

**Welcome to Landmark Chambers’  
‘What Next? Residential Property Law in  
2021/22’ webinar**

The recording may be accessed [here](#).

# Your speakers today are...



**Justin Bates (Chair)**

**Topic:**  
Renting Homes  
(Wales) Act  
2018



**Rupert Cohen**

**Topic:**  
Ground rent  
and estate  
rentcharge  
reform



**Kimberley Ziya**

**Topic:**  
Law  
Commission  
Residential  
Leasehold  
Reforms

# Law Commission Residential Leasehold Reforms



**Kimberley Ziya**

## Terms of reference

*“The project will be a wide-ranging review of residential leasehold law, focussing in the first instance on reform to:*

- 1. enfranchisement;*
- 2. commonhold; and*
- 3. the right to manage.*

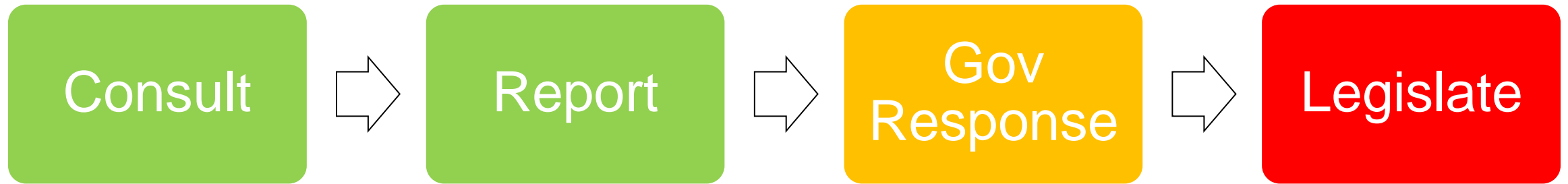
*The Commission and Government are discussing other areas of residential leasehold reform that could be included in the project.*

*The Government has identified the following policy objectives for the Law Commission's recommended reforms:*

### **Generally**

- to promote transparency and fairness in the residential leasehold sector;*
- **to provide a better deal for leaseholders as consumers;***

## Where are they up to?



## Enfranchisement: the rights

- Re-formulation of the rights under LRA 1967 and LRUDA 1993
  - 990 year lease extension for houses and flats
  - Buy out ground rent under an existing lease w/o extending term
  - Extend term w/o buying out “onerous” ground rent
  - “Individual” and “collective” freehold acquisition
    - Multiple buildings in a single claim
    - Require LL to take a leaseback of non-participating units

## Enfranchisement: qualifying criteria

- New unified scheme of qualifying criteria → more leaseholders eligible
  - Up to 50% of building non-resi
  - Abolish 2-year ownership requirement
  - Abolish low rent test and rateable values
  - New concept of “residential unit”
  - Flowchart: figure 6, para 6.393
  - Live-work units included
  - Shared ownership leaseholders given right to lease extension only
  - New exemption for community-led housing developments

## Enfranchisement: Procedure

- New, single procedure for all claims
  - Prescribed claim and response notices
  - Prescribed categories of addresses and deemed service
  - Competent LL responsible for serving on any intermediate LLs
  - Validity of notices only challengeable in limited circumstances
  - Where no response by LL in time, LHs can apply to FTT but not bound by terms in the Claim Notice
  - Claim not treated as withdrawn if LHs fail to apply to FTT for determination
  - Claim Notice no longer creates statutory contract
  - Benefit of Claim Notice automatically transfers upon assignment & doesn't have to be registered to bind on the LL



## Enfranchisement: Dispute resolution & costs

- No more split jurisdiction → FTT only
  - Powers to FTT to: (1) enforce a determination made or any agreement b/w the parties; (2) execute a lease extension or transfer; (3) access the Court Funds Office to take receipt of funds where necessary
  - Certain valuation only disputes heard by single valuer member only
- Control of LHs liability to pay for “non-litigation costs” of LL
  - Not required in most claims
  - Exceptions for low-value claims and where LH have made an election that increases costs (e.g. requiring LL to take a lease-back)
- Enfranchisement Restraint Order
- Standard Tribunal costs rules → anti-avoidance measures

## Enfranchisement: valuation

- Separate Valuation Options Paper → “Options to reduce the price payable”
- Three schemes:
  - Scheme 1 – leaseholder never in market → term + reversion only
  - Scheme 2 – leaseholder may be in market in future → term + reversion + (sometimes) hope value
  - Scheme 3 – leaseholder in market → term + reversion + marriage value
- Sub-options
  - **Prescribing rates; capping treatment of ground rent; restriction on future development (and therefore DV); 80-year cut off for marriage value; discount for LH improvements; discount for risk of holding-over**
- Online calculator

## Right to Manage: the highlights

- RTM for LH houses – same process as for flats
- Codify case law on meaning of “building”
- Non-resi limit increased to 50%
- Shared-ownership leases over 21 years incl. (even if not staircased to 100%)
- Abolish resident LL exclusion
- Single claim by single RTM co. for multiple buildings
- No prohibition on using RTM cos. as NPs for collective freehold acquisition
- More than one RTM co. can exist in relation to each premises
- Training requirements and resources for RTM co. directors
- Changes to simplify and clarify acquisition process

## Right to Manage: the highlights (continued)

- Greater rights to obtain information (& model forms)
- Strengthened notice requirements in relation to management contracts
- Reforms to “management functions” acquired by RTM co., specifically:
  - Regulated activities; insurance; shared appurtenant property; lease variations; uncommitted service charges; recovery of management costs
- Clear division of responsibility b/w RTM Co. and LL for giving lease consents
- Costs → very similar to enfranchisement (no non-litigation costs; usual Tribunal costs rules apply; anti-avoidance mechanism)
- Exclusive jurisdiction for FTT to determine whether RTM reqs. satisfied
- Clarification of procedure for and consequences of termination of RTM

## Commonhold: the highlights

- Aim to make commonhold a preferable alternative to leasehold
- Facilitating conversion to commonhold for existing LHs
  - Removal of unanimous consent to conversion
  - Reforms to make procedure simpler and more cost-effective
- Reforms to provide greater flexibility for new commonhold developments
  - Introduction of “sections” (e.g. resi vs commercial interests)
  - “Development rights” to enable completion of dev. post sale of some units
- Reforms to the commonhold community statement (CCS)
- Enabling shared ownership leases to be granted w/in commonhold
- Robust regime for financing and managing the commonhold
  - Incl. compulsory reserve funds
  - Provision for responding to emergencies e.g. selling off common parts

## Commonhold: the highlights (continued)

- Dispute resolution
  - Jurisdiction transferred to FTT but future-proofed to account for plans for New Homes Ombudsman and combined Housing Court
  - Reinforced role for ADR
- New regime for minority protection – right to go to the FTT
- Power for CH assoc. to apply to court for sale of defaulting owner's unit
- Protections against striking off and insolvency of CH assoc.
- Reforms to voluntary termination
  - Greater power for FTT to protect minority who don't consent
  - Right for lenders to apply to FTT at any time to protect their interests
  - Provision for termination of part of a commonhold

## Government Response

- 11 January 2021, statement by Robert Jenrick
  - Two-part legislation: (1) future ground rents set to zero; (2) all the rest
  - Enfranchisement:
    - Valuation: abolish marriage value, cap treatment of ground rents at 0.1% of freehold value, prescribe rates for calcs. at market value, online calculator, retain LH improvement discounts and s.9(1) method for low-value properties, allow voluntary restriction on future dev.
    - Also yes to: 990 year lease extension for houses and flats (w/ re-dev. Breaks) & right to buy out ground rent
  - New Commonhold Council
  - Response to remaining reports in due course...

## Ground rent and estate rentcharge reform



**Rupert Cohen**



## Ground rent - background

- The context
  - Historically – fixed sum and/or peppercorn
  - Developers became greedy
    - Two transactions for every unit built
  - Secure investment for ground rent investors
  - Ground rents doubling every 10 years
  - Consequential effect on enfranchisement valuation
    - Capitalise the rent & marriage value

## Ground rent proposals (1)

- Thin, very thin.
- Expecting a bill which will abolish ground rents for leases granted in the future
- Wider changes are bound up in the enfranchisement reforms which the Law Commission has reported on
- 11 January 2021: Housing Secretary Robert Jenrick: *“we will bring forward legislation in the upcoming session to set future ground rents to zero. This will be the first part of seminal two-part legislation to implement reforms in this Parliament”*.
- *“The Government will abolish marriage value, cap the treatment of ground rents at 0.1% of the freehold value and prescribe rates for the calculations at market value.”*

## Ground rent proposals (2)

- *“I am confirming that the Government will give leaseholders of all types of property the same right to extend their lease as often as they wish, at zero ground rent, for a term of 990 years ...”*
- Buy out ground rent: *“We will also enable leaseholders, where they already have a long lease, to buy out the ground rent without the need to extend the term of the lease.”*
- Bad news for LLs & ground rent investors

## Questions / issues for the future

- Future leases → legislation to have retrospective effect? Exchange / completion?
- What is the legal definition of “ground rent”?
- To which properties should the legislation apply?
- Just get round the changes by manipulating the service charge? (Arnold v Britton [2015] UKSC 36)

## Estate rentcharge

- Means of ensuring payment towards areas of common benefit by freeholders
- “estate rentcharge ... means ... a rentcharge created for the purpose— (b) of meeting, or contributing towards, the cost of the performance by the rent owner of covenants for the provision of services, the carrying out of maintenance or repairs, the effecting of insurance or the making of any payment by him for the benefit of the land affected by the rentcharge or for the benefit of that and other land.”
- Section 121 of the LPA 1925
- Roberts and others v Lawton and others [2016] UKUT 395 (TCC)

## Reform (1)

- December 2017: *DCLG: Tackling unfair practices in the leasehold market: Summary of consultation responses and Government response*: the government stated that, in relation to England, it will “ensure that, where a freeholder pays a rentcharge, the rentcharge owner is not able to take possession or grant a lease on the property where the rentcharge remains unpaid for a short period of time.” (paragraph 81).
- October 2018: Government paper announced intention to: “create a regime for freeholders which provides that maintenance charges must be reasonably incurred and that services provided are of a reasonable standard. We will also replicate consultation requirements and obligations on the provider of services to provide information to the freeholder. Finally we will provide freeholders with the ability to challenge the reasonableness of the charges they are required to pay towards the maintenance of communal areas and facilities at the First-tier Tribunal.”

## Reform (2)

- June 2019 – Government committed to:
  - *“Equal rights for freeholders: we will legislate to give freeholders on private and mixed tenure estates equivalent rights to leaseholders to challenge the reasonableness of estate rent charges (replicating relevant provisions in the Landlord and Tenant Act 1985) as well as a right to apply to the First-tier Tribunal to appoint a new manager to manage the provision of services covered by estate rent charges (replicating relevant provisions of the Landlord and Tenant Act 1987).”*
  - *“Right to Manage for freeholders: we will consider introducing a Right to Manage for residential freeholders after the Law Commission has reported to the Government (on their review of Right to Manage for leaseholders) as part of creating greater parity between leaseholders and residential freeholders.”*

## Renting Homes (Wales) Act 2018



**Justin Bates**



## What is this & why does it matter?

- Complete overhaul of residential L&T law in Wales
- Entirely new code of law (e.g. end of the lease/licence distinction; end of the AST)
- Expected to come into force some time next year
- Affects *everyone* – LL, T, mortgage lenders, LPA receivers *etc*

## Background

“Renting Homes” - Law Commission report in 2006

- Housing Law is too complex

- *Parry v Harding* [1925] 1 KB 111. Lord Hewart CJ

- “It is deplorable that in dealing with such a matter as this, a Court, and still more a private individual, and most of all a private individual who lives in a small tenement, should have to make some sort of path through the labyrinth and jungle of these sections and schedules. One would have thought that this was a matter above all others which the Legislature would take pains to make abundantly clear.”

## Background (2)

“Renting Homes” - Law Commission report in 2006

- Landlord neutrality – the nature and status of your LL should not be determinative of your rights
- Consumer Protection
  - All relevant material should be in one place and one accessible document – no more implied terms *etc*

## So what did the Law Commission propose?

2006 report proposed replacing the existing (28?) forms of tenancy with two main forms

- Secure contract (modelled on HA 1985 secure tenancy)
- Standard contract (modelled on HA 1988 AST)

In principle, any kind of LL could use either kind of tenancy

There would be prescribed terms of tenancy which must always be included and then scope for personalised terms on other issues. Modifications would only be possible if they benefited the contract-holder

## So what did the Law Commission propose? (2)

Prescribed written forms of contract with sanction for LLs who didn't provide a written copy of the terms

Overturn the rule in *Hammersmith & Fulham LBC v Monk* (as affirmed in *Sims v Dacorum BC*) so that someone can be added or removed as a joint tenant

Draft Bill produced. Westminster government did nothing with it.

2012 – Welsh Gov announces that it wants to take Renting Homes forward

2013 – The earlier (2006) report is updated for Wales

“In terms of housing law, the very purpose of the initial exercise was to seek to establish the proposition that what it was dealing with was not property, but accommodation - the notion that to own housing was not a pure exercise in investment but about places where people lived, to which the essential corollary is that no one should be turned out of a home without very good cause....Another parameter related to housing conditions - what is tolerable in housing is very different from what may be tolerable in commercial or industrial property, and ought not to be determined by an abstract construction of the balance of responsibilities indiscriminately applicable to all lettings”

## So what does it do?

The new concept of the “occupation contract” under which you rent your home

Two main types

- Secure (expected to be offered by “community landlords”)
- Standard (expected to be offered by private landlords)

But nothing to stop a private LL offering a Secure Occupation Contract

- So do mortgage lenders on BTL need to prohibit that? No point just saying “can only grant an AST” because the AST won’t exist in Wales

## So what does it do? (2)

Prescribed model contracts albeit with some (relatively minor) scope to vary them to the benefit of the occupier

- If written contract not provided then court can declare the terms and LL has to pay compensation (assessed at not less than 100% of the rent for the period of breach!)
- (pity the poor LPA receiver who will have to check this has all been done)

Succession to spouse, family member or carer.



## So what does it do? (3)

### LL Possession claims

- Breach of contract + reasonableness
- Ground + reasonableness

### For standard contracts only

- 6 month notice only ground
- Also has a “Ground 8” equivalent, but “... subject to any available defence based on the contract-holder's Convention rights...”; so is *McDonald v McDonald* (and *JFM v UK*) back for re-argument?

## Q&A

**We will now answer as many questions as possible.**

**Please feel free to continue sending any questions you may have via the Q&A section which can be found along the top or bottom of your screen.**

# Thank you for listening

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