

ENDING THE SCANDAL

Labour's new deal for leaseholders



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Introduction

John Healey MP & Sarah Jones MP

What happens when you buy a home but feel like you still don't own it? This is the plight for millions of England's homeowners who've bought as leaseholders. We've heard from leaseholders who were wrongly told they could buy the freehold cheaply at any time, who weren't told when the developer sold on their freehold, who didn't choose their own solicitor, who are unknowingly locked into paying escalating 'ground rents', and who found out only later that they have to ask – and pay – their freeholder for permission for basic things like to have a pet or change the carpets or build a conservatory.

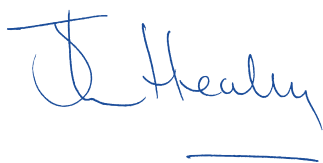
This is a market where almost six in ten leaseholders didn't understand what being a leaseholder meant until they had already purchased the property, and where nine in ten regret buying a leasehold property at all. It is a market that's not working, which demands wholesale change, and which needs urgent Government action to fix.

Conservative Ministers can't ignore the problem, but despite 37 Government press releases and other announcements on leasehold over the last three years, there is still no sign of change for home-buyers locked into unfair leasehold contracts, and no plans for the new legislation needed to make it happen. The truth is a Conservative Government can't help leaseholders because they won't stand up to the vested interests in the property market who are profiting out of the leasehold scandal.

This is Labour's plan to end the unfairness and injustice of leasehold for good. We publish this report and pledges on action for consultation and for wider debate. In compiling this report, we have met with leaseholders, campaigners and legal experts including practicing leasehold lawyers and the Law Commission. We are grateful to them for their views, advice and experience. All are clear that the current system needs radical change.

Ministers need to act immediately to help those leaseholders who have been misled about the property they have bought. Past mis-selling scandals – from pensions to endowment mortgages to PPI – show that sunlight is the best disinfectant and that exposing such scandals is the best way of ending them. So, a comprehensive inquiry into mis-selling is a vital first step, and the CMA inquiry, while welcome, may fall short of what's required.

But beyond that, we need new legislation to end the second-class status of homeowners who bought their home as leaseholders by ending the current system of leasehold for good. This report sets out Labour's plans to do just that. We look forward to your views, together with any evidence or experience that you believe we should consider to help the next Labour Government implement a radical new deal for leaseholders.



John Healey MP
Shadow Housing Secretary



Sarah Jones MP
Shadow Housing Minister

1. Labour's new deal for leaseholders: our five pledges

Leasehold reform is unfinished business for Labour. We legislated in 1967 to allow leaseholders to buy their homes and in 2002 to establish commonhold as an alternative to leasehold. The next Labour Government will finish the job. We will right the injustices faced by leaseholders locked in unfair contracts and faced with rip-off costs and we will end the broken leasehold model for good.

To give voice to those leaseholders who have been let down by the current system, the Government should ensure a full inquiry into the mis-selling of leasehold homes. This must shine a light on the misinformation and malpractice which leaseholders tell us is currently commonplace.

To end leasehold and ensure no leaseholder is left trapped against their will in this broken system, the next Labour Government plans the following five, radical changes.

1. End the sale of new private leasehold houses with direct effect and the sale of private leasehold flats by the end of our first term in Government.
2. End ground rents for new leasehold homes, and cap ground rents for existing leaseholders at 0.1% of the property value, up to a maximum of £250 a year.
3. Set a simple formula for leaseholders to buy the freehold to their home, or commonhold in the case of a flat, capped at 1% of the property value.
4. Crack down on unfair fees and contract terms by publishing a reference list of reasonable charges, requiring transparency on service charges and giving leaseholders a right to challenge rip-off fees and conditions or poor performance from service companies.
5. Give residents greater powers over the management of their homes, with new rights for flat-owners to form residents associations and by simplifying the Right to Manage.

There is further detail on our plans, and key questions we set out for consultation, in the sections that follow.

2. The leasehold rip-off

Leaseholders have always been at a disadvantage in our housing system. The roots of leasehold ownership stretch back to the middle ages and though the law has changed since then, the same fundamental inequality remains at the heart of the modern leasehold system.

At its most acute, this power imbalance means residents left trapped in contracts with unfair terms, unreasonable costs and unable to sell their properties, with big barriers in place for those leaseholders who try to act to achieve greater control or ownership over their homes.

Despite well-documented problems, the number of leasehold properties continues to grow. The precise number of leasehold homes is still unknown, but is estimated at between 4.3 and 6.6 million properties: up to one in four of all homes.¹ Sales data collected by the Land Registry shows that a quarter of all property transactions in 2018 were leasehold properties, with 98% of flats sold as leasehold.² Over the past 20 years, the proportion of houses built as leasehold is thought to have doubled.³

What is leasehold ownership?

Residential leasehold is a form of housing in which the occupier has bought the right to live in the property for a set period of time. This 'lease' often runs for between 99 and 999 years when a flat or house is first sold.

A lease acts as a contract between the leaseholder and their landlord or 'freeholder', which typically requires the leaseholder to make payments and abide by certain rules.

Long leases are often sold as real homeownership, or 'virtual freehold'. But leasehold is fundamentally a tenant-landlord relationship – leaseholders buy the right to live in a property rather than owning it outright and must abide by the terms of the lease. In contrast, freehold homeownership lasts indefinitely and allows the owner near-total control over their property.

Millions of homeowners feel that they have been sold a false promise when they've bought a leasehold home, and that the reality of being a leaseholder is entirely at odds with their idea of homeownership.

2.1 A MIS-SELLING SCANDAL

There is a widespread sense among leaseholders we have spoken to, especially those who bought leasehold houses direct from developers, that they were misinformed when they bought their property. Leasehold mis-selling has the potential to be a new PPI scandal, with growing evidence that many leaseholders did not fully understand the implications of leasehold ownership and were misled through the sale process.

The evidence is striking. Over 90% of leasehold house owners say they regret buying a leasehold property, and almost two-thirds feel like they were mis-sold.⁴ This is linked to concerns about the impartiality of advice received during the sale process: 65% of leasehold homebuyers say they used a solicitor recommended to them by the developer.

Many leaseholders have told us they bought their property on the basis they could easily and cheaply convert to freehold ownership, only to later find that a complex and often expensive process makes enfranchisement impossible for them to afford.

It is increasingly clear that there is a systemic problem with the selling of properties on a leasehold

basis. In 2018, the Conveyancing Association published research suggesting that 98% of sales of leasehold properties with onerous or doubling ground rents had been in breach of consumer protection regulations.⁵ Only 2% of leaseholders in these properties received the correct information prior to viewing their property, suggesting they were victims of mis-selling – a full inquiry must get to the bottom of these concerns and provide the basis for significant leasehold reform.

2.2 RIP-OFF GROUND RENTS

Expensive ‘ground rent’ charges which double every ten years have become a stand-out symbol of the problems with the leasehold model. They can mean homebuyers facing bills of thousands of pounds each year, and even left with a home which they cannot sell. When asked, almost half - 45% - of leaseholders say they were unaware that their ground rent would increase over time when they bought the property, and the same proportion say that they might not have bought their property if they had known.⁶

Ground rent is money for nothing which, unlike a service charge, is not a payment for a service to the leaseholder. In recognition of this, many leasehold properties already feature a ‘peppercorn’ ground rent, but other leaseholders face large and escalating ground rent payments, which can be sold on as a tradeable income stream by freeholders.

“I always thought that with a leasehold property I owned the house but not the land but ... I’m a tenant with a mortgage on a wasting asset.”

Joanne Darbyshire

My husband and I bought our Taylor Wimpey home in December 2010. The sales lady told me that it was leasehold, but we could purchase the freehold for £5,000 at any time. Given the costs of moving house we decided to wait and buy the freehold at a later date before the ground rent doubled. In November 2011, the freehold was sold to Adriatic Land 2 (GR2) Limited, owned by an offshore investor. We were advised that we needed to pay the ground rent to a new management company with no mention of what the other implications would be.

“In 2016 a neighbour’s house sale fell through - the buyer’s solicitor advised that the ground rent terms were onerous. After paying £108 to obtain a quote they were astounded to receive a quote for over £50k to buy out their freehold. A second neighbour paid £108 and received a quote for over £40k. It was only then that we realised the awful reality of what had happened. The freeholds had been sold on and the cost to buy had increased massively. We also discovered that we have to pay permission fees to make alterations to the house or re-mortgage. I always thought that with a leasehold property I owned the house but not the land, but that’s not the case; I’m a tenant with a mortgage on a wasting asset.”⁷

Escalating ground rents can make properties unsellable. In 2017, high street mortgage lender Nationwide stopped offering mortgages on properties with ‘unreasonable multiplying leaseholds’ or where the annual ground rent exceeded 0.1% of the property value.⁸ The UK Finance Mortgage Lenders’ Handbook makes it clear that, for many lenders, ground rents of more than 0.1% are considered onerous and impact on the potential for resale of a property.⁹ The campaign group, Leasehold Knowledge Partnership, have estimated that up to 100,000 homes cannot be sold due to high ground rents and other onerous lease conditions.¹⁰

How much do leaseholders pay in ground rents?

Despite high ground rents becoming a high-profile problem, the Government still does not collect or publish data on the ground rents paid by leaseholders. Research published in 2016 by insurer Direct Line, and cited by the Government, suggests average annual ground rents stand at £371 for new-build homes and £327 for older properties.

Analysis of English Housing Survey data for Labour suggests that there is a wide variation in the ground rents paid by leaseholders, with a substantial number at a nominal or 'peppercorn' level, as well as a significant number of more expensive ground rents.

Separate data provided by major developer Redrow, who analysed 5,000 of their leasehold properties built over the past five years, found up to 14% had ground rents above 0.1% of the property value at the point of sale.

2.3 TRADE IN FREEHOLD TITLES

High ground rents also helped establish a more fundamental fault in the current leasehold model: the unchecked ability to charge ground rents means leasehold properties are treated by developers and others as a tradeable commodity with a long-term income stream, which can be sold on for profit.¹¹ This has led to a market in the buying and selling of the freehold to leaseholders' homes, sometimes without their knowledge. Ground rents have been described by one consultancy as "an asset class that offers attractive spreads and long-term cash flows with additional security."¹²

2.4 UNFAIR CONTRACT TERMS

Leaseholders we have spoken to frequently highlight onerous contract terms, which were often not explained to them when they bought the property, and which they feel undermines their sense they own their home.

Leasehold contracts can contain restrictive covenants similar to the rules used in some private rental agreements. These can place tight restrictions on basic day-to-day activities, including banning leaseholders from something as simple as drying their washing outdoors or installing CCTV cameras on their property.¹³

Other simple changes to the home – such as replacing a doorbell or erecting a fence – can require leaseholders to get explicit permission from their freeholder. To do this, leaseholders can be charged a 'permission', or administration, fee by freeholders to review and grant their request.

The permission fees rip-off: some examples

Charge	Description
£252	Permission to have a pet
£60	Permission to replace a doorbell
£2,500	Permission to build a conservatory
£300	Permission to erect a fence

Source: Which?¹⁴

Leaseholders in retirement properties can be particularly vulnerable to onerous contract terms. So-called 'event fees' are fees payable by leaseholders including in the event of resale or subletting. In retirement properties they can activate on the sale of the property, often after the leaseholder's death, meaning that grieving family members can face fees of up to 30% of the property value, payable to the freeholder.¹⁵

If a leaseholder makes changes to their property without gaining the proper permission, or breaks other terms of their contract, the ultimate sanction available is forfeiture of the lease with full possession reverting to the freeholder, without payment or compensation. Forfeiture means a lease becomes void and the leaseholder no longer has the right to live in a property. The money they invested in their home is also lost. An extreme recent example of this saw a £600,000 flat confiscated from the leaseholder in 2018.¹⁶

2.5 RIP-OFF BUY-OUT COSTS

Leaseholders have a legal right to buy the freehold to their property – often referred to as ‘enfranchisement’. There are different rules for houses and flats, mainly because flat-owning leaseholders buy the freehold in conjunction with other leaseholders in the building. For both sets of leaseholders, the process of enfranchising is too complicated and too costly.¹⁷

The valuation process for the premium which leaseholders must pay to buy the freehold involves complex calculations which most leaseholders will need expensive legal and valuation advice to attain. As the Law Commission admits, many lawyers struggle to understand the complex methodology for enfranchisement,¹⁸ and we’ve heard that this complexity can lead to leaseholders being exploited and overcharged.¹⁹

The flawed system of enfranchisement creates a particular problem for people trapped in expensive leases. Buying the freehold is the simplest, and sometimes the only, way for leaseholders to escape exploitative contracts, such as those in which ground rents double periodically. But because the formula used for enfranchisement takes into account the value of ground rent, leaseholders with the worst leases face the highest buy-out costs, which can run to tens of thousands of pounds.²⁰

Some leaseholders report being told by the developer or their sales agent before buying their property that they could buy their freehold for as little as £2,000.²¹ But instead, they have found the buy-out process much more expensive than they had been promised, and that their freeholder is no longer the original developer but a new, commercial freeholder who has bought the freehold as an investment.²²

Achieving full ownership for owners of leasehold flats is a more complicated process still. Collective enfranchisement – when owners of leasehold flats in the same block join together to buy the freehold of their building – has additional restrictions to enfranchisement in houses. Two-thirds of leaseholders must agree to the purchase and be able to afford the freehold. Even if not all leaseholders want or are able to enfranchise, they must still pay for 100% of the freehold.

2.6 UNACCOUNTABLE FREEHOLDERS AND MANAGEMENT COMPANIES

Leaseholders have told us they feel abandoned to unaccountable management companies and freeholders who don’t take an interest in leaseholders’ concerns.

Most leaseholders will pay service charges, maintenance fees and insurance costs to their freeholder. While, unlike ground rent payments, these at least directly relate to the upkeep of a building or estate, there have been repeated reports of overcharging and of poor maintenance.

According to one major insurer, leaseholders are being overcharged by an estimated £1.4bn on service charges alone, with average service charge for new-build properties at least £2,700.²³ In some cases, leaseholders have faced service charges as high as £7,600 per year.²⁴

The service charge rip-off: some examples

Charge	Description
£2,470	Weekly vacuuming of a communal corridor
£990	Testing corridor lighting
£5,000	Fitting a fire alarm and emergency lighting in a communal entrance

Sources: The Guardian²⁵, The Times²⁶

Leaseholders are also exposed to one-off charges for major works. The tragedy of the Grenfell Tower fire exposed widespread failures in building regulations which left hundreds of blocks across the country covered in flammable cladding. Two years on from the Grenfell Tower fire, 9 in 10 private residential blocks covered in Grenfell-style aluminium composite material (ACM) cladding have not had it removed.²⁷ More than 40,000 leaseholders and other residents are living in these flammable blocks, with thousands more trapped in blocks with non-ACM cladding which the Government is yet to properly test. The Government has been forced to make a fund available for cladding remediation, as it became clear that leaseholders, those least responsible and least able to pay, were set to face bills thousands of pounds to remove the cladding.

Open-ended legal fees can be passed on to leaseholders through service charges if a tribunal finds in the freeholder's favour, and even in some cases if the leaseholder wins. In 2018, a leaseholder successfully challenged part of his service charge bill at tribunal, where the management company was ordered to reduce the bill by £1,200. The management company subsequently charged their £61,000 legal fees back to the leaseholder.²⁸ The imbalance of interests in the tribunal system dissuades leaseholders from pursuing claims and has even led to solicitors warning leaseholders not to use tribunals.²⁹

"I was charged £50,000 in ongoing fees after buying my flat"

Jay Beeharry

"I am a leaseholder and have a 2-bed modest flat in a block of 21 flats in London. For several years I have been in dispute with the freeholder of my block. I have lost thousands of pounds, significant time, life and equity in my leasehold flat that I have been unable to sell. I have been threatened with forfeiture of my home.

"Over the course of four years I was charged over £50,000 in service charges and one-off 'major works' fees. Residents tried to challenge the freeholder four times in tribunals – where in one case we were told repair costs had risen from £79,000 to £525,000 and another case where repairs had risen further to £600,000. I discovered an invoice which showed residents had been charged £72,000 for part of the works which only cost £21,500.

"Throughout this time the freeholder was hiking our building insurance contributions, which doubled between 2011 and 2017. However, another leaseholder successfully challenged this at the tribunal but the 36.1% excessive charging was not refunded to all lessees.

"The more we tried to get justice, the more the freeholder hiked our litigation costs although our attempts at mediation were ignored. When we did go to tribunal the freeholder simply passed their legal costs on to us so we were forced to accept, fearful of rising court and legal fees.

"Sadly, what I have described is not uncommon. The law did not protect us. We have been fighting a David vs Goliath battle against unscrupulous landlords and a system which is rigged against us."³⁰

Only one in five leaseholders know that they can replace a poorly performing managing agent. In practice, those who do want to mount a legal challenge – over service quality or cost – face the barrier of a complex and often costly tribunal process which makes many leaseholders reluctant to take action.³¹

What is the Right to Manage?

Introduced in 2002, the Right to Manage (RTM) allows leaseholders to take over the management (but not ownership) of their block through an 'RTM company' controlled by participating residents.

Establishment of a RTM does not require mismanagement from the existing building managers or consent from the freeholder, but more than 50% of leaseholders must agree to participate.

While in theory leaseholders have a 'Right to Manage' leasehold sites, this is difficult to exercise in practice, with as few as 4,000 successful cases across England and Wales since 2002.³² Simply setting up a Recognised Tenants Association – to represent leaseholders in discussions with a freeholder or managing agent – can be difficult and we have heard examples of freeholders hampering this process by failing to provide information to residents or challenging them on legal technicalities.

Opaque property ownership structures contribute to this problem. Buildings can be owned by shell companies or anonymous offshore trusts, with leaseholders given no way to contact them. One trust, based in the British Virgin Islands, claimed to own 1% of all residential freehold titles in England and Wales.³³

2.7 LAGGING BEHIND: INTERNATIONAL COMPARISONS

The success of other countries in addressing the flawed leasehold model and cultivating alternative forms of ownership shows that it is possible to end our failed system of leasehold. In fact, England is about the only country which has failed to move away from leasehold. Alternatives are available through cooperative flat ownership in Europe, strata-title ownership in Australia and condominium ownership in the USA. Closer to home, Scotland, Wales and Northern Ireland have all taken steps towards ending leasehold.

Scotland has abolished leasehold, transferring all properties held on long leases to outright ownership. All residential leases with over 100 years to run by 28th November 2015 were converted into outright ownership for the leaseholder. Former freeholders are entitled to compensation payable by the leaseholder, with the compensation calculated based on the annual ground rent paid by the leaseholder.

The Northern Ireland Ground Rents Act 2001 gave leaseholders the right to 'redeem' their ground rent and take ownership of their freehold. In contrast to enfranchisement in England and Wales, the formula used to calculate this redemption is a simple multiple of 9 times the annual ground rent.³⁴

Other countries have demonstrated that an alternative models of ownership can work. The Australian Strata Title system – equivalent to what we know as commonhold – came into force in 1961 and today numbers more than 270,000 schemes containing over 2 million properties and commercial units. Strata properties now account for more than half of all residential sales because of their popularity among both homeowners and investors.³⁵

The strata system has successfully developed to accommodate more complex, mixed use developments. Strata managers, professionals who are specialists in block management and housing legislation, play an important role in administering the owners' corporations which own the property. The success of the strata system in Australia has seen it spread to other countries including Canada, New Zealand and Singapore.

In contrast to management companies in leasehold blocks, strata managers are fully accountable to each block's 'owners committee'. They can also support owners to build consensus should disputes arise between residents.

In the USA, condominium or 'condo' ownership is well established. After spreading across the country through federal legislation in the late 1960s, growing popularity over the following decades has meant millions of properties built across the country. Condominiums can take a number of different forms, including apartment blocks, 'garden' complexes with low rise houses and 'townhouse' complexes with multiple semi-detached homes. The model contains flexibility for smaller schemes as well as more complex developments.

3. The Conservative failure on leasehold

After nine years, it's clear that Conservative Ministers have failed to tackle the leasehold scandal. The Conservatives' proposals that have been announced to help leaseholders are too weak, too slow and almost entirely overlook existing leaseholders. While Ministers have repeatedly promised action to tackle the abuses that leaseholders face, with over 60 official announcements since 2010,³⁶ no new legislation has been introduced and the Government continues to duck the fundamental problems with the leasehold model.

As a result, the number of leasehold properties is continuing to rise, and is now up to at least 4.3 million. The most recent available statistics for property transactions show that more than a third of new build properties are sold as leasehold. In the North West, more than four out of ten new build properties are leasehold while in London the figure rises to an astonishing 95%.³⁷

The Conservatives' failure on leasehold

- ✗ The number of leasehold properties is still increasing year-on-year
- ✗ Help to Buy funding still going to leasehold houses - an estimated £1bn in public cash since 2013
- ✗ There's still no proper property ownership register, so freehold ownership can remain obscure and unaccountable
- ✗ Over 60 Government press releases and other announcements on leasehold but still no legislation to stop developers and freeholders exploiting leaseholders

The Government's Help to Buy programme has made a bad situation worse by subsidising the sale of 18,000 leasehold houses since 2013, at an estimated public cost of nearly £1bn.³⁸ And for any of these homes which are now unsaleable, or saleable only at a significant discount, this will mean a loss for the Exchequer.

Following Labour pressure, in December 2017 Ministers had announced "a ban on leaseholds for almost all new build houses" and pledged to write to developers "to strongly discourage the use of Help to Buy Equity loans for the purchase of leasehold houses".³⁹

However, over a year later official statistics show leasehold houses are still being sold to buyers using Help to Buy loans. And more recently, a senior Government civil servant has revealed that the ban on Help to Buy cash going to leasehold houses won't come into force until 2021, admitting: "... from 2021, we will exclude leasehold houses from the replacement scheme... We were not able to do that, unfortunately, for the current scheme".⁴⁰

Despite promises of reform, the Government has been dragging its feet on meaningful change for leaseholders. The latest leasehold consultation published in October 2018 simply covered the same issues as a consultation 15 months earlier in August 2017, with the principal difference that the later consultation proposals actually weakened Ministers' previous plans.

The Government had previously promised to ban all new leasehold houses, but this now only applies to a 'majority' of new houses. A promise that "ground rents on newly established leases of houses and flats [will be] set at a peppercorn (zero financial value)" has turned into permission for freeholders to charge ground rents of up to £10 a year.

Ministers say they are committed to reforming the regulation of managing agents, but after nine years in Government they have only set up a working group. But without giving residents the ability to organise, make their voices heard and take or influence decisions of managing agents, then any new regulations risk being toothless.

The Government's recent reforms to Recognised Tenants Associations (RTAs) belatedly reduced the membership requirement from 60% of residents to 50%. But additional changes have actually made it more difficult to form RTAs by adding additional bureaucracy.⁴¹

The Conservatives' failure to set up a proper register of property ownership means freeholders can continue to use shell companies, including those based offshore, to avoid accountability to their leaseholders. Land ownership remains cloaked in secrecy and land trading is one of Britain's least transparent markets. We need to invest and strengthen the Land Registry to overcome this issue, yet the Conservatives threatened to privatise it, and their promise to create a comprehensive register won't be delivered until 2030.⁴²

In the biggest failure of all, the Housing Minister has admitted that the Government has no plans to make changes to legislation which will help existing leaseholders, who are the biggest victims of the leasehold scandal.⁴³ The Government's limited proposals will only apply to new leaseholders and even these changes are no closer to becoming law, with only vague references to possible legislation in 2020.⁴⁴

The truth is that the Conservatives can't help leaseholders because they won't stand up to vested interests in the property market. Labour's bold alternative – a new deal for leaseholders – is a pledge of action to stand up for the many affected by the leasehold crisis, not the few who benefit most from the current system.

4. Labour's alternative: a new deal for leaseholders

Labour's pledges to leaseholders are the foundations of our new deal for leaseholders, setting out how we will end the broken leasehold model for good.

This is unfinished business for Labour. It was a Labour Government in 1967 which gave leaseholders a legal right to enfranchise and take full ownership of their property. In 2002 a Labour Government introduced the Leasehold and Commonhold Reform Act to further strengthen leaseholders' rights and introduce ambitious proposals for a new commonhold tenure. We propose that the next Labour Government will:

1. End the sale of new private leasehold houses with direct effect and the sale of private leasehold flats by the end of our first term in Government.
2. End ground rents for new leasehold homes, and cap ground rents for existing leaseholders at 0.1% of the property value, up to a maximum of £250 a year.
3. Set a simple formula for leaseholders to buy the freehold to their home, or commonhold in the case of a flat, capped at 1% of the property value.
4. Crack down on unfair fees and contract terms by publishing a reference list of reasonable charges, requiring transparency on service charges and giving leaseholders a right to challenge rip-off fees and conditions or poor performance from service companies.
5. Give residents greater powers over the management of their homes, with new rights for flat-owners to form residents associations and by simplifying the Right to Manage.

While it will take a Labour Government to act on the injustices faced by leaseholders, Conservative Ministers should start now by acting on the growing evidence that leaseholders have been mis-sold their homes. Part of the problem appears to be that, unlike solicitors, licensed conveyancers are permitted to act on both sides of a property transaction – for both buyer and seller. This is a clear conflict of interest and the Government should bring forward an immediate ban on this practice. More fundamentally, past mis-selling scandals – from pensions to endowment mortgages to PPI – show that sunlight is the best disinfectant, so Ministers must also ensure the Competition and Markets Authority comprehensively investigates leaseholders' concerns.

However, even in advance of any such inquiry, it's already clear from our conversations with leaseholders that fundamental change is needed in the following areas.

4.1 PROHIBITING THE SALE OF NEW LEASEHOLD HOMES

While Conservative Ministers have talked about ending the sale of new leasehold houses, they still haven't acted. Worse still, the Government continues to use taxpayer funding to subsidise the sale of leasehold houses through Help to Buy.

There is no good reason why the sale of leasehold houses should continue, especially as there are indications from developers and from transaction data are that these types of properties are now being phased out of new developments.⁴⁵ Labour would act decisively to stop the sale of any further leasehold houses.

A Labour Government would end the sale of new commercial leasehold houses with direct effect.

For flat-owners, we believe the best alternative to the leasehold is a reformed 'commonhold' model, to give residents control over their homes and a basis to manage the building's commons parts.

To enable commonhold to flourish in England, we will reform those aspects of the current commonhold model that have prevented it becoming the norm for new flats and which have discouraged its use amongst existing flat owners. In particular, we aim to pursue reform in the following areas.

What is commonhold?

Commonhold's roots in England and Wales stretch back over half a century. In 1965, a committee chaired by Lord Wilberforce recommended that adoption of a system to replicate the new Australian 'strata title' commonhold model. However, it was not until Labour introduced legislation shortly after the 2001 general election that commonhold was formally brought into law.

Commonhold gives residents full ownership of their flat, equal to a freehold house, while at the same time making them joint owner of the outer building and shared areas through a company called a commonhold association. It is commonly used around the world in countries such as the USA, Australia and across Europe.

Making commonhold mandatory: to date, commonhold has been an option not a requirement for new developments, so developers continue to choose the more profitable leasehold model.

Lowering the threshold for resident consent: the current requirement for 100% resident to consent for a conversion to commonhold is too high, making it very difficult to obtain permission to convert a block to commonhold.

Increasing lender confidence: mortgage lenders report a lack of certainty and confidence in commonhold, in part citing concerns about the risk that a commonhold association becomes insolvent.

Increasing public confidence: consumer awareness of commonhold and its benefits remains low.

Improving the flexibility of commonhold: current commonhold rules are not well suited to some types of development such as mixed-use or shared ownership.

Labour's ambition is for leasehold ownership of flats to be superseded by commonhold, giving owners of flats a comparable experience of ownership to that of freeholders, and greater security in their homes. We will bring forward early legislation to end the building of new leasehold properties, putting in place the necessary reforms to ensure that commonhold can work for consumers, developers and lenders, just as it does in other countries. This early legislative declaration of intent will help manage the transition to commonhold over several years, allowing developers to maintain a strong planned programme of development.

A Labour Government will reform and revitalise commonhold, legislating to end leasehold for all new properties within our first Parliament by requiring new private flats to be sold as commonhold.

Questions

Q1 Should there be any exemptions to the prohibition on new private leasehold properties, and if so what should they be?

Q2 What changes need to be made to commonhold to ensure it can become the default tenure for new flats?

4.2 ENDING GROUND RENTS FOR NEW LEASEHOLD HOMES AND CAPPING UNFAIR GROUND RENTS FOR EXISTING LEASEHOLDERS

Escalating and unregulated ground rents have become a big worry for many leaseholders, causing financial stress and trapping an estimated 100,000 households in a home they can't sell.⁴⁷ The high cost of some ground rents is simply unjustified. They have no impact on the level of maintenance of a building, while experts say they serve "no purpose" and that we should "do away with ground rents altogether."⁴⁸ Leaseholders themselves have been clear they want to see an end to the scandal of runaway ground rents.⁴⁹

Ground rent is money for nothing, and we see no reason why new leasehold properties should come with a ground rent charge. No substantial case has been made for new ground rents to be set at anything other than zero – or a 'peppercorn' if strictly necessary – and it is time to do away with this feudal hangover and scrap ground rents as an income stream on new developments.

Labour will end ground rents on new leasehold properties.

The UK Finance Mortgage Lenders' Handbook states that many lenders class ground rents of more than 0.1% as onerous, impacting the potential for resale of a property.⁵⁰ The cross-party Housing, Communities and Local Government Select Committee, among others, has argued that any ground rent exceeding £250 is onerous and unnecessary.

Leaseholders whose ground rent exceeds £250 are exposed to unnecessary risk due to a condition of the 1988 Housing Act which classifies any property outside London with ground rent over £250 as an assured tenancy.

Setting a cap of 0.1% of property value, up to the lower Housing Act threshold for assured tenancies (currently £250) would mean substantial savings for many leaseholders, as the table below sets out.⁵¹ We do not see any reason why this cap needs to rise over time.

	North East	North West	Yorkshire and The Humber	East Midlands	West Midlands	East	London	South East	South West
Average house price (Dec 2018)	£123,046	£159,471	£162,129	£190,171	£196,571	£286,611	£463,283	£318,491	£253,752
Proposed ground rent cap	£123	£159	£162	£190	£197	£250	£250	£250	£250

As the Housing, Communities and Local Government Select Committee note, a restriction on rent is control of the use of property, rather than expropriation, so is likely to be justifiable in terms of human rights law.

A Labour Government will cap excessive ground rents for existing leaseholders at a maximum of 0.1% of property value, up to a maximum of £250 a year.

Questions

Q3 Do you agree with our proposals to restrict ground rents to zero, or a peppercorn, for new build properties?

Q4 Do you agree with our proposal to set the maximum ground rent chargeable at 0.1% of property value, with a cap of £250 a year?

4.3 ALLOWING LEASEHOLDERS TO BUY THE FREEHOLD TO THEIR HOME CHEAPLY AND EASILY, OR COMMONHOLD IN THE CASE OF A FLAT.

At the heart of Labour's plans to help leaseholders is the opportunity to obtain true ownership of their property through conversion to freehold, or commonhold in the case of flat owners.

We will legislate for a simple buy-out formula that will apply to longer leases, set at a proportion of freehold capital value. This will simplify the current complex system for leaseholders while maintaining a link to property value to produce a proportionate price for freeholders. An independent valuation service, for example through the Valuation Office Agency or the Leasehold Advisory Service, could help where necessary to avoid contested valuations. Whenever the freehold is being sold on, the leaseholder or leaseholders should always get first refusal.

In coming to a conclusion about an appropriate formula for leaseholder enfranchisement, we have modelled enfranchisement costs under our proposal compared to the status quo for a range of different assumptions on capitalisation and deferment rates, leasehold/freehold relativity, ground rents and different lease lengths. This modelling suggests substantial savings for leaseholders right across the country.

For a leaseholder currently living in a house or flat worth £200,000, Labour's simple new formula would mean they can buy their freehold for just £2,000. This is a significant saving compared to leasehold enfranchisement for a £200,000 property under the current system: with 90 years left on the lease and a £250 per year ground rent, the current cost for enfranchisement would be over £6,000, plus expensive legal fees. For properties with ground rents above £250, the cost would be significantly higher still.

We note that in other parts of the UK, buy-out provisions apply only to leases with a certain number of years left to run – in Northern Ireland it is 50 years and in Scotland it is 100 years. We welcome views as to the appropriate minimum lease length where the simple formula should apply, and how the additional compensation due to freeholders might be calculated for the minority of leaseholders on shorter leases, whose current high enfranchisement costs largely reflect the high reversionary value of shorter leases.

While it would be possible to tweak the existing basis on which leaseholders can buy the freehold to their home rather than make the radical change we propose here, the current system is so unsatisfactory, and so stacked against leaseholders who wish to enfranchise, that we must replace rather than reform the current complex valuation process if we are to give leaseholders a fair deal.

Labour will legislate to allow leaseholder with longer leases to buy the freehold to their home, or commonhold in the case of a flat, with payment capped at 1% of the freehold property value.

For flat-owners, one major obstacle to collective enfranchisement, and the conversion to commonhold, is the requirement for the leaseholders involved to pay for the entire value of the freehold – including covering the cost of those residents who are unable or unwilling to join the collective enfranchisement, as well as the cost of any areas of the building not eligible for involvement, such as retail units.

Following the work of the Law Commission, we propose new ‘leaseback’ rights to reduce the cost of collective enfranchisement. A leaseback allows a freeholder to retain ownership of parts of a block by taking a 999-year lease from the residents buying the freehold – effectively reversing the leaseholder-freeholder relationship.

Freeholders already have rights to request a leaseback of areas which are not participating in the collective enfranchisement, and in some cases leasebacks are mandatory – such as secure tenancies where a council is the landlord or freeholder.⁵² The value of any area subject to a leaseback is deducted from the collective enfranchisement cost. We propose extending leaseback rights to allow leaseholders to require a freeholder to take a leaseback of non-participating parts of the building, thus reducing their enfranchisement cost.

Over time, residents who were unable or unwilling to take part in the collective enfranchisement at the time, or who buy the property as leaseholders, will be able to exercise their legal right to buy out their lease. Our proposed reforms in 4.1 will also make commonhold work better for these sites, for example by introducing sections with different voting rights for mixed use sites, as advocated by the Law Commission.

Questions

Q5 Do you agree with our proposed formula to allow leaseholders to buy the freehold to their home, or convert to commonhold?

Q6 What should we define as a ‘longer lease’ for the purposes of a new, simple formula for enfranchisement?

4.4 CRACKING DOWN ON UNREASONABLE COSTS AND CONDITIONS

Overcharging, poor property maintenance standards and unresponsive managing or service companies are too common an experience for leaseholders at present. Labour will rebalance this relationship and ensure leaseholders get more information, greater influence and easier access to redress.

Leaseholders deserve much greater transparency and accountability over the fees they are charged. We want to ensure that leaseholders don’t have to go out of their way to access information about their service charge account with new transparency requirements, for example to present leaseholders with a standard itemised form with a full breakdown of costs.

The fragmented nature of complaints and regulation across the housing system has left leaseholders feeling confused and unsupported – and too often having to risk the expense of legal action. We propose to streamline and strengthen the current system, for example through a single body with powers to handle complaints and to enforce standards among building owners and property managers. We will introduce a new, improved route for redress which doesn’t require the time and potential cost involved in the current legal process

Labour will end the charging of unfair administration or ‘permission’ fees by limiting the circumstances in which fees can be charged and, for certain fees, being clear about the maximum fee that can be charged – for example for giving permission to install a doorbell. This could build on Law Commission proposals to tackle ‘event fees’ in retirement properties.⁵³

When it comes to simple tasks such as cosmetic changes, charging any permission fee at all is likely to be unreasonable. For administration fees relating to buying or selling, research suggests that leaseholders are being chronically overcharged. 98% of managing agents overcharge for a Notice of Assignment with an average fee of £95, almost four times the fee considered reasonable.⁵⁴ Labour will set out a clear schedule of permitted fees to end these rip-offs.

Labour will crack down on unfair fees and contract terms by publishing a reference list of reasonable charges, requiring transparency on service charges and giving leaseholders an improved system to challenge rip-off fees and conditions or poor performance from service companies.

Finally, no one should be threatened with forfeiture of their home for breaking restrictive covenants. A Labour Government will abolish forfeiture in respect of long leases, replacing it with a system akin to foreclosure on mortgage arrears. Under this system, freeholders would apply to the court for the sale of the lease in cases where a serious breach has had a proven detrimental effect on the property value, with the leaseholder receiving their remaining interest following sale.

Questions

Q7 Do you agree that there should be a new route for redress for leaseholders suffering from unreasonable costs and conditions?

Q8 What types of covenants or administration fees should be permitted and what is a reasonable level to charge?

Q9 Do you agree with our proposals to abolish forfeiture on long leases?

4.5 GIVING RESIDENTS GREATER POWERS OVER MANAGEMENT OF THEIR HOMES

One of our most important objectives is to give individual leaseholders more control over their homes, including those not yet ready or able to buy their freehold or to convert to commonhold. For owners of leasehold flats, Recognised Tenants Associations (RTAs) are an important first step.

What are Recognised Tenants Associations?

Recognised Tenants Associations (RTAs) give owners of leasehold flats important rights. To become ‘recognised’ a residents’ association must have agreement from more than 50% of qualifying leaseholders, before securing notice in writing from the freeholder or applying to the First-Tier Tribunal.

RTAs have the right to request information from the freeholder of their block, such as detailed information about the service charge account. RTAs also give residents the right to be consulted over a change in managing agent, or major works – the cost of which can be passed on to leaseholders.

Labour will strengthen the existing rights of RTAs. To improve transparency, building owners and managers will be required to provide information to RTAs up-front about their spending each year.

We will amend the existing statutory right to appoint a new property manager to give RTAs the right to change managing agent without needing to prove mismanagement in a costly tribunal process.

Despite years of promised reform from Government, freeholders can still frustrate the process of tenants' associations becoming recognised. Labour will remove these loopholes – for example by stopping landlords from withholding contact details of residents.

We will look to simplify the Right to Manage (RTM) so that leaseholders who wish to take full control of their building's management can do so more easily. Based on work being undertaken by the Law Commission we will remove or amend unnecessarily restrictive conditions in the RTM process – such as the requirement for two thirds of a block to be 'qualifying tenants' and no less than 25% non-residential premises. We will make it easier to apply through a new online hub.⁵⁵

However, we also recognise that managing a large block or estate is an important responsibility, often requiring the expertise and attention of a full-time professional. We welcome views on what training or requirements are needed to ensure the effective management of sites that are commonhold or operating under the Right to Manage.

Labour will empower leaseholders to take greater control of their homes by strengthening Recognised Tenants Associations and a streamlining the Right to Manage process.

Questions

Q10 What more could be done to give leaseholders more control over management of their buildings?

Q11 How can we best ensure effective management of commonhold or Right to Manage sites?

5. Our consultation questions

Please respond by 30 September 2019 to leaseholdconsultation@labour.org.uk.

- Q1 Should there be any exemptions to the prohibition on new private leasehold properties, and if so what should they be?
- Q2 What changes need to be made to commonhold to ensure it can become the default tenure for new flats?
- Q3 Do you agree with our proposals to restrict ground rents to zero, or a peppercorn, for new build properties?
- Q4 Do you agree with our proposal to set the maximum ground rent chargeable at 0.1% of property value, with a cap of £250 a year?
- Q5 Do you agree with our proposed formula to allow leaseholders to buy the freehold to their home, or convert to commonhold?
- Q6 What should we define as a 'longer lease' for the purposes of a new, simple formula for enfranchisement?
- Q7 Do you agree that there should be a new route for redress for leaseholders suffering from unreasonable costs and conditions?
- Q8 What types of covenants or administration fees should be permitted and what is a reasonable level to charge?
- Q9 Do you agree with our proposals to abolish forfeiture on long leases?
- Q10 What more could be done to give leaseholders more control over management of their buildings?
- Q11 How can we best ensure effective management of commonhold or Right to Manage sites?

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