

The British Property Federation

1. The BPF represents the commercial real estate sector – an industry with a market value of £1,662bn which contributed more than £94bn to the economy in 2014. We promote the interests of those with a stake in the UK built environment, and our membership comprises a broad range of owners, managers and developers of real estate as well as those who support them. Their investments help drive the UK's economic success; provide essential infrastructure and create great places where people can live, work and relax.
2. The UK's commercial real estate sector contributes about 5.4% of GDP, and directly employs 1 million people, or 6.8% of the labour force. It provides the nation's built environment and is diversifying from its core investment in the nation's offices, shops, leisure facilities and factories, to support the new economy through investments in logistics, healthcare, student accommodation, infrastructure, residential and increasingly through Build to Rent investment in new housing.
3. We are pleased to respond to the Select Committee's Inquiry into Leasehold Reform and welcome the opportunity to provide further guidance with regards to this area of policy. For the purposes of this evidence we have focussed on the Committee's key areas of inquiry.

The Leasehold Sector

4. The Government's Housing White Paper shone a light on the leasehold sector and we were pleased to see a commitment to the promotion of transparency and fairness for leaseholders. The BPF has remained a strong advocate for a fair leasehold system but we acknowledge that a small portion of the industry operates to the detriment of leaseholders, placing upon them significant financial burdens.
5. Media coverage has helped highlight the problems associated with purchasing a leasehold property, whether it be a flat or a house. Much of the problem has centred around leases that have been structured with rapidly escalating ground rents which has not only created consumer detriment but blighted the wider sector.
6. The issue of what constitutes an onerous ground rent has also created somewhat of a challenge amongst the industry. The attractiveness of ground rents to pension funds lies in their stability and predictability over long periods. A rapidly escalating ground rent is by its very nature unstable and runs contrary to the reasons why pension funds would want to invest in this part of the sector.
7. However, these issues are not indicative of a wholesale failure of the leasehold system which for the most part, operates successfully and with fairness. The leasehold sector constitutes an important part of the residential market and we would not wish to see any legislation put in place which would diminish its efficacy.

The adequacy of the Government's programme of work on residential leasehold reform, including (a) its application to existing leaseholders in both houses and flats and (b) whether further reforms should be introduced.

8. There have been few opportunities to amend problems in practice or in leasehold legislation since the passing of the 2002 Act. Government's consultation on *Tackling unfair practices in the leasehold market* aimed to correct this and we responded accordingly, voicing our support for many of the legislative and procedural suggestions put forward in the consultation. We supported a review of the parameters on ground rents but not their abolition in new leases, believing that it could devalue homes on ground rents and make it more difficult to obtain a mortgage on those properties.
9. Since responding to the consultation, we have continued to engage with officials at the Ministry of Housing, Communities and Local Government (MHCLG) with a view to assisting them in the development of leasehold reform. We have also worked with the Law Commission with regards to its review on enfranchisement and commonhold both of which we believe are in need of reform.
10. What appears to have been overlooked is that the leasehold industry is largely self-regulating. In the absence of any major reform, the sector has undertaken its own work to correct the system where required particularly with regards to ground rents. Government has highlighted the issue of onerous and doubling ground rents and whilst we firmly believe that extreme ground rents should be reined in, we feel that what has suggested goes too far beyond what is required. The focus on 10 year doubling ground rents, in particular, is misplaced given that these constitute a very small minority of the market and a majority of housebuilders, freeholders and investors have already put in place measures which allow leaseholders to convert their onerous leases to RPI, in most cases at no extra cost to themselves.
11. Developers have a responsibility to ensure that the details of a property are clear and readily understood by purchasers. Conveyancers too, have an important role to play in highlighting whether a lease is unreasonable and advise their customers, to which they have a duty of care, accordingly.
12. With regards to further reform, Government has already consulted on several related issues including conveyancing and the regulation of managing agents, yet no further progress has been made with regards to these. The BPF has responded to both consultations and believe that the suggestions made for each would assist Government and the industry to achieve a much tighter and joined up approach between these policy areas to create a holistic and transparent system.
13. The reinvigoration of commonhold is something that we do support but it is important that it works for mixed use scenarios which are commonplace in residential developments where homes for sale are mixed with affordable housing; or urban regeneration schemes which comprise residential and commercial uses. However, we appreciate that getting commonhold to a place where it is a viable alternative may take some time and so we would encourage Government to support measures towards greater resident control with appropriate guidance to help residents manage their blocks.
14. The issue of service charges is one that remains pertinent for the industry and should be noted by the Committee. Service charges are dependent on several factors including the level of service provided and the state of the repair of the external and communal structures of the building. With higher standards and well-maintained blocks, lessees expect higher levels of repair which in turn can result in higher levels of service charge. Current legislation, such as Section 20, does provide some element of transparency though more is needed to ensure that issues such as obtaining estimates, agreeing specifications and nominating contractors does not stifle the very works that residents want done..
15. In addition to the above, application to the First Tier Tribunal (FTT) needs to be much simpler, quicker and cheaper. The process of making an application can be lengthy particularly if one party asks for more time and as such needs to be much tighter in terms of processing cases. One solution to this could be to address the

resources available to the FTT which are limited and therefore do not enable it to work as efficiently as it potentially can.

16. Whilst the system itself is transparent, it is not widely understood by leaseholders and this needs to be addressed to allow leaseholders to more easily challenge and find a resolution on matters relating to high service charges.

What support and government intervention can be provided to existing leaseholders, in both houses and flats, affected by onerous leasehold terms.

17. The industry would welcome the introduction of a code of conduct which covers the construction of ground rents and on-going management of the relationship of the relationship between the homeowner and ground rent investors. A code could have a significant role to play in not only helping to safeguard purchasers of leasehold properties, but also help drive good practice within the industry and highlight those not operating to the required standard. Ideally this code would support legislation and could be put in place relatively quickly, ensuring that change takes place sooner, rather than waiting for the inevitable time it takes to put legislation in place. .
18. Whilst the industry is making its own strides in regulating itself, more could be done by Government to professionalise the sector. The work on leasehold reform has, to a certain extent effectively allowed leases to become demonised without due regard being given to those who don't have onerous leases but who now feel worried that they are financially trapped in their homes, which is simply not the case. Messaging around the sector could be much more positive to help improve the understanding that a reasonable lease is nothing to be worried about and should a leaseholder feel concerned that the terms of their lease are unfair, that there is help that can be offered to review this.
19. In relation to our earlier point regarding the FTT, The VOA could assist with some of the simpler cases on a fast track basis, particularly in relation to emergency works and service charge reasonableness, leaving the FTT to deal with unfair terms. The VOA should have the skills necessary to deal with these cases, but it would be up to local authorities to raise awareness of how and when to refer cases, with options for both parties.

What are the implications of providing such support and government intervention to these existing leaseholders.

20. The work that Government is seeking to undertake to address the potential difficulties faced by tenants of leases with rapidly rising rents are welcome and we would urge that any protection afforded to tenants in this regard should also be applied to such difficulties experienced by existing leaseholders. However, we would impress upon Government the need to be mindful of protecting the rights and interests of both landlords and tenants and the existing contractual arrangements which have been agreed between them.
21. As noted previously, problems faced by tenants arise not from a lack of clarity in the contractual terms of the lease, but from the shortcomings in the advice received by the tenants at the time of their acquisition of their lease. As such, the answer to the problems faced by existing leaseholders may not lie in amending the contractual terms of their lease, but instead in offering them clear guidance as to the action they might take against those who did not properly advise them at the time of their acquisition.

22. We have touched upon the responsibility of developers to ensure that the details of the property are clear and in addition to that, developers should steer a buyer towards advisers that do not have a link to them, meaning that the buyer will be assured of receiving impartial advice.
23. Finally, we would also ask that the Government gives thought to the consolidation and coordination of the various strands of its work and that of the Law Commission. The Committee's request for submissions comes on top of the Government's own consultation process and the Law Commission's consultations relating to leasehold reform generally, commonhold and enfranchisement specifically. Whilst we will continue to work with all parties to ensure that the leasehold reform agenda is able to fulfil its aims, we would stress that all work towards this must accord with one another.

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