all property prices in the estate were down. We challenged and got it reversed on the technicality that they missed the anniversary. Expect it to go up massively in 2023 to compensate them. Suspect it will rise so much in 2023 that it'll turn all properties into shorthold tenancies.'<sup>25</sup>

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<sup>25</sup> If the Welsh Government does bring the Renting Homes (Wales) Act 2016, Sched. 2, into effect (see para. 3-11) that should not happen, but the value of the property may still be affected.



- 5.7 For the participating house leaseholders the median rent was £200 and none of the leases specified a 'peppercorn' rent. The ground rents ranged from £4 to £300 pa.
- 5.8 The research team asked survey respondents if they knew whether their ground rent could increase. 40% of flat respondents (17 out of 42) did not have a ground rent that would increase compared with 38% (16) that could be increased and 21% (9) did not know. 96% of house leaseholders reported that their lease provided for the ground rent to increase (26 out of 27).
- 5.9 For those who could explain the basis of increase the most usual basis was inflation (RPI).
- 5.10 All of the participants interviewed were asked about increases in ground rents and whether any future increases were a cause for concern. Though there were some concerns about the long-term affordability of index-linked ground rent increases, the main area of concern was where review periods were set out in leases (e.g., every 25 years), but the calculation of those increases was not clear.

### **Service and insurance costs**

- 5.11 The National Leasehold Survey 2016 (Brady, 2016) demonstrated a considerable dissatisfaction with the level of service charges. For survey respondent flat leaseholders, service charges loomed large as a concern. 95% were paying a service charge and predominantly this was a variable charge (84%; 37 out of 45). 18% (n=8) did not know who paid for the insurance for the building.
- 5.12 The research team found that 76% (19 out of 25) of the house leaseholders were paying a service charge. Of the 19 house leaseholders, 50% of those were paying a variable charge (n=9), 33% a fixed amount (n=6) and 17% did not know (n=3). Charges were generally for common areas around the estate on which the house was situated.

5.13 For both flat and house leaseholders, the majority of survey respondents considered that service charges did not represent value for money: 71% for flats; and 89% for houses. For both flats and houses, respondents were able to explain why they considered the charges did not represent value for money. The comments focused on complaints about the quality of service compared with the cost:

‘In 4 years has increased 43%. Virtually no maintenance and cleaning has been done in the past 3 years. [Company] have just been appointed this year, for the road areas, they also do as little as possible.’

‘I pay 1400 pound service charge for poor service for cutting grass and change bulbs and odd repair scandalous.’

‘The service has been very poor, they get paid thousands every year and do very little for it even less than they are supposed to do.’

‘Works overpriced, Work is not competitively tendered, work directly awarded to sub company of [freeholder].’

5.14 For the flat leaseholders, respondents also voiced concerns about transparency and the relationship between the landlord and the manager:

‘Lack of transparency about commissions, and whether contractors pay to be approved. Insistence on approved contractors, usually national, rather than local ones. Will not itemise Management fees. Do not disclose bonus payments and do not ask Leaseholders to express an opinion before they are awarded. Do not publish income & expenditure (except our £10,000 contribution) until end of year - we wonder what they do with the other income until then (1% of sale price when changes hands)’.

‘The freeholder and managing agents are in collusion to extract as much money as they legally can from us.’

5.15 This lack of transparency was a common theme within the interview responses, both flat and house leaseholders. Nearly a fifth of interviewees (19%, n=5) had no idea of the services they received in return for the charges they paid. Other interviewees commented that, despite probing the costs incurred by their managing agent and amount detailed on service charge demands, they were unable to obtain the level of detail they wanted:

‘I’m not entirely sure but I believe it includes sort of the maintenance of like the common areas, obviously the buildings insurance, things like sort of the rubbish collection I’m presuming is included in that.’

*Leaseholder, Cardiff*

5.16 In terms of the insurance of blocks, the concerns included the cost and the commission for the manager or freeholder, as these quotes from the survey illustrate:

‘He charges us a huge commission to arrange the building insurance and had the building insured for £1.3 million....for 7 flats.....that are currently worth about £60,000 each’

‘The managing agent and their preferred broker partner organisation can arrange fees and commissions between them and force leaseholders to reward them to an unethical and immoral extent.’

5.17 For some interviewees, insurance charges were seen as the primary driver for increases in cost. This fed into wider transparency issues within the relationship between the managing agent and leaseholders. One leaseholder explained that they had achieved a significant reduction in insurance costs through a new Right to Manage company:

‘Once the RTM was established the service charge was reduced by 23%. And the principal reason for that was that we... the biggest reduction was on building insurance where instead of using the manager’s broker, the RTM went to the market. And then the second biggest was in building maintenance whereby the RTM hires in

maintenance companies, whereas previously it was the maintenance company run by the manager.'

*Flat leaseholder, Vale of Glamorgan.*

- 5.18 For responding house leaseholders, there was a particular concern on paying for public areas as these comments from the surveys indicate:

'The areas of land in question are usually adopted by the local council so these costs are in addition to council tax.'

'We do not receive any discount on council tax and then have to pay service charge on top. Anyone of the public can use the open public areas and play areas. They can also destroy them but we have to pay the cost of repairs.'

### **Reserve or sinking funds**

- 5.19 A number of the leases included provision for reserve funds, although a number did not mention them at all. Reserve funds are subject to advice from RICS in their Service Charge Residential Management Code (2016)<sup>26</sup>.
- 5.20 'The intention of a reserve fund is to spread the costs of 'use and occupation' as evenly as possible throughout the life of the lease to prevent penalising leaseholders who happen to be in occupation at a particular moment when major expenditure occurs. Reserve funds can benefit both the landlord and leaseholder alike by ensuring monies are available when required for major works, cyclical works or replacing expensive plant.' (Para. 7.5)
- 5.21 Paragraph 7.5 of the Code continues that reserve fund levels should be calculated on the basis of:

'the age and condition of the building and likely future cost estimates. On more complicated developments, the assessment should reference a

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<sup>26</sup> This Code applies to England. In Wales, the code is currently being updated.

comprehensive stock condition survey and a life-cycle costing exercise, both undertaken by appropriate professionals.'

5.22 On the issue of transparency, the Code makes it clear that freeholders ought to have a long-term maintenance plan reflecting stock condition information and projected income. It states that such information should be made available to leaseholders on request and any purchasers on resale.

5.23 In the sample of leases analysed, even when a lease provided for a reserve fund, how management agents would approach collection of reserve funds and how they were to be used was not explained. For example, in Lease 11 (analysed by the research team) there was simply a very open requirement to pay:

'2.3.1 In any financial year the total Expenses of the Services and of Insurance is to be deemed to include such fair and reasonable part of all costs and expenditure in respect of or incidental to all or any of the recurring services and other matters referred to in paragraph 2.1 above, whenever paid or incurred whether before or during the Term, *including reasonable provision for anticipated expenditure by way of contribution to sinking and reserve funds, as the Landlord in his reasonable discretion allocates to that financial year*' (Lease 11 – flat. Emphasis added)

5.24 Yet the lease does not define the sinking or reserve fund or in any way explain when or how it is to be used. In comparison Lease 6 (analysed by the research team) had a more limited reserve fund:

'Reserve Fund. Such sum as the Management Company shall determine as desirable to be set aside in any year towards a reserve fund to make provision for expected future substantial capital expenditure including (without prejudice to the generality of the foregoing) external decoration of the Property and the Building and the resurfacing of the roads and footpaths comprised in the Common Parts.' (Lease 6 - flat)

- 5.25 However, it still leaves much unclear – what for instance is meant by ‘*substantial* capital expenditure’.
- 5.26 The use of reserves and sinking funds was a concern for some of the interviewees. Although there was no direct question included in the interview guide, over a third of interviewees (37%, n=10) spoke about issues with their reserve funds. Interviewees expressed particular concerns about levels of reserve funds and the situations in which such funds should be accessed. On the level of reserves, some interviewees had taken steps to challenge the level of reserves being put aside:

‘I think it was originally around about 80 odd pounds [a year] or something, there wasn’t sufficient going into the reserve funds, and all, all their accountant, sorry, their finance department were doing each year was if there was a surplus they were reducing the, the, the service charge for the next year so there was no reserve fund building up. So we’ve, we’ve gradually increased that now to a sustainable level.’

*Flat leaseholder, Conwy.*

- 5.27 Some interviewees felt that reserve funds were being used inappropriately:
- ‘[W]e pay quite a substantial amount into [the fund] every month, but they, whenever like a light, a lamp post goes or something, or they want to add a speed bump or something ridiculous, they seem to take the money out of there, which I’m like, hmm, I don’t know if that is really a sinking fund thing.’

*Flat leaseholder, Neath Port Talbot*

### **Restrictions in the lease, permissions and other charges**

- 5.28 Restrictions on use exist for a number of reasons; to preserve the landlord’s interest, because of the interdependency of flats and apartments, for example no alterations without permission, not putting plants on windowsills and to ensure good relations between neighbours, for example no music after 11 pm or before 7 am.

- 5.29 One might have expected a correlation between length of the term of the leases and the onerous nature of terms; so, in leases for 999 years fewer restrictions may be expected. This turned out not to be the case. Some of the more extensive restrictions were found in the 999-year lease of a house. It is difficult to understand from the leases why such controls were considered to be necessary. For example: a requirement to clean the inside and outside of all windows of the property monthly, and to 'keep the garden forming part of the Property in a neat and tidy condition and free noxious weeds deposits and materials or refuse....' (Lease 11).
- 5.30 One of the leases included a clause enabling the landlord to introduce new, reasonable regulations. Whilst the need for this may be understandable, it means that prospective lessees are not fully aware of the rules they may in future be expected to comply with.
- 5.31 However reasonable the rules may be, they may lead to resentment. This might be because, as the literature discussed in Chapter 3 suggests, for many people ownership of property equates with control and the rules conflict with what it means to be in control. It could also be that the lessees do not trust those responsible for producing and/or policing the rules.
- 5.32 There were several examples of terms in the leases analysed that had the potential to be inappropriately onerous. For instance, one lease contained a rule that states that no pets are allowed without the consent of the management (which may be subsequently withdrawn).
- 5.33 The CMA (2020:28) received complaints relating to high amounts being charged for any request made by a leaseholder, and that they may do this notwithstanding the absence of an express contractual basis to charge. Rules about fees for granting permissions to sublet, have pets etc., may not be set out in the leases. It is accepted in law, although this might not be apparent to prospective lessees, that reasonable fees are payable. Reasonableness will depend upon the circumstances and the administrative

and professional costs involved. Lessees may not know that the fees can be challenged in the tribunal.

- 5.34 No specific Welsh perspective was identified by participant stakeholders who were critical of charging for registering a transfer of ownership and of costs charged in leasehold houses for no good reason. It was suggested by participating stakeholders that there should be new regulation as to what charges should apply. Currently, landlords can charge any amount they like for seller packs and notices of assignments. However, participating stakeholders were not aware of major problems around permission fees and do not deal with them often. It was felt by participants that in some instances it is reasonable for landlords to charge a premium where it takes time to consider the proposal (e.g., an extension or other major change to the fabric of a building) but that simple changes should attract low fees. Stakeholder participants suggested that large landlords use permission fees as a source of income, and these fees concern actions that should not be subject to permission (e.g., changing colour of building; charging for 'seller packs' was also outlined as a problem). It was suggested that the range of activities requiring permission should be restricted.
- 5.35 In the survey, the research team asked flat and house leaseholders whether they were concerned about any particular covenant or restriction in the lease. Just under half (48%, n=22) of the flat leaseholders were and over three quarters (77%, n=23) of house leaseholder were. Across both surveys the concerns were various, but a number of issues were apparent that also resonated in the interviews.
- 5.36 First, failure by the freeholder/manager to enforce the lease or changes in the enforcement practices of the landlord or the managing agent. In the survey, a number of flat leaseholder respondents suggested:
- 'Failure to enforce the lease covenants in relation to sub-letting properties which have a detrimental effect on the peaceful enjoyment, safety and security of resident leaseholders.'



‘Non-compliance of clauses in the Lease by the Managing Agent/Landlord’

‘Their failure to ensure that purchasers comply with the legal requirements’.

5.37 Further evidence of this was found in the interviews. So, for instance, one interviewee explained, when asked about fees for subletting,

‘for many, many years nobody ever bothered to apply it here; the only time it was applied was when we had a rip-off managing agent came in and they took it on themselves to implement it because they were getting the money for, for the consent and, and they basically just announced that people had to now, you know, pay, I think it was 50 or 60 quid and, and they just sent out letters on that basis. Now bearing in mind that there are two hundred and eighty flats, at least eighty-five % of them are, are buy to lets, you know, they were raking in quite some money for doing that’.

*Flat leaseholder, Cardiff*

5.38 What this reveals is that a sense of unfairness may result from haphazard practices, even when those practices are justified under the terms of the lease. Lessees may believe that the rules are only being enforced against some, rather than all, lessees. Again, this relates to issues of trust and the exercise of what may be arbitrary power.

5.39 Secondly, concern with limits on activities. The examples in the survey focused on day-to-day limits on the use of the home:

‘Some restrictions on activities that a 'normal' householder would expect to be able to freely undertake, such as clothes drying on a balcony, simple vehicle maintenance on your own driveway.’

‘Pet dog cannot be replaced by any other pet when he dies.’

5.40 In addition, the issue of subletting is particularly problematic for lessees. In many ways it represents one of the freedoms of property ownership, the

ability to make money from an asset. On the other hand, subletting may cause problems for neighbours and for the community of residents as a whole. The question is who decides whether subletting should be allowed or not? In leases it is a decision of the freeholder/developer. In jurisdictions with condominium or strata law it is either the government who may prevent a condominium ruling out subletting or the condominium owners. Either way, the rules have greater legitimacy than rules imposed by a developer or freeholder.

5.41 In contrast with the professional stakeholders, house leaseholders in the survey focused most on restrictions on extensions and home modifications:

‘The fact we have to pay for permission to alter our home. So all covenants concern me as have to pay. Which was not highlighted.’

‘Extensions incur an admin fee then a percentage of the cost’

‘That we can’t build anything without the consent of the [free]holder’

5.42 The fact the leaseholders have to pay a fee for the permission, simply adds to the feeling of unfairness, as comments from the survey illustrate:

‘1) Fee to have a pet. 2) Fee to replace fixtures i.e. wardrobe. 3) Fees to alter internal layouts’

‘Get permission for pet which got pay fee. Permission change door which got pay fee’

‘The need to seek permission and pay exorbitant fees when improving the inside of the Apartment when undertaking standard home improvements like for example replacing a kitchen’.

5.43 In the survey, ten flat leaseholders (out of 42) and five house leaseholders (out of 25) had paid charges for a permission. None of them considered that the charges represented value for money. Reasons included:

'I registered the name of existing tenant when the new freeholder took over 4-5 years ago. I was charged about £40. I had not had any charge before. The charge has increased significantly since then.'

'Pay £35(+VAT) for permission for a gecko in a terrarium.'

'They are usually over and above what it would cost the freeholder to provide the permission, it's just another way of extracting money from leaseholders'

'£180 to just inquire to alter your home where no planning permission is needed. To then be charged for a licence for work to go ahead. Charge for changing mortgage providers, what has it got to do with the freeholder?'

- 5.44 Value for money was a particular concern also raised by interviewees. Eight interviewees (out of 27) had experienced issues with permissions charges. All eight felt that that the permissions charges they had paid or challenged did not represent value for money. Most felt that this was 'money for nothing', particularly where such permissions had to be renewed regularly or, in the case of permission for sub-letting, when there is a new tenant:

'Because I think it's right to let the company know that you're renting your flat out and, and I daresay there's a little bit of administration involved but not £125's worth. All they can do is update the system; it's not £125's worth of work. And the renewal to change a name? [...] It takes me two minutes. I think charging £42 to renew your, your rent status or your letting status is just... I don't think it's right.'

*Flat leaseholder, Cardiff.*

### **Advice after buying**

- 5.45 Given the concerns of survey and interview respondents, it is not surprising that respondents had sought advice since buying the property. Amongst the survey respondents, 76% of the flat (out of 42) and 63% (out of 25) of the house leaseholders had sought advice. This is a high percentage but given

the comments (para. 4.30) on where the survey was publicised perhaps not so surprising. Most commonly survey respondents had sought advice from LEASE or from a private solicitor. Other sources of advice included Citizens Advice, the National Leasehold Campaign and LKP. A number of respondents had sought advice from several sources: e.g., one respondent commented: 'fellow members of our residents' association, LEASE /solicitor/ LKP/RICS, Dept for Communities, and Welsh Government and others'.

- 5.46 The interviewees reported mixed experiences of support provided by LEASE. A proportion of the respondents (44%, n=12) had sought support from LEASE, but only 5 of those interviewed (42%) were positive about the advice and support they had received. Of particular note here was that interviewees were positive about their ability to book an appointment with a LEASE adviser and the follow-up support received.
- 5.47 However, two interviewees with protracted issues felt that the service they had received from LEASE had changed over time. Two other interviewees lamented the closure of the Welsh 'office' of LEASE.<sup>27</sup> One participant explained that LEASE historically ran a series of seminars for leaseholders across Wales, but felt since its consolidation, there was a lack of localised support (including seminars) as the service provided by LEASE no longer has a Welsh only presence.
- 5.48 The qualitative interviews (both flats and houses) also revealed a significant reliance amongst leaseholders on more informal channels of support, including the Leasehold Knowledge Partnership and the National Leasehold Campaign. Support through the National Leasehold Campaign was often provided on a peer-to-peer basis through Facebook or other social media platforms.

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<sup>27</sup> For approximate 2 years the Welsh Government funded LEASE to look into the issues of leasehold in Wales. As part of this work, there was an increased presence in Wales of LEASE staff.

- 5.49 Although LEASE provides impartial legal advice on leasehold, sometimes leaseholders want to share their difficulties and experiences with other leaseholders. This may be to understand whether their experience is unique, whether others have successfully found solutions to similar difficulties or just to share their experience and frustration and to seek and/or offer support. **We recommend that the Welsh Government should consider how to build a network of leaseholders, possibly through existing organisations, to improve knowledge of leaseholder rights and responsibilities in Wales and to facilitate mutual support (Recommendation 2).**

### **Disputes**

- 5.50 If leaseholders want to take any action on their concerns what is the next step? One of the leases analysed for this project contained a complaints process which required lessees to inform the management company in writing of any issues or complaints relating to other lessees in the development. Another lease analysed enabled the developer to provide a complaints procedure. The survey did not ask questions about lessee satisfaction with complaints procedures, but it would appear to be good practice in apartment blocks and in developments.
- 5.51 However, internal mechanisms for complaints are rare and if leaseholders wish to take action the appropriate forum is the Leasehold Valuation Tribunal (LVT). Some participating stakeholders thought that there is a low awareness in Wales of the LVT amongst leaseholders and that efforts should be made to increase appreciation of the Tribunal.
- 5.52 Indeed, despite the fact that leaseholders did not consider the service charges value for money, amongst the survey respondents only 37% of flat leaseholders (out of 42) and 6% of house leaseholders (out of 25) had ever legally challenged the services charges. This is not necessarily because they were unaware of the tribunal. There may be other reasons they chose

not to make legal challenges to service charges. For the survey leaseholders who had contemplated or taken action, expense and time are issues as these comments demonstrate:

‘We are advised it will be very difficult to prove it’s too expensive and possibly cost more in legal fees.’

‘We complain frequently...only to be told only option is FTT...our solicitor quoted around £7-9000 in legal fees to represent us.....plus all the landlords legal fees.....Not a viable option. Justice is only an option to the people rich enough to afford it.’

- 5.53 Participating stakeholders were of the view that the LVT in Wales is effective and that leasehold dispute resolution in a dedicated court is particularly helpful. While one leaseholder survey participant had a positive experience of the Tribunal - ‘Tribunal ruled in leaseholders’ favour’ – other participants spoke of postponements and mediation leading to nothing but a further round of legal action.

### **Reputation of leasehold**

- 5.54 Finally, in this Chapter the research team consider the views of the different respondents to the question of the overall reputation of leasehold.
- 5.55 Stakeholder participants suggested that many of the problems associated with leasehold are not inherent in the tenure itself but may be attributed to abusive practices (e.g., onerous terms, zealous use of permission fees). Onerous terms and poor practice are impacting the reputation and integrity of the tenure. This is compounded by media reports that paint these problems as an inherent feature of leasehold rather than exploitative practices. Stakeholder participants believed that leasehold tenure is valid and reliable, however the proliferation of onerous terms from the early 2000s has dramatically changed the perception of leases. So overall, they saw a positive future for leasehold if those issues were resolved and the perception changed.

5.56 To test the views of respondents to the survey, the research team asked respondents: what advice would you give anyone who was thinking of buying a leasehold flat or house? Amongst flat owners, only one respondent positively responded with 'do it' and 57% (26 of 44) said 'don't do it' (Figure 5.01).

5.57 For the flat leaseholder respondents the reasons for this advice is largely to do with technicalities and poor service as these comments from the surveys indicate:

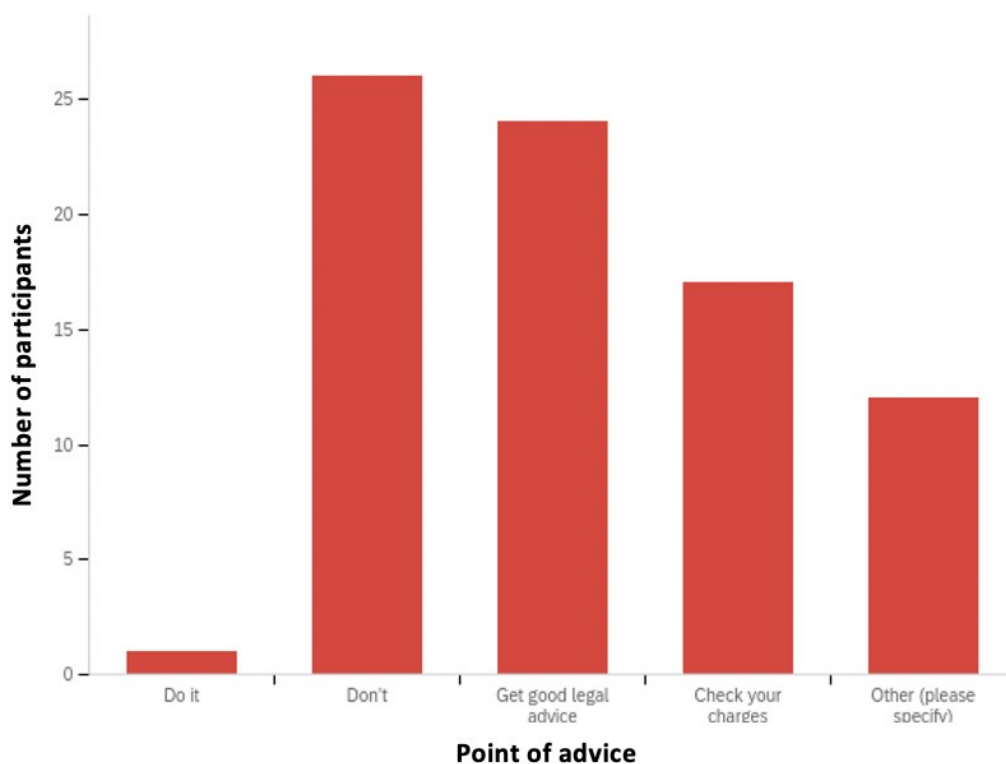
'If there are underlying conflicts between the interests of different leaseholders, it will be very very difficult to resolve, especially where property management is (mis)handled by leaseholders.'

'The leasehold document is written in such confusing terms, ground rent can be very expensive and you run the risk of not being able to make changes to your own home.'

'Restrictive and if you get a poor property manager it is just hassle.'

'The manner in which service charges are managed relies on the integrity and professionalism of the manager who should be acting in the interests of the leaseholders. Many leaseholders just pay their charges believing that they are totally correct. Those who sub-let their properties in breach of the lease cover any costs in the letting fees and the amounts they can make are more than adequate to see a substantial profit.'

**Figure 5.1:** Flats leaseholders - What advice would you give anyone who was thinking of buying a leasehold flat?



Source: Survey of flat leaseholders (n=41) (Respondents could chose more than one response)

5.58 Similarly, the respondents to the house leaseholders survey 87% (20 of 23) said 'don't' buy leasehold (Figure 5.2).

5.59 In explaining why they would advise against leasehold, some of the survey respondents expressed a real sense of regret:

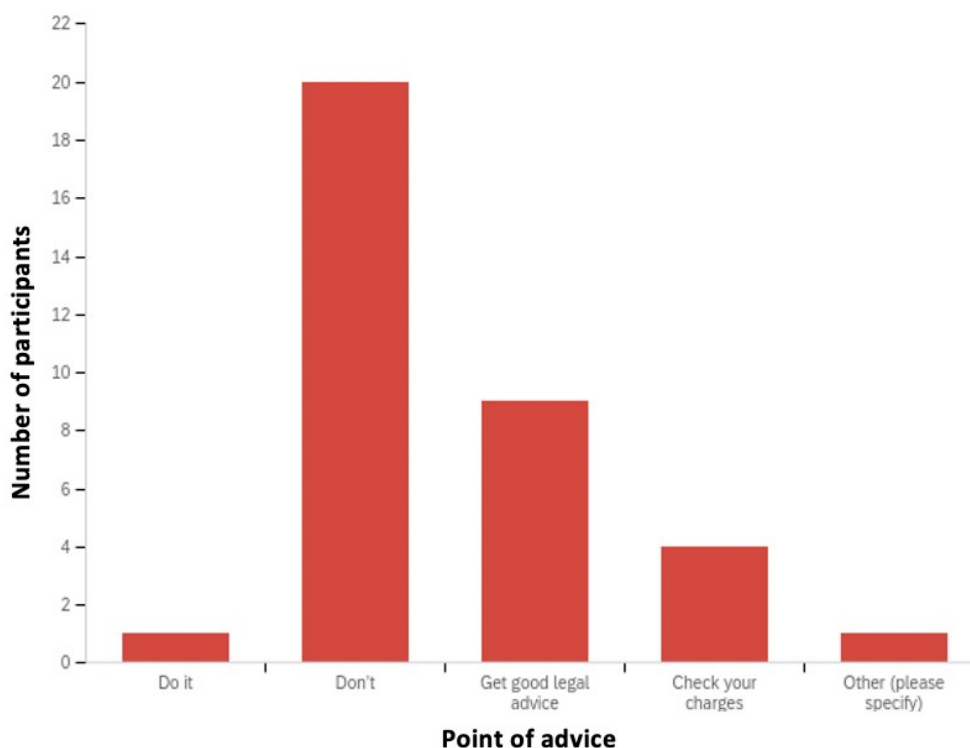
'We have been trying to sell our house for around 6 months, no one is interested because we are leasehold. We feel trapped in a house we can't afford to extend or improve because of the onerous clauses in the lease and will soon have 2 children under 3 in a house that we can't change.'

'It is mentally destroying us a family and knowing we have this hanging over our heads, with no real regulations. Not being told the truth when purchasing our dream home has been a nightmare.'

'It has caused me a lot of upset, stress and illness.'



**Figure 5.2:** House leaseholders - What advice would you give anyone who was thinking of buying a leasehold house?



Source: Survey of house leaseholders (n=23) (Respondents could chose more than one response)

5.60 Amongst interview participants, one of the most prevalent and pressing issues raised by leaseholders concerned the nature of a lease as a depreciating asset and the impact of this on their ability to sell or pass on the property as they would if the property was freehold. This was particularly the case for leases with terms of 99 years or less, where leaseholders expressed real concerns about significant depreciation within their lifetime.

5.61 Echoing comments made by some survey respondents, several interviewees explained that they did not appreciate at the time of purchase that the length of time remaining on a lease can impact on its value. As one participant explained:

‘I thought that it was an asset just like my house was an asset that would rise in value all the time, that I would find security, I didn’t know that that wasn’t the case and that... what people have said to me, [...]

in general following the leasehold stuff, is that a leasehold property should be cheaper because it's not an asset, it's a lease that devalues, that depreciates rather than appreciates, and so a leasehold property is something that you would buy because you can't afford a freehold, and that has shocked me tremendously.'

*Flat leaseholder, Neath Port Talbot.*

### **Summary**

- 5.62 The Chapter has sought to examine experience of living in leasehold properties and the overall reputation of the tenure.
- 5.63 The empirical work with participating stakeholders suggested that this group felt that issues with the leasehold tenure centred on abusive practices and concomitant reputational issues. Though concerns were raised around the level of ground rents charged, with some participating stakeholders favouring nominal or 'peppercorn' ground rents, others were concerned about protecting institutional freehold investment. The responses of stakeholders appear out of line with our data from leaseholders, who raise fundamental issues with the tenure form. However, the small stakeholder sample should be also noted.
- 5.64 The survey and telephone interviews with leaseholders from across Wales sought to understand the lived experience of residing in leasehold properties. They illustrate a range of concerns. No reason for the disparate ground rents amongst leaseholders was obvious to the research team. Participating house owner leaseholders were more knowledgeable about ground rents – possibly because that was a larger portion of their charges than for flat leaseholders. Respondents voiced concern about value for money for service charges, sinking funds and permission fees.
- 5.65 The Chapter indicates a significant take-up of support provided to leaseholders through the Government supported service, LEASE. However, it also indicates a growing reliance on increasingly informal channels of

support, including the use of social media by bodies such as the Leasehold Knowledge Partnership and the National Leasehold Campaign.

- 5.66 There is a lack of trust and confidence in the tenure, which is having a significant impact on the value of leasehold properties and the ability of lessees to sell their properties. The data from survey and interviewee respondents suggested that the lack of trust and confidence may relate to broader relational issues between freeholders, leaseholders and managing agents. At the core of these issues sits a perceived lack of transparency, as lessees see increasing service charges with no evidence of additional value or the necessity for such increases.
- 5.67 The analysis of lease terms confirmed that management arrangements were often complex and lacking in transparency. Overall, lease terms were difficult to understand and written in complex language. This was as true of the most recent leases analysed as well as the earlier leases. This would suggest that a broader law reform project may be required to simplify variation of lease terms and the removal of out-of-date restrictions. **We recommend the Welsh Government considers simplifying and modernising lease terms and improving the legal mechanisms to remove out-of-date restrictions. This would improve the accessibility of leasehold documents and enable more modern terms to be inserted into leases (Recommendation 3(i)).**
- 5.68 The lack of confidence and support in the leasehold tenure amongst lessee respondents to the survey and interviewees can also be attributed to a disparity between the expectations and reality of the lease as an asset. Many respondents suggested that they had not understood that leases can, under certain market conditions, exist as a depreciating or wasting asset.

## 6. Participants' views on commonhold and other reforms

6.1 This Chapter focuses on what the empirical findings reveal about various proposals for reforms to leasehold.

6.2 The research questions were not orientated towards consideration of leasehold reform, however it was raised by participants and their observations provide an insight into their experience of leasehold.

6.3 The matters covered are:

- Commonhold
- Leasehold houses
- Existing statutory rights
- Forfeiture

6.4 Several of these issues are covered by work recently published by the Law Commission.

6.5 The Law Commission identified residential leasehold as a law reform project as part of its 13<sup>th</sup> Programme of Law Reform. The UK Government announced the project in its response to its consultation, *Tackling Unfair Practices in the Leasehold Market*. As a joint project between the UK and Welsh Governments, the terms of reference were agreed with both Governments and published on 18 April 2018 (Law Commission 2018a).

6.6 The Law Commission were tasked with improving consumer choice, and with providing greater fairness and transparency for leaseholders. Three major projects were identified: enfranchisement, commonhold and the RTM.

6.7 At the time of writing the Law Commission has published its final reports on those three projects (Law Commission, 2020b, 2020c, 2020d). The Reports build on the consultation reports set out in this Chapter and set out

recommendations for wholesale reform of the enfranchisement, right to manage, and commonhold regimes.<sup>28</sup>

- 6.8 The general policy aim of the law reform exercise, identified by the UK Government, is to promote transparency and fairness in the residential leasehold sector and to provide a better deal for leaseholders as consumers. As the Law Commission points out, the terms of reference are not neutral but ‘indicative of a policy conclusion reached by the (UK) Government that the leasehold system as it presently exists is not a satisfactory means of owning property’ (Hopkins and Mellor, 2019:324).
- 6.9 The various publications of the Law Commission in relation to its project on leasehold reform are summarised in Annex H to this report (up to 2019).<sup>29</sup> Web links are provided to the consultation papers and reports.

## **Commonhold**

### *The policy context*

- 6.10 Commonhold was introduced as a new and alternative form of owning property in 2002. It allows a person to own a freehold flat and at the same time be a member of the company which owns and manages the shared areas and the structure of the building.
- 6.11 Commonhold offers homeowners particular advantages over leasehold. These are:
- Owners own their property outright, avoiding the time-limited nature of leasehold, which creates a wasting asset and consequent expenses in extending the lease or enfranchising.
  - There is no landlord – instead, owners have a stake in the building that includes their flat and can make decisions together with other owners about the shared areas.

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<sup>28</sup> Analysis of the final reports was out of scope of this research project.

<sup>29</sup> Analysis of the final reports was out of scope of this research project.

- No ground rent is payable.
- There is no risk of forfeiture in commonhold – forfeiture is discussed briefly at para. 6.69.
- A standard set of rules and regulations apply – this means that owners will be much clearer on their rights and responsibilities and avoids the complexity of leases.

6.12 Despite these advantages commonhold has not been a success. According to the Law Commission only 20 commonhold schemes have been created to date.

6.13 This research has not been able to identify the number of commonhold properties within Wales. However, on its website, the Leasehold Knowledge Partnership lists 15 commonhold developments in England and Wales, of which one is in Wales: Grove Court Mews, Pembroke, which comprises 24 units.<sup>30</sup>

6.14 The Welsh Government's Task and Finish Group Report (2019) proposed that the Welsh Government conduct a feasibility study and impact assessment on the effect of compulsory commonhold on the current stock of houses and flats in Wales.

6.15 The House of Commons Housing Communities and Local Government Select Committee Report on Leasehold Reform (House of Commons, 2019) considered that commonhold should become the primary model of ownership of flats in England and Wales.

6.16 Whilst the UK Government's response to the Select Committee report (MHCLG 2019a) was supportive of increasing the use of commonhold, it considered that leasehold for flats could work efficiently in many

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<sup>30</sup> See [Leasehold Knowledge The 15 Commonholds](#)

circumstances and may be more attractive than commonhold to flat owners who do not want the responsibilities that come with commonhold.

6.17 This consideration was rooted in a notion of choice. The response explained that it considered that ‘it is important that people have the right home for them and therefore a choice of tenure that meets their needs’ (MHCLG, 2019a:11).

6.18 The evidence from this empirical research suggests that tenure is not something which informs decisions about home purchases and it is difficult to understand how choice could be made meaningful for homeowners, as opposed to developers and freeholders. Participants in the qualitative interviews often suggested that experiential or practical reasons underpinned their purchasing decision. Location, for instance, featured heavily in the decisions of some leaseholder respondents (n=7):

‘Well it’s in the most breathtaking location. We are in one of the top floor, you know, we are in the top floor and we have views across the [surrounding area], it’s breathtaking. The building is very interesting, it’s historic, it has a very interesting history, and it looks, externally it looks beautiful.’

*Flat leaseholder, Flintshire.*

#### *The Law Commission and commonhold*

6.19 As part of the broader reform of leasehold, the Law Commission have been investigating the barriers to an increased take-up of commonhold.

6.20 The Law Commission published a consultation paper, *Reinvigorating commonhold: the alternative to leasehold ownership* in December 2018 (Law Commission, 2018c).

6.21 The Law Commission project seeks to address only the perceived *legal* barriers to the wider take-up of commonhold. Other potential barriers, such as the lack of incentives for developers to adopt commonhold, or the

significance of the income streams generated by leasehold, need to be addressed by policy reforms.

6.22 The consultation paper followed a Call for Evidence in February 2018 (Law Commission, 2018d) which revealed three broad strands of legal issues in connection with the low uptake of commonhold:

- issues in the process of creating, or converting an existing building to, commonhold;
  - issues which may make commonhold unattractive to homeowners; and
  - issues which may make commonhold unattractive across the wider property sector.
- The main law reform proposals contained in the consultation are changes which would:
- enable commonhold to be used for larger, mixed-use developments;
  - enable shared ownership leases and other forms of affordable housing to be included within commonhold;
  - facilitate existing leaseholders to convert to commonhold and gain greater control over their properties;
  - improve mortgage lenders' confidence in commonhold to increase the choice of financing available for home buyers;
  - provide homeowners with a greater say in how the costs of running their commonhold are met; and
  - enable homeowners to end unattractive long-term contracts imposed by developers.

6.23 The Law Commission final report on Commonhold was published on 21 July 2020 (Law Commission, 2020b).



- 6.24 It is difficult to predict exactly what impact any reinvigoration of commonhold will have on leasehold reform. It may be that if commonhold becomes more widely available as an alternative to leasehold, it will mean that reforming leasehold becomes less significant. On the other hand, it could be that more widespread knowledge of the advantages of commonhold may increase the pressure to reform leasehold for those who are unable to take advantage of commonhold.
- 6.25 The Law Commission, in its introduction to the consultation paper, makes clear that commonhold is not the magic bullet to resolve all of the problems of leasehold. So, for instance, it cannot replicate the autonomy and control of the freehold owner of a house ‘Commonhold units will often be structurally interdependent, such as flats within a block. The actions of individual unit owners therefore have greater potential to affect the others around them’ (Law Commission, 2018c: 25).
- 6.26 It may also be that solutions previously developed to resolve leasehold problems are transferable to commonhold. The Law Commission makes it clear that it will adopt aspects of leasehold law when that offers the best approach to a problem.
- 6.27 Finally, it points out that commonhold is not in itself a consumer protection device.
- ‘There are instances where we have had to conclude that commonhold is unable completely to prevent abuse. For instance, our commonhold structure cannot prevent developers from referring prospective purchasers to selected conveyancers who might not advise purchasers independently. Broader concerns such as this cannot be resolved within the legal framework of commonhold’ (Law Commission, 2018c: 26).
- 6.28 This observation suggests that any legal reforms to commonhold as a tenure will need to be accompanied by an improvement in consumer protections along the lines of those recommended by the CMA (2020) and/or the Task and Finish Group (2019).

### *What this project's data showed - commonhold*

- 6.29 All stakeholder participants were unified in their reluctance for a specific Welsh reform to introduce commonhold into Wales in place of leasehold. It was felt that commonhold would not work any better in Wales than it would in England. Some participating stakeholders felt that commonhold would be an appropriate tenure in smaller developments up to ten units but that it would be problematic in larger developments where getting agreement of many residents would be difficult. It was pointed out that comparable systems to commonhold in other jurisdictions do not work well (although it was not clear on what basis participating stakeholders believed that) and that commonhold does not enable institutional freeholders to own freeholds, and that these institutions can manage buildings in an effective and responsible way (although no evidence was produced that this is generally the case).
- 6.30 The stakeholder participants felt that residents are generally not concerned with managing the building themselves, although the problems of finding suitable directors of a freehold company to manage a building was similar in both commonhold and leasehold tenure. Further, some of the stakeholder participants expressed the view that from the perspective of developers there is potential for value to be lost by not using leasehold and that only specialist lenders would lend against commonhold currently, making the tenure too risky for developers.
- 6.31 There was more enthusiasm for commonhold amongst the interviewees. Of the seven interview flat owner participants who raised the issue (it was not explicitly covered by the interview guide) the majority expressed interest in it, suggesting that based on what they knew it would be an improvement on leasehold.
- 6.32 One interviewee suggested, echoing the concerns of the professional stakeholders that unit owners may not be prepared to become involved in management of the commonhold. Another, echoing Easthope's (2019)

reflections on the leasehold system in England and Wales (see paragraph 3.119), suggested that, as they had a residents' management company built into their leasehold relationship, there was little difference between their position and those living in a commonhold scheme.

6.33 Interviewees' issues with such management structures were as follows:

'when people say they want right to manage [...] I say to them "When you get it, who's gonna do it, who's gonna do the work then?". [...] we've always been very open here and I think that people realise that we're only doing it for the benefit of everybody really. So they're lucky that they get [...] people like me who'll do it for free for them.'

*Flat leaseholder, Cardiff.*

6.34 Another interviewee who had considered commonhold for their block of flats pointed to the need for a critical mass of support within a development in order to spark such a move:

'a lot of the leaseholders here, [...] they don't like, you know, to have to pay the higher charges but they don't dislike it enough to want to take legal action, not at this point anyway. And then as I, I suggested we're, we're too fragmented at this point I think to, to be talking about solutions like right to manage or commonhold.'

*Flat leaseholder, Cardiff.*

## **Leasehold houses**

### *The policy context*

6.35 The sale of leasehold houses was one of the issues which raised the political profile of leasehold reform, in particular where there were cases of mis-selling.

6.36 The Welsh Government acted quickly in excluding leasehold houses from Help to Buy - Wales in March 2018. It also obtained a commitment from volume home builders not to develop and sell leasehold houses in Wales.

- 6.37 The Welsh Government Task and Finish Group report (2019) noted the success of the initiatives and recommended a more permanent arrangement for banning the sale of leasehold houses other than in exceptional circumstances.
- 6.38 This was in line with the proposals of the UK Government set out in *Tackling Unfair Practices in the Leasehold Market* (DCLG, 2017b).

*What this project's data showed – leasehold houses*

- 6.39 The stakeholder participants reported that in their experience there had been no sales of new leasehold houses in Wales during the last year and a half as a result of Welsh Government action excluding leasehold houses from Help To Buy - Wales support (see para. 1.03, above).
- 6.40 The stakeholder participants pointed out that ending the sale of new leasehold houses leaves unresolved the problem of existing leasehold houses and makes their future sale more problematic.
- 6.41 Survey respondents were not asked directly about the reform of house leasehold. However, the answers to the question about advice to new buyers (para. 5.55) supports the policy decision that houses should be not be sold on leasehold:

‘There is no need for any normal new house to be sold leasehold. Simply a money spinner for landowner.’

‘To prevent being scammed into thinking you're buying a freehold property.’

- 6.42 There was a particular resentment of the leasehold form amongst qualitative interviewees living in houses. Three out of the four house leaseholders interviewed felt that their property had been mis-sold to them. As one interviewee explained:

‘I had a report from the solicitor, the report on title said it was a perfectly good house, perfectly sellable, mortgageable; five years down the line it's not mortgageable and it's certainly not sellable.’

### **Existing statutory rights**

6.43 There are a number of statutory rights available to leaseholders that act to rebalance the relationship of landlord and leaseholder. The rights for flat owners are:

- The right to extend the lease;
- The right to collectively buy the freehold (enfranchisement);
- The right to manage the building; and
- The right of first refusal.<sup>31</sup>

For house owners they are:

- The right to enfranchise the lease; and
- The right to extend the lease.

### *Enfranchisement and lease extensions – the policy context*

6.44 *Tackling Unfair Practices in the Leasehold Market* (DCLG, 2017b) indicated that the UK Government recognised difficulties facing leaseholders who wished to exercise their rights to extend their lease or purchase the freehold (known as enfranchisement). These difficulties include unnecessary legal complexity and costs. The UK Government also indicated it would consider extending the Right of First Refusal (currently limited to flat owners) to house lessees.

6.45 As one of the most significant disadvantages of leasehold is that the asset held by the leaseholder diminishes over time, reforms to make the ability of the leaseholder to either acquire the freehold or extend the lease easier, quicker and more cost effectively are particularly important.

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<sup>31</sup> There are no current proposals from the Law Commission to reform the right to first refusal.

### *The Law Commission and lease enfranchisements and extensions*

- 6.46 The Law Commission considered enfranchisement and lease extension with the intention of recommending changes to the law in England and Wales to make it easier for leaseholders to buy their freehold or extend their leases.<sup>32</sup>
- 6.47 The Law Commission published a consultation paper, *Leasehold home ownership: buying your freehold or extending your lease* in September 2018 (Law Commission, 2018b). It made provisional proposals for reform designed to provide a new scheme of qualifying criteria for enfranchisement rights, enhance and improve the enfranchisement rights themselves, and provide a new unified procedure for all claims.
- 6.48 The Law Commission makes radical provisional proposals in its consultation paper including:
- A universal right to a lease extension which is available to all leaseholders, whether they own a house or flat;
  - A right for leaseholders to acquire the freehold of a building individually, or of a building or estate collectively;
  - A new right for leaseholders who did not participate in a previous collective; and
  - All existing enfranchisement rights are retained, albeit in a more streamlined form.
- 6.49 In January 2020 the Law Commission, following analysis of consultation responses, published its report on valuation in enfranchisement. This sets out options to reduce the price payable by leaseholders when purchasing the freehold or extending their lease (Law Commission, 2020a).
- 6.50 The report does not make a recommendation as to how premiums should be calculated. This is because the decision on which option to implement is

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<sup>32</sup> Since this report was drafted The Law Commission have published their final reports.

more than a legal question. It also involves considerations of social policy, and political judgement. It therefore concludes that the matter is one for politicians to decide.

- 6.51 The Law Commission published reports on the remaining enfranchisement issues – the rationalisation, streamlining and expansion of the existing enfranchisement rights and procedural improvements for claiming enfranchisement rights – on 21 July 2020 (Law Commission, 2020c).

*Right to Manage (RTM) – the policy context*

- 6.52 The RTM – which was introduced in the Commonhold and Leasehold Reform Act 2002 – is designed to enable flat leaseholders to take over the management of their building enabling them for instance to take over the collection and management of service charges. It is a stand-alone right but may also be a stepping-stone to enfranchisement.
- 6.53 There has been less uptake of the RTM than might have been expected given the level of discussion around issues with leasehold. The Law Commission estimates that there are only around 6000 RTM companies in England and Wales out of around 4 million leasehold properties.<sup>33</sup>
- 6.54 This may be because of legal criteria which restrict the availability of the right; the technical nature of the RTM which can lead to protracted legal disputes; problems of the legal costs of acquisition being borne by RTMs; and uncertainty as to the extent of obligations which transfer to the RTM.

*The Law Commission and Right to Manage*

- 6.55 The Law Commission considered the RTM with the aim of making the right simpler, quicker and more accessible to leaseholders.<sup>34</sup>

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<sup>33</sup> This estimate of numbers of RTM companies is available on the Law Commission website: [RTM project page](#) (accessed 16 April 2020).

<sup>34</sup> The Law Commission published its Report on RTM on 21 July 2020 (Law Commission, 2020d).

6.56 The Law Commission consultation paper on the RTM was published in January 2019 (Law Commission, 2019). Its proposals included:

- relaxing the qualifying criteria, so that leasehold houses, and buildings with more than 25% non-residential space, could qualify for the RTM;
- permitting multi-building RTM on estates;
- reducing the number of notices that leaseholders must serve, and giving the tribunal the power to waive procedural mistakes;
- setting out clearer rules for the transfer of information about management functions, and for the management of property which is not exclusive to the premises claiming the RTM; and
- requiring each party to bear its own costs of any tribunal action and exploring options for the landlord's non-litigation costs.

*What the project data showed – statutory rights*

- 6.57 The stakeholder participants did not note any particular Welsh specific concerns around enfranchisement and lease extension but suggested that valuation is far too complex and needs reform. Participating stakeholders stated that enfranchisement is complicated and unaffordable and that residents need to be well organised but there is a great deal of evidence that this is not currently working. They suggested that the statutory process should be easier and cheaper. It was also suggested that leaseholders are not very aware of the statutory formula for enfranchisement and extension when given quotes from freeholders. There needs to be greater awareness and visibility of the formula.
- 6.58 We asked the survey respondents if they knew when their lease started and finished. This is important for the statutory rights to enfranchise or extend.



For the participating flat leaseholders 28% (13 of 47) and house leaseholders 31% (9 out of 29) did not know the date of the start of their lease; and 39% of flat leaseholders (18 of 46) and 45% (13 out of 29) house leaseholders did not know when their lease expired.

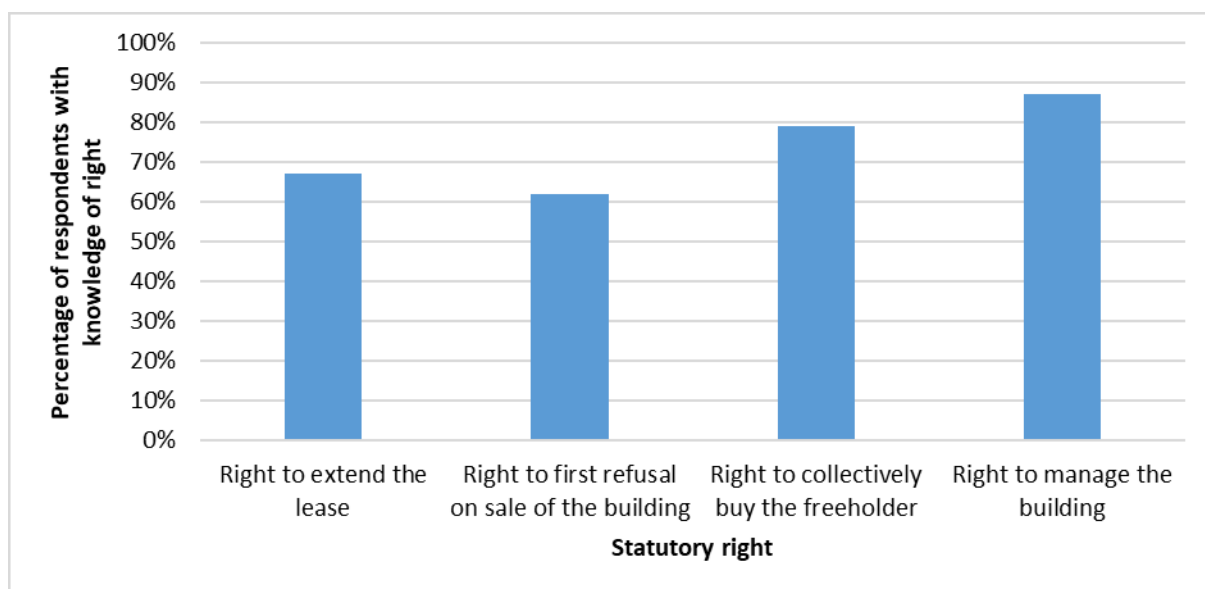
- 6.59 Over 60% of respondents (out of 41) to the survey knew about all of the rights, but right to first refusal was least known (see Figure 6.01). 72% of them had considered using one of the rights. Explaining why, the responses were most likely to mention management issues. Buying the building was thought, by participants, to be expensive and difficult.

‘We wanted to take charge of the maintenance as no work was being done. We have tried to buy the freehold but have had difficulties in obtaining good professional advice.’

‘We would like to get rid of the appointed management company [...] and get an honest and ethical company to manage us.’

‘To enfranchise-because currently we don’t own anything, only the contents of our apartment. However, to buy the lease would need 50% or more leaseholders in the block to do the same. What is considered as the block is also uncertain, is it the 8 apartments that access the communal door or is it the entire building which has more apartments. To date there has been no appetite from others to purchase the lease. Right To Manage -again, there is apathy when it comes to taking on work or incurring more costs by other leaseholders, so we are trapped.’

Figure 6.1 2Flat leaseholders – knowledge of statutory rights (%)



Source: Survey of flat leaseholders n=41

6.60 For house leaseholders there are fewer enfranchisement rights. Their options are limited to the right to purchase the freehold and the right to extend the lease. 71% (n = 29) of house leaseholders responding to the survey knew about the former and 33% (n = 14) the latter. 62% (n = 25) had considered used the rights, but 12% (n = 5) had taken any action. Of these 3 were in the process of enfranchising.

6.61 Survey respondents were asked whether they had experience of taking action in connection with their statutory rights. 40% had taken action – with some success – always in relation to the RTM:

‘The Right To Manage the development was obtained.’

‘RTM established. Freeholder legal case challenged this & eventual compromise agreed. Have established a collective enfranchise company but it is clear that Freeholder can use their financial strength [to] launch legal defence that raises cost far above the buildings value.’

6.62 Other survey respondents were in the process of instructing lawyers or putting finance together to pursue the RTM, and some had failed:

‘Challenged. Tribunal ruled in favour of existing management structure.’

‘We lost...could not afford to continue with [LVT] under threat of many ££££ [pounds].’

6.63 A third of all interviewees (n=9) lived in properties managed by the residents themselves. Of these, 5 interviewees had applied for and successfully obtained the RTM through the statutory process. In the analysis of the interview data, two clear themes emerged.

6.64 First, in order to exercise their RTM, a significant amount of expertise was required. Whether this was existing professional expertise amongst leaseholders resident in blocks (e.g. lawyers, accountants and property managers) who were willing to undertake the work necessary to establish the RTM company, or extensive research by ‘active’ leaseholders to familiarise themselves with the process. It was clear from the experiences shared that a significant amount of time and effort was required to establish and operate a RTM company.

6.65 Secondly, the expertise, and/or ‘soft’ skills required to establish and run an effective management company may not exist in all leasehold properties. Furthermore, there may be a lack of willingness amongst leaseholders to take on roles within these companies to allow for an equitable distribution of the workload. As one leaseholder in a retirement development explained:

‘[O]ur average age at that time was, was late eighties and early nineties, you know, people’s health and energy declines so there weren’t many people, or if any, who wanted to be directors and take on those responsibilities. We also still are the generation where married women didn’t pursue a career, they, they worked possibly but it was more for a little bit of extra money. So we haven’t necessarily got, within the development, the sort of skills we would need to become directors, apart from which as somebody once said to me “I’ve spent all my life doing that, I don’t want to spend my retirement doing that sort of

thing as well” you know. So we’re not really very keen on doing a Right To Manage process but we’re virtually forced into it because there is no alternative.’

*Flat leaseholder, Cardiff.*

- 6.66 The RTM was not, in the view of some survey respondents, a panacea. Having taken over the management of their property, some leaseholders reported feeling overwhelmed with the volume of work they had to undertake. The RTM had also had a significant impact on their relationship with other leaseholders:

‘[M]y biggest bugbear about all of this is that we pretty much have autonomy here now. But the fact is nobody wants to stand to be a director. So it’s almost like when you give the gift of enfranchisement to people they don’t want it, they want someone else to do it for them. And I’ve often found, because I’ve had people in the past banging on my door because they’re being sued for rent, service charge arrears and everything and, you know, personal abuse and things, we’re having to take enforcement action and everything, it’s not something I recommend that people do lightly.’

*Flat leaseholder, Cardiff.*

## **Forfeiture**

### *The policy context*

- 6.67 There was limited consideration of forfeiture (the right of a landlord to repossess the property following a breach of covenant by the lessee) in the policy documentation studied.
- 6.68 The House of Commons Housing Communities and Local Government Committee Report Leasehold Reform (House of Commons, 2019) did however consider it, and recommended that the Law Commission’s 2006 proposals to reform the law on forfeiture should be implemented in England and Wales.

- 6.69 In summary those proposals suggested a modernisation of the law of forfeiture meaning that courts would have a range of proportionate and appropriate remedies available to them for tenant breach of covenant. The current complex mix of statute, common law and procedural requirements would be replaced with a simple statutory scheme. The reforms have not, as yet, been implemented.<sup>35</sup>
- 6.70 A recommendation has been made in Chapter 7 that the Law Commission proposals on reforming forfeiture be implemented as part of a broader reform project (**Recommendation 3 (v)**).

*What the project data showed – forfeiture*

- 6.71 The stakeholder participants did not believe there were any specific issues around forfeiture in Wales. It was suggested that it is a very draconian remedy that was almost always disproportionate to the landlord's claim. On the other hand, they suggested it is almost impossible to convince a judge to award forfeiture. Some stakeholders suggested that forfeiture should be abolished for residential leases while others thought that it should be more controlled. Those advocating its abolition suggested that it would not upset the balance between landlord and tenant as the landlord has access to specific performance as a separate remedy. An order to compel performance is almost always a more suitable remedy. In the case of arrears, lenders will almost always pay this and add to borrower's arrears. Stakeholders noted that forfeiture problems have improved via LVT's involvement. Those advocating a more controlled approach pointed out that if forfeiture were not an option for landlords there would be no means of obliging the leaseholder to act. It was suggested that without the possibility of forfeiture investors would not invest.

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<sup>35</sup> See for the proposals in full, Law Commission (2006) *Termination of Tenancies for Tenant Default*, Cm 6946.

- 6.72 The issue of forfeiture did not feature significantly in the empirical data. It was not mentioned by survey respondents, and only three interviewees (11%) displayed awareness of the right to forfeiture (3 out of 27).

### **Summary**

- 6.73 Commonhold exists in law as an alternative tenure form to leasehold. It offers the potential to address many of the issues inherent in the leasehold framework, such as its nature as a wasting asset. However, its uptake has so far been very limited. The Law Commission has been working on proposals to address this.
- 6.74 Though participants in the empirical exercise were generally positive about the potential of commonhold ownership, there was a recognition that in order to implement commonhold in its present form within existing developments, a critical mass of people and skills is required.
- 6.75 On leasehold houses, the consensus between participating stakeholders and interview participants was that the use of leasehold for such dwellings is inappropriate. Recent moves by the Welsh Government to withdraw Help to Buy - Wales support from leasehold houses was supported by participants in this research.
- 6.76 The Law Commission recommendations (Law Commission, 2020) are likely be welcomed by the participants in this research project, who lamented the complexity of matters such as the valuation formulas used for collective enfranchisement.
- 6.77 The empirical data in this project suggested that the transfer of management or control to residents can have a positive impact on the management of leasehold developments. However, there was an acknowledgment amongst the research participants that it is not a panacea. It is reliant on a significant time commitment amongst lessees and the availability of certain professional and 'soft' skills to enable its proper functioning.

## 7. Conclusions

### Introduction

- 7.1 The Welsh Government asked the research team to answer the following questions:
- What do we know about leasehold ownership in Wales?
  - What are leaseholders' views on and experiences of purchasing and living in leasehold properties?
  - What are the advantages/disadvantages of owning a leasehold property?
  - What are stakeholders' views on leasehold?
- 7.2 The team carried out a thorough review of the current policy, legal and academic literature, a quantitative analysis of available Land Registry data, an analysis of a sample of leases and qualitative work including some small focus groups with some property lawyers and property agents, an online survey of leaseholders and a number of in-depth telephone interviews with leaseholders.
- 7.3 As in the Chapters above, the conclusions draw on the quantitative exercise and the qualitative work (from leaseholders and participating stakeholders), together with the knowledge review to explore experiences and knowledge of purchasing and living in leasehold properties to provide a rounded view that integrates expertise and experience.

### What do we know about leasehold ownership in Wales?

- 7.4 The evidence from the quantitative analysis is that the number of leasehold properties in Wales is approximately 16% of all properties – very approximately 235,000 properties. Land Registry Price Paid Data indicates that leaseholds account for 12% of all property transactions in Wales

including repeat sales, with the majority of these transactions (64.3%) involving flats.

- 7.5 It appears that there are generally more leasehold properties in densely populated conurbations, with Cardiff and Swansea being the Welsh 'hotspots' for leasehold transactions. These findings chime with the broader literature on the use of leaseholds, including Easthope et al. (2014), which concludes that multi-titled property has become a standard planning response to increased urbanisation and urban densification.
- 7.6 The above findings on leasehold ownership in Wales are based on data that was not specifically collected to quantify the number of leasehold properties in Wales. This means the data is crude, so for instance it does not necessarily reflect situations where enfranchisement has taken place, nor accurately describe property as leasehold where a freehold owner has converted a property into leasehold flats.
- 7.7 Leasehold houses comprise a larger proportion of the leasehold market in districts with a mining legacy. Leasehold homes are generally cheaper than freehold homes but there is a weak link between the prevalence of leasehold and indices of deprivation. There is no evidence that high ground rents or onerous lease terms impact upon the prices of leasehold property although there is some evidence that they can impact upon obtaining mortgage finance.

### **Purchasing and living in leasehold properties**

- 7.8 The empirical research suggests that the position of leaseholders in Wales is not substantially different from that revealed by investigations into leasehold tenure in England. In general, leaseholders were dissatisfied, the issues are explored in more detail below.

#### *Leasehold houses*



7.9 There was a strong consensus on the need to end houses being sold on leasehold in the reports considered in Chapter 3 and this was echoed across the qualitative data. There has been a recent decline in the sale of new build leasehold houses demonstrating the effectiveness of Welsh Government interventions (see para. 1.3). Overall, when considering experiences of purchasing (Chapter 4) and living in leasehold properties (Chapter 5), house leaseholders were more dissatisfied than those occupying flats.

#### *Experiences of purchasing*

- 7.10 In Chapter 3 it was noted that governmental approaches in Wales as well as in England favoured leaseholder-oriented measures in response to the problems of leasehold. Such measures are designed to address the information imbalance between purchaser and the vendor. UK-wide consumer surveys of leaseholders indicate that conveyancers gave insufficient advice to leaseholders at the point of purchase. There is a general consensus amongst policy makers as well as amongst those we surveyed around the need to improve the quality of information available for leasehold purchasers, as well as the professionalism of those involved in leasehold transactions and those involved in managing leasehold properties.
- 7.11 The empirical work with stakeholders suggested that this group felt that issues with the leasehold tenure centred around information asymmetries, abusive practices and connected reputational issues.
- 7.12 Stakeholders accepted that the reputation of the sector has been damaged but felt that this was largely due to abusive practices. They placed an emphasis on the need to protect consumers through an increased role for lawyers but felt that the core problem with the tenure was that leaseholders simply did not appreciate the basic legal situation on purchase.
- 7.13 The research team noted the disjuncture between the stakeholder views and those of the leaseholders surveyed and interviewed. It also noted that the policy literature, particularly the reports of the regulation of property agents working party (Best, 2019) and the CMA (2020) were more critical of

practices within the sector. It might be argued that those who are professionally invested in the current system, and fully familiar with it, are more likely to support the status quo.

- 7.14 The survey and interviews discussed in Chapter 4 reveal that, although most leaseholders understood that they were buying a lease and that there was a legal difference between leasehold and freehold tenure, there remained a significant lack of a *qualitative* appreciation of what being a leaseholder entails and what the lived reality of residing in a leasehold property would involve. This is discussed further below when considering what the research revealed about experiences of living in leasehold properties.
- 7.15 The interviews showed that it was often difficult for participating leaseholders to understand the management structures in many leasehold arrangements. The analysis of lease terms confirmed that management arrangements were often complex and lacking in transparency. There is a suggestion that management arrangements might be better explained diagrammatically rather than in words. Overall, lease terms were difficult to understand and written in complex language. This was as true of the most recent leases considered as the older leases.

#### *Advice and support*

- 7.16 The response rate for both the survey and subsequent interviews fell below what was anticipated as part of the initial research design. Previous studies, including the *National Leasehold Survey 2016* have received proportionally fewer responses from Welsh leaseholders. The view of the research team is that this demonstrates a general lack of engagement on the issues, compared to leaseholders in England. This may point to a need for policy efforts to support engagement and networking.
- 7.17 Our research considered support for leaseholders. It revealed that when participating leaseholders did seek advice, some sought support from LEASE. However, there was also evidence of a growing reliance on increasingly informal channels of support, including the use of social media

by campaigning bodies such as the Leasehold Knowledge Partnership and the National Leasehold Campaign.

## **Experiences of living in leasehold properties**

### *Onerous terms*

- 7.18 In the reports considered in Chapter 3, there was a strong consensus on the need to prevent onerous ground rents and other onerous lease terms. The CMA interim report gave some useful indications as to what might constitute an ‘onerous’ term within a lease.
- 7.19 There was no obvious reason for the difference in the ground rents in the leases provided to the research team. Concerns were raised by the survey and interview participants around the level of ground rents charged, and many participating stakeholders favoured nominal or ‘peppercorn’ ground rents. However, other participating stakeholders were concerned about protecting institutional freehold investment. It is important to note that the CMA interim report expressed reservations about index linked rises in ground rent, although the stakeholders in this empirical work were satisfied that these were acceptable.

### *Service charges and permission fees*

- 7.20 The data from this research and the consumer surveys show considerable dissatisfaction with service charges. Often there is a lack of transparency about service charges, as lessees see increasing charges with no evidence of additional value or the necessity for such increases. There is also considerable frustration with what leaseholders see as unnecessary permission fees.

### *Professional relationships*

- 7.21 Consumer surveys also demonstrate extensive dissatisfaction with leasehold. The data suggested that the lack of trust and confidence may relate to broader relational issues between freeholders, leaseholders and managing agents. The research team consider that all the professionals –

lawyers, estate agents, managing agents, developers etc. – involved in leasehold and earning an income from it, need to take a greater role in increasing leaseholder confidence and trust in leasehold tenure.

- 7.22 One problem highlighted by this research is the relationship between leaseholders and managing agents. Managing agents are generally chosen by freeholders but are paid for by leaseholders. Leaseholders quite understandably would like a greater say in the appointment of managing agents.
- 7.23 The empirical data suggests that the transfer of management or control to residents can be of use here along with moves to make RTM and collective enfranchisement simpler and cheaper. These can enhance and enable the control that leaseholders wish to exercise over the property.
- 7.24 However, collective ownership/management are not a panacea. The Right to Manage and collective enfranchisement are reliant on a significant time commitment amongst lessees and the availability of certain professional and ‘soft’ skills to enable its proper functioning.
- 7.25 The literature confirms that the demands placed upon leaseholder managers/directors is a significant problem within the sector and there is a need for policy interventions to support these leaseholders. Even if there is a move to commonhold, this problem will remain. Managing multi-owned buildings, whatever the legal form, is hard work.

#### *The limits of legal reforms*

- 7.26 Quite understandably, participating leaseholders called for greater control over their property. Legislation is seen as an exercise in the rebalancing of rights between leaseholder and freeholder and several of the recommendations from this research endorse increased rights for leaseholders.
- 7.27 However, the data from this research showed that being part of a Right to Manage and/or understanding what a lease is in legal terms was insufficient

to help people understand the day-to-day experience of living in a leasehold property. The realities of living in multi-owned properties need to be explained. Common understandings of home ownership tend to reflect freehold ownership and suggest almost total control over living in the property. The research team has noted in both the literature and during interviews that the rhetoric of ownership as absolute control is very powerful and will almost inevitably lead to disappointment in leasehold properties.

- 7.28 The extent of control that freeholders experience is not available in leasehold properties. Whilst lessees own their homes, they share control with the freeholder and, because of historical and structural inequalities, that shared control is unlikely to be on an equal footing.
- 7.29 In addition, even if law reform addresses the imbalance of power between freeholder and leaseholder, or even if the lessees enfranchise or convert to commonhold, no individual owner of a home in a multi-owned property can have complete control. There will inevitably be shared responsibilities for the maintenance of the property and restrictions on use to ensure the maximum collective enjoyment of the property.
- 7.30 Policy interventions will have to take account of the need to balance increased individual leaseholder autonomy with the need to ensure that the collective interests of all those with a stake in the building or development are protected.
- 7.31 Therefore, in addition to addressing the imbalance of rights between leaseholders and freeholders a more holistic approach to the management and governance of leasehold properties is required.
- 7.32 The research team would suggest that there is a need for an approach that goes beyond responding to the demands of leaseholders. For instance:
- a new rhetoric about shared responsibility for the best outcomes for a building/development, rather than individual wealth accumulation and control.

- a form of regulation that reflects the life cycle of a multi-owned building.
- the future proofing of buildings, such as sufficient flexibility to enable energy efficiency improvements or responses to building defects; and
- the alignment and systematisation of the public law regulation of buildings through e.g., planning permission and the Housing Health & Safety Rating System, with private regulation through leasehold or commonhold regimes.

7.33 This would require policy innovation. It would end the reactive policy cycle within which leasehold reform seems to be caught, and it would prepare Wales for the future. As the data in Chapter 2 indicated, flats within multi-owned buildings in Wales are likely to be of increasing significance within urban environments.

#### *Dispute resolution*

7.34 The data from this project also suggests that there was limited knowledge of or confidence in the LVT and other dispute resolution provision such as complaints procedures, ombudsman etc. This is a concern as an effective dispute resolution is a prerequisite for confidence in the tenure.

7.35 It should be noted that leaseholder participants in the research had limited experience of the LVT. In order to improve the effectiveness of dispute resolution for leaseholders, and other owners within multi-owned property, the research team suggest that further research focusing on the experiences of leaseholders and directors of RTMs and freehold companies using the LVT would be of benefit.

#### **What are the advantages/disadvantages of owning a leasehold property?**

##### *Difficulties in reaching general conclusions*

7.36 The literature would suggest that there is no such thing as a typical leaseholder and this research project confirms that. There was also no

evidence that leaseholders made active choices to purchase leasehold property *per se*. People buy leaseholds for a variety of reasons:

- Location.
- Security (including responsibility for external repairs).
- Type of housing (flat).
- Setup - retirement/supported.

### *Advantages*

7.37 The advantage of leasehold ownership of flats is that it enables ownership within multi-occupied property. The leaseholders of flats interviewed for this research wanted and expected to be property owners. There do not appear to be any advantages in owning a leasehold house based on this research.

### *Disadvantages*

7.38 The Law Commission identifies the two key disadvantages of leasehold:

- The lease is a wasting asset.
- Leaseholders do not experience the freedoms and controls that they associate with property ownership.

7.39 These were reflected in the experience of respondents to the survey and telephone interviews. Many respondents suggested that they had not understood that leases exist as a depreciating or wasting asset. They complained about their lack of control.

7.40 Overall, this research indicated that there is a lack of trust and confidence in the tenure in Wales. This can be attributed to a disparity between the expectations and reality of the lease as an asset, which is having a significant impact on the value of leasehold properties and the ability of lessees to sell their properties.

7.41 The Law Commission's work on enfranchisement and reforming the RTM will go some way towards responding to these disadvantages. However, there may be a need for more radical policy moves to deal with the continued power imbalance within leasehold and the lack of flexibility in leasehold tenure.

### *Commonhold*

7.42 Commonhold exists in law as an alternative tenure form to leasehold. It offers the potential to address many of the issues inherent in the leasehold framework, such as its nature as a wasting asset. However, its uptake has so far been limited in England and Wales. The Law Commission has recently published proposals to address this.

7.43 Though participants in the empirical interviews, who were aware of it, were generally positive about the potential of commonhold ownership, there was a recognition that to implement commonhold in its present form within existing developments, a critical mass of people and skills is required.

7.44 Even if commonhold becomes more widespread, there will still be a need for consumer protections and education and training for those who are involved in the commonhold.

7.45 The research team are concerned about the implications of having two forms of tenure for multi-owned buildings if commonhold becomes more common. **There is a need for economic modelling of the consequences for the value of property in such circumstances. The Welsh Government may wish to draw on experiences in New Zealand where leasehold and unit title ownership (New Zealand's equivalent of commonhold) exist side by side (Recommendation 6).**

### **Recommendations**

7.46 This report endorses the recommendations of the Task and Finish Group (TFG 2019) (paras 3.21 – 3.31) which reflect the findings of this research. It supports recommendations for the education and training of prospective



purchasers, the increasing professionalisation of property managers and for increased transparency in leasehold matters.

- 7.47 It also endorses the interim report and recommendations of the CMA (CMA 2020) (paras 3.53 – 3.62) and would suggest that the Welsh Government engages with its continued work as appropriate.
- 7.48 The detailed recommendations contained in the regulation of property agents working party (Best, 2019) (paras 3.42 – 3.52) aimed at improving processes for charges levied on leaseholders and the professionalism of agents are also endorsed. The research team would particularly endorse the importance of mandatory standard form for service charges which would include extensive information and standard costs codes, mandatory sinking funds and constraints on permission fees.
- 7.49 In addition, the research team make the following recommendations:
- 7.50 *Recommendation 1.* The Welsh Government should consider a mechanism that quantifies and records the distribution of leasehold homes in Wales accurately (para 2.5). This would enable better identification of new trends in leasehold and may prevent problems emerging in the future.
- 7.51 *Recommendation 2.* The Welsh Government should consider how to build a network of leaseholders. This could possibly be achieved through existing organisations, and could help to improve knowledge of leaseholder rights and responsibilities in Wales (para 5.49).
- 7.52 *Recommendation 3.* The Welsh Government should consider some additional law reforms identified by this research which have not been specifically identified in the current work of the Law Commission which would also enhance the rights of leaseholders. Such a project might include:
- i. simplifying and modernising lease terms and improving the legal mechanisms to remove out-of-date restrictions. This would improve the accessibility of leasehold documents and enable more modern terms to be inserted into leases (para 5.67).

- ii. mandating template leases for new developments which could for instance include diagrammatic representations of management structures (para 4.52).
- iii. developing a mandatory leasehold property report along the lines of strata title reports in Australia (para 3.124 – 3.125).
- iv. strengthening consultation requirements on major works, giving lessees a greater say in what work should be carried out by whom and at what cost (para 3.9)
- v. implementing the earlier Law Commission’s proposals to reform the law on forfeiture (para 6.70).

7.53 *Recommendation 4.* The Welsh Government should consider the need for further research to understand the effectiveness of the current system of dispute resolution, including the LVT, the (dis)benefits of resident management and how the current dispute resolution procedures respond to these problems (para 3.143). Despite the efforts of the research team, there remain significant gaps in knowledge around dispute resolution, including, for example, where leaseholders collectively own or manage property. The research should also consider proportionate dispute resolution so that those in conflict can avoid the negative impact that prolonged disputes have on the value of their assets.

7.54 *Recommendation 5.* Longer term, the Welsh Government should consider exploring more radical reforms to leasehold, adopting a more holistic and sustainable approach (see paras 3.98 – 3.140). This approach moves beyond the binary relationship of leaseholder and freeholder and understands the economic and social role played by leaseholds in multi-owned properties, particularly in urban environments and areas of high housing demand. This should involve:

- i. A recognition that ownership of a home in a multi-owned building is always going to be a different experience from ownership of a home

that is a house and that expectations of homeowners need to be adjusted accordingly.

- ii.** A recognition of the need to balance the different interests of different stakeholders in multi-owned property. This might mean giving greater weight to collective best interests and the need for effective stewardship of property whilst remaining mindful of the possibility of unfair consequences for particular individuals.
- iii.** Responding to the different regulatory needs that arise at different stages of the life cycle of a building.
- iv.** Leasehold regulation taking into account the social, economic and environmental concerns of those living in and around multi-owned buildings and that these will change during the lifetime of a building.
- v.** The alignment of the private law regulation of a building with public law regulation, so for instance leasehold regulation should consider planning and health and safety requirements.

7.55 *Recommendation 6.* There is a need for economic modelling of the consequences for the value and use of leasehold properties within a system where leasehold exists alongside another form of tenure (e.g. commonhold). The research team are concerned about the implications of having widespread use two forms of tenure for multi-owned buildings if commonhold becomes more common. The Welsh Government may wish to draw on experiences in New Zealand where leasehold and unit title ownership (New Zealand's equivalent of commonhold) exist side by side (para 7.45).

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### Annex A: Unique sales only – Land Registry Price Paid Data

	<b>Ctax Houses Stock</b>	<b>Ctax Flats Stock</b>	<b>Ctax Total stock</b>	<b>Ctax Houses % Stock</b>	<b>Ctax Flats % Stock</b>	<b>Sales % Houses Leasehold</b>	<b>Sales % Flats Leasehold</b>	<b>Leasehold sales as % of all sales</b>	<b>House sales as % of all leasehold</b>	<b>Flat sales as % of all leasehold</b>	<b>Estimated Stock leasehold houses</b>	<b>Estimated stock leasehold flats</b>	<b>Estimated total stock leasehold (n)</b>	<b>Estimated total leasehold stock (%)</b>
Blaenau Gwent	28,890	3,600	32,490	88.9	11.1	2.9	85.9	4.6	62.2	37.8	838	3,092	3,930	12.1
Bridgend	56,870	7,180	64,050	88.8	11.2	3.5	92.9	7.8	42.5	57.5	1,990	6,670	8,661	13.5
Caerphilly	71,690	6,760	78,450	91.4	8.6	4	90	5.8	67	33	2,868	6,084	8,952	11.4

Cardiff	109,190	46,820	156,010	70.0	30.0	2.7	98.2	22.6	9.5	90.5	2,948	45,977	48,925	31.4
Carmarthenshire	79,250	7,020	86,270	91.9	8.1	1.6	84.4	2.8	55.7	44.3	1,268	5,925	7,193	8.3
Ceredigion	29,610	4,590	34,200	86.6	13.4	0.6	94.8	4	13.5	86.5	178	4,351	4,529	13.2
Conwy	45,360	11,420	56,780	79.9	20.1	5.5	91.5	13.8	35.8	64.2	2,495	10,449	12,944	22.8
Denbighshire	38,900	5,480	44,380	87.7	12.3	4	92	5.3	47.9	52.1	1,556	5,042	6,598	14.9
Flintshire	63,370	4,880	68,250	92.8	7.2	2.6	96.1	6.5	56.2	43.8	1,648	4,690	6,337	9.3
Gwynedd	54,300	6,850	61,150	88.8	11.2	3.5	91.6	5	21	79	1,901	6,275	8,175	13.4
Isle of Anglesey	31,790	2,880	34,670	91.7	8.3	1.1	92.4	4.5	24.5	75.5	350	2,661	3,011	8.7

Merthyr Tydfil	24,960	1,730	26,690	93.5	6.5	2.3	79. 9	3.5	63. 5	36.5	574	1,382	1,956	7.3
Monmouthshire	36,850	4,480	41,330	89.2	10. 8	1.8	94. 9	5.5	30. 4	69.6	663	4,252	4,915	11.9
Neath Port Talbot	58,220	7,570	65,790	88.5	11. 5	6.1	94	8.5	69. 9	30.1	3,551	7,116	10,667	16.2
Newport	55,460	12,76 0	68,220	81.3	18. 7	5.6	92. 2	11. 8	43. 8	56.2	3,106	11,765	14,870	21.8
Pembrokeshire	52,410	7,290	59,700	87.8	12. 2	1.7	95. 5	6.7	23. 6	76.4	891	6,962	7,853	13.2
Powys	56,780	5,680	62,460	90.9	9.1	0.6	86	2.4	23. 5	76.5	341	4,885	5,225	8.4
Rhondda Cynon Taff	98,830	9,710	108,54 0	91.1	8.9	3	91. 1	4.6	64. 1	35.9	2,965	8,846	11,811	10.9
Swansea	92,250	19,91 0	112,16 0	82.2	17. 8	9	95. 9	15. 2	54. 9	45.1	8,303	19,094	27,396	24.4

The Vale Of Glamorgan	36,160	5,380	41,540	87.0	13.0	4.7	94.5	11.2	62.1	37.9	1,700	5,084	6,784	16.3
Torfaen	48,540	9,210	57,750	84.1	15.9	7.3	97.2	12	35.6	64.4	3,543	8,952	12,496	21.6
Wrexham	53,080	7,070	60,150	88.2	11.8	3.9	97.9	9.9	37	63	2,070	6,922	8,992	14.9
<b>Total</b>	<b>1,222,760</b>	<b>198,270</b>	<b>1,421,030</b>	<b>86.0</b>	<b>14.0</b>	<b>3.6</b>	<b>95.4</b>	<b>9.5</b>	<b>35.7</b>	<b>64.3</b>	<b>45,745</b>	<b>186,475</b>	<b>232,220</b>	<b>16.3</b>

*Source: Stock data from Valuation Office Agency Council Tax records; Sales flow data Land Registry Price Paid Data 2004/5 -2018/19*

## Annex B: Summary Tables

Table 1: Summary of Policy Proposals

	<b>Tackling Unfair Practices in the Leasehold Market – Government Response</b>	<b>Leasehold Reform 12<sup>th</sup> Report of Session 2017 - 19</b>	<b>UK Government Response to Leasehold Reform CP 99</b>	<b>Final Report of Task and Finish Group</b>	<b>The Regulation of Property Agents Working Group Report</b>	<b>Leasehold Housing Update Report</b>
<b>Date</b>	21 December 2017	19 March 2019	3 July 2019	17 July 2019	18 July 2019	28 February 2020
<b>Link</b>	<a href="#">Government Consultations Tackling Unfair Practices in the leasehold-market</a>	<a href="#">House of Commons Leasehold Reform Twelfth Report of Session 2017-2019</a>		<a href="#">Welsh Govt Independent Review of Residential Leasehold Report</a>	<a href="#">UK Gov Regulation of Property Agents Working Group Final Report</a>	<a href="#">UK Gov Leasehold Housing Update Report</a>
<b>Remit</b>	England	England	England	Wales	England (for managing agents) England and Wales (for estate agents)	England and Wales

<b>Authors</b>	Department of Communities and Local Government	The House of Commons Housing Communities and Local government Committee	Ministry of Housing Communities and Local Government	Independent Task and Finish group instructed by Welsh Government	Working party chaired by Lord Best under the auspices of Ministry of Housing Communities and Local Government	Competition and Markets Authority
<b>Leasehold houses</b>	Ban sale of new build houses with exceptions. Also ban conversion of freehold houses into leasehold	Sale of leasehold houses should cease	Leasehold only to be used for flatted developments with very limited exceptions	Ban use of leasehold in new build houses - with potential exceptions.		CMA concerned that there may have been mis-selling of leasehold houses
<b>Ground Rents</b>	Ground rents on newly established leases of houses and flats restricted to peppercorn rents	New ground rents restricted to peppercorn rents existing ground rents should be limited to 0.1% of the present	There is a new industry pledge to help existing leaseholders with unfair and costly agreements	Ban onerous ground rents and implement the reduction of future ground rents to a nominal financial value.		CMA concerned that some ground rents are high or increase significantly

	Developers to be encouraged to provide compensation schemes for existing lessees with onerous ground rents	value of a property, up to a maximum of £250 per year. Should not increase above £250 over time, by RPI or any other mechanism.	get terms changed			<p>over time. The amount of such increases is frequently unclear or uncertain</p> <p>CMA concerned that some leases will become 'assured tenancies'</p> <p>Significant concerns about RPI linked increases in ground rent</p>
<b>Commonhold</b>	Re-invigorate commonhold	Should become primary model of	Consider Committee's views on	Conduct a feasibility study on the effect of	The report suggests that the creation of a	



		ownership of flats.	commonhold in light of Law Commission report.	compulsory commonhold on current stock of leasehold property.	regulatory framework for property agents would assist greater use of commonhold by providing information to help residents choose a property agent and providing assurance that they have protections if things go wrong.	
<b>Consumer protections /education</b>	Information to be provided on all redress schemes	Standardized key features document required.  Competition and Markets Authority should investigate mis-	Clearer information to consumers on how to buy and sell leasehold to be provided. Work being carried out	Develop and publish a Welsh 'How to buy and live leasehold' guide. Estate agents to provide with property		

		selling and possible compensation.	with developers on a standardised 'key features' document so consumers have clear details on lease before they buy.  New Homes Ombudsman to be established.	particulars and ensure property adverts are correct and detailed. Managing agent must issue guide with the ground rent and service charge demand.		
<b>Sinking funds</b>		Sinking funds require regulation and ss 42A and 42B of the LTA 1987 should be implemented.	Will be considered in light of Regulation of Property Managing Agents Working Group Report.	Introduce a requirement to protect sinking funds via client money protection.	Consideration should be given to implementing ss 42A and 42B of the LTA 1987. Sinking funds should be mandatory and regulated.	

					Government should work with insurance sector on feasibility of extending client money protection to all leaseholders and freehold homeowners.	
<b>Managing agents</b>	Call for evidence on professionalisation of managing agents.			All managing agents must comply with accreditation scheme which has now been prioritised by the Minister. Must be qualified in technical, safety, customer liaison, ethics	All property agents should be regulated. In addition Should be a review of s.24 of LTA1987(appointment of manager by tribunal) consultation on options to support more informally the vetoing or switching of a management	

				and behaviours.	agent consideration of extending powers of Registered Tenants Association and other formations of representative groups of lessees new regulator should be able to intervene where poor management performance.	
<b>Law Reform</b>	Particular matters referred to the Law Commission including simplification and streamlining of enfranchisement, consideration of whether unfair contract terms	Law Commission should recommend a process that will make enfranchisement substantially cheaper. The Government				

	protections apply to leases	should invite, and fund, the Law Commission to conduct a more comprehensive review of leasehold legislation.				
<b>Reputation/ viability of tenure</b>			Government minded of need to ensure that changes made do not have an adverse impact upon new housing supply or the sustainability of shared facilities, structures			

			and open spaces.			
<b>Consultation on major works</b>		<p>Recommends Government implement a new consultation process for leaseholders affected by major works in privately-owned buildings.</p> <p>Threshold of £10,000 per leaseholder should be established, above which works should only proceed with the consent of a majority of leaseholders in the building.</p>			Government should consult on new major work consultation provisions.	

<b>Forfeiture</b>		Government should take up the Law Commission 2006 proposals to reform forfeiture, to give leaseholders greater confidence in disputing large bills.	Will ask Law Commission to update work on forfeiture.			
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**Table 2:** Surveys of Leaseholders (Trade and Consumer Reports)

Author	Title and details	Key Findings	Recommendations
<a href="#">Brady Solicitors with LEASE</a>	<p><i>National Leaseholder Survey 2016</i></p> <p>Survey was available online from 11 January to 29 April 2016.</p> <p>Completed by 1,244 leaseholders including directors of RTMs.</p>	<p>Significant proportion of directors of RMC were dissatisfied with their role and a majority said that the work took up more time than they had anticipated.</p> <p>Difficult to persuade others to take on the role.</p> <p>Considerable dissatisfaction with managing agents.</p> <p>Majority felt that changing managing agents would be difficult.</p> <p>40% of respondents disagreed with the statement that service charges were good value for money.</p>	



		35% said they had insufficient knowledge of leasehold matters.	
<a href="#">Propertymark</a>	<p><i>Leasehold a Life Sentence?</i></p> <p>Survey of over 1000 purchasers of leasehold houses</p> <p>Published 7 September 2018.</p>	<p>62% of respondents felt they were mis-sold their leasehold property.</p> <p>65% used the solicitor their house builder had recommended.</p> <p>94% regretted buying a leasehold property.</p> <p>93% wouldn't purchase another leasehold property.</p> <p>48% of leasehold homeowners were unaware of escalating ground rents.</p>	<p>All developers to adhere to the Consumer Code for Home Builders.</p> <p>Purchasers of new build homes should have access to an ombudsman scheme.</p> <p>Freeholders of leasehold properties should all be required to sign up to a redress scheme.</p> <p>Developers should not build on land that they do not own the freehold to.</p> <p>Selling the freehold:</p> <ul style="list-style-type: none"> <li>• Homeowners should get first refusal</li> <li>• Freehold then should not be sold unless homeowners are consulted and given a choice</li> </ul>

			<p>– and must be transparent with what it means for ground rent, etc.</p> <p>Better education for consumers.</p> <p>Cap ground rents.</p> <p>Digital logbook for properties.</p> <p>Overarching statutory regulation of the sector.</p>
National Leaseholder Campaign	<p><i>Conveyancing Satisfaction Survey 2016</i></p> <p>1496 Respondents. Vast majority were owners of leasehold houses but there were some flat owner respondents.</p> <p>Focus of survey was conveyancing process and effectiveness of legal advice.</p>	<p>Solicitors failed to inform purchasers as follows:</p> <ul style="list-style-type: none"> <li>• 89% of respondents of difference between freehold and leasehold.</li> <li>• 91.4% of respondents of estate charges /maintenance fees.</li> <li>• 96.4% of respondent of the long-term financial implications of leasehold.</li> </ul>	

		<ul style="list-style-type: none"><li>• 84.3% that freehold could be sold on to third party investor.</li><li>• 81.5% of respondents of the right to enfranchise.</li><li>• 87% of respondents either did not know or could not remember receiving information on solicitors' complaints procedure.</li><li>• 82% of respondents either did not or could not remember receiving a client care document from solicitor.</li></ul>	
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## **Annex C**

Questions for focus group – to obtain national perspective

The following issues have been raised in connection with leasehold reform.

Future of commonhold  
Leasehold houses  
Ground rents  
Permission fees  
Mis-selling  
Standardised key features document  
Clear information on leasehold tenure  
Legal costs  
Forfeiture  
Enfranchisement and lease extension  
Management  
Complexity  
Reputation of the tenure

Do any of these issues have a particular Welsh perspective?

Which of these issues, from a Welsh perspective do you consider to be the most important?

Are there issues missing from this list?

What information should be made available to purchasers of leases that they don't have now?

What opportunities are there in the conveyancing process to communicate the issues of leasehold?

What potential ways forward are there in resolving the issues?

## Annex D

### Terms of leases

	<b>Length of term</b>	<b>Parties (as set-out in the lease)</b>	<b>Short description of premises</b>	<b>Ground Rent</b>	<b>Management of building</b>
LEASE 1	2 November 1979  999 years	Lessor and lessee	Flat in a mansion	£40 per annum	Lessor who can charge 15% or employ managing agents  Lessees have owned the freehold from 2004
LEASE 2	17 July 1991  999 years	Landlord and tenant	First floor flat – one of two and owner of other flat is the landlord	Peppercorn rent	Landlord  As there is no common areas no real management is necessary
LEASE 3	1 July 2001  Underlease	Landlord, tenant and management company	Flat, mixed developments	£438.00  5 year review (but no clause	Management company

	120 years (less 5 days)			to raise ground rent)	
LEASE 4	26 June 2002  125 years	Landlord and tenant	Flat one of two with common parts	Peppercorn rent	Landlord, who can claim expenses if he does not employ managing agents
LEASE 5	10 September 2002  Underlease  999 years less 20 days	Lessor (developer), the management company and lessee	Flat on a new development	£200 per annum  Subject to review so that it remains at the same percentage of the review value of the building	Management company and the Lessor

LEASE 6	1 January 2003  125 years	Lessor (Developer), Management Company and Lessee	Flat on a new development with parking space	£150 to be reviewed every 10 years – review value of the building	Management company Lessee has a share in the management company Management Company may cease to perform obligations if majority of members agree
LEASE 7	1 October 2004  150 years	Company (Developer), Management Company and Buyer	Flat on a new development with parking space	£150 to be adjusted by reference to RPI every 25 years	Management company that all lessees and future purchasers belong to.
LEASE 8	1 January 2005  999 years	Landlord, Tenant and (management) Company	Flat on a new development with garage and additional storage area	£25 per annum for whole term	Tenants are automatically member of the management company. Freehold to be transferred to the management company 3 months after the completion of the leases of the apartments in the building.

LEASE 9	14 March 2007  125 years	Landlord (housing association) and leaseholder	Ground floor flat.	£10 per annum	Landlord.
LEASE 10	26 June 2015  999 years	Landlord (developer), management company and tenant	House on an estate	£150 per annum to be varied every 10 years according to RPI	Management company to provide services and insurance for common parts.
LEASE 11	2015 999 years	Landlord (Developer), Management Company and Tenant	Flat on a new development with parking and bike store	Peppercorn rent	Tenant and landlord are members of management company.
LEASE 12	26 <sup>th</sup> May 2016	Landlord (housing association – a charity) and tenant	Flat in retirement scheme		Landlord provides all services



	60 years				
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## Annex E: Survey for leaseholders of flats

### Section 1: About you and your lease

Do you...

- Live in the flat as your home
- Let the flat to short term tenant(s) (i.e. you are the landlord)
- On a different basis, e.g. you let it as a holiday home

How old are you: Please enter a number, if you prefer not to say enter "0".

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Who else lives in your household (tick any that apply):

- A partner (wife/husband, civil partner, co-habitee)
- Child or children under 18 years old
- Child or children over 18 years old
- Other
- Prefer not to say

Approximately, how much is the net annual income of your household?

- Over £100,000
- £50,000 – 99,999
- £25,000 – 49,999
- £10,000 – 24,999
- Less than £10,000
- Prefer not to say

When did you buy the leasehold?  
(Please enter the year)

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What is the date of the beginning of your lease?

- Please specify the year \_\_\_\_\_
- Don't know

What is the date of the end of your lease?

- Please specify the year \_\_\_\_\_
- Don't know

Is your flat...

- A converted house
- Originally built as a flat

Which floor do you live on?

- Ground Floor
- 1st floor
- 2nd Floor
- 3rd Floor
- 4th Floor
- 5th Floor
- 6th - 10th Floor
- 11th Floor or above

How many floors are there in your block of flats?

- Ground Floor
- 1st floor
- 2nd Floor
- 3rd Floor
- 4th Floor
- 5th Floor
- 6th - 10th Floor
- 11th Floor or above

Approximately how many flats are there in your block?

\_\_\_\_\_

Is your flat any of the following (tick any that apply)?

- Shared ownership

- Retirement housing
- Purchased via Help-to-Buy Wales
- Bought under the right to buy from a local authority
- Bought under the right to acquire from a housing association
- Bought with a buy-to-let mortgage
- None of the above

Who is your freeholder?

- A commercial organisation
- A private individual
- The original builder/developer,
- A local authority,
- A housing association,
- Collectively owned by the leaseholders
- Don't know

Is your building managed by...

- The freeholder
  - A management company set up by the freeholder or developer
  - A manager appointed by the freeholder
  - The leaseholders
  - A manager appointed by the leaseholders
  - On a different basis (if so, please specify)
- 
- Don't know

## **Section 2: About the terms of the lease and what you pay**

**When you bought your flat:** Did you understand the terms of the lease?

- Yes
- No

**When you bought your flat:** Did you use a solicitor or conveyancer?

- Yes
- No
- Don't know

Did the solicitor or conveyancer explain the terms of the lease?

- Yes
- No
- Don't know

Since you have bought your house have you sought advice on your lease or aspects of living in a leasehold property from anyone?

- Yes
- No

Please give details including from whom.

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Does your lease require you to pay a service charge?

- Yes
- No
- Don't know

Is the service charge...

- A fixed amount
- Varies depending on the costs
- Don't know

Do you think the service charges represents value for money?

- Yes
- No
- Don't know

Can you explain why you think that?

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Does the freeholder pay the insurance for the building?

- Yes
- No
- Don't know

Does this cause any problems?

- Yes
- No

Can you explain the problems?

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Have you ever sought to legally challenge the service charges?

- Yes
- No

Can you say what happened?

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How much do you pay annually for your ground rent? (£ per year) An estimate is fine if you are not sure.

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Does the lease provide for the ground rent to increase?

- Yes
- No
- Don't know

If the ground rent can increase, can you explain on what basis?

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Are there any particular covenants or restrictions in your lease that concern you?

- Yes
- No
- Don't know

Can you explain those concerns?

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Have you ever had to pay any other charges under the lease (eg for permissions to do alterations to the premises, to sublet etc)

- Yes
- No
- Don't know

If yes, do you think the charges represent value for money?

- Yes
- No
- Don't know

If no, can you explain why you think that?

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Have you ever sought to legally challenge any other charges under the lease?

- Yes
- No

Can you say what happened?

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### Section 3: Using your rights

Do you know about any of the following rights...

The right to extend your lease?

- Yes
- No

The right to first refusal if your landlord wants to sell the freehold?

- Yes
- No

The right for leaseholders to collective to buy (enfranchisement) their freehold

- Yes
- No

The right for leaseholders collectively to manage their building

- Yes
- No

Have you considered using any of these rights?

- Yes
- No

Can you explain why you considered it?

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Have you taken any action to use any of the rights?

- Yes
- No

Can you say what happened?

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What advice would you give anyone who was thinking of buying a leasehold flat? (Tick all that apply)

- Do it
- Don't
- Get good legal advice
- Check your charges
- Other (please specify) \_\_\_\_\_

Why would you give that advice?

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## Annex F

Survey for leaseholders of houses.

Section 1: About you and your lease

Do you...

- Live in the house as your home
- Let the house to short term tenant(s) (i.e. you are the landlord)
- On a different basis, e.g. you let it as a holiday home

How old are you: Please enter a number, if you prefer not to say enter "0".

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Who else lives in your household (tick any that apply):

- A partner (wife/husband, civil partner, co-habitee)
- Child or children under 18 years old
- Child or children over 18 years old
- Other
- Prefer not to say

Approximately, how much is the net annual income of your household?

- Over £100,000
- £50,000 – 99,999
- £25,000 – 49,999
- £10,000 – 24,999
- Less than £10,000
- Prefer not to say

When did you buy the leasehold?

(Please enter the year)

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What is the date of the beginning of your lease?

- Please specify the year \_\_\_\_\_
- Don't know

What is the date of the end of your lease?

- Please specify the year \_\_\_\_\_

- Don't know

Is your house any of the following (tick any that apply)

- Shared ownership
- Retirement housing
- Purchased via Help-to-Buy Wales
- Purchased as a buy to let property

Who is your freeholder?

- A commercial organisation
- A private individual
- The original builder/developer,
- Collective owned by the leaseholders
- Other (please specify) \_\_\_\_\_
- Don't know

Section 2: About the terms of the lease and what you pay

When you bought your house: Did you understand the terms of the lease?

- Yes
- No

When you bought your house: Did you use a solicitor or conveyancer?

- Yes
- No
- Don't know

Did the solicitor or conveyancer explain the terms of the lease?

- Yes
- No
- Don't know

Since you have bought your house have you sought advice on your lease or aspects of living in a leasehold property from anyone?

- Yes
- No

Please give details including from whom.

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How much do you pay annually for your ground rent? (£) An estimate is fine with you are not sure.

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Does the lease provide for the ground rent to increase?

- Yes
- No
- Don't know

If the ground rent can increase, can you explain on what basis?

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Are there any particular covenants or restrictions in your lease that concern you?

- Yes
- No
- Don't know

Can you explain those concerns?

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Have you ever had to pay any other charges under the lease (eg for permissions to do alterations to the premises, to sublet etc.)

- Yes
- No
- Don't know

Do you think the charges represent value for money?

- Yes
- No
- Don't know

If no, can you explain why you think that?

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Have you ever sought to legally challenge any other charges under the lease?

- Yes
- No

Can you say what happened?

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Does your lease require you to pay for a service charge?

- Yes
- No
- Don't know

Is the service charge...

- A fixed amount
- Varies depending on the costs
- Don't know

If you pay a service charge, what services do you receive?

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Do you think the service charges represent value for money?

- Yes
- No
- Don't know

Can you explain why you think that?

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Have you ever asked for further information about the service charges?

- Yes

- No
- Don't know

Have you ever legally challenged the service charges?

- Yes
- No

Can you say what happened?

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### Section 3: Using your rights

Do you know about any of the following rights...?

The right to buy (enfranchise) your freehold?

- Yes
- No

The right to extend your lease?

- Yes
- No

Have you considered using any of these rights?

- Yes
- No

Can you explain why you considered it?

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Have you taken any action in connection with any of the rights?

- Yes
- No

Can you say what happened?

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What advice would you give anyone who was thinking of buying a leasehold house? (Tick all that apply)

- Do it
- Don't
- Get good legal advice
- Check your charges
- Other (please specify) \_\_\_\_\_

Why would you give that advice?

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## **Annex G: Topic Guide for telephone interviews with leaseholders.**

Can you confirm that you have received the Privacy Notice explaining your rights under the General Data Protection Regulation? Are you happy to proceed on the basis of the information in the notice?

Some of the information we are asking you will already have put in your survey. Because the survey is anonymous, I am going to ask them again....

I am going to start with some basic information about you and your home:

1. Can you confirm your name and your age?
  2. Tell me about your home:
    - a. Who owns the leasehold property (interviewee only or with others)?
      - i. Is this shared ownership?
    - b. When did you buy the property?
    - c. Is your home a:
      - i. House (can you described it – terrace, (semi)-detached, bungalow)
      - ii. Flat (can you describe it – converted house, purpose-built, number of floors and flats)
    - d. Is this the first home you have owned?
    - e. How old if the property? Are you the first owner of it?
    - f. Is your property ex-local authority/ housing association flat.
    - g. Is your property retirement housing?
    - h. Did you purchase your property via a Help-to-Buy Wales mortgage
    - i. Have you previously owned a leasehold property? (only if answered no to Q2d)
- As you are aware, we are interviewing you to gain a better understanding of leaseholds in Wales. The following questions are related to the freeholder and property management.
- j. Do you know who the freeholder is for your property:
    - i. Name?
    - ii. What sought of organisation are they?

iii. If no name: probe for type of organisation (e.g., private company, builder/developer, local authority, housing association, collective ownership by leaseholders).

k. If the property is a flat, Is the building in which your flat is situated managed by:  
(dependent on response to Q 2Cii

i. The freeholder

ii. A manager appointed by the freeholder

iii. The leaseholders

iv. A manager appointed by the leaseholders

v. In a different way. PROBE

l. What is the local authority area it is in?

Can you remember purchasing your current home? This next section of questions is about that experience.

3. Why did you choose to purchase the property?

4. When you decided to purchase the property, did you know it was a leasehold property? (if yes go to Q5; if no to Q7)

5. Were you specifically looking for a leasehold property?

6. When and How were you made aware that the property was leasehold?

7. Where did you get that information from?

8. Did you have a solicitor or conveyancer acting for you in the purchase? Did they send you the lease, did they explain the terms of the lease and their implications?

9. How easy or difficult were the lease terms to understand?

10. Do you think the lease terms were written in an accessible way that was easy for you to understand?

11. Were you given clear and transparent information provided on what leasehold ownership entails?

12. Did you feel you fully understood what the leasehold agreement meant at the time of purchase?

13. Did you seek out any own advice beyond your solicitor or conveyancer? If so, from where (internet, CAB etc.)? Can you tell us about that?

The next section questions are about living in your home and the experience of being a leaseholder.

#### Payments – service charges

14. Does your lease require you to pay for a service charge? (If no go to question 23).
15. How much do you pay annually for service charges? (Probe for average (over how many years) or particular year, does it fluctuate?)
16. Do you know what services you receive for that charge? Can you tell me about them?
17. Have you had to pay for any major works (eg for modernisation of the block of flats) in the last 10 years (or less if you have been an owner for fewer years)
18. Do you have any concerns about your service charge payments?
19. Do you think the charges represent value for money? Can you explain why you think that?
20. Have you been consulted on any service (either for building works or on-going contracts for services) at any time? Tell us about that process (probe for simple or complex).
21. Have you ever sought to legally (eg through a leasehold tribunal or court action) challenge the charges? Can you tell us about that experience?
22. Do you have any say on the fixing of the service charges? If yes tell me about how. If not, would you like more say?

#### Payments – ground rent

23. How much do you pay annually for your ground rent?
24. Do you know if your lease allows the ground rent to be increased? If so by how much and how often?
25. Do you have any concerns about your ground rent?
26. Do you have any views on the long-term affordability of your ground rent charges?

#### Other costs

27. Have you ever had to pay any other charges under the lease (eg for permissions to do alterations to the premises, to sub-let etc)
28. If yes, can you tell us about the experience?

29. Do you think the charges you have had to pay represent value for money? Can you explain why you think that?

#### Relationships

30. Do you have any relationship with your freeholder? If you do, can you describe it?

31. Is there a property management agent managing the premises? If there is, what is the relationship like between you and the property management agent? (Probe for nature of the relationship with the agents – does it make a difference if appointed by the freeholder or the leaseholders.)

32. What (if any) are the areas of contention with the freeholder or the agent?

33. Have you on your own or with other leaseholders challenged aspects of how your agreement is managed?

34. If you have, can you let us about that experience (probe for simple or complex)?

35. Do you think the processes are transparent? If not, how can they be improved?

36. Is there a recognised tenants association? If so, what role does it take? Do you think it is effective in supporting leaseholder /challenging freeholders/agents?

#### Awareness of rights

37. Are you aware of any law that gives leaseholders rights? If so, can you tell us about your understanding of them?

38. Do you know about any of the following rights:

a. Leasehold houses: the buy the freehold or extend the lease

b. Leasehold flats: right to a lease extension

c. Leasehold flats: right to first refusal

d. Leasehold flats: the right to collective enfranchisement

e. Leasehold flats: the right to manage

39. Have you thought about trying to use or actually used any of these rights? Why did you consider it?

40. If you did use any of the rights, what is your experience of it?

41. Are you aware of the role of Leasehold tribunals? And how many lease terms disputes can be resolved? (Probe for understanding of the leasehold tribunal).

42. Have you ever used the tribunal – what was your experience of it?

43. Do you understand what action the freeholder can take if you do not keep to the lease (probe for forfeiture actions)? Do you have any experience of this? Can you tell us about that?

44. Are you familiar with the Leasehold Advisory Service or LEASE?

45. Have you consulted LEASE for advice? If so, what is your experience of that?

46. Have you used any other advice service to get help to understand your lease or anything else about living in a leasehold property?

We are now going to the final questions about what the advantages/disadvantages of owning a leasehold property.

47. How is your experience of owning a leasehold property compared with your initial expectations when entering into the agreement?

48. Are you satisfied or dissatisfied with your lease agreement or do you not have a view on it?

49. Does owning a leasehold property impact on your plans for the future? (probe for problems of selling and the nature of them)

50. Have you experienced any unexpected issues from being a leaseholder? Can you explain them to us?

51. Would you consider buying a leasehold property again in future?

Would you be happy to send the researchers a copy of your lease for the purposes of this project?

Do you have an electronic copy? Alternatively, I will send you a stamped addressed envelope to provide a copy of your lease.

## Annex H Law Commission Leasehold and Commonhold projects

Sub-project	Terms of reference*	Call for evidence	Consultation	Report
Leasehold enfranchisement	<p>To simplify enfranchisement legislation;</p> <p>To consider the case to improve access to enfranchisement and reforms that may be needed to better protect leaseholders, including the ability for leaseholders of houses to enfranchise on similar terms to leaseholders of flats;</p> <p>to examine the options to</p>		<p><i>Leasehold home ownership: buying your freehold or extending your lease</i></p> <p>CP 238</p> <p>20 September 2018</p>	<p><i>Report on options to reduce the price payable</i></p> <p>Law Com 387</p> <p>9 January 2020</p> <p>Note, the report does not make recommendations as to how premiums should be calculated as this involves in part a political judgement and is, therefore, for Government and ultimately Parliament to decide.</p>

	<p>reduce the premium payable by existing and future leaseholders to enfranchise, whilst ensuring sufficient compensation is paid to landlords;</p> <p>to make enfranchisement easier, quicker and more cost effective;</p> <p>to ensure that shared ownership leaseholders have the right to extend the lease of their house or flat;</p> <p>to bring forward proposals for leasehold flat owners, and house owners, prioritising solutions for</p>			<p>Work continues on other aspects of leasehold enfranchisement and reports are due Spring 2020.</p>
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	existing leaseholders of houses.			
Right to Manage	To facilitate and streamline the exercise of the right to manage.		<i>Leasehold Home Ownership: Exercising the Right to Manage</i> CP 243 January 2019	Due Spring 2020
Commonhold	To reinvigorate commonhold as a workable alternative to leasehold, for both existing and new homes.	22 February 2018	<i>Re-invigorating Commonhold: The alternative to Leasehold</i> CP241 December 2018	Due Spring 2020

\*In addition to the specific terms of reference of the sub-projects there are two overarching terms of reference: to promote transparency and fairness in the residential leasehold sector and to provide a better deal for leaseholders as consumers.