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Submitted to **Law Commission consultation on leasehold home ownership: buying your freehold or extending your lease**
Submitted on **2019-01-07 21:29:39**

About you

What is your name?

Name:
Thekla Fellas

What is the name of your organisation?

Enter the name of your organisation:
The Property Litigation Association (PLA)
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Are you responding to this consultation in a personal capacity or on behalf of your organisation?

Response on behalf of organisation

If other, please state::

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Chapter 3: Overview of the new regime

Consultation Question 1: We invite the views of consultees as to whether a reformed enfranchisement regime should treat particular issues differently in England and in Wales. Consultees are welcome to share their views on this point here, or in response to questions which we ask later in this paper on particular issues.

Please share your views below::
We have no views in response to this question other than those reflected in the responses below

Chapter 4: The right to a lease extension

Consultation Question 2:

Yes

Please expand on your answer::
We agree that leaseholders of both houses and flats should have the same right to acquire lease extensions as often as they wish (subject to payment of an appropriate premium).

Please share your views below::
(1) We agree that extensions of50 and 90 years are too short to provide leaseholders with adequate security. We consider that the appropriate length for a lease extension for both houses and flats would be between 125 and 150 years. In our view, 250 years or 999 years would be too long, given that the purpose of the lease extension regime (as opposed to the right of a tenant to acquire the freehold) is to preserve some value in reversionary interest for the landlord.

(2) The point at which a landlord should be entitled to terminate the lease will depend on the length of the lease extension that a tenant is able to acquire under the revised statutory scheme. For example, if the revised regime provided for lease extensions of 250 years or more, we do not think it would be fair and

proportionate to limit the landlord's right of termination to the last 5 years of the extended term.

Unless adequate transitional provisions (or retrospective effect) are introduced, it will also be important to bear in mind that statutory redevelopment rights for landlords in leases which have already been extended are constrained to the last 5 years of the period ending 90 years after the existing lease terms date.

If lease extensions under the new regime are prescribed to be up to 150 years, we recommend that rights of termination for the purposes of redevelopment should be exercisable in the 12 months prior to the existing lease term date, and during the last 10 years of the term. The rationale behind allowing redevelopment during the last 10 years is to reflect the longer term of the extended leases when compared to the 50 or 90 year extensions permitted under the current regime

Consultation Question 3 :

The right to a lease extension should in all cases be a right to an extended term at a nominal ground rent

Please expand on your answer::
We acknowledge that if one purpose of reforming the statutory regime is to address onerous ground rents for what might be a minority of leaseholders who pay an onerous ground rent but do not want to pay for an extended lease, the option to reduce ground rents without acquiring an extended lease could benefit this category of leaseholder.

However, , we agree that creating the ability for leaseholders to elect to extend a lease without reducing the ground rent, or reduce the ground rent without acquiring an extended lease will introduces additional complexity into the statutory regime. This is also likely to contribute to a leasehold market in which consumers (including individuals buying existing leasehold interests) will be confused. They might be unable to make a like-for-like comparison between the leases of two flats (one of which might have been extended without a reduction in the ground rent, the other of which might have had its ground rent reduced but have a shorter residual term), and might pay only to reduce the ground rent but then find that the short residual term is unmortgagable.. The Terms of Reference require proposals to simplify the existing regime and not to complicate it.

For these reasons, we agree that a single uniform right, to a fixed additional term at a nominal ground rent, is the appropriate solution.

Consultation Question 4 :

Yes

Please expand on your answer::
We agree with the proposals for the reasons set out in the Consultation Paper

Question 5:

Other

Please expand on your answer:
(1) We agree.

(2) We do not agree with this proposal. The proposal will affect a lender’s willingness to provide finance to landlords and is likely to have an adverse effect on the value of a landlord’s reversionary interest as the market for buyers would be limited to predominantly cash buyers.

Unlike the proposal referred to in (1) which will improve a lender’s security, the grant of an extended lease will diminish a lender’s security over a landlord’s mortgaged property interest. The consent of a lender should be obtained prior to the grant of the lease and a lender afforded a reasonable opportunity to impose reasonable conditions such as payment of the premium (or a substantial part of it) to the lender to reduce the amounts outstanding on any mortgage.

Question 6:

Other

Please expand on your answer:
The current regime allows a degree of flexibility to modernise leases in view of changes in law and in the building and allows for defects and omissions in leases to be remedied. Any new regime should retain this flexibility, which is beneficial to landlords, leaseholders, purchasers and mortgagees of leasehold premises and the leaseholders were they to exercise the rights of collective enfranchisement or rights to manage.

Adoption of model lease terms is to be encouraged, where appropriate, and might help to simplify the extension process.

However, whether it would be appropriate for a new lease to be identical to the existing lease save where either party has elected to include terms from a prescribed list of non-contentious terms, will depend on when the existing lease was granted and whether it allows for proper management of the building and recovery of the costs of repairing, maintaining and upgrading the building through the service charge. In other words, limiting modernisation to a list of prescribed terms will only work if that list is fit for modernisation of all forms of existing lease. Unless a satisfactory and comprehensive list can be agreed, we would recommend adopting the existing regime and its flexibility notwithstanding that retaining the existing regime might not simplify the lease extension process.

With reference to the examples of prescribed terms proposed by the Law Commission:

(a) any new mutual enforceability covenant should be limited to enforcement of the repairing obligation only. A landlord should only be required to take such action where reasonable and only upon having received sufficient security for its costs including an indemnity against all and any costs and expenses arising from

or incidental to such enforcement.

(b) a covenant by the landlord to enforce the repairing obligations imposed by a third party management company or to carry out a management company's obligations if it fails to do so, should be conditional on the majority of other leaseholders in the building consenting to the landlord taking such action and recover its costs from the leaseholders. A landlord should not have a new financial burden placed on it, particularly as the leaseholders have the ability to appoint a manager or form an RTM Company if a management company is not performing its obligations.

(c) the requirements of the Council of Mortgage Lenders ("CML") can frequently change and to prevent a landlord unintentionally finding itself in breach of the terms of a lease, any new obligation should be limited to the landlord using reasonable endeavours to comply with the insurance requirements of the CML from time to time.

Please share your views below:
The prescribed list should also include:

(a) a covenant by the leaseholder to pay for services provided by the landlord which are not referred to in the existing lease, but which have arisen and been enjoyed by the leaseholder by the date of the lease extension (or, alternatively, a right for the landlord to extend the list of services in respect of which a service charge is payable, to include services which the landlord reasonably deems necessary or desirable for the benefit of the leaseholders as a whole).

(b) provision for the costs of upgrading the building and common parts where reasonably necessary to be recovered through the service charge.

(c) a covenant by the leaseholder to obtain consent to assign underlet or part with possession of the whole of his or her flat, such consent not to be unreasonably withheld or delayed.

Please share your views below:
For Aggio style leases, any new lease will need to be consistent with the terms of other leases in the building and it would not be appropriate to adopt a standard or model form of lease.

Question 7:

No

Please share your views below:
We do not consider that the ability of parties to enter into a lease extension outside the statutory regimes creates significant problems in practice. Whilst a tenant might agree a lease extension without being made aware of its statutory rights, we do not think it would be appropriate to fetter the landlord and tenant's right to enter into a mutually acceptable commercial arrangement at their discretion.

Please share your views below:
For the reason above, we do not consider that controls should be placed on parties' ability to enter into a new lease or lease extension by consent on mutually acceptable terms. At most, a landlord should be required to notify their tenant of the existence of the statutory rights and invite them to take independent legal advice before proceeding with a lease extension outside the statutory regimes. However, we consider that this (equivalent to the "contracting out" procedure for commercial leases under the Landlord and Tenant Act 1954) is unnecessarily onerous.

Question 8:

Please share your experiences below:
The authors of these responses do not have sufficient experience in practice of the contracting-out procedure to be able to share experiences.

Please share your views below:
In principle, we consider that similar provisions should be made under any new enfranchisement regime.

The right to a lease extension: the impact of reform

Question 9: To what extent would our proposed uniform right to a lease extension at a nominal ground rent, for both houses and flats, increase the likelihood of leaseholders seeking lease extensions under (future) enfranchisement legislation?

Please share your views below:
We consider that a uniform right to a lease extension at a nominal rent for both houses and flats will increase the number of lease extension claims pursued in respect of houses.

Currently, leaseholders have different enfranchisement rights under the 1967 Act and 1993 Act. In particular under the 1967 Act leaseholders are only entitled to a lease extension for a term of 50 years after the expiry of the existing lease at a market rent and they are not entitled to any further lease extensions. By comparison, under the 1993 Act leaseholders are entitled to a lease extension of 90 years plus the unexpired term of the existing lease at a peppercorn rent and can extend repeatedly.

A uniform right applying to flats and houses will remove the perceived advantages leaseholders of flats are considered to have in comparison to leaseholder of houses. This is likely to increase the number of lease extensions of houses claimed which is currently a right infrequently claimed.

Question 10:

Please share your views and evidence below:
No comment.

Question 11:

Please share your views and evidence below:
We cannot submit evidence as to the likely uptake of these proposed options (extending leases without changing the ground rent, and vice versa). However, we consider that the requirement by most mortgage lenders for a lease to be of a particular length means that lease extensions will remain paramount. Furthermore, any changes to the law in relation to ground rents (on which Government is consulting separately) may have a more measurable impact on leaseholders and on the market

Question 12:

Please share your views and experiences below:
(1) We do not consider that the ability of parties to negotiate a lease extension materially increases the cost and duration of a lease extension process in the majority of cases. The terms of a new lease are often a secondary consideration to the premium to be paid and we do not consider that restricting the ability of parties to negotiate lease terms would lead to a higher proportion of leaseholders exercising rights to a lease extension.

(2) Constraints within the existing statutory regimes on the imposition of onerous additional terms should mean that substantive disputes over the proposed new terms are relatively rare.

(3) The scope for modernisation of a lease and imposition of addition terms is restricted as set out in s57 of the 1993 Act and as a result, undesirable or onerous terms which result in increased costs to leaseholders are not imposed, so this.

In the majority of cases, the form of lease offered to a leaseholder is in a substantially similar form to the leaseholder's current lease. There are limited exceptions, for example where an old lease is not comprehensive and/or may have been granted by a head landlord whose interest has expired or is due to expire soon. In these circumstances (in our view), the imperative to remedy defects or omissions in the lease outweighs any perceived increase in cost or time.

It is often favourable to a leaseholder (and potential purchaser or mortgagee) to have a new lease in a modernised form and consistent with other extended leases in the building. In the event the leaseholder participated in a collective enfranchisement claim, it would be in a leaseholder's interest in its capacity as part owner of the freehold that any new lease allowed for a degree of modernisation and proper recovery of costs incurred by the landlord.

Please share your views below:
see above

Other

Please share your views below:
we are unable to comment.

Chapter 5: The right of individual freehold acquisition

Question 13:

Please share your views below:
(1)

(a) We do not agree with the proposal which would deprive a landlord of its interest in any other premises in the building. As distinct from lease extensions, rights of enfranchisement of a house should be limited to circumstances where a leaseholder has a lease of the whole of the house and should not allow leaseholders to acquire other assets belonging to a landlord over which a leaseholder presently has no rights.

(b) We do not agree with this proposal. There would be practical difficulties where premises such as a car parking space fall outside of the curtilage of the property and do not fall within a landlord's title or where a freehold title would need to be carved out and rights reserved to deal with the transfer of such land.

(2) We agree with this proposal.

Question 14:

Other

Please expand on your answer:
(1) Whilst this seems to be simple in principle, we foresee practical difficulties where a landlord's mortgage affects a number of properties. This might then result in additional costs being incurred by leaseholders in determining or applying to Court to determine the sum payable to discharge part of a registered charge. If the issue to be addressed is unreasonable claims by landlords for the cost of applying to mortgagees for release of the mortgage, then (if appropriate) a cap might be imposed on those fees.

Leaseholders should not be permitted to correspond with a landlord's mortgagee regarding matters affecting a landlord's mortgage and the current regime whereby a landlord obtains a redemption figure prior to completion should continue.

(2) A leaseholder should not be permitted to pay sums into Court instead of to the mortgagee save in exceptional circumstances, as the cost of a lender applying to recover monies paid into Court will deter lenders from lending to landlords and this appears to be an unnecessary level of complexity and red tape. Any costs in connection with an application made by the leaseholder to pay monies into Court or by a mortgagee to recover such monies should be recoverable from the leaseholder.
(3) Subject to the above, we agree with the proposal that sums due from the leaseholder to the landlord should be reduced by sums paid under (2) above.

Yes

Please expand on your answer:

Question 15:

Please share your views below:
We believe it would be appropriate for the terms of the transfer to reflect rights and obligations contained in the existing lease.

No

Please expand on your answer below:
We do not agree that a prescribed list of terms would be appropriate.

Where a property forms part of a larger estate, the prescribed list is unlikely to cover the precise estate management rights and obligations specific to each property and contained in each lease, so a prescribed list is unlikely to be sufficiently comprehensive. As currently proposed, a leaseholder could decide not to elect to impose an obligation contained in the lease from which the leaseholder derives a benefit, which would require the landlord or other leaseholders on an estate or owners of enfranchised property on an estate to pick up the shortfall. Further, it would be unfair for a leaseholder to unilaterally elect to impose rights which the leaseholder does not currently enjoy under their lease. Any uplift in the value of the property as a result of the imposition of terms set out in a prescribed list or from the conversion of time limited rights over the landlord's retained land to permanent rights should be reflected in the premium paid to the landlord

Please share your views below:
Notwithstanding the above, if a list of terms is to be prescribed, this should include:

(a) a positive covenant on the leaseholder to contribute towards the costs of common roadways amenities and services;

(b) an indemnity from the leaseholder to observe and perform the obligations contained in the lease on the part of the landlord where a leaseholder elects not to merge the lease with the freehold and an indemnity for the benefit of the transferor against any future breach;

(c) restrictions on the use of the property as a single residential dwelling;

(d) restrictions on external development of the property unless development value is paid to the landlord.

Question 16:

Please share your views below:

(1) We agree that the terms of the transfer should reflect the rights and obligations contained in the existing lease
(2) We do not agree that a prescribed list of terms would be appropriate for reasons set out in our response to question 15.

Please share your views below:
However if the Law Commission is minded to recommend that a list of terms is prescribed, please see the proposed terms listed in our response to question 15.

Question 17:

Yes

Please expand on your answer:

Please share your views below:
We also agree that unpaid sums due a landlord of an estate should be capable of being charged against the freehold title of the premises and enforced by the landlord as if he or she were a mortgagee of a property.

Question 18:

No

Please expand on your answer:
In practice, we believe that a leaseholder's existing lease is likely to deal with rights and obligations, and it will only be in exceptional cases that that is not the case. Therefore, and having regard to our concerns that it would not be possible to create a sufficiently comprehensive prescribed list, we consider that reference to a prescribed list should not be made.

Please share your views below:
However where this is not the case, rights similar to those set out in Clause 10(2) of the 1967 Act should be granted.

Question 19:

No

Please expand on your answer:
We do not consider that the ability of parties to enter into a transfer of the freehold of a house outside the 1967 Act creates significant problems in practice. Whilst a tenant might agree to acquire the freehold without being made aware of its statutory rights, we think it would be very unlikely for a landlord to agree to do so unless the tenant had already been aware of its statutory rights under the 1967 Act. In principle, we do not think it would be appropriate to fetter the landlord and tenant's right to enter into a mutually acceptable commercial arrangement at their discretion.

Please share your views below:
For the reason above, we do not consider that controls should be placed on parties' ability to enter into a transfer of the freehold by consent on mutually acceptable terms.

The right of individual freehold acquisition: the impact of reform

Question 20:

Please share your views below:
(1) Save for matters mentioned below (and primarily the premium), in the majority of cases we consider that the terms of a transfer are often readily agreed so that diration and cost are not materially increased by negotiation of the lesser terms.

(2) For that reason, and by reason of the statutory constraints on the introduction of onerous provisions, disputes are infrequent and (where an application to the Tribunal for determination of terms is made), prompt directions and listing of the claim for hearing often leads to the transfer terms being agreed within a short period, thanks to the efficiency of the Tribunal system.

Where specific terms are included in the transfer, these reflect rights and obligations contained in the leaseholder's lease, which have previously been agreed by the parties (whether as original parties to the lease or assignees), and these are not contentious.

Areas of contention relate to restrictions relating to development, where a leaseholder may want to deviate from the restrictions in the leaseholder's lease. In these instances, a landlord should be adequately compensated for any development value or be entitled to impose a restrictive covenant in the transfer.

(3) The ability of the parties to negotiate the terms of the transfer is restricted by the provisions of s10 of the 1967 Act which does not allow for the imposition of onerous terms. Any terms which require future payments of costs from the leaseholder reflect terms contained in the leaseholder's lease and if the leaseholder is to retain the benefit of rights (i.e. rights of way over private roadways and communal gardens) the leaseholder should be required to continue to contribute towards these costs.

Please share your views below:
Limiting the ability of the parties to introduce new rights and obligations beyond those contained in the leaseholder's existing lease may reduce the potential for disputes but is unlikely to materially affect the time and costs incurred agreeing the form of transfer. It is in the interests of both parties that any new regime retains a degree of flexibility for the parties to include additional rights and obligations specific to the nature of the property where these are not included in the lease of the property, particularly where the freeholder retains adjoining land, and that need for flexibility outweighs any concerns about the time and cost of negotiating those terms.

Other

Please expand on your answer:
We are not able to comment

Chapter 6: The right of collective freehold acquisition

Question 21:

Yes

Please expand on your answer:
(1) We agree that a general requirement that the nominee purchaser should be a company would provide clarity and streamline decision making processes (amongst other things) and that, in principle, the advantages of a company nominee outweigh the cost and administrative work related to incorporation of the company and conduct of company business, especially if the exceptions proposed in the consultation are implemented.

(2) We agree to these exceptions being sensible, if exceptions are to be made from the rule

Other

Please expand on your answer:
We have no comments to make with regard to whether some requirements of company law are inappropriate or onerous for a nominee purchaser save to note that (1) the requirements of company law already apply to existing companies incorporated to act as nominee purchasers so there should be no need to make exceptions in future, and (2) we are aware that some requirements of company law only apply to companies of a particular size or value (eg. particular accounting requirements) so that the most onerous provisions would not ordinarily apply to nominee purchase companies in any event.

Question 22:

No

Please expand on your answer:
We do not consider that the easier administration of a company limited by guarantee (as described in paragraph 6.77 of the Consultation Paper) warrants the introduction of a rule that nominee purchasers should be companies limited by guarantee as opposed to companies limited by shares, and the advantages to some participants of using a company limited by shares (for example an unequal distribution of share value to reflect unequal contributions to the purchase price) should be available too.

Question 23:

Yes

Please expand on your answer:
In the interest of simplicity, where a new statutory regime requires that all nominee purchasers are companies, we agree with the proposal to prescribe certain articles of association.

Please share your views below:
One such article might have effect to restrict disposal of the freehold acquired by the nominee purchaser other than in certain circumstances (eg. where a particular number or percentage of the participants votes in favour of the disposal).

Question 24:

Yes

Please expand on your answer:
Agreed, in order to give practical effect to the described benefits of requiring that the nominee purchaser is a company. There may be additional circumstances in which the court (as opposed to the Tribunal) might make an order permitting or requiring the proposed disposal.

However, rather than the proposed exception outlined in question 24, paragraph 17.42, it might be that certain prescribed company articles of association (see the answer to question 23 above) are sufficient to control disposal of the freehold by the nominee company.

Please share your views below:
There are likely to be a number of instances in which the Tribunal might be required to permit disposal of the freehold by the corporate nominee purchaser, including where the prescribed articles of association allow for a disposal of the freehold only with the consent of a particular proportion of the participant tenants and some of the tenants are absentees.

Question 25:

Other

Please expand on your answer:
We recognise that this proposal may be intended to apply to a modern, private estate/development with multiple buildings constructed at a similar time and sharing common amenities (common areas, private roads, gardens etc) which are solely enjoyed by the residents on that estate. In this scenario, the introduction of an extended enfranchisement right in respect of a whole estate might be a useful additional right for leaseholders. However, it is not clear from the proposals as contained in the Consultation Paper how exactly such a right would apply in other scenarios i.e. what would be the qualification criteria to define an Estate and its extent? We also consider a clear definition of an Estate would need to be given.

Please share your views below:
Paragraph 6.95(1) states that the right will be available within estates of multiple buildings that contribute to a common service charge. We are concerned that there is a lack of clarity as to what will fall within the definition of an Estate which cannot in our view be defined purely by reference to payment of a common service charge. Service charge obligations can themselves be divided into building and estate service charges and it is not clear that the proposed right should extend to buildings which are treated differently and independently save for their shared obligation to meet estate service charges. In particular, it is not clear how this right could apply in respect of buildings forming garden squares or where the boundaries of the proposed Estate will be and how they will delineated.

Until the definition is more clearly defined, we consider that the introduction of this right could give cause to further litigation and costs in addressing the question “what is an Estate?”. This could result in extensive dispute in the same way as the question of “what is a house?” under the 1967 Act. Reforms that could give rise to litigation, complexity, delays and costs will be contrary to the Terms of Reference.

Question 26:

Yes

Please expand on your answer:
We agree with the proposals at 26(1) and (2) in respect of land specifically demised with the lease of the flat.

No

Please expand on your answer:
However, we do not agree that the Nominee Purchaser should be entitled to acquire the freehold of additional land in which leaseholders exercise rights in

common. Enfranchisement rights are intended to give rights to residential homeowners in respect of their home. They may also frequently enjoy rights over additional freehold land which is separately located to the building containing their homes. The proposed reform could cause significant prejudice to landowners who would lose valuable freehold land beyond the extent of their tenants' demises if such rights were to be introduced. We do not think that this is what the existing rights were designed to achieve and in our view, such reform creates unfairness to freeholders. If such reform is introduced, Government will to ensure freeholders are sufficiently compensated.

Question 27:

Other

Please expand on your answer:
Whilst this seems to be simple in principle, we foresee practical difficulties where a landlord's mortgage affects a number of properties. This might then result in additional costs being incurred by the nominee company in determining or applying to Court to determine the sum payable to discharge part of a registered charge. If the issue to be addressed is unreasonable claims by landlords for the cost of applying to mortgagees for release of the mortgage, then (if appropriate) a cap might be imposed on those fees.

Nominee purchasers should not be permitted to correspond with a landlord's mortgagee regarding matters affecting a landlord's mortgage and the current regime whereby a landlord obtains a redemption figure prior to completion should continue.

(2) A nominee purchaser should not be permitted to pay sums into Court instead of to the mortgagee save in exceptional circumstances, as the cost of a lender applying to recover monies paid into Court will deter lenders from lending to landlords and this appears to be an unnecessary level of complexity and red tape. Any costs in connection with an application made by the leaseholder to pay monies into Court or by a mortgagee to recover such monies should be recoverable from the leaseholder.

(3) Subject to the above, we agree with the proposal that sums due from the leaseholder to the landlord should be reduced by sums paid under (2) above.

Yes

Please expand on your answer:

Question 28:

Please share your views below:
We agree that undischarged rights and obligations should be continued automatically.

Please share your views below:
A prescribed list of terms would not be appropriate as these may not cover actual rights and obligations specific to the property and the parties should be free to negotiate appropriate covenants specific to the particular building and based on the rights and obligations contained in the existing occupational leases.

If the Law Commission is minded to recommend a prescribed list, the following should be included:

(a) A covenant and indemnity from the nominee purchaser to observe the covenants contained in the occupational flat leases and to indemnify the transferor against any future breach.

(b) A covenant and indemnity from the nominee purchaser to observe and perform the covenants agreements or conditions and other matters referred to in the charges register of the landlord's title in so far as they affect the property and to indemnify the transferor against any breaches.

(c) A restrictive covenant prohibiting development of the property or a change of use.

(d) A covenant and declaration relating to party walls and the cost and maintenance of responsibility for such party walls.

Question 29:

Please share your views below:
We agree with the proposal that the transfer should reflect rights and obligations set out in leaseholders' existing leases. This would give leaseholders clarity as to the rights and obligations the transfer would be subject to at the outset and minimise the scope for dispute between the parties.

We do not believe a prescribed list of covenants would be an appropriate alternative as the prescribed list is unlikely to cover the precise rights and obligations specific to each property contained in the leases of flats in the building. The proposal is likely to result in further disputes between the parties as to the applicability of covenants set out in the prescribed list

Please share your views below:
If the Law Commission is minded to prescribe a list of terms, this should include the following:

(a) Rights of subjacent and lateral support and protection as enjoyed at the date of the transfer in favour of the enfranchised property and any adjoining land retained by the landlord.

(b) The right to full free and uninterrupted passage of soil water electricity gas and telephone signals through service media now laid under or over the property or retained land.

(c) An indemnity from the nominee purchaser to observe the covenants contained in the occupational flat leases and to indemnify the transferor against any future breach.

(d) An indemnity from the nominee purchaser to observe and perform the covenants agreements or conditions and other matters referred to in the charges register of the landlord's title in so far as they affect the property and to indemnify the transferor against any breaches.

(e) A restrictive covenant prohibiting development of the property or a change of use from use.

(f) A declaration relating to party walls and the cost and maintenance of responsibility for such party walls.

(g) An obligation on the leaseholder to contribute towards the costs of roadways amenities and services used in common, which the leaseholder is obliged to contribute towards under the lease.

Question 30:

No

Please expand on your answer:
We do not agree with the principle of this proposal which would unfairly prejudice a landlord of retained land. Leaseholders should not have the ability to acquire rights to which they are not currently entitled, unless these are agreed between the parties and adequate compensation is paid to a landlord for these rights.

Such rights might lead to increased responsibilities and costs to a landlord in dealing with the additional rights of leaseholders who have acquired their freeholds, to the detriment of the landlord and other leaseholders who enjoy such rights and have paid for such rights under their occupational leases or as freehold owners following historic collective enfranchisement claims.

Any rights to be granted should be limited to those contained in the existing occupational leases of flats in the building.

Please share your views below:
No comments.

Question 31:

No

Please expand on your answer:
We do not agree that freeholders should be forced in all cases to take leasebacks and therefore retain leasehold interests in non-qualifying units or non-participating flats whilst also losing their freehold. We are concerned that this proposal causes injustice to freeholders who will be forced to take on responsibilities for a leasehold under the compulsory leaseback created in the claim.

We consider that the introduction of compulsory leasebacks will make enfranchisement cheaper as it will reduce the premium payable on enfranchisement. This meets the objectives in the Terms of Reference but also potentially gives rise to prejudice being suffered by freeholders who will receive a lower premium because of the grant of leasebacks of non-qualifying or non-participating units.

The creation of additional leasehold interests (the leasebacks) could also give rise to a more complicated leasehold structure in the relevant block which could increase disputes in particular those relating to the management of the block. This conflicts with the Terms of Reference which includes ways to reduce costs and disputes.

Question 32:

Yes

Please expand on your answer:

Yes

Please expand on your answer:

Question 33:

No

Please expand on your answer:
We do not believe that the ability to enter into mutually agreeable commercial arrangements outside the scope of the 1993 Act gives rise to significant problems in practice. We refer to our earlier comments in relation to lease extensions and acquisition of the freehold of houses by consent.

Please share your views below:
We refer to our earlier comments in relation to lease extensions and acquisition of the freehold of houses by consent.

Question 34:

Other

Please expand on your answer:
Whilst we understand the advantages of this proposal in terms of fairness to non-participating tenants, we consider that such reforms would need to be carefully considered so as to not prejudice leaseholders who have already participated in and pursued a collective claim.

Please share your views below:
We consider that it would be especially difficult to introduce rights retrospectively. It might be appropriate for rights to participate to be introduced for future claims in the same way as under the Right to Manage regime which will allow qualifying tenants at the date of the claim to have an opportunity to participate.

Please share your views below:
We agree that the issues identified in paragraph 6.156 are all serious issues to be considered but do not presently have suggestions as to how they might be resolved.

The right of collective freehold acquisition: the impact of reform

Question 35:

Please share your views below:
We cannot offer evidence as to the costs and benefits of requiring leaseholders to pursue collective enfranchisement by way of a company, and a company limited by guarantee, but refer to our comments in response to the related questions above.

Question 36:

Please share your views below:
(1) Save for matters mentioned below, the terms of a transfer are often readily agreed in accordance with general conveyancing practice.

(2) Where specific terms are included in the transfer, these reflect rights and obligations contained in the occupational flat leases, the terms of which the nominee purchaser is aware of prior to initiating the collective enfranchisement claim.

Areas of contention relate to restrictions relating to development, where a nominee purchaser may want to deviate from the restrictions contained in the occupational leases. In these instances, a landlord should be adequately compensated for any development value.

(3) The ability of the parties to negotiate the terms of the transfer is restricted by Schedule 7 of the 1993 Act which does not allow for the imposition of unusual or onerous terms.

Please share your views below:
Limiting the ability of the parties to introduce new rights and obligations beyond those contained in the occupational flat leases may reduce the potential for disputes but is unlikely to affect the time and costs incurred agreeing the form of transfer and appears to be disproportionate to the issues. It is in the interests of both parties that any new regime retains a degree of flexibility for the parties to include additional rights and obligations specific to the nature of the property where these are not included in the occupational flat leases, particularly where the freeholder retains adjoining land.

Other

Please expand on your answer:
We are unable to comment

Question 37:

Please share your views below:
We have commented above with regard to our reservations about compulsory leasebacks. Subject to that, the proposed reform will make collective enfranchisement more affordable. A common issue for leaseholders currently is the lack of buy-in from non-participating leaseholders in the building. This creates a financial burden for the participating leaseholders who have to finance the premium in relation to the non participating flats. Alternatively they have to find a white knight. In addition, in a mixed use building, often the premium attributable to the commercial parts is more valuable than the residential parts. Therefore, introducing compulsory leasebacks for non-participating flats and commercial units will likely reduce the premium payable by those participating leaseholders.

On that basis we consider the reform is likely to result in a higher proportion of leaseholders seeking to exercise this right in respect of buildings where there are leaseholders who do not wish to participate or cannot currently afford to do so under the existing regime.

Chapter 8: Qualifying criteria: proposals for reform

Question 38:

Other

Please expand on your answer:
We understand the reason for the proposal to introduce a new concept of “residential unit”. However, we do have concerns as to how changing the definition of a flat to a residential unit for the purposes of the enfranchisement legislation will work alongside the existing definition of a flat in the 1987 Act and the 2002 Act as

well as other relevant legislation relating to residential property. We consider that it may make the application of existing case law and precedents relating to the meaning of flats and houses more difficult to apply

Other

Please expand on your answer:
Further consideration of the proposed definition of a "residential unit" should be carried out having regard to all of the relevant case law relating to the definition of houses and flats to ensure that (at least with regard to pre-existing points of contention if not new ones created by the new definition) the risk of further uncertainty is limited.

Yes

Please expand on your answer:
We agree that business leases should not benefit from enfranchisement rights and that such rights should be restricted to those leases which require residential use (not simply ancillary).

Question 39:

Yes

Please expand on your answer:

Question 40:

Yes

Please expand on your answer:

Yes

Please expand on your answer:

Question 41:

Yes

Please expand on your answer:
Whilst we cannot offer an expert opinion on valuation issues, we consider the current qualifying criteria is outdated and agree with this proposal.

Question 42:

Yes

Please expand on your answer:
We agree with this proposal. The current regime allows leaseholders to assign the benefit of a Claim Notice once served and therefore the two year requirement is an unnecessary additional criteria to satisfy.

Question 43:

Yes

Please expand on your answer:

Question 44:

No

Please expand on your answer:
We consider that the current definitions in the 1993 work well and should remain.

No

Please expand on your answer:
We consider that the current definitions in the 1993 work well and should remain.

Question 45:

Please share your views below:
We agree with this proposal in principle, as it will assist leaseholders in being able to exercise enfranchisement rights, where they are otherwise excluded from doing so. The Law Commission should however consider that this may result in an increase in litigation and increase party's costs. Serious consideration will have to be given to the scope of that discretion and any circumstances in which it should be disapplied by reason of the adverse consequences of permitting enfranchisement of premises to which the regime would not ordinarily apply.

Question 46:

Yes

Please expand on your answer:
We agree that it is appropriate to apply a maximum percentage limit on non-residential use to individual freehold acquisition claims concerning premises containing multiple units,

Yes

Please expand on your answer:
We agree that the same percentage should apply to collective freehold acquisition claims

Yes

Please expand on your answer :
We consider that the limit of 25% of the internal floor space (excluding common parts) is appropriate, as the proposed reforms are aimed at protecting leaseholder's rights in respect of residential properties and should therefore affect buildings which are predominately residential

Question 47:

Yes

Please expand on your answer:

Question 48:

Yes

Please expand on your answer:

Question 49:

Yes

Please expand on your answer:
We agree with this proposal and consider that having at least half of the total number of residential units participating ensures that there is a requisite majority who will in turn take over the management of the building as freeholders.

Question 50:

Yes

Please expand on your answer:
We agree that this proposal supports the Terms of Reference as it will allow one individual to acquire the freehold of their premises where the building only contains two residential units.

However this may result in a circular situation with multiple claims one after another, where leaseholder A acquires the freehold, leaseholder B then acquires the freehold from leaseholder A, which results in leaseholder A re-acquiring the freehold from leaseholder B. This might be addressed by a statutory prohibition on successive enfranchisement claims within a prescribed period of time (for example 3 or 5 years). Separately, this could also allow the leaseholder who owns the freeholder to assert too much control to the disadvantage of the other leaseholder .

Question 51:

No

Please expand on your answer:
The prohibition on the owners of three or more flats in a building being qualifying tenants is intended to prevent an individual from acquiring a freehold of a building comprising flats by collective enfranchisement. If it is proposed to allow such actions, then lifting the prohibition would seem to be the way to achieve that. However, we do believe that such actions run contrary to the policy of the 1993 Act and the collective enfranchisement regime generally.

Furthermore, we also consider that in relation to smaller building, with fewer flats, removing this requirement could result in a leaseholder who owns several flats asserting too much control if they participate in a claim to acquire the freehold. A suitable compromise might be to lift the prohibition other than in relation to buildings containing only a small number of flats (for example, up to 6 flats).

It is worth noting that under the current regime, a leaseholder who owns more than three or more flats can register the ownership of the properties under different company names, in order to allow them to participate in collective enfranchisement claims. We therefore consider that removing the current prohibition would not affect the legal position that can be circumvented by the current 'loophole'.

Question 52:

Yes

Please expand on your answer:
We consider that the limit of 25% of the internal floor space (excluding common parts) is appropriate, as the proposed reforms are aimed at protecting leaseholder's rights in respect of residential properties and should therefore affect buildings which are predominately residential

Question 53:

Yes

Please expand on your answer:
We understand the merits of those exceptions and agree that they should remain

Question 54:

Other

Please expand on your answer:
As commented above, the definition of an Estate will need careful consideration. Likewise, we consider that the qualifying criteria for an Estate collective enfranchisement will need to be carefully considered.

By reference to paragraphs 6.93 and 6.94 of the Consultation Paper, we consider that the proposal may be aimed at applying to a modern, private estates or developments constructed at a similar time, the boundaries of which are clearly delineated and where leaseholders share common amenities which are solely enjoyed by the residents on the estate. The qualifying criteria for a collective freehold acquisition of a single building may be a useful starting point but the criteria will need to be far broader to identify exactly what land and buildings can form the subject of the estate enfranchisement claim. Paragraph 6.95(1) suggests that the right will be available within multiple buildings that all contribute to a common service charge. However, this provides limited clarity as to what will fall within the definition of an Estate for the purposes of exercising a claim which cannot be defined purely by reference to buildings that pay a common service charge.

Until the definition and qualifying criteria are made clear, we are concerned at the likelihood of litigation, costs and delay being caused when addressing the question "what is an Estate?".

Question 55:

Please share your views below:
We consider that creating an exception to the two or more flats requirement and two-thirds condition in the case of buildings consisting of two residential units supports the Terms of Reference as it will now allow one individual to acquire the freehold of their premises where the building only contains two residential units.

The Law Commission should however consider that this may allow once individual to monopolise the freehold to the disadvantage of another individual, and this could result in an increase in litigation claims and costs. Again, a prohibition on successive enfranchisements within a particular period of years might help to address this issue.

Question 56:

Yes

Please expand on your answer:
We agree that the policy behind the prohibition of collective enfranchisement where more than 25% is in non-residential use applies equally to premises comprosing just two units.

We would consider that the limit should not be a higher percentage limit in respect of two residential unit buildings, as the proposed reforms are aimed at protecting leaseholder's rights in respect of residential properties and should therefore affect buildings which are predominately residential.

Please share your views below:

We do not consider that any different rules should apply to two-unit buildings in this regard

Question 57:

No

Please expand on your answer:
The ability of a head lessee of a block of flats to acquire the freehold of that block does run contrary to the policy of the 1993 Act, which is aimed at empowering the owners of individual flats. However, under the existing enfranchisement regime there is a workaround available for investor tenants to exercise rights should they so wish. We therefore do not consider that the proposed reforms will create a significantly different position in comparison to the existing position.

Question 58:

No

Please expand on your answer:
The policy behind enfranchisement rights has historically been to empower owners of individual flats or houses, but that has been eroded by successive amendments to the statutory regimes, including the removal of a residence test (which in practice was difficult to engage and led to additional litigation). Whilst it would be desirable to prevent head lessees of a block of flats or owners of a number of flats in the same building from taking advantage of the statutory rights, that would seem to run contrary to the direction that the legislation has taken over the last 20 years

Please share your views below:
Having regard to the above, we do not think that a residence test or definition of a residential unit to exclude units let on short residential tenancies would be workable in practice and they would be likely to lead to an increase in litigation and disputes, whilst running contrary to the direction that amendments to the legislation have taken over the last 20 years or so.

Qualifying criteria: the impact of reform

Question 59:

Please share your views below:
In our view,

(1) when compared to the question of what amounts to a "house" for the purpose of the legislation, the qualifying criteria based on financial limits have in our experience done little to slow down or prevent or make more costsly any genuine claim under the enfranchisement legislation, on the basis that the question of whether a lease meets the criteria are relatively easy to ascertain.

(2) we consider that the same can be said for questions of whether premises are either flats or houses.

(3) In contrast, uncertainty surrounding the definition of a house will have prevented some claims or made 1967 Act claims significantly more expensive due to disputes on such issues being one of the last remaining areas in which a landlord might be able to challenge an enfranchisement claim in respect of a house, with such disputes being costly in their nature (requiring expert evidence and detailed legal submissions in court).
.
(4) This has historically been a cause of delay but – in practice – proving two years of ownership is not particularly time consuming.

(5) The complexity and inaccessibility of the qualifying criteria might have been difficult for individual applicants and inexperienced landlords to deal with in the past, but they have already been significantly simplified. Neither do we think that complexity can be said to delay enfranchisement, in the sense that the right to enfranchise has normally been established by the applicant with near certainty before the process commences.

Please share your views below:
It is difficult to say at this stage to what extent the proposed reforms will reduce the duration, costs and number of disputes in the future, but any measures which remove or relax qualifying criteria and (for example) open the door to investors taking advantage of the statutory regime without having to rely on a perceived loophole is likely to reduce the number of disputes overall.

Question 60:

Please share your views below:
We are not able to comment on this

Exceptions and qualifications: the impact of reform

Question 68:

Please share your views below:

Question 69:

Please share your views below:

Chapter 11: Procedure: proposals for reform

Question 70:

Yes

Please expand on your answer:
We consider that there are advantages in introducing a single procedure when exercising any type of enfranchisement claim. This will remove existing inconsistencies between the different regimes (1993 and 1967) and simplify the process.

Question 71:

Other

Please expand on your answer:
We consider it sensible to create a single set of prescribed forms. However, there should be a separate form for each type of enfranchisement claim. Adopting one form could cause confusion. Please see further comments in response to question 74.

Question 72:

Yes

Please expand on your answer:
We agree that all enfranchisement notices should be signed by or on behalf of the party giving the notice, as the signing of a notice serves an important function in making it clear to the recipient of that notice, that the person has authorised the giving of that notice. In relation to collective enfranchisement claims, the notice should be signed by the requisite number of leaseholders required to bring the claim.

That said, if the prescribed forms are in due course to be moved to an online system there will be difficulties in signing the online form. This will need to be taken into account and an alternative provided for.

No

Please expand on your answer:
If Key information on the prescribed form has not been provided then the notice should be challengeable for validity.

No

Please expand on your answer:
We consider that the additional requirement of a statement of truth would be too onerous in relation to enfranchisement claims. If leaseholders are required to sign a statement of truth, they will require advice on the implications of signing and making a false statement, which could cause delays and will increase costs.

Question 73:

Yes

Please expand on your answer:
We agree with this proposal, save that a “recipient” should not be liable to pay costs where they did not receive the Information Notice.

Question 74:

Yes

Please expand on your answer:
We agree that Claim Notices should include full details about the leaseholder’s claim and proof of the leaseholders’ title. This will reduce the landlord’s costs as it will remove the current requirement where landlord are required to request that leaseholders deduce title.

Please share your views below:
In line with the Terms of Reference, the proposed reforms should make the process of enfranchisement claims easier and quicker for leaseholders. It is therefore considered that having one single form for all enfranchisement claims could complicate matters for leaseholders, as the form would also contain information which is irrelevant to the particular right claimed. This may cause confusion for leaseholders and may increase the number of disputes and challenges on validity for example where a leaseholder fails to complete a relevant section of a form.

We consider there should be four separate prescribed forms as follows:
1. Lease extension of a residential unit;
2. Individual enfranchisement of a residential unit;
3. Collective enfranchisement of a building;
4. Collective enfranchisement of an estate (if a right is introduced).

Question 75:

No

Please expand on your answer:
We disagree and consider that leaseholders seeking to bring a collective freehold acquisition claim should be required to serve notices on other leaseholders inviting their participating in the claim as per the Right to Manage regime. Firstly, if a freehold acquisition claim is initiated, all leaseholders should be made aware of this in order to make an informed decision as to whether they wish to participate in the claim. We consider that leaseholders should not be restricted or excluded from exercising such rights, due to the lack of awareness that other leaseholders are intending to proceed with a claim.

We consider that all leaseholders should be encouraged to participate in collective freehold acquisition claims at the outset of the claim, rather than throughout the claim. This will ensure that the process is easier to manage which supports the Terms of Reference to simplify the process and make it easier and quicker for leaseholders. We consider that a similar procedure as under the Commonhold and Leasehold Reform Act 2002 in relation to the right to manage should be adopted here.

Question 76:

Yes

Please expand on your answer:
We agree with this proposal. Following agreement of terms of acquisition on a collective enfranchisement claim, the current Regulations require the parties to enter into a contract which contains bespoke terms relating to handover of management and apportionments. It is therefore appropriate for a contract which will contain terms relevant to the building being enfranchised and not a statutory contract to be entered into.

Please share your views below:

Question 77:

Other

Please expand on your answer:
We agree that the Response Notice should require numbers (1) to (4).

In relation to number 5, we consider that leaseholders before serving a Claim Notice would seek to establish who the competent landlord is and if this information cannot be easily establish will serve an Information Notice on the relevant landlords. Therefore where a Response Notice is served by a person upon whom the Claim Notice was served, there should be no requirement for proof of the landlord's title, as this will be unnecessary and in some sense a duplication of due diligence already undertaken by the leaseholder in serving a Claim Notice.

If the claim relates to unregistered land, an Information Notice can be served on the landlord prior to serving the Claim Notice.

Question 78:

Other

Please expand on your answer:
(1) We agree that leaseholders making an enfranchisement claim should serve their Claim Notice on their competent landlord, as they will have the requisite interest to grant the interest claimed.

(2) We disagree. Where there are joint owners of a single freehold, we consider that the current procedure is adequate and a leaseholder should be required to serve all joint owners of a freehold. We consider that this could result in many landlord's not receiving a Claim Notice and could further delay the process and increase challenges on validity.

Question 79:

Yes

Please expand on your answer:

Question 80:

Yes

Please expand on your answer:

Question 81:

Yes

Please expand on your answer:

Question 82:

No

Please expand on your answer:
(1) We do not agree which this proposal. It should remain the responsibility of a leaseholder bringing a claim to serve the Claim Notice on all intermediate leaseholders and third parties. This is particularly important in respect of third parties e.g. guarantors where the competent landlord may not have the relevant information in order to serve a copy of a Claim Notice promptly.

In this scenario, the proposed reform will place an unnecessary burden on a competent landlord to promptly identify the relevant recipients and relevant addresses for service in respect of third parties for whom it may not have the relevant information. This may also cause delays in the ability of the competent landlord to discharge any responsibility which in turn could prejudice the relevant intermediate landlord/third party who may not have sufficient time consider the claim before the counter-notice deadline.

In all, our view is that the leaseholder is in a far better position to identify all relevant parties who need to be served before the claim is commenced.

(2) Given the existing statutory obligations in both the 1967 and 1993 Acts, (see footnote 1054 of Consultation Paper) we do not consider this to be a controversial proposal.

Question 83:

Please share your views below:

(1) We agree that a landlord should be entitled to apply to the Tribunal for an order setting aside a determination of an enfranchisement claim that has been made in his absence.

(2) Some of the following criteria should be considered:

a. The reasons why the landlord was absent;
b. The extent of the determination to be set aside;
c. Payment of the leaseholders wasted costs;
d. A long stop date by which an absent landlord can make an application.

Question 84:

Yes

Please expand on your answer:
We agree that detailed conveyancing regulations are not generally needed in relation to enfranchisement claims. Following agreement of terms of acquisition, the parties generally agree a form of contract containing provisions specific to the property, including provisions relating to arrears, handover of service charge funds and finalisation of service charge reconciliations and handover of management information.
The form of contract will usually incorporates the Law Society's standard conditions of sale.

Question 85:

No

Please expand on your answer:
(1) We consider an eight week period for a landlord to prepare and serve a Response Notice is preferable as six weeks may be too limited for the landlord to be able to adequately consider and respond to the claim.

(2) We suggest 28 days. However see our comments in respect of question 82 above about the obligation on the landlord.

(3) We consider that 21 days is a very limited amount of time post-service of the Response Notice. It may encourage premature applications to the Tribunal in respect of claims which would otherwise be settled under the current regime where the parties have to wait two months (1993 Act claims). We therefore consider that the existing period of two months in respect of 1993 Act claims should remain unchanged. We do however acknowledge that if a single procedure is to be introduced, the existing inconsistencies between the 1967 Act and the 1993 Act need to be regularised.

Question 86:

Other

Please expand on your answer:
(1) We do not agree with the proposed reform. As an alternative, and when seeking to protect leaseholders, the reform could include a new mechanism for remedying a claim that has become deemed withdrawn where a leaseholder has failed to take a necessary procedural step within the statutory timeframe. This could include introducing the ability for a leaseholder to make an application to the Tribunal for relief from sanctions.

(2) We do not agree with this proposal. If a leaseholder fails to take a relevant procedural step within the statutory timeframe, it is not appropriate to place an obligation on the landlord to then apply to the Tribunal for the claim to be struck out. The current regime does not need to be changed save that a new mechanism can be introduced to allow leaseholders who would currently be deemed withdrawn to have an ability to make an application to the Tribunal to reinstate a claim and therefore avoid the consequences of a deemed withdrawal.

(3) We agree.

(4) We agree.

Question 87:

Yes

Please expand on your answer:
(1) We agree that the benefit of the Claim Notice should be transferred automatically upon assignment of the leaseholder's lease, save where the assignment expressly states that the benefit of the Claim Notice will not be transferred.

Yes

Please expand on your answer:
We also agree that when a Claim Notice has been assigned the landlord should continue to be able to serve documents on the assignor until he or she is given notice of the assignment of lease. We consider that the proposed reforms should require leaseholders to give notice of the assignment to the landlord within a fixed period of time from the date of the assignment itself.

Question 88:

No

Please expand on your answer:
We do not agree with this proposal. Landlords should not be at risk of being penalised where they have no control over the time taken for the Land Registry to register the notice. Nor does a landlord have any control over the timing of an application by a leaseholder. A landlord could be under a contractual obligation to dispose of his or her interest. Relevant questions could be included within the Information Notice to put leaseholders on notice.

Question 89:

Other

Please expand on your answer:
In practice a landlord will usually give notice to its mortgagee prior to completion of the lease. However the requirement for not less than 21 days' notice to be given will delay completion and may result in further costs being incurred by leaseholders if the delay requires a leaseholder to make a protective application to the County Court prevent a deemed withdrawal of the claim. The requirement for a leaseholder to pay monies into Court is more complex than the current regime and is likely to increase costs for all parties and will delay completion.

Question 90:

Yes

Please expand on your answer:
We agree with the proposal that a leaseholder should be under an obligation to give the lease extension to his or her mortgagee within one month of registration and if the leaseholder does not, he or she will be liable for any losses that occur as a result.

No

Please expand on your answer:
We do not agree with the proposal that in an individual freehold acquisition claim, a deed of substituted security would not be required where a leaseholder elects to merge his or her leasehold title and where notice has been given but no objection raised by the mortgagee. This is likely to affect a mortgagee's willingness to lend to leaseholders on properties which could be subject to rights of individual acquisition.

Question 91:

No

Please expand on your answer below:
The requirement to notify the beneficiary of a transaction should be limited to instances where third party consents are required by the competent landlord and noted on the competent landlord's registered title, which should also contain details of the consent required and an address for service of any notice. Where a landlord uses reasonable endeavours but is not able to identify the beneficiary of a restriction noted on its title, the landlord should not be liable for any losses that occur.

The proposal is likely to result in increased costs for a landlord, which a landlord should be entitled to fully recover from a leaseholder. The proposal will also delay completion.

Question 92:

Yes

Please expand on your answer:

Procedure: the impact of reform

Question 93:

Please share your views and evidence below:
We do not consider that the existence of separate procedural regimes for different types of enfranchisement rights has resulted in a slow down or prevented claims being made or claims being more costly. .

Please share your views below:
Nevertheless, we do consider that the Law Commission's proposed reforms for a unified enfranchisement procedure that applies to all enfranchisement claims will simplify the procedure and is likely to reduce the duration, costs and numbers of disputes in comparison to the existing regime

Please share your views below:
We make no comment in respect of the question relating to missing or uncooperative landlords

Chapter 12: Dispute resolution

Question 94:

Yes

Please expand on your answer:
• We agree it would be preferable to end the current division of responsibility for resolving enfranchisement disputes between the County Court and the Tribunal and that moving forward, all matters should be determined by the Tribunal. We do however make specific comments on the ability of the Tribunal to award costs in our responses to the relevant questions on costs that follow.

Question 95:

Please share your views below:
No comment, we defer to expert valuers to respond.

Dispute resolution: the impact of reform

Question 96:

Please share your views and evidence below:
Our members have not provided any evidence in response to this question.

Please share your views and evidence below:
Our members have not provided any evidence in response to this question.

Please share your views below:
Our members have not provided any evidence in response to this question.

Question 97:

Other

Please expand on your answer:
Our members have not provided any evidence in response to this question.

Chapter 13: Costs

Question 98:

Please share your views below:
• We consider that it is appropriate for leaseholders to be required under the legislation to contribute towards a landlord's non-litigation costs in a claim. Liability for costs in accordance with the current legislation does not need to be altered and in particular, to be a fair system, liability for costs should not be reduced further. In bringing statutory claims a tenant should meet their landlord's reasonable non-litigation costs that a landlord actually incurs when a leaseholder elects to enforce a statutory right. A landlord cannot avoid or object to the exercise of such rights and it is therefore unfair to landlords that they should not be able to recover their legitimate and reasonable costs in responding to the claim. Please note our further comments on costs in our responses to questions below.

Question 99:

Please share your views below:
• We comment on the proposals for reform as follows:
• As to options based on fixed or capped costs, we do not consider these to be reasonable generally in any but the most routine and low value of claims.

• Some claims raise complex legal and valuation issues for which expert advice is required by both landlords and tenants. Obtaining such advice is justifiable and there could be inadequately compensationfor costs if a universal standard fixed or capped costs regime was introduced which did not take account of the relevant costs parties legitimately incurs.

• If the Government is minded to reform the existing costs regime, one option would be to calculate liability for non-litigation costs by reference to the value of the claim (the premium payable) or geographic location. We would suggest that the existing rules in the Civil Procedure Rules could also be referred to in circumstances where the Government is minded to apply a fixed costs regime. It has to be borne in mind that in respect of any claim, no matter how low value, there is still a minimum level of costs parties will reasonably incur in meeting the claim. It is important that reforms do not unfairly prejudice either party who should be entitled to incur reasonable costs when investigating a claim even if the premium is low so long as costs are not disproportionate. One option may be to introduce a fixed costs regime whereby costs are calculated by reference to the location of the property and the premium payable.

• When dealing with high value/complex claims we consider it acceptable for a landlord to incur costs to obtain adequate advice in respect of the issues raised by the particular property interests claimed so long as they are reasonable. Costs could be calculated by reference to cost bands based on the location or the

premium payable in respect of the subject property.

Please share your views below:
• If fixed costs were to be introduced then they should apply to collective enfranchisement claims as well as individual enfranchisement claims and lease extensions in order to be consistent. In relation to fixed costs on a collective claim, such claims often raise a number of additional or complex issues for which additional legal advice is required, e.g. leasebacks, non-qualifying units, additional freehold land and rights over other property and intermediate interests. We consider that it is reasonable for additional costs to be recoverable in respect of each additional feature in a claim. There is no one size fits all in terms of costs and any changes to the existing regime need to build in flexibility to allow recoverability of costs that are reasonable relating to each feature of the particular collective enfranchisement claim.

No

Please expand on your answer:
We disagree with the proposal that there should be no additional costs recovered in relation to claims where there are intermediate landlords. Where costs are incurred in respect of the intermediate interest, these should be recoverable so long as they are reasonable.

Likewise, reasonable costs relating to management companies should also be recoverable in addition

Question 100:

No

Please expand your answer below:
We do not agree with the proposal. In our view it is fair and reasonable until such time as a claim is withdrawn or struck out the leaseholder should be liable to pay the reasonable non-litigation costs of the landlord in respect of the claim.

No

Please expand on your answer below:
The leaseholder should be liable to pay the reasonable non-litigation costs of the landlord in respect of the claim.

Question 101:

Yes

Please expand your answer below:
The introduction of the right to seek security for non-litigation costs will be very beneficial to landlords and fair to tenants in respect of collective claims where the existing regime provides no security for a landlord's costs.

Question 102:

Yes

Please expand your answer below:
We agree to this proposal to provide a deterrent to vexatious litigation and avoid wasted Tribunal time and costs.

Question 103:

No

Please expand on your answer:
• We do not agree with the proposal.
•
• If jurisdiction for addressing all disputes in enfranchisement claims is to be transferred from the County Court to the Tribunal, we see no reason why the Tribunal should not have the same ability as the County Court to award costs. As per the County Court we consider that the Tribunal should have the ability to award costs in favour of the winning party, such costs to be payable by the losing party. This would apply to claims currently dealt with by the County Court, e.g. for vesting orders, declarations as to the validity of notices or the entitlement to bring an enfranchisement claim

Question 104:

No

Please expand on your answer:
• We do not agree with this proposal. As above, we consider that the Tribunal's powers to award costs should be extended to be in line with the powers currently exercisable by the County Court.

Costs: the impact of reform

Question 105:

Please share your views below:
Our members have not provided any evidence in response to this question

Please share your views below:
Our members have not provided any evidence in response to this question

Please expand on your answer:
Our members have not provided any evidence in response to this question

Please share your views below:
Our members have not provided any evidence in response to this question

Question 106:

Please share your views below:
In our view the risk of a cost liability in the County Court does currently act as a deterrent to both landlords and tenants to running bad claims or pursing poor arguments when litigating in the County Court. We have concerns that if the Tribunal is to inherit jurisdiction to determine such claims but without expanding its ability to award costs, it could be faced with an increased level of bad claims/poor arguments being run in the Tribunal simply because there will be no cost deterrent. If this was to occur, it would increase litigation costs for both parties as well as taking up valuable Tribunal time and resource.

Chapter 15: Valuation: options for reform

Question 107:

Please share your views below:
No comment, we defer to expert valuers to respond

Question 108:

Please share your views below:
No comment, we defer to expert valuers to respond

Question 109:

Other

Please share your views below:
• We consider that the proposed reforms are aimed at protecting leaseholders in respect of their homes. We recognise why the Law Commission and Government are looking at ways to ensure that commercial investors are treated differently from owner occupiers in respect of the premium payable when exercising enfranchisement rights. We do however consider that it will be challenging to come up with ways to treat commercial investors differently from owner occupiers.
•
• We would comment as follows:
•
• The Law Commission would need to consider a criteria/test in order to establish whether a leaseholder fits the definition of a commercial investor. Defining a commercial investor will be not be straightforward.
• On receipt of a claim, there will need to be a mechanism in place where landlords can easily identify whether the leaseholders comes within the definition of a commercial investor or not. One approach would be to include a declaration on the claim Notice requiring the tenant to make a declaration as to whether or not they are an owner occupier.
• Thought needs to be given as to the circumstances where a claim is made by an owner occupier but before completion of the new lease, the claim is assigned to an investor (which commonly happens with short leases) the leaseholder becomes a commercial investor. In these circumstances, should the leaseholder be required to pay a higher premium? If so, how could this requirement be enforced during the statutory process? All these things need to be considered further.
• In our experience, there is a market for investors who take short leases which are often bought for cash because they are not easily mortgageable. There are sellers who rely on investors to purchase such leasehold interests. If these investors were to be treated differently under the new regime, that could prejudice leaseholders in the market seeking to dispose of shorter leases and could result in such leasehold interests being unsaleable.
• There is however a positive impact to be achieved by differentiating between commercial and non commercial investors if the Government wishes to restrict overseas investors especially within the London market to make properties more affordable for domestic leaseholders.

Question 110:

Please share your views below:
No comment, we defer to expert valuers to respond

Question 111:

Please share your views and evidence below:
No comment, we defer to expert valuers to respond

Question 112:

Please share your views below:
No comment, we defer to expert valuers to respond

Question 113:

Please share your views below:
No comment, we defer to expert valuers to respond

Question 114:

Please share your views below:
No comment, we defer to expert valuers to respond

Question 115:

Please share your views below:
No comment, we defer to expert valuers to respond

Question 116:

Please share your views below:
No comment, we defer to expert valuers to respond

Question 117:

Please expand on your answer:
No comment, we defer to expert valuers to respond

Question 118:

Please share your views below:
No comment, we defer to expert valuers to respond

Valuation: the impact of reform

Question 119:

Please share your views below:
No comment, we defer to expert valuers to respond

Question 120:

Please share your views below:
No comment, we defer to expert valuers to respond

Question 121:

Please share your views and evidence below:
No comment, we defer to expert valuers to respond

Question 122:

Please share your views and evidence below:
No comment, we defer to expert valuers to respond

Question 123:

Please share your views and evidence below:
No comment, we defer to expert valuers to respond

Question 124:

Please share your views and evidence below:
No comment, we defer to expert valuers to respond

Question 125:

Please share your views and evidence below:
No comment, we defer to expert valuers to respond

Chapter 16: Intermediate and other leasehold interests

Question 126:

No

Please expand on your answer:
We consider that the introduction of a statutory duty to act with reasonable care and skill and in good faith is too onerous and may be used as a mechanism by other landlords to abuse the process if they simply disagree with the competent landlord's actions. This could increase litigation and costs. The Law Commission should consider how this will be used in practice and how it would be tested.

Question 127:

Please share your views below:
Such an interest should be acquired but only so long as the intermediate interest is adequately compensated

Question 128:

Yes

Please expand on your answer:

Question 129:

Please share your views below:
We consider there should be an option for the intermediate landlord to seek a leaseback of flats for which he or she would be the qualifying tenant. We consider this is the preferred approach as it provides the intermediate leaseholder with the option of a leaseback and in the absence of taking a leaseback the intermediate interest can be acquired by the nominee purchaser on payment of an adequate compensation.

Question 130:

Yes

Please expand on your answer:
We agree. In respect of paragraph 130 (2) this proposal would be helpful especially in respect of mixed use buildings where the landlord takes a leaseback of the commercial parts. In these circumstances a tribunal should have power to sever and introduce easement rights which will facilitate proper management of the various parts of the buildings.

Question 131:

Yes

Please expand on your answer:

Question 132:

Other

Please expand on your answer:
No comment.

Question 133:

Other

Please expand on your answer:
No comment.

Please share your views below:
No comment.

Question 134:

Other

Please expand on your answer:
No comment.

Intermediate and other leasehold interests: the impact of reform

Question 135:

Please share your views and evidence below:
No comment.

Additional comments

If you have any further comments on issues raised in our Consultation Paper, please share them with us.

additional comments:
We would invite the Law Commission to consider alongside its enfranchisement reform, the rights of first refusal under the Landlord and Tenant Act 1987.
In a survey of PLA members in 2018, out of the 140 who responded:
• 71% thought the right of first refusal under the 1987 Act was unfit for purpose; only 4% thought it was fit for purpose.
• 44% thought it should be abolished in its entirety; only 22% thought it should not be abolished
Reasons given include:
• Given that long leaseholders enjoy a collective right of enfranchisement - this legislation should be abolished in its entirety. It is ridiculous that there should be uncertainty as to whether or not the grant of a lease of a commercial unit in a mixed use scheme without serving s 5 notices involves the commission of a criminal offence.
• It was a mess when it was originally passed and tinkering has not improved it. For example if you agree a lower price with the tenants you cannot sell a property to them without committing an offence. There is no mechanism to withdraw a notice once given. In my view it is wrong to introduce criminal sanctions in civil matters
• This is an unnecessary and cumbersome cost which fetters the disposal of buildings which few if any tenants take advantage of
• The uncertainty regarding whether the Act bites in relation to the grant of a commercial lease needs to be addressed, as do certain of the definitions.
• It is one of the most badly drafted pieces of legislation I have the misfortune to come across in landlord and tenant practice. I agree there is no obvious need for it. The lack of deemed service of notice provisions makes it incredibly time-consuming and expensive to serve notices on multi-tenanted buildings and often leaves a residual risk for the seller of having committed an inadvertent offence Its application is too wide eg it should not cover the grant of renewal leases of commercial units within a mixed use building.
• Tenants have other protections and the ability to collectively enfranchise. There are loads of uncertainties re: the Act and the criminal aspect is crazy. It is a bureaucratic, procedural, expensive and risky nightmare for clients - especially in a mixed use context where the client is dealing with the commercial element.