



**Law
Commission**
Reforming the law

Commonhold: A Call for Evidence Analysis of Responses

10 December 2018

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Introduction

- i. On 22 February 2018, the Law Commission launched a call for evidence to find out which aspects of the commonhold legislation could be creating a barrier to commonhold's success. Our Call for Evidence was the first step in our project to reinvigorate commonhold as a workable alternative to leasehold, for both existing and new homes.¹ In our Call for Evidence we set out problems with the current commonhold legislation of which we were aware and invited observations. These issues fell within the following three broad categories.
 - (1) difficulties creating or converting to commonhold;
 - (2) making commonhold work for homeowners; and
 - (3) making commonhold work across the property sector.
- ii. Whilst the Law Commission's project is focused on improving aspects of commonhold legislation, Government is separately considering wider measures to reinvigorate commonhold, such as raising consumer awareness. In our Call for Evidence, we also invited views on what wider steps could be taken to encourage the use of commonhold. As explained in the Call for Evidence, any responses which relate to these wider issues being considered by Government have been shared with Government.² Our Call for Evidence also asked consultees open questions about their experience of commonhold and how it compares with leasehold.
- iii. We received responses from 143 consultees to our Call for Evidence. The names of those responding are listed at Appendix 1 of this analysis of responses.
- iv. Alongside our Call for Evidence, we carried out a survey of those involved with existing commonholds. We contacted over 150 unit owners and commonhold association directors. We received 31 responses to this survey, of which 30 were from commonhold unit owners, and one was from a commonhold managing agent. The survey was conducted anonymously.
- v. In this document, we set out the questions we asked in our Call for Evidence and analyse the responses received to each question. Certain responses raised issues which overlapped a number of questions. Where this is the case, we have analysed responses that raise similar points in one place. This paper also analyses the responses received to the survey of existing commonholds.
- vi. In this analysis, we do not repeat the discussion of issues published in the Call for Evidence. This analysis should therefore be read alongside the Call for Evidence. Additionally, our analysis has been published alongside our commonhold Consultation Paper. In our Consultation Paper we set out our proposals to address the issues raised in response to our Call for Evidence. The Consultation Paper and Call for Evidence are available at <https://www.lawcom.gov.uk/project/commonhold/>.

¹ Our Terms of Reference with Government setting out what is required of our project can be found at <https://www.lawcom.gov.uk/project/residential-leasehold-and-commonhold/>.

² See the Call for Evidence, p ii and para 1.7.

Question 1: converting from leasehold – the consent requirement

Question 1

(a) **If you have previously tried to convert to commonhold:** Did the requirement to obtain everyone's consent prevent you from converting to commonhold? What was your experience and what difficulties did you come across?

(b) **If you have never tried to convert to commonhold:** Do you think the requirement to obtain everyone's consent would prevent you from converting to commonhold in your building or development? If so, why and what difficulties could you foresee?

Please provide details about your particular building or development, for instance the number and type of units (such as flats) within each building.

1.1 Sixty-nine consultees provided a response to question 1.¹

(1) Sixty-six² consultees considered that the requirement to obtain the consent of all leaseholders, the lender and/or the freeholder could create a barrier to conversion. We address each of these categories of individuals separately below.

¹ A2 Dominion Housing Group Ltd; Alan Mitchell; ARMA; Association of Retirement Housing Managers; Barbara Gardener; Barratt Plc; Bramshott Place Village Residents' Association; British Insurance Brokers' Association; Building Societies Association; Catherine Margaret Charles; Christine Jackson; City of London Law Society; CRELA; Coastline Housing; Colette Boughton; David Croydon; David Johnson; Derrick Fuller-Webster; Dr C Hakim; Ellen Andrew; FPRA; Fieldfisher LLP; FirstPort; Gerlinde Gniewosz; Graham Paddock; Hazel Oliver; Home Builders Federation; Howard Davies; Heulwen Egerton; IRPM; Irwin Mitchell LLP; J Brown; Jackie Roe; Jo Rostron; John Byrne; John H Cooney; Kate Stephenson; Kevin Mullery; Kheya Bag; Laurence Target; Leasehold Reform Group; Leila Allen; Lord Walker of Gestingthorpe; Marathon House RTM Company Ltd; Mari Knowles; Mary Dudley Seaver; McCarthy & Stone; Michael Harvey; National Leasehold Campaign; Osborne Clarke Solicitors; Paul Clark; Paul Sams; Peter Bellenes; Peter Smith; Places for People; Professor James Driscoll; R M Campbell-Barr; Redrow Homes Ltd; Rodney Townson; Shula Rich; Stephen Bedford; Susan Ellis; Suzanne McGreavy; The Property Ombudsman; The Quoin Commonhold Association; Tony Martin; Trevor Leigh; Trowers & Hamblins LLP; Wrigleys Solicitors LLP

² A2 Dominion Housing Group Ltd; Alan Mitchell; ARMA; Association of Retirement Housing Managers; Barbara Gardener; Barratt Plc; Bramshott Place Village Residents' Association; Building Societies Association; Catherine Margaret Charles; Christine Jackson; City of London Law Society; CRELA; Coastline Housing; Colette Boughton; David Croydon; David Johnson; Derrick Fuller-Webster; Dr C Hakim; Ellen Andrew; FPRA; Fieldfisher LLP; FirstPort; Gerlinde Gniewosz; Graham Paddock; Hazel Oliver; Home Builders Federation; Howard Davies; Heulwen Egerton; IRPM; Irwin Mitchell LLP; J Brown; Jackie Roe; Jo Rostron; John Byrne; John H Cooney; Kate Stephenson; Kevin Mullery; Kheya Bag; Laurence Target; Leasehold Reform Group; Leila Allen; Lord Walker of Gestingthorpe; Marathon House RTM Company Ltd; Mari Knowles; Mary Dudley Seaver; McCarthy & Stone; Michael Harvey; National Leasehold Campaign; Osborne Clarke Solicitors; Paul Clark; Paul Sams; Peter Bellenes; Peter Smith; Places for People; Professor James Driscoll; R M Campbell-Barr; Redrow Homes Ltd; Rodney Townson; Shula Rich; Stephen

- (2) One consultee, the Quoin Commonhold Association, referred to its personal experience setting up a commonhold. The main difficulty the association faced was not in obtaining unanimous consent but in obtaining professional advice to assist with the conversion.³
- (3) One consultee, Trevor Leigh, argued that the consent requirement is not the main difficulty with commonhold. Trevor Leigh said that whilst the consent requirement acts as a “brake” there are other reasons making commonhold “unworkable”.
- (4) Additionally, the British Insurance Brokers' Association explained that from an insurance perspective, there is no issue with the actual conversion.

1.2 In addition, 10 consultees discussed their views on what percentage of leaseholders should be required to convert.⁴

Obtaining freeholder’s consent

1.3 Twenty-two consultees referred to actual or perceived difficulties arising from the need to obtain the freeholder’s consent to the conversion.⁵

1.4 Graham Paddock argued that freeholders and bondholders would be extremely unlikely to see conversion as being in their best interests.

1.5 Bramshott Village Residents Association explained that it would be unlikely for the freehold owner to agree to sell the freehold voluntarily due to the income streams received from the development. This view was shared by Heulwen Egerton and McCarthy & Stone. McCarthy & Stone explained that it will often sell the reversionary interest in its developments to professional investors. These investors would be unlikely to consent to conversion unless the ground rent stream would be preserved post conversion.

1.6 J Brown argued that statutory intervention is required:

Bedford; Susan Ellis; Suzanne McGreavy; The Property Ombudsman; Tony Martin; Trowers & Hamblins LLP; Wrigleys Solicitors LLP (Wrigleys Solicitors LLP deals frequently with community-led housing developments and does not envisage the consent requirement to be a major issue on such developments; however, it sees that it might be a concern on more standard housing developments). Although they each raised concerns about obtaining the freeholder’s consent, three consultees went on to explain that the requirement for 100% consent of leaseholders would not create an obstacle in their buildings (Jo Rostron, Kheya Bag, and Christine Jackson).

³ The association converted a disused office block into 6 flats, 3 workshops and a community space. As the office space was unoccupied, it is unlikely that the consent requirement would have presented a significant obstacle.

⁴ Gerlinde Gniewosz; Graham Paddock; John Byrne; Fiona Campbell; Mari Knowles; FirstPort; Peter Williams; Leasehold Reform Group; Charities’ Property Association; Michael Harvey.

⁵ Association of Retirement Housing Managers; Bramshott Place Village Residents’ Association; Christine Jackson; Colette Boughton; FirstPort; Fiona Campbell; Graham Paddock; Howard Davies; Heulwen Egerton; J Brown; Jo Rostron; John H Cooney; Kevin Mullery; Kheya Bag; Leila Allen; Marathon House RTM Company Ltd; McCarthy & Stone; National Leasehold Campaign; Paul Clark; Peter Bellenes; R M Campbell-Barr; Suzanne McGreavy.

if freeholders had been voluntarily required to give their consent to leaseholder enfranchisement, would the Right to Enfranchise ever have worked to the extent it has? – No.

- 1.7 Another consultee explained that their landlord had borrowed heavily against the freehold and, if compelled to sell the property, would suffer a loss.
- 1.8 On another note, R M Campbell-Barr explained that it can often be practically difficult to find out who the freeholder is.
- 1.9 Additionally, Suzanne McGreavy, Leila Allen and J Brown raised the issue of freeholders owing flats within the block and being able to veto conversion. Leila Allen urged that any resident freeholders should be obligated to participate in a conversion to commonhold.
- 1.10 FirstPort queried whether it might be possible for a developer to retain one flat within a block and thereby avoid the possibility of 100% consent being obtained. Fiona Campbell suggested that anti-avoidance mechanisms should be introduced to ensure that freeholders cannot obstruct conversion or retain control of residential buildings strategically.
- 1.11 On the other hand, one consultee, the Association of Retirement Housing Managers, referred to one of its members being offered the opportunity to convert by its landlord, in a development comprising 29 bungalows and common parts.

Obtaining unanimous consent of leaseholders

- 1.12 Forty-eight consultees⁶ considered that the requirement to obtain unanimous consent of leaseholders would create a barrier to conversion. Three consultees did not consider it would create a problem in their buildings.⁷
- 1.13 Places for People said that:

obtaining full engagement and/or unanimity from property owners on day-to-day matters is often very challenging, even on very small developments. Therefore, obtaining unanimity for such a legally significant step of converting to commonhold is likely to be even more so, especially given the uncertain valuation implications for that action.
- 1.14 This view was supported by a number of other organisations such as Redrow Homes Ltd, City of London Law Society, FirstPort and FPRA.

⁶ Alan Mitchell; ARMA; Association of Retirement Housing Managers; Barbara Gardener; Bramshott Place Village Residents' Association; Catherine Margaret Charles; City of London Law Society; Coastline Housing; Colette Boughton; David Croydon; David Johnson; Derrick Fuller-Webster; Dr C Hakim; Ellen Andrew; FPRA; FirstPort; Gerlinde Gniewosz; Hazel Oliver; Howard Davies; Irwin Mitchell LLP; IRPM; Jackie Roe; John Byrne; John H Cooney; Kevin Mullery; Laurence Target; Leasehold Reform Group; Lord Walker of Gestingthorpe; Marathon House RTM Company Ltd; Mari Knowles; Mary Dudley Seaver; McCarthy & Stone; Michael Harvey; National Leasehold Campaign; Paul Clark; Paul Sams; Peter Bellenes; Places for People; Professor James Driscoll; R M Campbell-Barr; Redrow Homes Ltd; Rodney Townson; Shula Rich; Stephen Bedford; Susan Ellis; The Property Ombudsman; Tony Martin; Wrigleys Solicitors LLP.

⁷ Christine Jackson; Jo Rostron; Kheya Bag.

- 1.15 IRPM considered that whilst conversion might be possible in some smaller blocks of two to three residents, obtaining unanimous decisions in large blocks would be very challenging.
- 1.16 Irwin Mitchell LLP explained that on one occasion, even though the owners were unable to sell their freehold flats, due to difficulties associated with “flying freeholds” (such as the lack of management structure), only 80% of residents supported the conversion to commonhold which would have resolved these difficulties.
- 1.17 Members of the public and representatives of residents’ management associations (“RMCs”) who responded to this question also explained that they have been or would be unable to obtain the consent of 100% of the leaseholders in their particular building. Such respondees included:
- (1) Barbara Gardener, who lives in a block of 56 flats where at least two thirds are rented out, and others may not be interested in the process;
 - (2) R M Campbell-Barr, who lives in a block where there are 54 apartments, 22 of which are leaseholder-occupied, seven let on shared ownership leases and 25 bought to let. This consultee explained that it had already taken almost three years to achieve the right to manage;
 - (3) Gerlinde Gniewosz said it would be essentially impossible, as there are 300 homes on her development;
 - (4) Stephen Bedford explained that, in his development, unanimous consent would not be obtained as two property owners on the development currently do not have to pay anything but still benefit from the estate services;
 - (5) Bramshott Place Village Residents’ Association which represents residents of a small retirement village, described the 100% consent requirement as “insuperable”. This village is occupied by 220 residents, some of whom are very elderly and risk averse, living in a mix of small blocks and cottages with substantial grounds and communal facilities;
 - (6) Alan Mitchell, director of three RMCs, described a failed attempt to obtain the support necessary to collectively enfranchise buildings containing 200 leaseholders. Only 40% consent was obtained with difficulty, even with an assertive campaign; and
 - (7) Marathon House RTM Company Ltd described being prevented from converting due to difficulty interacting with leaseholders in the building.

- 1.18 Laurence Target suggested that:

the practicability of becoming commonhold or ceasing to be commonhold might be made more realistic with deemed consents presumed in the absence of actual objections.

Reasons why obtaining 100% consent presents an obstacle

1.19 Several consultees put forward a number of reasons as to why it is often difficult to obtain unanimous consent:

- (1) 25 consultees referred to issues surrounding the difficulty contacting leaseholders and leaseholder apathy;⁸
- (2) 10 consultees referred to concerns about the cost of converting;⁹
- (3) eight consultees referred to a lack of awareness and difficulty obtaining legal advice;¹⁰ and
- (4) four consultees referred to leaseholders not wishing to be involved in the management of the building.¹¹

Difficulty communicating with leaseholders and leaseholder apathy

1.20 Twenty-five consultees referred to issues surrounding the difficulty contacting leaseholders and leaseholder apathy.¹²

1.21 The National Leasehold Campaign said that “estate/block needs an agent for change - someone that will devote their own time, free of charge, to make a move to commonhold happen”. It also explained that:

there are a number of property owners who are simply apathetic about the issues and trying to encourage them to give consent or join into making change happen is incredibly difficult. Those running the present self-managed blocks will often have had first hand experience of the time and effort required to persuade the necessary majority of their fellow leaseholders to “sign up” to the purchase of the freehold from the original leaseholder, and will invariably have found that a small percentage will not quite get around to completing the paperwork for a very long time – perhaps not until they are proposing to sell their flats.

⁸ Alan Mitchell; Alex Quinn; ARMA; Association of Retirement Housing Managers; Barbara Gardener; Bramshott Place Village Residents' Association; Coastline Housing; Colette Boughton; David Croydon; FirstPort; FPRA; Howard Davies; John Byrne; John H Cooney; Marathon House RTM Company Ltd; Mari Knowles; McCarthy & Stone; Michael Harvey; National Leasehold Campaign; Paul Clark; Peter Bellenes; Places for People; Redrow Homes Ltd; RM Campbell Barr; Susan Ellis.

⁹ Derrick Fuller-Webster; FPRA; Graham Paddock; Jackie Roe; Michael Harvey; National Leasehold Campaign; Paul Clark; Rodney Townson; Susan Ellis; Tony Martin.

¹⁰ Alan Mitchell; Catherine Margaret Charles; David Johnson; Derrick Fuller-Webster; Jackie Roe; National Leasehold Campaign; Rodney Townson; Shula Rich.

¹¹ Association of Retirement Housing Managers; Heulwen Egerton; Leasehold Reform Group; McCarthy & Stone.

¹² Alan Mitchell; Alex Quinn; ARMA; Association of Retirement Housing Managers; Barbara Gardener; Bramshott Place Village Residents' Association; Coastline Housing; Colette Boughton; David Croydon; FirstPort; FPRA; Howard Davies; John Byrne; John H Cooney; Marathon House RTM Company Ltd; Mari Knowles; McCarthy & Stone; Michael Harvey; National Leasehold Campaign; Paul Clark; Peter Bellenes; Places for People; Redrow Homes Ltd; RM Campbell Barr; Susan Ellis.

- 1.22 Colette Boughton, David Croydon, Howard Davies and Mari Knowles also referred to leaseholders being passive or apathetic.
- 1.23 Nine consultees explained that obtaining consent can be complicated where leaseholders have sublet the property or live overseas and do not occupy the property.¹³ John Byrne said:
- in buy to let properties where rental income is the primary concern and being remote from current management issues and day-to-day matters can lead to an apathy for involvement and change.
- 1.24 This view was shared by Marathon House RTM Company Ltd, ARMA, National Leasehold Campaign, Peter Bellenes and Colette Boughton. Colette Boughton referred to buy-to-let and non-UK owners wanting “the lowest cost, easiest option, without long-term commitment that converting to commonhold would imply”.
- 1.25 John H Cooney explained that in his building, all eight flats have been sublet and so all correspondence has to be by letter.
- 1.26 Alan Mitchell argued that:
- on a building/estate with more than say 8 or 10 flats you get 'natural separation' of owners by virtue of physical distance, lifestyle and ownership type. This makes communication and achieving consensus difficult.
- 1.27 Three consultees suggested there may be particular difficulties in obtaining everyone’s consent where there are elderly residents.¹⁴
- 1.28 Further, McCarthy & Stone explained that in cases where homeowners have died and their estates are going through probate, the consent of relevant executors, personal representatives or family members would be required.
- 1.29 With regards to commercial leaseholders, it has been suggested that there would be little incentive to take a commonhold unit. Alex Quinn gave the example of a shop owner who may have little interest in buying the commonhold of the shop their business is occupying. Additionally, Susan Ellis considered that there would be no incentive to convert where the leaseholders already control the scheme.

Concerns regarding costs

- 1.30 Ten consultees referred to concerns about the cost of converting.¹⁵

¹³ ARMA; FirstPort; John Byrne; John H Cooney; Marathon House RTM Company Ltd; National Leasehold Campaign and Colette Boughton; Peter Bellenes; Redrow Homes Ltd.

¹⁴ Association of Retirement Housing Managers; Bramshott Place Village Residents’ Association; Howard Davies.

¹⁵ Derrick Fuller-Webster; FPRA; Graham Paddock; Jackie Roe; Michael Harvey; National Leasehold Campaign; Paul Clark; Rodney Townson; Susan Ellis; Tony Martin. (A number of other consultees referred to the costs of conversion but did not expressly refer to its effect on the consent requirement. These consultees included Stuart Ryan; Trevor Leigh and Philip Griffiths; Heulwen Egerton).

1.31 The National Leasehold Campaign explained its concern that “many home owners are under tight financial pressures and simply don't have the means to fund costly legal bills”.

1.32 This view was shared by Trevor Leigh who (whilst not specifically referring to the consent requirement) said:

in real life people don't have cash just sitting around for such an investment, which is why the vast majority of lease extensions are transacted when leaseholders are selling their interest.

1.33 FPRA suggested that the costs will include those of professional advisors who will need to familiarise themselves with a new and unfamiliar area of law. FPRA explained that whilst it may be easier for leaseholders in small blocks to convert, they “would probably see no reason to go to the expense of conversion”.

Lack of awareness and difficulty obtaining legal advice

1.34 Eight consultees referred to a lack of awareness or understanding of commonhold amongst leaseholders and difficulty obtaining legal advice from professionals.¹⁶

1.35 Alan Mitchell suggested that conversion to commonhold is difficult as “99.9%+ of the population do not know what it is”. Derek Fuller-Webster argued that there is a lack of marketing of the benefits of commonhold.

1.36 In addition, many consultees, including Derrick Fuller-Webster and Catherine Margaret Charles, referred to professionals in the property sector being unsupportive of commonhold when seeking to convert.

1.37 Derrick Fuller-Webster recounted that when seeking advice on using commonhold for a potential development, the response was “why would you do that when you and I can make more money from leasehold?”

1.38 On the other hand, Irwin Mitchell LLP stated that it had offered the choice to convert to commonhold on numerous occasions to leasehold flat developments, mixed use developments and more significantly on one development comprising leasehold and freehold flats. Every attempt had, however, been unsuccessful.

Not wanting to be involved in management

1.39 Four consultees argued that leaseholders would be dissuaded from converting due to not wanting to be involved in the management of the commonhold.¹⁷

¹⁶ Alan Mitchell; Catherine Margaret Charles; David Johnson; Derrick Fuller-Webster; Jackie Roe; National Leasehold Campaign; Rodney Townson; Shula Rich. The lack of familiarity with commonhold more generally, and not specifically in relation to conversion, is discussed in response to question 9.

¹⁷ Association of Retirement Housing Managers; Heulwen Egerton; Leasehold Reform Group; McCarthy & Stone. Aspects of the current commonhold model which may, more generally, be undesirable to existing leaseholders or new unit owners are discussed in response to question 3.

- 1.40 Heulwen Egerton, chair of Llys Pegasus Leaseholders' & Residents' Association, which is made up of 50 retirement flats, explained why leaseholders in her scheme would not wish to be involved in the management of a commonhold:

our average age is now over 80; some leaseholders might not want to be bothered with considering all the implications... At present we do not have enough leaseholders able to scrutinise critically Articles of Association/commonhold community statement etc. even if these were drawn up by a solicitor.

- 1.41 The Association of Retirement Housing Managers and McCarthy & Stone supported this view. McCarthy & Stone (who build houses in the retirement sector comprising 40 or 50 units owned by elderly homeowners) said:

we believe that our homeowners would not want the administrative burden of, or the additional costs and responsibilities associated with, having to run or manage a commonhold association or to have to pay a professional organisation to do so. Our experience shows that often the desire to get out of onerous management responsibilities is one of the primary reasons for our homeowners deciding to move into specialist retirement housing. We believe that our homeowners prefer having a professional freeholder who has the legal obligation to maintain their developments for the long term.

One hundred per cent consent requirement of leaseholders would not create an obstacle to conversion

- 1.42 Three consultees advised that the requirement to obtain 100% support of leaseholders would not prevent the conversion to commonhold in their buildings. These consultees were:

- (1) Jo Rostron, who lives in a small mid-terraced property divided into three flats;
- (2) Kheya Bag, who lives in an eight-unit block. This consultee explained that whilst some leaseholders live abroad they can still be contacted by email (however, this consultee suggested it would be unlikely for the freeholder to consent to the conversion); and
- (3) Christine Jackson, who lives in a block of four flats.

- 1.43 One organisation, Wrigleys Solicitors LLP, did not consider the 100% consent requirement to be a major issue as it "deals a lot with community-led housing..." However, it said that "it might be a concern on more standard housing developments".

Views on reducing the percentage of leaseholder support

- 1.44 A number of consultees provided their views on what percentage of leaseholders should be required to support a conversion to commonhold.

- 1.45 Three consultees expressed concern that unanimity be maintained.

- (1) The Leasehold Reform Group stated that whilst the 100% requirement may make it difficult to convert to commonhold, "residents have good reasons for

opposing a change in the nature of their tenure and it would not be appropriate for their interest to be overruled by the decision of a majority”.

- (2) The Charities’ Property Association also expressed concern that the principle of unanimity be retained.
 - (3) Michael Harvey said “I fail to see how you can inflict commonhold on people who do not want it”.
- 1.46 On the other hand, seven consultees argued that the percentage support required to convert to commonhold should be reduced.¹⁸
- 1.47 Gerlinde Gniewosz questioned why the requirement to convert to commonhold is 100% when residents are able to exercise the right to manage without 100% leaseholder consent.
- 1.48 Graham Paddock, John Byrne and Fiona Campbell argued that conversion should be possible with 50% support. Graham Paddock suggested that where any leaseholders do not wish to convert, the freehold in “their” units could vest in the freeholder “and the lease considered to be suitably adjusted”.
- 1.49 Mari Knowles made the following suggestion:
- (1) keep the requirement for a unanimous vote for blocks with fewer than, say, four or 10 units; and
 - (2) for any block larger than (1), if a majority agree but they struggle to get a unanimous decision, apply to the First-tier Tribunal (Property Chamber) (“the Tribunal”) for a declaration that they can convert to commonhold. This will give the minority the opportunity to raise objections, and if they are valid, the Tribunal can reject the application. If there are no valid objections, the Tribunal can issue the declaration which would allow the block to then convert.
- 1.50 FirstPort and Mari Knowles argued that any proposal whereby conversion could occur without 100% support would require careful consideration. FirstPort said that protections would have to be in place to ensure that the rights and interests of objectors were not overridden by a (perhaps small) majority.
- 1.51 Peter Williams referred to the human rights implications which would need to be considered before introducing a process under which a leaseholder could have his or her lease taken away and replaced by ownership of a commonhold unit.

¹⁸ Gerlinde Gniewosz; Graham Paddock; John Byrne; Fiona Campbell; Mari Knowles; FirstPort; Peter Williams.

Obtaining lender's consent

- 1.52 Thirteen consultees raised issues surrounding the requirement for lender's consent to conversion.¹⁹
- 1.53 ARMA suggested that this requirement creates the practical difficulty of "contacting potentially disinterested or overseas owners for details of their lenders and consent".
- 1.54 Additionally, even where mortgage lenders can be contacted, the Building Societies Association suggested it would be unlikely for every lender to consent, especially in larger buildings.

Even where a building society may be willing to lend against a commonhold property, it is very unlikely that each leaseholder in the property will have the same lender. As the Law Commission states, 70% of UK Finance members do not accept commonhold, so the chances of all the mortgage lenders in a particular development agreeing to conversion are slim.

- 1.55 A factor in lenders being unwilling to lend, according to Irwin Mitchell LLP, is their lack of understanding of commonhold.
- 1.56 With regards to whether lender's consent should be required for conversion, Redrow Homes Ltd and the Leasehold Reform Group argued in favour. The Leasehold Reform Group said:

mortgagees have a contractual and moral right to withhold consent in relation to changes in the fundamental legal nature of their security... If a person has acquired a leasehold interest or secured a debt over such leasehold interest, it is not for third parties to vote them out of it or change the nature of that interest without that person's consent.

¹⁹ A2 Dominion Housing Group Ltd; ARMA; Building Societies Association; Catherine Margaret Charles; City of London Law Society; Coastline Housing; Graham Paddock; Irwin Mitchell LLP; J Brown; Jackie Roe; Leasehold Reform Group; Peter Smith; Redrow Homes Ltd. Lenders' unwillingness to lend on commonhold more generally is discussed in response to question 7, which invited the perspective of mortgage lenders on commonhold, and question 9.

Question 2: other concerns relating to converting to commonhold, or creating a new commonhold development

Question 2

Are you aware of any difficulties in the process of creating a commonhold as a new development or any other difficulties in the process of converting to commonhold (other than the consent requirement)?

Please give as much detail as you can

2.1 Twenty-six consultees responded to question 2.²⁰ Many of these consultees discussed one or more specific issues in their response:

- (1) 15 consultees referred the conversion process being costly and time-consuming;²¹
- (2) nine consultees discussed other practical issues arising out of conversion to commonhold;²² and
- (3) five consultees raised difficulties in the process of creating a new development as commonhold.²³

²⁰ A2Dominion Housing Group Ltd; Alan Davis; ARMA; Association of Retirement Housing Managers; Berkley Group Holding plc; Birmingham Law Society; Bramshott Place Village Residents' Association; Buildings Societies Association; Colette Boughton; CRELA; Derrick Fuller-Webster; Ellen Andrews; Fiona Campbell; Home Builders Federation; Irwin Mitchell LLP; John Byrne; John H Cooney; Leasehold Reform Group; Mari Knowles; Mike Paley; National Leasehold Campaign; Peter Bellenes; Philip Griffiths; Rodney Townson.; Stuart Ryan; Suzanne McGreavy.

²¹ A2Dominion Housing Group Ltd; Buildings Societies Association; Colette Boughton; CRELA; Derrick Fuller-Webster; Ellen Andrews; Fiona Campbell; John Byrne; John H Cooney; Mari Knowles; National Leasehold Campaign; Peter Bellenes; Philip Griffiths; Rodney Townson; Stuart Ryan.

²² A2 Dominion Housing Group Ltd; Alan Davis; ARMA; Association of Retirement Housing Managers; Birmingham Law Society; Bramshott Place Village Residents' Association; Leasehold Reform Group; Mike Paley; Suzanne McGreavy.

²³ ARMA; Association of Retirement Housing Managers; Berkley Group Holding plc; Home Builders Federation; Irwin Mitchell LLP.

Costly and time-consuming conversion process

- 2.2 Fifteen consultees²⁴ referred to general difficulties in the process of converting, other than the consent requirement.
- 2.3 John H Cooney referred to the process for conversion being long-winded and expensive. CRELA agreed that the conversion process is likely to be too complex. It suggested that a simplified conversion process could be trialled in the residential market first, for example with blocks of flats which are already owned and managed by their tenants. It said:
- This could be a way to get commonhold into the market place so that more people could become used to dealing with it and the sector as a whole could become more familiar with it.
- 2.4 Colette Boughton, Peter Bellenes and Fiona Campbell all argued for a simple and cheap procedure for conversion. Colette Boughton recommended that this procedure should be “led by leaseholders”. These consultees also argued that protections should be in place against the freeholder tactically preventing or delaying the conversion or injecting high fees into the process. Ellen Andrews agreed that the freeholder might otherwise make conversion “almost impossible”.
- 2.5 John Byrne recommended that the process should be clear of anomalies and that unnecessarily restrictive barriers be removed. He gave the example of leaseholders in buildings with more than 25% non-residential use being prevented from exercising the right to manage.
- 2.6 With regards to the costs involved, Peter Bellenes suggested there could be established tariffs as part of the conversion process. Derrick Fuller-Webster argued that the fee should equate to not more than the current amount for obtaining a lease extension. Stuart Ryan expressed concern that the freeholder’s costs need to be proportionate and not something “they just pluck out the air”. Finally, Philip Griffiths pointed out that where there is a head-lessee, there may be two groups of people who have to be “paid off” in order to make progress and it seems to double the level of difficulty.
- 2.7 On the other hand, A2 Dominion Housing Group Ltd argued that other than the consent requirement, the conversion process is not problematic. Mari Knowles agreed that the process is otherwise straightforward: “it is getting everything set up to manage the commonhold on a day to day basis after completion that is the issue”.
- 2.8 Additionally, the conversion process may become easier with familiarity. The Buildings Societies Association pointed out: “as more properties convert, the process will become slicker and more consumer friendly”.

Other practical issues arising out of conversion to commonhold

- 2.9 The Association of Retirement Housing Managers asked whether the automatic extinguishment of leases would trigger a disposal for stamp duty land tax purposes. It

²⁴ A2Dominion Housing Group Ltd; Buildings Societies Association; Colette Boughton; CRELA; Derrick Fuller-Webster; Ellen Andrews; Fiona Campbell; John Byrne; John H Cooney; Mari Knowles; National Leasehold Campaign; Peter Bellenes; Philip Griffiths; Rodney Townson; Stuart Ryan.

also asked how compatible this extinguishment would be with enfranchisement legislation “in terms of it effectively killing off lease extension claims and freehold purchases?”

2.10 Alan Davis queried the safeguards that would need to be in place to protect the harmony and nature of the building when transferring from leasehold to commonhold. He said: “without these rules, owners may be able to make changes which affect the premium payable, to the detriment of others”. This consultee also queried the position of commercial leaseholders in his building who have not paid for a share of the freehold but own 999 year leases.

2.11 The Leasehold Reform Group considered the wider implications of a large scale conversion to commonhold:

given the scale of existing leasehold ownership and that homeowners would need to collectively raise finance to acquire the freehold of their development, levels of public indebtedness and vulnerability to interest rate rises are likely to increase.

2.12 Birmingham Law Society recommended that, in light of the Grenfell Tower disaster, the issue of replacement cladding should be considered for all new commonhold developments and in the process of converting to commonhold, stating “this should hopefully avoid such costly mistakes in the future”.

2.13 Mike Paley raised a number of practical questions that would need to be considered as part of the conversion process. He asked whether the leaseholder or the occupants would become the commonholder and how boundaries would be defined between the flat owners and the rest of the building.

2.14 Bramshott Place Village Residents’ Association asked whether “exit fees” will be payable on conversion to commonhold. Under the terms of their residents’ leases, exit fees of between 5% and 15% of the value of the property will be payable to the landlord on resale.

2.15 A2 Dominion Housing Group Ltd stated that it would be difficult to require a tenant under an existing tenancy agreement to be bound by terms of the Commonhold Community Statement (“CCS”).

2.16 Two consultees²⁵ referred to practical difficulties which arise due to the extinguishment and regrant of charges following conversion. ARMA queried whether owners would be able to change mortgage lender at the point of conversion and what would happen if a lender had an attractive rate that was no longer available.

2.17 Suzanne McGreavy said:

I have no confidence in the banking sector's competence or willingness to successfully manage and coordinate the termination of existing mortgages and regranting of new ones by different lenders especially in larger developments.

²⁵ ARMA; Suzanne McGreavy.

Difficulties in the process of creating new commonhold developments

- 2.18 Few concerns were raised specifically in relation to the legal process of creating and registering a new commonhold development. The concerns that were raised related to a lack of flexibility for the developer once the commonhold has been registered and/or the first unit has been sold. Additionally, Berkeley Group Holding plc referred to the unsuitability of the current commonhold model for larger mixed-use regeneration schemes.
- 2.19 Several consultees referred to a general mistrust in the creation of new commonhold developments and a tendency for developers to prefer leasehold.²⁶ Consultees also referred to a general lack of awareness of commonhold. These issues are addressed in more detail in the responses to question 9, below.

²⁶ ARMA; Association of Retirement Housing Managers; Berkeley Group Holding plc; Irwin Mitchell LLP; Home Builders Federation.

Question 3: issues to be addressed to make commonhold work for homeowners

Question 3

There are a number of issues which may need to be addressed to make commonhold work for homeowners. These include issues relating to:

- *Application of company law. Stakeholders tell us that company law is too complex and that the commonhold association may require a different corporate structure.*
- *Consumer protection in new developments. Stakeholders tell us that the right balance has not been struck between providing flexibility to the developer and protecting consumers.*
- *Degree of flexibility in the commonhold community statement. Stakeholders tell us that the right balance has not been struck between the terms which must apply to all commonholds and those which can be changed.*
- *Commonhold costs. Stakeholders tell us that there should be more flexibility in the way costs of managing and maintaining the commonhold can be shared.*
- *Dispute resolution. Stakeholders tell us that the dispute resolution procedure is ineffective and that a body other than the county court should assist with resolving disputes.*
- *Termination and insolvency. Stakeholders tell us that the law surrounding termination is unclear and that homeowners may not be adequately protected if the commonhold association becomes insolvent.*

(a) If you have previous involvement with commonhold: Have you encountered problems in practice relating to any of the above aspects of commonhold?

Please provide as much detail as you can about your experience.

(b) If you have not had previous involvement with commonhold: Have any of the issues above deterred you from using commonhold? If so, why?

(c) Are you aware of any issues not referred to above which might make commonhold undesirable for homeowners?

Please provide as much detail as possible.

3.1 Ninety-nine consultees responded to this question.²⁷ In the Call for Evidence we referred to six specific issues which related to this question. Many of the consultees discussed one or more of these issues in their response, some consultees raised further points of interest and some simply acknowledged that the issues referred to needed to be addressed. Of those who provided further detail:

- (1) 26 consultees discussed particular issues for homeowners relating to the application of company law;²⁸
- (2) five discussed issues relating to consumer protection in new developments;²⁹
- (3) seven discussed issues relating to the degree of flexibility in the commonhold community statement;³⁰
- (4) 15 discussed issues relating to the flexibility in sharing commonhold costs;³¹
- (5) 33 discussed issues relating to the dispute resolution procedure;³² and

²⁷ A2 Dominion Housing Group Ltd; Alan Davis; Alan Mitchell; Alex Quinn; ARMA; Association of Retirement Housing Managers; Barbara Gardener; Barbara Thorne; Barratt Plc; Berkeley Group Holding plc; Birmingham Law Society; Bramshott Place Village Residents' Association; British Property Federation; Carol Carter; Carol Kerby; Catherine Margaret Charles; Catherine Tuckwood; Charities' Property Association; Christine Jackson; Christopher Jessel; City of London Law Society; Cliff Barry; Coastline Housing; Colette Boughton; Conveyancing Association; CRELA; David Croydon; David Johnson; David Robinson; Derrick Fuller-Webster; Dr C Hakim; Ellen Andrew; Estates and Management Ltd; Federation of Private Residents' Associations; Fieldfisher LLP; Fiona Campbell; FirstPort; Gerlinde Gniewosz; Gill Waystrode; Graham Paddock; Heather Keates; Heulwen Egerton; Home Builders Federation; Howard Davies; IRPM; Irwin Mitchell LLP; J Brown; Jackie Roe; John Bunting; John Byrne; John H Cooney; John Harvey; Kevin Mullery; Kheya Bag; Laurence Target; Leasehold Reform Group; Leila Allen; Linden Ltd; Lord Walker of Gestingthorpe; M D Sinclair; Marathon House RTM Company Ltd; Mari Knowles; Martin Foulds; Martin Wood; McCarthy & Stone; Michael Bowen; Michael Harvey; Mike Paley; National Leasehold Campaign; Nicholas Warren; Oliver Yun; Osborne Clarke Solicitors; Paul Sams; Peter Bellenes; Peter Smith; Peter Williams; Philip Griffiths; Pinsent Masons LLP; Places for People; Quoin Commonhold Association; R M Campbell-Barr; Rawdon Crozier; Redrow Homes Limited; RHG; RM Campbell-Barr; Rodney Townson; Rosemary Herbert; Shula Rich; Stan Marlow; Stephen Bedford; Stuart Ryan; Susan Ellis; Susan Stuckey; Suzanne McGreavy; The Property Ombudsman; Trevor Leigh; Trowers & Hamilins LLP; Wrigleys Solicitors LLP; Yorkshire Building Society Group.

²⁸ Alan Davis; ARMA; Association of Retirement Housing Managers; Barbara Gardener; Birmingham Law Society; Christopher Jessel; Coastline Housing; David Johnson; Derrick Fuller-Webster; Federation of Private Residents' Associations; Graham Paddock; Home Builders Federation; Howard Davies; IRPM; Laurence Target; Leasehold Reform Group; Mari Knowles; Michael Bowen; Osborne Clarke Solicitors; Peter Smith; Quoin Commonhold Association; Susan Ellis; Suzanne McGreavy; The Berkeley Group Holding plc; the City of London Law Society; Wrigleys Solicitors LLP. See also question 4 below, in response to which consultees discussed their experiences of company law in the context of leaseholder-owned companies.

²⁹ Graham Paddock; Mari Knowles; J Brown; Colette Boughton; John Harvey.

³⁰ Laurence Target; Coastline Housing; J Brown; Mari Knowles; The Berkeley Group Holding plc, Wrigleys Solicitors LLP; Leasehold Reform Group.

³¹ ARMA; Berkeley Group Holding plc; British Property Federation; Conveyancing Association; Dr C Hakim; Fieldfisher LLP; FirstPort; Graham Paddock; J Brown; Leasehold Reform Group; Mari Knowles; Peter Williams; Pinsent Masons LLP; RM Campbell-Barr; Yorkshire Building Society Group.

³² Alan Davis; Association of Retirement Housing Managers; Barbara Gardener; Birmingham Law Society; British Property Federation; Carol Carter; Christopher Jessel; City of London Law Society; David Johnson;

- (6) 15 consultees discussed issues surrounding the termination or insolvency of a commonhold association.³³

APPLICATION OF COMPANY LAW

3.2 Twenty-six consultees discussed the application of company law to commonhold associations.³⁴ Several of these consultees discussed one or more specific issues in their response.

- (1) Nine consultees suggested that company law offered benefits to homeowners in a commonhold.³⁵
- (2) Fifteen consultees raised concerns regarding the application of company law to commonholds.³⁶

Benefits of company law

3.3 Nine consultees³⁷ considered that it was appropriate to apply company law to commonhold associations, or that company law was the best of the available options.

3.4 The Birmingham Law Society stated that “company law is well understood with a weight of jurisprudence behind it”.

David Robinson; Derrick Fuller-Webster; Dr C Hakim; Fiona Campbell; FirstPort; Gerlinde Gniewosz; Graham Paddock; IRPM; J Brown; John Bunting; John Harvey; Kheya Bag; Laurence Target; Mari Knowles; Martin Wood; Michael Bowen; Nicholas Warren; Paul Sams; Rawdon Crozier; RM Campbell-Barr; The Berkeley Group Holding plc; the Conveyancing Association; the Leasehold Reform Group; The Property Ombudsman.

³³ Catherine Margaret Charles; Christopher Jessel; Fieldfisher LLP; Graham Paddock; IRPM; J Brown; Kevin Mullery; Laurence Target; Leasehold Reform Group; Mari Knowles; Martin Wood; Nicholas Warren; Stephen Bedford; the Berkeley Group Holding plc; the Conveyancing Association. See also question 4 below, in response to which consultees discussed their experiences of insolvency in the context of leaseholder-owned companies.

³⁴ Alan Davis; ARMA; Association of Retirement Housing Managers; Barbara Gardener; Birmingham Law Society; Christopher Jessel; Coastline Housing; David Johnson; Derrick Fuller-Webster; Federation of Private Residents' Associations; Graham Paddock; Home Builders Federation; Howard Davies; IRPM; Laurence Target; Leasehold Reform Group; Mari Knowles; Michael Bowen; Osborne Clarke Solicitors; Peter Smith; Quoin Commonhold Association; Susan Ellis; Suzanne McGreavy; The Berkeley Group Holding plc; the City of London Law Society; Wrigleys Solicitors LLP. See also question 4 below, in response to which consultees discussed their experiences of company law in the context of leaseholder-owned companies.

³⁵ Leasehold Reform Group; Birmingham Law Society; Susan Ellis; The Berkeley Group Holding plc; Wrigleys Solicitors LLP; Federation of Private Residents' Associations; Mari Knowles; ARMA; Osborne Clarke Solicitors.

³⁶ Barbara Gardener; Peter Smith; Suzanne McGreavy; Alan Davis; David Johnson; Graham Paddock; Howard Davies; Coastline Housing; Quoin Commonhold Association; Association of Retirement Housing Managers; Laurence Target; the City of London Law Society; Leasehold Reform Group; the Home Builders Federation; Christopher Jessel.

³⁷ Leasehold Reform Group; Birmingham Law Society; Susan Ellis; The Berkeley Group Holding plc; Wrigleys Solicitors LLP; Federation of Private Residents' Associations; Mari Knowles; ARMA; Osborne Clarke Solicitors.

- 3.5 ARMA said that the application of company law will mean that directors of the commonhold association will need to satisfy the “appropriate duty of care”:

if Directors are being responsible/making decisions for a development then it is only right that they have to be held accountable for their actions. There are enough exemptions for small companies now that would allow minimal reporting requirements on them, but still ensures they have the appropriate duty of care. ...as long as the information and education process is available for the directors then this shouldn't be an issue.

- 3.6 The Berkeley Group Holding plc agreed, explaining:

the protections that company law gives association members must be retained. Managing a building (particularly a high rise building) is complex and needs external expertise because of the liabilities that may arise around personal injury, structural integrity and regulatory risk eg fire protection and health and safety around maintenance works. Those instructing the external experts need to be subject to the same fiduciary duties as other company directors. It would be strange to put in place a regulatory regime for managing people's most valuable asset that is less onerous than that which relates to where their hair is cut or they buy their clothes.

- 3.7 The Federation of Private Residents' Associations stated that the commonhold association should be a company with limited liability:³⁸

limited liability is an essential protection for the leaseholder of a flat and will be similarly necessary to the owner of a commonhold flat., ... the formal and filing requirements are a price that must be paid for limited liability.

Concerns regarding company law

- 3.8 Fifteen consultees³⁹ raised concerns over the complexity of company law for homeowners and the potential penalties for non-compliance.

- 3.9 One existing commonhold, the Quoin Commonhold Association, said:

we have found the company set up and legal side of things quite constraining as it feels as if we don't really fit very well under company law. We don't have shareholders or make profit, we have a kitty and use it to split shared costs, but really we are dormant in terms of being a functioning company. Sending accounts to companies house has been an interesting experience also. We have now got the system sorted out but found it all very daunting to begin with, especially with the threat of a large fine for not filing correctly or on time hanging over our heads. It all felt very heavy handed.

³⁸ The term limited liability company refers to a company in which the liability of the company's members for its debts are limited to a set amount. This amount relates either to the unpaid amount of the members' shares in the company (company limited by shares) or the amount each member has committed to contribute if the company is wound-up (company limited by guarantee).

³⁹ Barbara Gardener; Peter Smith; Suzanne McGreavy; Alan Davis; David Johnson; Graham Paddock; Howard Davies; Coastline Housing; Quoin Commonhold Association; Association of Retirement Housing Managers; Laurence Target; the City of London Law Society; Leasehold Reform Group; Home Builders Federation; Christopher Jessel.

- 3.10 The City of London Law Society and Coastline Housing noted the risk of criminal liability under company law. Coastline Housing stated:

the criminal liability inherent in being a member or director of a commonhold association under company law would likely put many people off the idea of purchasing a property under this legislation.

- 3.11 Peter Smith stated: “the seemingly unclear relationship between the statutory duties of commonhold association directors and their duties under the general law” could put people off commonhold.

- 3.12 Laurence Target noted the risks associated with commonhold associations being struck off for failing to submit an annual return.

This could be because the responsible director moves away and is not replaced, or an accountant who was supposed to complete the return goes out of business, or because the flat owners manage repairs and services informally and do not want to spend time and money on the return, or may not have the skills to prepare and submit it. ...the association will [then] be struck off. The Act is not clear what happens in that situation...

- 3.13 Graham Paddock suggested that:

if commonhold associations must be companies, the Companies Act should be amended to provide for simpler and more appropriate governance, auditing and reporting requirements for commonhold companies.

- 3.14 He went on to argue that “the best alternative to a company is, as suggested in the Aldridge Report,” a bespoke corporate body, “a methodology that has proved successful and robust in many other jurisdictions”.

CONSUMER PROTECTION IN NEW DEVELOPMENTS

- 3.15 Five consultees called for greater consumer protection in new developments.⁴⁰

- 3.16 Graham Paddock noted that:

the developer’s power to reserve the right to make changes to the facilities and buildings during the course of development should be re-considered and suitable consumer protection provisions inserted.

- 3.17 There were also concerns raised regarding developers being able to appoint managing agents or to create ongoing revenue streams. Mari Knowles stated:

allowing developers to appoint a manager should be banned. This has been disastrous in leasehold buildings in many cases I have seen and should be avoided entirely. The whole point of commonhold is to give the unit owners control, and they simply would not have this if the developer was allowed to appoint a manager.

⁴⁰ Graham Paddock; Mari Knowles; J Brown; Colette Boughton; John Harvey.

- 3.18 However, the calls for greater consumer protection will need to be balanced against the concerns of other consultees, who call for greater flexibility in creating new commonhold developments. Concerns about the degree of flexibility offered to developers when creating new commonhold developments are analysed under question 5.

DEGREE OF FLEXIBILITY IN THE COMMONHOLD COMMUNITY STATEMENT

- 3.19 Seven consultees discussed issues regarding the level of flexibility of the CCS.⁴¹
- 3.20 Three consultees⁴² noted the importance and benefits of flexibility in the CCS, or considered that the current flexibility of the statement was correct. J Brown noted that “as the [unit owners] have voting rights, they should be afforded the flexibility to democratically change the CCS to suit their purpose as required”.
- 3.21 However, four other consultees⁴³ expressed concerns about the ease with which the CCS can be amended. Berkeley Group Holding plc noted that:

there could be a number of ways a person buying into a development is deprived of what they had originally bought by a vote passed by other home owners.

- 3.22 It went on to explain that:

the ease with which CCSs can be changed will create tension between members of commonhold associations and is fundamentally unfair. We understand that presently to be quorate only 20% of owners need attend a meeting and then a majority at that meeting can pass a resolution on a show of hands. Important decisions could be made by only 11% of the affected owners. Owners should have the comfort that what they initially buy into is what they will always have.

- 3.23 Mari Knowles and the Leasehold Reform Group suggested that certain fundamental clauses should be made harder to amend to address this.

COMMONHOLD COSTS

- 3.24 Five consultees⁴⁴ advocated the view that there should be greater flexibility in how commonhold costs (such as the costs of managing and maintaining the commonhold) are shared between unit owners.
- 3.25 The Conveyancing Association provided an example of a practical difficulty which may be caused under the commonhold legislation. Currently, unit owners could be required to pay an equal share of the costs but, if some unit owners had parking spaces allocated and others did not, it would not be possible to share the costs in a different way.

⁴¹ Laurence Target; Coastline Housing; J Brown; Mari Knowles; The Berkeley Group Holding plc, Wrigleys Solicitors LLP; Leasehold Reform Group.

⁴² Laurence Target; Coastline Housing; J Brown.

⁴³ Mari Knowles; The Berkeley Group Holding plc; Wrigleys Solicitors LLP; Leasehold Reform Group.

⁴⁴ Leasehold Reform Group; FirstPort; Graham Paddock; ARMA and the Conveyancing Association.

- 3.26 Four consultees⁴⁵ were of the view that, instead of greater flexibility, there should be fixed costs from the outset which should not be amended. R M Campbell-Barr and J Brown both noted the benefits of certainty for a purchaser of a unit who knew from the outset what their share of the costs would be. Mari Knowles and Dr C Hakim both cautioned of an increased risk of disputes resulting from flexibility in amending the sharing of costs.
- 3.27 Additionally, seven consultees⁴⁶ noted that the ability to challenge unreasonable service charge costs under the Landlord and Tenant Act 1985 did not apply to commonhold costs. Fieldfisher LLP stated:
- Commonhold works on the basis that the commonhold assessment (which is very similar to a service charge in a lease) will be set and agreed by the unit holders, who are of course residents. There are no provisions for the assessment to have to be reasonable, nor for quotes to be obtained, consultations made etc.
- 3.28 The British Property Federation questioned whether there are “sufficient safeguards for the minority of unit holders who may find the expenses proposed by the majority unrealistic”.

DISPUTE RESOLUTION

- 3.29 Thirty-three consultees⁴⁷ discussed issues relating to dispute resolution in commonhold. Many of these consultees discussed one or more specific issues in their response:
- (1) 13 referred to the pre-action procedure;⁴⁸
 - (2) 10 discussed the creation or role of an ombudsman;⁴⁹ and
 - (3) 19 considered the role of the courts and the Tribunal.⁵⁰

⁴⁵ Mari Knowles; RM Campbell-Barr; J Brown and Dr C Hakim.

⁴⁶ Berkeley Group Holding plc; Peter Williams; Graham Paddock; Pinsent Masons LLP; Yorkshire Building Society Group; British Property Federation; Fieldfisher LLP.

⁴⁷ Alan Davis; Association of Retirement Housing Managers; Barbara Gardener; Birmingham Law Society; British Property Federation; Carol Carter; Christopher Jessel; City of London Law Society; David Johnson; David Robinson; Derrick Fuller-Webster; Dr C Hakim; Fiona Campbell; FirstPort; Gerlinde Gniewosz; Graham Paddock; IRPM; J Brown; John Bunting; John Harvey; Kheya Bag; Laurence Target; Mari Knowles; Martin Wood; Michael Bowen; Nicholas Warren; Paul Sams; Rawdon Crozier; RM Campbell-Barr; The Berkeley Group Holding plc; the Conveyancing Association; the Leasehold Reform Group; The Property Ombudsman.

⁴⁸ Barbara Gardener; Paul Sams; The Berkeley Group Holding plc; FirstPort; IRPM; J Brown; the Conveyancing Association; the Leasehold Reform Group; Christopher Jessel; David Robinson; British Property Federation; David Johnson; Martin Wood.

⁴⁹ Barbara Gardener; Paul Sams; RM Campbell-Barr; Rawdon Crozier; the Leasehold Reform Group; The Property Ombudsman; British Property Federation; David Robinson; J Brown; Michael Bowen.

⁵⁰ Barbara Gardener; Birmingham Law Society; Dr C Hakim; the Conveyancing Association; Christopher Jessel; David Johnson; David Robinson; Derrick Fuller-Webster; Fiona Campbell; Gerlinde Gniewosz;

Pre-action procedure

3.30 Thirteen consultees referred to the pre-action procedure.⁵¹ The Conveyancing Association stated that it had conducted a survey of commonholders and that “Of those who had experienced disputes they ranked their satisfaction with the dispute resolution process as 3.6/5”.

3.31 However, Christopher Jessel raised certain concerns regarding the pre-action procedure. He described the procedure for enforcement by a unit owner against another unit owner or tenant as “long drawn out and, while no doubt well-intentioned...[it is] bureaucratic”.

3.32 He also pointed out that the use of prescribed forms could create a trap for the unwary.

the procedure includes the compulsory use of prescribed forms and 21 day notices. In practice an association which comprises a group of flat owners in a small commonhold will have neither the knowledge nor the skill to do this so that if they are compelled to go to court against an intransigent⁵² unit holder, the claim may be struck out because Form 19 or 20 was not used. Experience with the forms required for collective enfranchisement indicates the sort of technical point which a defendant might take. I suggest this is too prescriptive.

3.33 Martin Wood suggested there is no need for a compulsory dispute resolution procedure, noting:

Disputes within commonholds will occur just as they occur in leasehold developments. But there is no compulsorily imposed resolution procedure that applies to leaseholds. ...There is no reason and, in my view, no merit in treating commonhold differently from leasehold.

Ombudsman

3.34 Ten consultees discussed the creation or role of an ombudsman.⁵³ Five of those consultees⁵⁴ indicated that an approved ombudsman service would be a positive development for commonhold.

3.35 The Leasehold Reform Group, in its response to our Call for Evidence, suggested that “any ombudsman established to deal with disputes would be more cost effective if it supervised leasehold and commonhold”.

Graham Paddock; IRPM; J Brown; John Harvey; Kheya Bag; Laurence Target; RM Campbell-Barr; The Berkeley Group Holding plc; The Property Ombudsman.

⁵¹ Barbara Gardener; Paul Sams; The Berkeley Group Holding plc; FirstPort; IRPM; J Brown; the Conveyancing Association; the Leasehold Reform Group; Christopher Jessel; David Robinson; British Property Federation; David Johnson; Martin Wood.

⁵² Uncompromising.

⁵³ Barbara Gardener; Paul Sams; RM Campbell-Barr; Rawdon Crozier; the Leasehold Reform Group; The Property Ombudsman; British Property Federation; David Robinson; J Brown; Michael Bowen.

⁵⁴ Barbara Gardener; J Brown; Michael Bowen; Paul Sams; The Property Ombudsman.

Role of courts and the Tribunal

3.36 Nineteen consultees⁵⁵ discussed the role of courts and the Tribunal in commonhold dispute resolution.

3.37 Graham Paddock referred to the practices of other countries:

the county court will not have the expertise to handle commonhold disputes unless there is specific training. In many jurisdictions there are special tribunals or specially trained staff in existing court structures to deal with community scheme disputes.

3.38 Derrick Fuller-Webster agreed, stating “a tribunal should be established along the model of the Australian Capital Territory for resolution of disputes in the first instance without resorting to costly court litigation”.

3.39 IRPM recommended transferring jurisdiction to the Tribunal (or the Residential Property Tribunal in Wales):

it is difficult to see a dispute resolution entity that is significantly simpler than the First Tier Tribunal model, albeit we recognise that taking a case to Tribunal is daunting for most residents, especially where the other side is professionally represented. ...At minimum, the FTT should be given powers to determine commonhold disputes as it has for leasehold disputes.

3.40 However, J Brown criticised the Tribunal as “not fit for purpose in its current format: case timelines are too long, decisions are inconsistent, too costly, etc.”

TERMINATION AND INSOLVENCY

3.41 Fifteen consultees discussed issues surrounding the termination or insolvency of a commonhold association.⁵⁶

3.42 Nicholas Warren, Mari Knowles, J Brown, Stephen Bedford and IRPM all noted the risk of a commonhold association becoming insolvent due to unpaid commonhold assessments. Mari Knowles suggested one way of reducing the risk of insolvency:

if the Articles (or Commonhold Statement) provided that expenses should not be expended until monies have been received on account (akin to the RICS service charge code), this would reduce the chances of insolvency.

3.43 Fieldfisher LLP raised concerns regarding the clarity of the legislation, stating:

⁵⁵ Barbara Gardener; Birmingham Law Society; Dr C Hakim; the Conveyancing Association; Christopher Jessel; David Johnson; David Robinson; Derrick Fuller-Webster; Fiona Campbell; Gerlinde Gniewosz; Graham Paddock; IRPM; J Brown; John Harvey; Kheya Bag; Laurence Target; RM Campbell-Barr; The Berkeley Group Holding plc; The Property Ombudsman.

⁵⁶ Catherine Margaret Charles; Christopher Jessel; Fieldfisher LLP; Graham Paddock; IRPM; J Brown; Kevin Mullery; Laurence Target; Leasehold Reform Group; Mari Knowles; Martin Wood; Nicholas Warren; Stephen Bedford; the Berkeley Group Holding plc; the Conveyancing Association. See also question 4 below, in response to which consultees discussed their experiences of insolvency in the context of leaseholder-owned companies.

the original legislation gave very little detail about what would happen upon the insolvency of a commonhold. This needs to be fleshed out so the consequences are absolutely clear, eg what happens to existing security granted over the units, what if the building cannot be rebuilt following destruction etc.

- 3.44 Laurence Target considered the possibility of a “successor” association to take over from the insolvent association, and its effect on the new unit owners:

the structure of dissolution, with a new CA [commonhold association] taking on the rights and liabilities of the old CA, seems futile: it would leave the new CA as insolvent as the old. The asset that a CA has that is most valuable is the right to make unit holders pay. The obligation (save where protected by enquiries) goes with the unit, and outstanding obligations should go to the price a purchaser will pay.

- 3.45 Martin Wood raised concerns about the ability of the members of the commonhold association to bring the commonhold to an end voluntarily by agreement:

commonhold is supposed to facilitate freehold, and therefore perpetual ownership of flats, but the termination provisions completely undermine this, effectively providing for a flat owner to have the ownership of their flat forcibly taken away from them against their wishes.

Question 4: experience from the application of company law to, and insolvency of, leaseholder-owned companies

Question 4

There are similarities between commonhold associations and leaseholder-owned companies which own and/or manage their building.

If you have experience of a leaseholder-owned company:

(a) Has the application of general company law to leaseholder-owned companies caused any issues in practice?

(b) Do you have any experience of a leaseholder-owned company becoming insolvent? What was the situation, and to what extent (if at all) were the leaseholders responsible for paying the debts of the company?

Please give as much detail as possible.

4.1 Forty-five consultees⁵⁷ answered one or both parts of this question.⁵⁸

QUESTION 4 (A) HAS THE APPLICATION OF GENERAL COMPANY LAW TO LEASEHOLDER-OWNED COMPANIES CAUSED ANY ISSUES IN PRACTICE?

4.2 Forty-two consultees answered question 4(a).⁵⁹ Of those:

⁵⁷ Alan Davis; Alan Mitchell; ARMA; Association of Retirement Housing Managers; Barbara Gardener; Barbara Thorne; Barratt plc; Birmingham Law Society; Catherine Margaret Charles; Christopher Jessel; Colette Boughton; Conveyancing Association.; CRELA; David Johnson; Derrick Fuller-Webster; Estates and Management Ltd; FirstPort; FPRA; Heather Keates; IRPM; Irwin Mitchell LLP; Jackie Roe; Julian Maples; Kathy Allen; Kevin Mullery; Laurence Target; Leasehold Reform Group; Linden Ltd; Mari Knowles; Michael Bowen; Michael Harvey; Mike Paley; National Trust; Nigel Shingler; Osborne Clarke Solicitors; Paul Sams; Peter Smith; Places for People; Redrow Homes Ltd; Rodney Townson; Susan Ellis; Susan Stuckey; The Berkeley Group Holding plc; Tony Martin; Trevor Leigh.

⁵⁸ This includes 11 commercial bodies; 10 practising lawyers; three third sector/voluntary organisations; one legal academic; 13 members of the public and seven 'other'.

⁵⁹ Alan Davis; Alan Mitchell; ARMA; Association of Retirement Housing Managers; Barbara Gardener; Barbara Thorne; Barratt plc; Birmingham Law Society; Catherine Margaret Charles; Christopher Jessel; Colette Boughton; Conveyancing Association; CRELA; David Johnson; Derrick Fuller-Webster; Estates and Management Ltd; FirstPort; IRPM; Irwin Mitchell LLP; Jackie Roe; Julian Maples; Kathy Allen; Kevin Mullery; Laurence Target; Leasehold Reform Group; Linden Ltd; Mari Knowles; Michael Bowen; Michael Harvey; National Trust; Nigel Shingler; Osborne Clarke Solicitors; Paul Sams; Peter Smith; Places for People; Redrow Homes Ltd; Rodney Townson; Susan Ellis; Susan Stuckey; The Berkeley Group Holding plc; Tony Martin; Trevor Leigh.

- (1) 25 said that the use of general company law did cause issues in practice;⁶⁰
 - (2) 14 said that the use of general company law did not cause issues in practice;⁶¹ and
 - (3) three responded without giving a clear “yes” or “no”.⁶²
- 4.3 In all categories of consultees there was a majority who thought that the use of company law did cause problems; the exception was among members of the public, who were more equally divided (five thought it did cause issues, whilst six did not).⁶³
- 4.4 Discussion of the application of company law fell within two broad categories:
- (1) the failure to make an annual return;⁶⁴ and
 - (2) difficulty in getting people to serve as directors.⁶⁵

Failure to make an annual return

- 4.5 Fifteen consultees referred to companies being struck off for failure to make what was generally referred to as an annual return.⁶⁶
- 4.6 Birmingham Law Society said that:
- there also needs to be some provision covering the Management Company failing to file accounts or otherwise ‘offending’ Companies House leading to it being struck off. The usual manner of restoring the company might prove impractical with a gap in knowledge about the former officers (sold up or deceased) and potentially uninterested Treasury Solicitors.
- 4.7 Some consultees saw the problem as the responsibility of the leaseholders concerned. Irwin Mitchell LLP stated that the:

⁶⁰ Paul Sams; Peter Smith; Places for People; Barbara Thorne; Leasehold Reform Group; Rodney Townson; Birmingham Law Society; Susan Stuckey; Christopher Jessel; CRELA; Alan Davis; Alan Mitchell; Estates and Management Ltd; FirstPort; IRPM; Irwin Mitchell LLP; Jackie Roe; Julian Maples; Kathy Allen; Laurence Target; Linden Ltd; Osborne Clarke Solicitors; Association of Retirement Housing Managers; National Trust; Nigel Shingler.

⁶¹ Redrow Homes Ltd; Susan Ellis; The Berkeley Group Holding plc; Tony Martin; Trevor Leigh; Catherine Margaret Charles; Colette Boughton; David Johnson; Derrick Fuller-Webster; Kevin Mullery; Mari Knowles; Michael Bowen; Michael Harvey; Barratt plc.

⁶² ARMA; Barbara Gardener; Conveyancing Association.

⁶³ This may be because they could speak only of their individual experience; whereas other categories were more likely to have come across a range of cases.

⁶⁴ ARMA; Birmingham Law Society; Christopher Jessel; CRELA; Estates and Management Ltd; FirstPort; Irwin Mitchell LLP; Jackie Roe; Laurence Target; Mari Knowles; Michael Bowen; Osborne Clarke Solicitors; Paul Sams; Susan Ellis; Trevor Leigh.

⁶⁵ Leasehold Reform Group; The Berkeley Group Holding plc; Trevor Leigh; Christopher Jessel; FirstPort; IRPM; Irwin Mitchell LLP; Jackie Roe; ARMA; National Trust.

⁶⁶ Now referred to by Companies House as the ‘confirmation statement’. The 15 consultees were: ARMA; Birmingham Law Society; Christopher Jessel; CRELA; Estates and Management Ltd; FirstPort; Irwin Mitchell LLP; Jackie Roe; Laurence Target; Mari Knowles; Michael Bowen; Osborne Clarke Solicitors; Paul Sams; Susan Ellis; Trevor Leigh.

lack of filing of accounts ... is also a result of ignorance of responsibilities and apathy of lessees. The consequence of striking off the company fuels leaseholder dissatisfaction with the leasehold system when in practical terms, it is the leaseholder's own lack of knowledge which results in the problem.

- 4.8 For others, the difficulties encountered by leaseholder-owned companies indicated that less stringent requirements should apply to commonhold associations. Christopher Jessel said:

a commonhold association should not be struck off the companies register for failure to submit the annual return but should only be dissolved if the termination procedure in the Act has been followed ... as the name of the association must include the word "commonhold"... it should be easy to recognise which companies this applies to.

- 4.9 Other consultees considered that these issues ought not to become major problems. Mari Knowles explained that:

there are many companies out there who offer basic company secretarial services for a very small annual fee, so encouraging commonholders to use such services would also assist.

Difficulty in finding persons to serve as directors

- 4.10 Ten consultees⁶⁷ raised the issue of the difficulty in getting members of the company to serve as directors.

- 4.11 IRPM explained that:

it is not always easy to persuade leaseholders to become directors of the management company, with all the liability that may accrue to them from the role. [It] creates the risk of a few directors acting undemocratically and/or against the best interests of the majority.

- 4.12 From a survey of managing agents, the Leasehold Reform Group (a group representing institutional freeholders) explained that 100% of their respondents were concerned at an absence of volunteers for directorships, whilst 79% had noted an increase in resignations of directors in the last 12 months.

- 4.13 ARMA expressed similar concern that "all the Directors resigning over time and no-one else [being] willing to take their placeis an issue", but it went on to explain that "the issue of company law being applicable wouldn't change such problems".

- 4.14 On the other hand, Trevor Leigh suggested that the application of company law would cause problems. He said: "I have seen leaseholder controlled companies struck off due to the failure of members to elect ... individuals prepared to fulfil the statutory offices".

⁶⁷ Leasehold Reform Group; The Berkeley Group Holding plc; Trevor Leigh; Christopher Jessel; FirstPort; IRPM; Irwin Mitchell LLP; Jackie Roe; ARMA; National Trust.

General difficulties encountered with leaseholder-owned companies

- 4.15 A number of consultees referred to problems that had been encountered but did not specifically attribute this to the applicability of company law.
- 4.16 The consultees who referred most frequently to leaseholder-controlled companies running into difficulties were often freeholders, or those representing freeholders.
- 4.17 In response to the Leasehold Reform Group's survey (referred to in paragraph 4.12 above), 80% of their respondents said that "health and safety issues were a common cause for concern with leaseholder-owned companies".
- 4.18 Other issues raised by the Leasehold Reform Group included:
- (1) difficult or dysfunctional relationships within boards of directors, leading to an inability to take decisions;
 - (2) an unwillingness to act in the long-term interests of the development;
 - (3) failure to comply with the terms of the lease and/or relevant legislation;
 - (4) an inability to find a replacement managing agent if one agent has felt forced to resign; and
 - (5) lack of the relevant professional skills on the board, leading to a reliance on having to commission experts, and directors having to rely upon insurance to guard against their personal liabilities.
- 4.19 Having noted the problems encountered by leaseholder-controlled companies, the Leasehold Reform Group proposed that such companies, and commonhold associations should be required to take various steps to protect the interests of their residents, including: increased regulation; financial penalties for failure to implement requirements; compulsory training for directors; and a statutorily prescribed minimum to be kept in reserves.
- 4.20 Some of these issues were also raised by Estates and Management Ltd and Berkeley Group Holding plc.

QUESTION 4 (B) DO YOU HAVE ANY EXPERIENCE OF A LEASEHOLDER-OWNED COMPANY BECOMING INSOLVENT?

- 4.21 Twenty-eight consultees answered question 4(b).⁶⁸

⁶⁸ Alan Davis; Alan Mitchell; Barbara Thorne; Barratt plc; Conveyancing Association; CRELA; David Johnson; Derrick Fuller-Webster; FPRA; Michael Bowen; Mike Paley; Susan Ellis; Susan Stuckey; The Berkeley Group Holding plc; Tony Martin; Catherine Margaret Charles; Estates and Management Ltd; FirstPort; Heather Keates; Irwin Mitchell LLP; Jackie Roe; Leasehold Reform Group; Mari Knowles; Michael Harvey; Osborne Clarke Solicitors; Paul Sams; Redrow Homes Ltd; Trevor Leigh.

- (1) 15 consultees said that they did not have experience of a leaseholder-owned company becoming insolvent;⁶⁹ and
 - (2) 13 consultees said that they did have experience of leaseholder-controlled companies becoming insolvent.⁷⁰
- 4.22 Twelve of these consultees⁷¹ gave more detail as to specific issues relating to the insolvency or potential insolvency of leaseholder-controlled companies.
- 4.23 Mari Knowles cited one instance where insolvency had nearly come about because the leaseholder-owned freehold management company had failed to consult properly on major works and most of the expenditure had proved irrecoverable.⁷² The builders sued, and faced with insolvency, the company had had to make a call on its shareholders.⁷³ A complicating factor was that this resulted in the shareholders having to contribute equally whereas the service charge provisions provided for leaseholders' contributions to vary depending on the size of the flat.
- 4.24 Osborne Clarke Solicitors, whilst remarking that insolvency among residents' management companies was rare, noted that it had come across an example where such a company was managing itself without a managing agent and had failed to levy service charges. The company became insolvent when faced with essential building works, and so the leaseholders set up a right to manage company and paid for the works through that.
- 4.25 Heather Keates referred to an example where the leaseholders had had to pay the debts of the company to ensure continuity of services.
- 4.26 Derrick Fuller-Webster explained that he had come across a case where a company had nearly become insolvent, but the situation had been retrieved by responsible financial management, and the company now had "a viable contingency fund and a ten-year rolling plan".
- 4.27 The Leasehold Reform Group, in its survey of managing agents (referred to above at paragraph 4.17) stated that 60% of the respondents had experienced "challenges relating to insolvency or lack of funds in relation to a leaseholder-owned company". In 18% of these cases the company was wound-up. In 18% the difficulty was resolved by a loan from the freeholder, and in 27% by an external loan. It remarked that "one of the advantages of the involvement of the institutional freeholder or property manager is that

⁶⁹ Alan Davis; Alan Mitchell; Barbara Thorne; Barratt plc; Conveyancing Association; CRELA; David Johnson; Derrick Fuller-Webster; FPRA; Michael Bowen; Mike Paley; Susan Ellis; Susan Stuckey; The Berkeley Group Holding plc; Tony Martin.

⁷⁰ Catherine Margaret Charles; Estates and Management Ltd; FirstPort; Heather Keates; Irwin Mitchell LLP; Jackie Roe; Leasehold Reform Group; Mari Knowles; Michael Harvey; Osborne Clarke Solicitors; Paul Sams; Redrow Homes Ltd; Trevor Leigh.

⁷¹ Catherine Margaret Charles; Derrick Fuller-Webster; Estates and Management Ltd; FirstPort; Heather Keates; Irwin Mitchell LLP; Leasehold Reform Group; Mari Knowles; Michael Harvey; Osborne Clarke Solicitors; Paul Sams; Trevor Leigh.

⁷² This incident would appear to have pre-dated the decision of the Supreme Court in *Daejan Investments Ltd v Benson* [2013] UKSC 14; [2013] 1 WLR 854.

⁷³ The legal basis upon which the call was made was not specified.

they are able to assist, in some cases with direct financial aid". It also referred to leaseholder-controlled companies using reserve funds to aid cash flow.

- 4.28 Trevor Leigh also raised a similar issue, referring to leaseholder-controlled companies floundering until the initiative was taken by a freeholder.

Question 5: new commonhold developments, including shared ownership

Question 5

If you are involved in creating residential or mixed-use developments:

- (a) Have you previously considered using commonhold or would you consider using it for a new development?
- (b) Did (or would) commonhold offer sufficient flexibility to meet the needs of your development?
- (c) Were you (or would you be) affected by the incompatibility of commonhold with shared ownership?
- (d) What other factors influenced (or would influence) your decision whether or not to use commonhold?
- (e) What aspects of commonhold could be improved to make it more usable for new developments?

Please provide a description of the development in question, for instance the number of buildings in the development, the number of units within each building, and specifying the use of such units.

5.1 Forty-nine consultees⁷⁴ responded to question 5 including:

- (1) 10 housebuilders;⁷⁵
- (2) two housing associations;⁷⁶

⁷⁴ A2Dominion Housing Group Ltd; Alan Davis; ARCO; Association of Retirement Housing Managers; Barbara Gardener; Barratt Plc; Berkeley Group Holding plc; Birmingham Law Society; Boodle Hatfield LLP; British Property Federation; Building Societies Association; Catherine Margaret Charles; City of London Law Society; Coastline Housing; CRELA; Emerson Group; Fieldfisher LLP; FirstPort; Gill Waystrode; Graham Paddock; Hazel Oliver; Heather Keates; Heulwen Egerton; Home Builders Federation; IRPM; Irwin Mitchell LLP; Jackie Roe; John Byrne; Laurence Target; Leasehold Reform Group; Linden Limited; McCarthy & Stone; Michael Bowen; Michael Harvey; National Trust; Osborne Clarke Solicitors; Paul Sams; Pinsent Masons LLP; Places for People; Prof James Driscoll; Redrow Homes Limited; Stephen Bedford; Susan Ellis; The Property Ombudsman; Trevor Leigh; Trowers & Hamblins LLP; UK Finance; Wrigleys Solicitors LLP; Yorkshire Building Society Group.

⁷⁵ Barratt Plc; Berkeley Group Holding plc; British Property Federation; Emerson Group; Home Builders Federation; Linden Limited; McCarthy & Stone; Places for People; Redrow Homes Limited; Susan Ellis.

⁷⁶ A2Dominion Housing Group Ltd; Coastline Housing.

- (3) 15 property lawyers who advise housebuilders;⁷⁷ and,
- (4) 22 others, including academics and members of the public.⁷⁸

QUESTION 5 (A) HAVE YOU PREVIOUSLY CONSIDERED USING COMMONHOLD OR WOULD YOU CONSIDER USING IT FOR A NEW DEVELOPMENT?

5.2 Twelve consultees⁷⁹ said that they had previously considered using commonhold. A number of consultees explained their response further:

- (1) one consultee stated that it had acted for a client on a commonhold development;⁸⁰
- (2) one consultee said that it had been involved in schemes that had initially intended to use commonhold but which did not complete as commonhold;⁸¹
- (3) one consultee stated they would recommend commonhold, but thought the recommendation would be unlikely to be taken up;⁸² and
- (4) four consultees explained that they considered using commonhold, but ultimately opted not to use it.⁸³

5.3 Fourteen consultees⁸⁴ said that they had not previously considered, and would not consider, using commonhold for a new development.

5.4 Consultees gave a number of reasons why they rejected using commonhold, which will be analysed further below.

⁷⁷ Boodle Hatfield LLP; Fieldfisher LLP; Irwin Mitchell LLP; Laurence Target; Osborne Clarke Solicitors; Pinsent Masons LLP; Trowers & Hamblins LLP; Wrigleys Solicitors LLP; CRELA; Jackie Roe; Paul Sams; Catherine Margaret Charles; Michael Bowen; Michael Harvey; Heather Keates.

⁷⁸ Alan Davis; ARCO; Association of Retirement Housing Managers; Barbara Gardener; Birmingham Law Society; Building Societies Association; City of London Law Society; FirstPort; Gill Waystrode; Graham Paddock; Hazel Oliver; Heulwen Egerton; IRPM; John Byrne; Leasehold Reform Group; National Trust; Professor James Driscoll; Stephen Bedford; The Property Ombudsman; Trevor Leigh; UK Finance; Yorkshire Building Society Group.

⁷⁹ A2Dominion Housing Group Ltd; Redrow Homes Limited; The Berkeley Group Holding plc; Trowers & Hamblins LLP; Emerson Group; Wrigleys Solicitors LLP; Heather Keates; Irwin Mitchell LLP; Laurence Target; Osborne Clarke Solicitors; Michael Bowen; Barratt Plc.

⁸⁰ Osborne Clarke Solicitors.

⁸¹ Trowers & Hamblins LLP.

⁸² Laurence Target.

⁸³ Berkeley Group Holding plc, Irwin Mitchell LLP; Emerson Group and Barratt Plc.

⁸⁴ Paul Sams; Places for People; Leasehold Reform Group; Susan Ellis; Trevor Leigh; Catherine Margaret Charles; CRELA; FirstPort; Graham Paddock; Jackie Roe; Michael Bowen; Michael Harvey; Association of Retirement Housing Managers; National Trust.

QUESTION 5 (B) DID (OR WOULD) COMMONHOLD OFFER SUFFICIENT FLEXIBILITY TO MEET THE NEEDS OF YOUR DEVELOPMENT?

5.5 Thirty-three consultees⁸⁵ responded to this question.

- (1) Five consultees⁸⁶ said that yes, commonhold did offer sufficient flexibility to meet the needs of some, or all, of their developments.
- (2) Twenty-eight consultees⁸⁷ said that commonhold did not offer sufficient flexibility for their developments.

Commonhold offers sufficient flexibility

5.6 Of those stating the commonhold did offer sufficient flexibility for some developments, Osborne Clarke Solicitors explained that commonhold had provided enough flexibility for the commonhold development it had advised on, as there was no need to involve mortgage lenders (whose consent may perhaps have been difficult to obtain).

5.7 Laurence Target added that, in some respects, “a lack of flexibility would serve consumer protection and justice”.

5.8 Whilst not commenting specifically in relation to flexibility, McCarthy & Stone noted its experience of a similar system to commonhold in Scotland:

we have a number of developments in Scotland. The land tenure for our flatted developments in Scotland and associated management arrangements are similar to the commonhold system in England, albeit that the common parts of our developments in Scotland are owned directly by homeowners jointly and not via a separate company owned by homeowners as they would be under the current commonhold system in England. ... We have not experienced any particular problems in the stewardship or management of our Scottish estate

⁸⁵ A2Dominion Housing Group Ltd; Alan Davis; ARCO; Association of Retirement Housing Managers; Barratt Plc; Berkeley Group Holding plc; Boodle Hatfield LLP; Building Societies Association; Coastline Housing; Fieldfisher LLP; FirstPort; Graham Paddock; Home Builders Federation; IRPM; Irwin Mitchell LLP; Jackie Roe; Leasehold Reform Group; McCarthy & Stone; Michael Harvey; National Trust; Paul Sams; Pinsent Masons LLP; Places for People; Redrow Homes Limited; Trevor Leigh; UK Finance; Wrigleys Solicitors LLP; Yorkshire Building Society Group; Susan Ellis; CRELA; Laurence Target; Osborne Clarke Solicitors; Michael Bowen.

⁸⁶ Susan Ellis; CRELA; Michael Bowen; Laurence Target; Osborne Clarke Solicitors. Susan Ellis, CRELA and Michael Bowen said that commonhold offered sufficient flexibility for all their developments. Laurence Target and Osborne Clarke Solicitors said that commonhold offered sufficient flexibility for some, but not all, developments.

⁸⁷ A2Dominion Housing Group Ltd; Alan Davis; ARCO; Association of Retirement Housing Managers; Barratt Plc; Berkeley Group Holding plc; Boodle Hatfield LLP; Building Societies Association; Coastline Housing; Fieldfisher LLP; FirstPort; Graham Paddock; Home Builders Federation; IRPM; Irwin Mitchell LLP; Jackie Roe; Leasehold Reform Group; McCarthy & Stone; Michael Harvey; National Trust; Paul Sams; Pinsent Masons LLP; Places for People; Redrow Homes Limited; Trevor Leigh; UK Finance; Wrigleys Solicitors LLP; Yorkshire Building Society Group.

Commonhold does not offer sufficient flexibility

5.9 Consultees provided the following reasons why commonhold is not flexible enough:

- (1) the inability to provide effectively for ongoing management and maintenance;⁸⁸
- (2) the inability to accommodate mixed-use and/or mixed-tenure developments;⁸⁹ and
- (3) inadequate provisions for the phasing of the development.⁹⁰

Inability to provide effectively for ongoing management and maintenance

5.10 Seven consultees⁹¹ said that commonhold did not give them the flexibility necessary to provide for ongoing management and maintenance of their developments.

5.11 For example, the Berkeley Group Holding plc stated that:

Berkeley's selling point is that it is creating communities that will look as good in 50 years time as they do when we complete them. We have severe mis-givings about how commonhold will ensure this happens.

5.12 Places for People agreed stating that:

many of our developments are developed for a legacy landowner who wishes to retain control of the developments (management and design) for the long term benefits of all parties, and commonhold would not be their choice.

5.13 The Home Builders Federation noted that “the freeholder’s is the only interest in the system that will always stretch beyond a handful of years”.

5.14 ARCO⁹² explained that commonhold is unattractive to the retirement community sector. It said:

commonhold has not been adopted in the sector as it does not offer sufficient flexibility and certainty for operators, and would be a major disincentive to invest in the long term operation of a complex hospitality, care and housing offer. Essentially, under commonhold the role of the retirement community operator would convert to that of a

⁸⁸ A2Dominion Housing Group Ltd; National Trust; The Berkeley Group Holding plc; Home Builders Federation; Graham Paddock; Places for People; ARCO.

⁸⁹ A2Dominion Housing Group Ltd; Leasehold Reform Group; FirstPort; McCarthy & Stone; Barratt Plc; Home Builders Federation; Irwin Mitchell LLP; Fieldfisher LLP; Osborne Clarke Solicitors; Association of Retirement Housing Managers; The Berkeley Group Holding plc; Alan Davis; Graham Paddock; Coastline Housing; Laurence Target; Pinsent Masons LLP; Places for People; Boodle Hatfield LLP; UK Finance; Yorkshire Building Society Group; Building Societies Association.

⁹⁰ Irwin Mitchell LLP; Berkeley Group Holding plc; Home Builders Federation; Association of Retirement Housing Managers; IRPM.

⁹¹ A2Dominion Housing Group Ltd; National Trust; The Berkeley Group Holding plc; Home Builders Federation; Graham Paddock; Places for People; ARCO.

⁹² ARCO.

developer and property manager, without the long-term alignment of interests between the two.

- 5.15 The National Trust explained that some charity land owners may have specific reasons for needing to retain control:

for other owners with an interest in preserving groups of historic assets for wider public benefit (as opposed to just for the benefit of the unit owners themselves), even though the use of commonhold would theoretically be possible, the problem of someone outside of the commonhold scheme being unable to enforce positive obligations to ensure that wider public benefit is achieved could mean that using commonhold would produce an outcome which served the public interest less well.⁹³

Insufficient flexibility to accommodate mixed uses or tenures

- 5.16 Twenty-one consultees⁹⁴ responded that commonhold was not sufficiently flexible to accommodate mixed-uses or tenures within a development.

- 5.17 Fieldfisher LLP stated that “different parts of a development may have different requirements which cannot easily be catered for in one commonhold”.

- 5.18 The Home Builders Federation noted the importance of mixed-use developments, explaining:

the construction of mixed use developments, blending commercial or leisure facilities with residential schemes is a major source of housing supply, particularly on previously developed land in urban areas and such schemes provide many excellent examples of place-making. The practicality and effectiveness of commonhold for such developments is uncertain.

- 5.19 Barratt Plc added that:

owners within our developments could either be owner-occupiers or owners purchasing on a buy-to-let or investment basis, as well as owners of commercial premises where these form part of our developments. In addition as a condition of our obtaining planning consent for developments up to 30%-50% of properties within our developments are required to be "affordable" ... The competing interests of different types of owners and the need for a structure which allows enforcement of obligations upon owners of individual units is difficult through a commonhold structure and therefore would be unattractive to the range of potential purchasers of properties within our developments.

⁹³ See also the National Trust’s response to question 8, stating why the National Trust is unable to use commonhold.

⁹⁴ A2Dominion Housing Group Ltd; Leasehold Reform Group; FirstPort; McCarthy & Stone; Barratt Plc; Home Builders Federation; Irwin Mitchell LLP; Fieldfisher LLP; Osborne Clarke Solicitors; Association of Retirement Housing Managers; The Berkeley Group Holding plc; Alan Davis; Graham Paddock; Coastline Housing; Laurence Target; Pinsent Masons LLP; Places for People; Boodle Hatfield LLP; UK Finance; Yorkshire Building Society Group; Building Societies Association.

- 5.20 The Berkeley Group Holding plc were in agreement, stating that “the current legislation fails because it is based on a simplistic structure”. It also commented that:

we asked Taylor Wessing LLP, property lawyers with offices in jurisdictions that have commonhold style tenure, to apply a commonhold structure to our development at Royal Arsenal. They found the complexities of the Royal Arsenal development made it an unacceptably complex structure involving a number of commonholds with overlapping interests and vastly differing numbers of members.

- 5.21 The Association of Retirement Housing Managers also raised concerns that commonhold may not work for mixed tenure developments.

Inadequate provisions for phasing of developments

- 5.22 Five consultees⁹⁵ expressed concern that commonhold did not provide sufficient flexibility for phased developments, where certain units are sold before the development is complete.

- 5.23 Irwin Mitchell LLP explained that commonhold lacked sufficient flexibility for developers to make changes to the development after registration:

the designation of the development at the outset was one of the main drawbacks in that developers wished to retain the ability to amend the layout of a development as required. Many developers sought to change the mix of housing and flats during a phased development, depending upon the demand for specific house types already sold. The requirement to register the land as commonhold and consider developers rights at the outset of the development unduly fettered developers flexibility to make changes during the course of construction and sale.

A further consideration for developers was the ability to benefit from cooperating with adjoining developments, either by granting access rights or providing land for the siting of sub-stations or access, for example. Developers took a view that by setting out the land as commonhold would prevent them from dealing with the land as opportunities arose and would impact their ability to benefit from additional unforeseen value prospects.

- 5.24 The Berkeley Group Holding plc agreed, stating that:

ideally the developer should not lose control until the whole development, including any subsequently acquired land or planning enhancements, is completed. Current developer rights are too limited and will restrict the building of vibrant communities that are capable of evolving through the development programme and meeting changing needs and technological advancements. Developments are built phase by phase so an ability, as of right, to make connections to existing roads, sewers and services are essential. Further, loss of the common parts of a building at a stage when the developer may need to install services through the building is problematic. This

⁹⁵ Irwin Mitchell LLP; Berkeley Group Holding plc; Home Builders Federation; Association of Retirement Housing Managers; IRPM.

can be required if an unexpected problem is encountered in the ground necessitating re-routing of services for an adjoining building

5.25 The Home Builders Federation raised similar concerns. They also explained that:

on very large, multi-phase residential developments, it is likely that detailed planning consent will not yet be granted for later phases which would make the creation of a commonhold statement and the transfer of common parts and shared facilities to owners a very tricky balancing act to undertake for developers.

QUESTION 5 (C) WERE YOU (OR WOULD YOU BE) AFFECTED BY THE INCOMPATIBILITY OF COMMONHOLD WITH SHARED OWNERSHIP?

5.26 Twenty-nine consultees answered this question.⁹⁶ Of those, 20⁹⁷ said that they would be affected by the incompatibility of commonhold with shared ownership.

5.27 CRELA noted that:

shared ownership is definitely increasing in terms of popularity and features on more and more developments throughout the country including London in particular.

5.28 Redrow Homes Limited explained that they would be affected, “due to the requirement for shared ownership units to be included in apartment blocks as affordable housing”.

5.29 Coastline Housing agreed, stating that:

restrictions regarding the length of leases granted for a unit would be problematic for mixed tenure blocks that include shared ownership units. This could lead to a reduction in the number of shared ownership flats built and available for sale.

5.30 Four consultees⁹⁸ said that they would not be affected by the incompatibility of shared ownership with commonhold. However, these consultees were not developers. Rather, these consultees consisted of a managing agent, a group of institutional freeholders who invest in ground rents and two practicing lawyers.

5.31 Five consultees did not explicitly state whether they would be affected by the incompatibility of shared ownership with commonhold.⁹⁹ These consultees, however,

⁹⁶ A2Dominion Housing Group Ltd; Paul Sams; Places for People; Redrow Homes Limited; Birmingham Law Society; The Berkeley Group Holding plc; Trowers & Hamblins LLP; CRELA; Fieldfisher LLP; Graham Paddock; Irwin Mitchell LLP; Coastline Housing; Osborne Clarke Solicitors; McCarthy & Stone; Michael Bowen; Michael Harvey; Barratt Plc; Association of Retirement Housing Managers; Leasehold Reform Group; Trevor Leigh; Catherine Margaret Charles; Jackie Roe; Laurence Target; British Property Federation; Home Builders Federation; Building Societies Association.

⁹⁷ A2Dominion Housing Group Ltd; Paul Sams; Places for People; Redrow Homes Limited; Birmingham Law Society; The Berkeley Group Holding plc; CRELA; Fieldfisher LLP; Graham Paddock; Irwin Mitchell LLP; Coastline Housing; Osborne Clarke Solicitors; McCarthy & Stone; Michael Bowen; Michael Harvey; Barratt Plc; Association of Retirement Housing Managers; British Property Federation; Home Builders Federation; Building Societies Association.

⁹⁸ Leasehold Reform Group; Trevor Leigh; Catherine Margaret Charles; Jackie Roe.

⁹⁹ Laurence Target; J Brown; RM Campbell-Barr; Trowers & Hamblins LLP; Conveyancing Association.

considered that shared equity, co-ownership, or similar arrangements, could be used in place of shared ownership leases. In particular, Laurence Target says:

The fact that so-called shared ownership leases (there is nothing actually shared in the ownership - they are leases with an option to reduce the rent on payment of a premium) cannot be used should be regarded as an advantage: leases are fundamentally unsatisfactory as a form of owner occupation, the government concluded. Shared ownership trusts are available, and offer many advantages. Other forms of affordable housing fit within commonhold.

5.32 However, certain consultees identified issues which could hinder the use of these models in commonhold. These concerns, and other concerns about incorporating different forms of affordable housing in commonhold, are discussed in question 6 below.

QUESTION 5 (D) WHAT OTHER FACTORS INFLUENCED (OR WOULD INFLUENCE) YOUR DECISION WHETHER OR NOT TO USE COMMONHOLD? AND

QUESTION 5 (E) WHAT ASPECTS OF COMMONHOLD COULD BE IMPROVED TO MAKE IT MORE USABLE FOR NEW DEVELOPMENTS?

5.33 Responses to questions 5(d) and (e) raised similar, overlapping issues. For this reason, below we analyse the responses to these questions together.

5.34 Thirty-eight consultees¹⁰⁰ responded to these questions. Many of these consultees discussed one or more specific issues in their response.

(1) Sixteen consultees raised concerns that commonhold is unknown.¹⁰¹

(2) Several consultees raised financial concerns:

(a) 11 consultees¹⁰² said there was a lack of financial incentive for developers to use commonhold;

¹⁰⁰ A2Dominion Housing Group Ltd; Alan Davis; Association of Retirement Housing Managers; Barbara Gardener; Barratt Plc; Birmingham Law Society; Catherine Margaret Charles; City of London Law Society; Coastline Housing; CRELA; Emerson Group; Fieldfisher LLP; Gill Waystrode; Graham Paddock; Hazel Oliver; Heather Keates; Heulwen Egerton; Home Builders Federation; Irwin Mitchell LLP; Jackie Roe; John Byrne; Laurence Target; Leasehold Reform Group; Linden Limited; Michael Bowen; Michael Harvey; Osborne Clarke Solicitors; Paul Sams; Places for People; Prof James Driscoll; Redrow Homes Limited; Stephen Bedford; Susan Ellis; The Berkeley Group Holding plc; The Property Ombudsman; Trevor Leigh; Trowers & Hamblins LLP; Wrigleys Solicitors LLP.

¹⁰¹ A2Dominion Housing Group Ltd; Redrow Homes Limited; Susan Ellis; Trevor Leigh; Trowers & Hamblins LLP; Catherine Margaret Charles; Graham Paddock; Jackie Roe; Laurence Target; Linden Limited; Michael Bowen; Michael Harvey; Barratt Plc; Home Builders Federation; Redrow Homes Limited; Heather Keates.

¹⁰² Prof James Driscoll; Redrow Homes Limited; Emerson Group; Hazel Oliver; Laurence Target; Leasehold Reform Group; Trevor Leigh; Jackie Roe; Irwin Mitchell LLP; Barratt Plc; City of London Law Society.

- (b) 15 consultees¹⁰³ raised concerns over whether commonhold units would be as marketable as leasehold units, including concerns over whether potential purchasers would be able to get a mortgage; and
- (c) seven consultees¹⁰⁴ stated that developers would lose the right to charge fees, such as service charges and ground rents, and they might face additional costs in choosing to adopt commonhold.

5.35 Concerns relating to (1) and (2) are issues which fall outside of the Law Commission's terms of reference for this project. These issues are therefore analysed under question 9, which focusses on wider issues surrounding the reinvigoration of commonhold being addressed by Government.

¹⁰³ Heather Keates; Michael Bowen; Home Builders Federation; Irwin Mitchell LLP; Paul Sams; Places for People; Redrow Homes Limited; Birmingham Law Society; Emerson Group; Wrigleys Solicitors LLP; Hazel Oliver; Jackie Roe; Coastline Housing; Barratt Plc; Osborne Clarke Solicitors.

¹⁰⁴ Barbara Gardener; Heulwen Egerton; John Byrne; Laurence Target; Stephen Bedford; Gill Waystrode; Jackie Roe.

Question 6: affordable housing schemes in commonhold, other than shared ownership

Question 6

If you have experience with affordable housing schemes:

Do you foresee any issues within the current commonhold model which could make it difficult to incorporate forms of affordable housing other than shared ownership?

6.1 Forty-three consultees answered this question.¹⁰⁵ Several of these consultees discussed one or more specific issues in their response:

- (1) 10 did not foresee any issues with other forms of affordable housing, or positively considered that other forms would fit within the current commonhold model;¹⁰⁶
- (2) four referred to issues accommodating particular forms of affordable housing within commonhold (other than shared ownership, which is addressed in question 5);¹⁰⁷ and
- (3) three raised concerns regarding the impact of commonhold on affordable housing more generally.¹⁰⁸

CONSULTEES WHO DID NOT FORESEE ISSUES

6.2 Ten consultees¹⁰⁹ did not foresee any issues with other forms of affordable housing, or positively considered that other forms would fit within the current commonhold model.

¹⁰⁵ A2Dominion Housing Group Ltd; Paul Sams; Pinsent Masons LLP; Places for People; Prof James Driscoll; R M Campbell-Barr; Ray Harling; Redrow Homes Limited; Leasehold Reform Group; Birmingham Law Society; Stan Marlow; Stuart Ryan; Susan Ellis; the Berkeley Group Holding plc; Trowers & Hamblins LLP; British Property Federation; Carol Kerby; Catherine Margaret Charles; CRELA; Alan Davis; David Croydon; David Robinson; Derrick Fuller-Webster; Alan Mitchell; Fieldfisher LLP; Gerlinde Gniewosz; Graham Paddock; Alex Quinn; Heather Keates; Irwin Mitchell LLP; J Brown; Laurence Target; Linden Limited; Mary Dudley Seaver; Osborne Clarke Solicitors; McCarthy & Stone; Michael Bowen; Barratt plc; Association of Retirement Housing Managers; Home Builders Federation; Conveyancing Association; Coastline Housing.

¹⁰⁶ R M Campbell-Barr; Ray Harling; Birmingham Law Society; Carol Kerby; Alan Davis; Derrick Fuller-Webster; Alex Quinn; Laurence Target; Linden Limited; Mary Dudley Seaver.

¹⁰⁷ A2 Dominion Housing Group Ltd; Berkeley Group Holdings plc, Trowers & Hamblins LLP; Places for People. See paras 5.26 to 5.32 for discussion relating to the incompatibility of commonhold with shared ownership.

¹⁰⁸ Leasehold Reform Group; Barratt Plc; Coastline Housing.

¹⁰⁹ R M Campbell-Barr; Ray Harling; Birmingham Law Society; Carol Kerby; Alan Davis; Derrick Fuller-Webster; Alex Quinn; Laurence Target; Linden Limited; Mary Dudley Seaver.

DIFFICULTIES INCORPORATING PARTICULAR FORMS OF AFFORDABLE HOUSING

6.3 Four consultees referred to one or more issues accommodating particular forms of affordable housing within commonhold (other than shared ownership, which is addressed in paragraphs 5.26 to 5.32 above):¹¹⁰

- (1) two consultees raised issues relating to shared equity and co-ownership trusts;¹¹¹
- (2) two consultees raised issues regarding rent to buy or right to buy;¹¹² and
- (3) one consultee raised issues relating to affordable rental housing.¹¹³

Shared equity and co-ownership trusts

6.4 Trowers & Hamblins LLP and Places for People identified issues which could hinder the use of shared equity within commonhold. Trowers & Hamblins LLP stated that:

shared equity products which are based on a mortgage model should still work on a commonhold scheme, although they have their own issues as since March 2014 they are now FCA regulated which makes them very unattractive for traditional providers of social housing.

6.5 Trowers & Hamblins LLP also pointed out that co-ownership trusts carry a high ATED tax.

Right-to-buy and rent-to-buy

6.6 Two consultees referred to issues incorporating the rent to buy and right to buy within commonhold.¹¹⁴

6.7 Places for People stated:

we would expect rent to buy schemes would be incompatible with commonhold in the same way that shared ownership schemes are not suitable. Rent to buy tenants purchase their home on a shared ownership lease and so commonhold is currently impossible for this product.

6.8 The Berkeley Group Holding plc explained:

tenants of affordable housing rented from a registered provider have rights to buy. [Our] expectation of commonhold is that the registered provider would take a whole apartment block of affordable housing. Whether this would work for rights to buy would depend on how easy it is to sell part of a single commonhold once that commonhold is in place. Alternatively, would this mean that the registered provider has to acquire

¹¹⁰ A2 Dominion Housing Group Ltd; Berkeley Group Holdings plc; Trowers & Hamblins LLP; Places for People.

¹¹¹ Trowers & Hamblins LLP; Places for People.

¹¹² Places for People; Berkeley Group Holding plc.

¹¹³ A2Dominion Housing Group Ltd.

¹¹⁴ Places for People; Berkeley Group Holding plc.

each residential unit individually? If so, this would be a cumbersome and unnecessarily expensive process for both registered provider and developer.

Affordable rental

6.9 A2Dominion Housing Group Ltd referred to issues incorporating affordable rental housing “in particular with our general needs, affordable rented, keyworker and social rented schemes/properties”.

IMPACT OF COMMONHOLD ON AFFORDABLE HOUSING MORE GENERALLY

6.10 Three consultees raised issues with the commonhold legislation that would particularly affect the affordable housing sector.¹¹⁵

Different contributions for affordable housing¹¹⁶

6.11 Barratt Plc stated:

the potential for differentials in contributions to reflect use of shared facilities commonly required in developments with a high affordable housing element are also incompatible with the commonhold structure or model.

Balancing interests

6.12 The Leasehold Reform Group added:

we have concerns that without an institutional freeholder, there is no stakeholder to ensure that the interests of social housing tenants and commonhold owners are appropriately balanced.

Implications for repair and maintenance

6.13 Coastline Housing was concerned about the requirement for housing associations to be members of the commonhold association and the impact this could have on repair and maintenance within commonhold:

the requirement for a commonhold association wherever there are shared areas would effectively mean that as a Housing Association we would be required to become members of separate associations for each block where we currently own the freehold. ... The management implication with regard to percentage of votes, the requirement to vote and hold meetings, and providing a director would present a significant time and staffing challenge. This could also have damaging implications with regard to timely repair and maintenance of the block as a whole.

¹¹⁵ Leasehold Reform Group; Barratt Plc; Coastline Housing.

¹¹⁶ Allocations of costs, and differing contributions, were discussed further in response to question 3.

Reduction in use of section 106 agreements

6.14 The Leasehold Reform Group stated that commonhold may lead to a reduction in the use of section 106 agreements¹¹⁷ and discussed the consequences of this. They said a number of housebuilders expect section 106 agreements and Community Infrastructure Levy contributions would be reduced on commonhold developments and, consequently, there would be a reduction in supply of social and intermediate housing.

Loss of institutional investment and ground rent

6.15 The Leasehold Reform Group also considered that the inability to collect ground rents in commonhold would have an impact on the provision of social housing, stating:

we would expect that the absence of institutional investment in commonhold would impact the viability of developments and so reduce the absolute number of shared ownership or affordable homes which can be delivered. A number of housebuilders have expressed concerns to us about the impact the elimination of ground rents and widespread use of commonhold would have on a secure pipeline of affordable homes.

¹¹⁷ Section 106 agreements are agreements between local authorities and developers which must be satisfied as a condition to obtaining planning permission. As well as affordable housing requirements, they also commonly include a requirement to provide public open space, educational facilities, highways or town centre improvements as part of a new development.

Question 7: commonhold and mortgage lenders

Question 7

If you are a mortgage lender:

- (a) Do you currently lend on commonhold?
- (b) What influenced your decision to lend or not to lend on commonhold property?
- (c) What would make commonhold more satisfactory security?

7.1 Eleven consultees¹¹⁸ answered this question. Of those, only three could be considered “lenders” (or representatives of lenders).¹¹⁹ The other respondents included academics, solicitors and members of the public.

QUESTION 7 (A) DO YOU CURRENTLY LEND ON COMMONHOLD? AND

QUESTION 7 (B) WHAT INFLUENCED YOUR DECISION TO LEND OR NOT TO LEND ON COMMONHOLD PROPERTY?

7.2 Responses received to these questions raised overlapping issues and will be considered together.

7.3 None of the consultees had actually lent on a commonhold, or had experience of its members lending on commonhold.

7.4 However, each of the three lenders (or representatives of lenders) responding said they, or a majority of their members, are or would be willing in principle to lend on commonhold. They also pointed out that the position may be more optimistic than indicated in our Call for Evidence. UK Finance and the Building Societies Association disagreed with the suggestion in the Call for Evidence that a significant number of lenders¹²⁰ were unwilling to lend on commonhold. UK Finance explained that those who were prepared to lend on commonhold represented 60% of new lending in 2016. UK Finance also suggested “other lenders would probably be prepared to offer mortgages on commonhold properties but have not made provision to because of the very low numbers”. The Building Societies Association also clarified that 57% (24 out of 42) of building societies in England and Wales were willing to lend.

¹¹⁸ Peter Williams; Prof James Driscoll; Trowers & Hamblins LLP Solicitors; Yorkshire Building Society Group; Building Societies Association; Michael Bowen; Home Builders Federation; UK Finance; Graham Paddock; Dr C Hakim; Derrick Fuller-Webster.

¹¹⁹ UK Finance; Building Societies Association; Yorkshire Building Society Group.

¹²⁰ The figure given was 70%.

7.5 Lenders and representative bodies referred to a number of advantages of commonhold over leasehold.

7.6 The Yorkshire Building Society Group said that it welcomed commonhold and explained that commonhold already has an edge over leasehold in the following ways.

- (1) The owner would no longer have a diminishing asset, so a commonhold unit might command a premium over leasehold.
- (2) The CCS is written in plain English and is easier to understand than a lease.
- (3) The CCS assumed that owners would have a greater degree of involvement in the management of their development, without the complication of a separate management company.
- (4) Subsequent sales of units ought to be quicker and cheaper as it would not be necessary to obtain consents from landlords.

7.7 The Yorkshire Building Society Group also referred to the lack of forfeiture within commonhold, saying:

the Society is seeing an increase in forfeiture proceedings without any prior warning being given to it which increases the risk to its security. In some cases the forfeiture action has already been successful which means a lender like us has lost its security and has to obtain relief from forfeiture in order to reinstate its security. The costs which have to be paid by a lender, (which invariably include the use of specialist external lawyers) to ensure that relief from forfeiture is obtained and its security reinstated, can be significant and those costs are added to the borrower's mortgage debt with the consequent erosion of equity which such payment entails.

7.8 The Building Societies Association also identified potential advantages of commonhold over leasehold, noting that:

- (1) the owner will have a non-diminishing asset;
- (2) units could not be subject to increasing ground rents or other onerous terms one might find in leasehold; and
- (3) commonhold was not subject to forfeiture, which could result in a lender losing its security.

7.9 UK Finance agreed with the Yorkshire Building Society Group and the Building Societies Association that commonhold has the potential to overcome some of the disadvantages associated with leasehold.

7.10 Derrick Fuller-Webster considered that lenders should have greater incentive to lend on commonhold units:

a mortgage lender has more security and incentive to lend on Commonhold properties than leasehold. The underlying reason being that the borrower in a Commonhold

[scenario] OWNS the "lot" and an equal share in Common property unfettered by a Landlord or freeholder.

QUESTION 7 (C) WHAT WOULD MAKE COMMONHOLD MORE SATISFACTORY SECURITY?

7.11 The consultees who responded to question 7(c) can be separated into lenders and their representatives, and other consultees. We analyse the issues raised by each group below.

Issues raised by lenders and their representatives

7.12 The Building Societies Association suggested that some of the difficulties over security stem from the use of company law, although they did not give further explanation, and stated that the Law Commission should "revisit whether a new form of corporate vehicle would rectify any defects in the current situation". The application of company law is discussed in more detail in question 3. The Building Societies Association also stressed that the association must clearly be under sufficient obligation to repair so as to ensure that units do not lose value, to the detriment of lenders if they had to sell on repossession.

7.13 UK Finance suggested that its members' concerns over commonhold revolved around five issues:

- (1) what would happen to their security in the event of the voluntary termination of the commonhold. The question of whether a lender should have voting rights on termination was also raised;
- (2) the possible liability of customers if the commonhold association became insolvent, which might possibly also fall on the lender or affect the lender's security;
- (3) concerns over poor management (failure to repair or insure; difficulty in enforcing payment from unit owners; and a failure on the part of unit owners to engage in collective management);
- (4) the difficulty in assessing the value of a commonhold unit as a security; and
- (5) the perception that commonhold was too inflexible to cope with mixed developments, which is discussed in more detail in question 5 above.

Issues raised by other consultees

7.14 Seven other consultees responded to this question,¹²¹ noting that lenders had particular concerns over commonhold. They stated that if these concerns were not addressed, then commonhold would never take off.

7.15 Peter Williams made the point that:

¹²¹ Professor James Driscoll; Peter Williams; Trowers & Hamblins LLP; Michael Bowen; Home Builders Federation; Graham Paddock; Dr C Hakim.

There is a chicken-and-egg issue here. Lenders won't lend on commonhold until it is seen to be a success. And it won't be a success unless lenders start to lend on it. That's a difficult problem to resolve.

7.16 He also explained that, as there were so few commonholds, it was difficult for valuers to value them, and they might even apply a 10% discount to the leasehold value, as a safety margin.

7.17 Michael Bowen agreed, noting that the lack of confidence in commonhold would itself make a commonhold unit a “risky security”.

7.18 Graham Paddock said that lenders must be able to:

register mortgages and enforce judgments against the owners of commonhold units as effectively as they currently can against the owners of freehold properties and against leaseholders.

7.19 Dr C Hakim suggested that:

mortgage lenders dislike commonhold because they know that repairs are even less likely to be done if all leaseholders need to agree on what and when and how much to spend.

Question 8: other issues relating to commonhold and the property sector

Question 8

Are you aware of any other issues which makes commonhold unsuitable or unattractive to any part of the property sector (for example, mortgage lenders, developers, commercial tenants, landlords)?

8.1 Twenty-eight consultees raised one, or more, issues which made commonhold unsuitable or unattractive to any part of the property sector, which have not been discussed in detail elsewhere in this analysis of responses.¹

- (1) Eleven consultees raised concerns over the management of a commonhold.²
- (2) Eleven consultees discussed the lack of remedies where commonhold contributions remain unpaid.³
- (3) Three consultees raised concerns for buy-to-let investors.⁴
- (4) One consultee discussed commonhold from the perspective of the insurance industry.⁵
- (5) Two consultees discussed the incompatibility of commonhold with some forms of Islamic financing.⁶
- (6) One consultee discussed the interaction of commonhold with the Law Commission's report on easements, covenants and profits-à-prendre.⁷

¹ ARCO; ARMA; Berkeley Group Holding plc; Birmingham Law Society; Boodle Hatfield LLP; British Insurance Brokers' Association; Carol Carter; Christopher Jessel; City of London Law Society; David Robinson; Dr C Hakim; Fieldfisher LLP; FirstPort; Home Builders Federation; IRPM; Lord Walker of Gestingthorpe; National Leasehold Campaign; Nicholas Warren; Peter Smith.; Pinsent Masons LLP; Professor James Driscoll; Stan Marlow; The Law Society; The National Trust; the Property Ombudsman; Trevor Leigh; UK Finance; Yorkshire Building Society Group.

² Pinsent Masons LLP; the Property Ombudsman; UK Finance; Yorkshire Building Society Group; IRPM; ARCO; ARMA; Home Builders Federation; Dr C Hakim; Stan Marlow; National Leasehold Campaign.

³ Birmingham Law Society; The Berkeley Group Holding plc; Trevor Leigh; Christopher Jessel; City of London Law Society; David Robinson; ARMA; Nicholas Warren; Boodle Hatfield LLP; FirstPort; Peter Smith.

⁴ Berkeley Group Holdings plc; Carol Carter; Lord Walker of Gestingthorpe.

⁵ British Insurance Brokers' Association.

⁶ Prof James Driscoll; Fieldfisher LLP.

⁷ The Law Society.

(7) One consultee explained the inability of the National Trust to use commonhold.⁸

Issues around the management of a commonhold

8.2 Eleven consultees⁹ raised concerns that owners would be unlikely to be actively involved in the management, which could have wider implications across the property sector.¹⁰

8.3 The Property Ombudsman stated that:

commercial tenants may wish to deal with professional management companies rather than other occupants tasked with management responsibilities.

8.4 Stan Marlow noted that the “culpability and co-operation of other occupants” would need to be considered and the National Leasehold Campaign said that the need to:

find residents that are happy to devote time and effort to commonhold need to be considered. This could be particularly problematic in developments that are predominately buy-to-let or owned by offshore investors. It could also apply in developments that are large (when there are a large number of people across the estate/block to manage) or small and no one individual in the block wants to take responsibility for input to the commonhold.

Lack of remedies where commonhold contributions remain unpaid

8.5 Eleven consultees¹¹ raised concerns over the mechanisms available to the commonhold association to enforce unit owners’ financial obligations.

8.6 Trevor Leigh said:

commonhold cannot work unless there is a tough regime for getting non-payers to cough up. In reality mortgage lenders will lay out if there is equity rather than having their security sold off on the cheap.

8.7 The Berkeley Group Holding plc argued that arrears of service charges are rare in leasehold structures because of the possibility of forfeiture, which is not available in commonhold. They also said:

arrears are likely to be more common in a commonhold structure, particularly as commonhold associations will have to take proceedings against their own members

⁸ The National Trust.

⁹ Pinsent Masons LLP; the Property Ombudsman; UK Finance; Yorkshire Building Society Group; IRPM; ARCO; ARMA; Home Builders Federation; Dr C Hakim; Stan Marlow; National Leasehold Campaign.

¹⁰ In response to question 5; a number of developers also raised concerns regarding the inability of commonhold to provide sufficiently for the ongoing management and maintenance of their developments: see paras 5.10 to 5.15 **Error! Reference source not found.** Similar concerns were also discussed in response to question 9.

¹¹ Birmingham Law Society; The Berkeley Group Holding plc; Trevor Leigh; Christopher Jessel; City of London Law Society; David Robinson; ARMA; Nicholas Warren; Boodle Hatfield LLP; FirstPort; Peter Smith.

(which we know from our experience of resident management companies they are loathe to do).

- 8.8 Christopher Jessel explained that the current procedure for enforcing unpaid contributions is inadequate. He said:

if the service charge is unpaid, even if the association does go to court and obtain an order to pay, that may not be the end. If the order is not complied with it can get a charging order and ultimately sell the unit. The process is long drawn out and expensive and in the meantime the association is deprived of income. An unscrupulous unit holder has opportunities to procrastinate. The other unit holders have to live with the defaulting unit holder and cover any shortfall in maintenance costs and will have to meet the expenses including a failed arbitration or mediation. If the unit holder either cannot or will not pay, it will be a waste of time going through the motions.

- 8.9 ARMA added that the ability to charge interest on unpaid contributions “may under some circumstances not be a deterrent to not paying and insufficient funds would therefore be collected”.

Concerns for buy-to-let investors

- 8.10 Three consultees¹² explained that commonhold is unattractive for buy-to-let investors.

- 8.11 Berkeley Group Holdings plc noted:

for commercial tenants and residential buy-to-let investors, the ability of the commonhold association to divert rental income towards the payment of service charge arrears is unattractive unless strong protection is put in place to prevent income diversion in the event of a genuine dispute.

- 8.12 Carol Carter explained:

buy-to-let landlords avoid any purchases which depend on others' decisions - we could be put out of business by someone else's decision to change the rules! So we always seek to buy outright where possible.

- 8.13 Lord Walker of Gestingthorpe raised the concern that commonhold may be particularly unattractive for overseas purchasers.

Most recent developments of flats in London seem to have been aimed at overseas buyers (several were advertised in Hong Kong and Singapore before they were marketed in this country). Many overseas buyers of flats leave them unoccupied, or sublet them, and are unlikely to wish to be involved in management responsibilities, especially if that involves membership of a company incorporated in this country.

¹² Berkeley Group Holdings plc; Carol Carter; Lord Walker of Gestingthorpe.

Insurance and commonhold

- 8.14 The British Insurance Brokers' Association referred to issues surrounding the insurance of commonholds. It stated:

currently it is only a requirement for a commonhold to insure against fire. Therefore there is a risk where the flats are insured and your flat is on the fifth floor and there is a major flood then you are dependent on the flats below you being insured for flood so they can be rebuilt. If they have not purchased cover for flood then this would create a serious problem for not only those on the ground floor, but those on the fifth floor too, who had purchased suitable insurance... It is really important that a commonhold agreement is drafted in such a way that the insurance provisions in the agreement are worded in such a way to take into account the respective party interests, so that there is no dispute at the time of the claim in respect of damage to common areas.

Incompatibility with some forms of Islamic financing

- 8.15 Two consultees¹³ explained that, in addition to causing problems with shared ownership, the prohibition on residential leases over seven years existing in commonhold has created difficulties for some Islamic finance arrangements.

Interaction of commonhold with the Law Commission's report on easements, covenants and profits-à-prendre

- 8.16 The Law Society raised a number of points regarding the interaction of the commonhold project with the Law Commission's report Making Land Work.¹⁴

The Law Commission's 2011 report ... also addressed the present difficulties in making positive obligations run between successor freehold owners. We would urge the Government to proceed with this legislation to modify covenant law which would increase the flexibility for developers of housing to use freehold schemes and allow them to be less dependent on leasehold models of disposal. We consider that the enactment of these proposals might reduce the need for further review and reconsideration of the commonhold regime. At least it could provide an additional or interim solution.

- 8.17 In Making Land Work, we said that the creation of land obligations would not be appropriate for complex management arrangements, and that commonhold or leasehold structures would continue to be the correct approach.¹⁵ The Law Society did not agree with that view.

It is stated in [the Report] that no provision is made for management structures, nor any financial structures such as interest payments or sinking funds; the latter can be managed within the terms of an obligation. It goes on to say that "simple management structures could be achieved using a management company such as is currently used to support estate rent charges and also between leasehold owners of land." Estate rent charges are generally considered to have several significant drawbacks, even though without positive covenant enforceability in relation to freehold estate disposals,

¹³ Prof James Driscoll; Fieldfisher LLP.

¹⁴ Making Land Work: Easements, Covenants and Profits à Prendre (2011) Law Com No 327.

¹⁵ Making Land Work: Easements, Covenants and Profits à Prendre (2011) Law Com No 327, para 5.91.

they are the only means of enforcing positive covenants for meeting and contributing towards the cost of the provision of services in freehold estate schemes. Even so, we are not certain why the Report is content to refer to leasehold schemes, which are supported by enforceability of positive covenants, as being in order but conclude in [the Report] that they might not work for freehold arrangements. We see no reason why not. ... We are not convinced that this statement [in the Report] can be substantiated, but we say this with due regard to what is, in all other respects, an excellent report which unfortunately continues to gather dust on the shelves of the Ministry of Justice.

National Trust

8.18 The National Trust explained that:

the majority of the National Trust estate has been declared inalienable. As such, for the majority of our properties, the Trust is unable to make use of the commonhold structure because that would involve parting with the freehold (something we are unable to do with inalienable land).

Question 9: wider issues affecting the success of commonhold

Question 9

Government is considering wider issues which may affect the success of commonhold including:

- financial incentives to prefer leasehold
- lack of consumer awareness
- difficulty obtaining finance

(a) Do you think these issues may prevent the take up of commonhold?

(b) What other issues need to be addressed in order to re-invigorate commonhold?

(c) Should there be incentives to use commonhold (financial or otherwise), if so what should those incentives be?

(d) Should commonhold be compelled? If so, in what circumstances?

9.1 One-hundred consultees¹ responded to this question.

¹ A2Dominion Housing Group Ltd; AgeUK; Alan Davis; Alan Mitchell; ARMA; Association of Retirement Housing Managers; Barbara Gardener; Barbara Thorne; Barratt Plc; Birmingham Law Society; Bramshott Place Village Residents' Association; British Property Federation; Building Societies Association; Carol Carter; Catherine Margaret Charles; Christine Jackson; City of London Law Society; Coastline Housing; Colette Boughton; Conveyancing Association; CRELA; David Croydon; David Johnson; David Robinson; Derrick Fuller-Webster; Dr C Hakim; Ellen Andrew; Emerson Group; Fieldfisher LLP; Fiona Campbell; FirstPort; Gerlinde Gniewosz; Gill Waystrode; Graham Paddock; Hazel Oliver; Heather Keates; Heulwen Egerton; Home Builders Federation; Howard Davies; IRPM; Irwin Mitchell LLP; J Brown; Jackie Roe; Jo Rostron; John Byrne; John H Cooney; Kevin Mullery; Kheya Bag; Laurence Target; Leasehold Reform Group; Leila Allen; Letitia Crabb; Linden Limited; Lord Walker of Gestingthorpe; Marathon House RTM Company Ltd; Mari Knowles; McCarthy & Stone; Michael Bowen; Michael Harvey; Michael Kucharski; Mrs K Melbye; N A Carnie; National Leasehold Campaign; National Trust; Nikolas Anderson; Oliver Yun; Osborne Clarke Solicitors; Paul Clark; Paul Sams; Peter Bellenes; Peter Smith; Peter Williams; Philip Griffiths; Pinsent Masons LLP; Places for People; Prof James Driscoll; Quoin Commonhold Association; R M Campbell-Barr; Rawdon Crozier; Ray Harling; Redrow Homes Limited; Rodney Townson; Roger Jenking; Sandra Virgo; Shula Rich; Stan Marlow; Stephen Bedford; Stuart Ryan; Susan Ellis; Susan Stuckey; Suzanne McGreavy; The Berkeley Group Holding plc; the Law Society; the Property Ombudsman; Tony Martin; Trevor Leigh; Trowers & Hamblins LLP; UK Finance; Wrigleys Solicitors LLP; Yorkshire Building Society Group.

QUESTION 9(A) DO YOU THINK FINANCIAL INCENTIVES TO PREFER LEASEHOLD, LACK OF CONSUMER AWARENESS AND DIFFICULTY OBTAINING FINANCE MAY PREVENT THE TAKE UP OF COMMONHOLD?

9.2 Seventy-five consultees² responded to this question.

9.3 All of these consultees, apart from the Leasehold Reform Group, answered that yes, one or more of these issues may prevent the take up of commonhold. Many of these consultees discussed one or more specific issues in their response.

(1) Fifty specifically noted that financial incentives to prefer leasehold were an issue.³

(2) Twenty specifically noted that lack of consumer awareness was an issue.⁴

(3) Twenty specifically noted that difficulty obtaining finance was an issue.⁵

² A2Dominion Housing Group Ltd; Alan Mitchell; ARMA; Association of Retirement Housing Managers; Barbara Gardener; Barbara Thorne; Barratt Plc; Birmingham Law Society; Bramshott Place Village Residents' Association; British Property Federation; Building Societies Association; Carol Carter; Catherine Margaret Charles; Christine Jackson; City of London Law Society; Coastline Housing; Conveyancing Association; CRELA; David Croydon; David Johnson; Derrick Fuller-Webster; Ellen Andrew; Emerson Group; Gill Waystrode; Graham Paddock; Hazel Oliver; Heather Keates; Heulwen Egerton; Home Builders Federation; Howard Davies; IRPM; Irwin Mitchell LLP; J Brown; Jackie Roe; John Byrne; Kevin Mullery; Laurence Target; Leasehold Reform Group; Leila Allen; Letitia Crabb; Linden Limited; Marathon House RTM Company Ltd; Mari Knowles; McCarthy & Stone; Michael Bowen; Michael Harvey; Michael Kucharski; Mrs K Melbye; N A Carnie; National Leasehold Campaign; Nikolas Anderson; Oliver Yun; Osborne Clarke Solicitors; Paul Sams; Peter Williams; Places for People; Prof James Driscoll; Quoin Commonhold Association; R M Campbell-Barr; Ray Harling; Redrow Homes Limited; Rodney Townson; Sandra Virgo; Shula Rich; Stan Marlow; Stephen Bedford; Stuart Ryan; Susan Ellis; Suzanne McGreavy; The Berkeley Group Holding plc; the Property Ombudsman; Trevor Leigh; Trowers & Hamblins LLP; UK Finance; Wrigleys Solicitors LLP.

³ Association of Retirement Housing Managers; Barbara Gardener; Barbara Thorne; Barratt Plc; Birmingham Law Society; Bramshott Place Village Residents' Association; British Property Federation; Christine Jackson; City of London Law Society; Conveyancing Association; David Croydon; Derrick Fuller-Webster; Emerson Group; Gill Waystrode; Graham Paddock; Hazel Oliver; Heather Keates; Heulwen Egerton; Home Builders Federation; IRPM; Irwin Mitchell LLP; J Brown; Jackie Roe; John Byrne; Laurence Target; Leila Allen; Letitia Crabb; Marathon House RTM Company Ltd; McCarthy & Stone; Michael Bowen; Michael Kucharski; Mrs K Melbye; N A Carnie; National Leasehold Campaign; Nikolas Anderson; Osborne Clarke; Paul Sams; Peter Williams; Places for People; Professor James Driscoll; R M Campbell-Barr; Redrow Homes Limited; Rodney Townson; Sandra Virgo; Shula Rich; Stephen Bedford; Stuart Ryan; Suzanne McGreavy; the Property Ombudsman; Trevor Leigh.

⁴ A2Dominion Housing Group Ltd; Professor James Driscoll; Birmingham Law Society; Stephen Bedford; Suzanne McGreavy; UK Finance; Building Societies Association; Carol Carter; IRPM; Leila Allen; Barratt Plc; Quoin Commonhold Association; Conveyancing Association; Alan Mitchell; Places for People; Barbara Thorne; Ray Harling; City of London Law Society; Association of Retirement Housing Managers; N A Carnie.

⁵ Paul Sams; Places for People; Redrow Homes Limited; Birmingham Law Society; Emerson Group; Wrigleys Solicitors LLP; Hazel Oliver; Jackie Roe; Coastline Housing; Barratt Plc; Osborne Clarke Solicitors; Barbara Thorne; Stephen Bedford; Susan Ellis; The Berkeley Group Holding plc; The Property Ombudsman; David Johnson; Ellen Andrew; ARMA; Oliver Yun.

9.4 However, seven consultees⁶ thought that one or more of these issues would not prevent the take up of commonhold. Of those:

- (1) one specifically stated that financial incentives to prefer leasehold were not an issue preventing take up;⁷
- (2) six specifically stated that consumer awareness was not an issue preventing take up;⁸ and
- (3) two specifically stated that difficulty obtaining finance was not an issue preventing take up.⁹

Financial incentives to prefer leasehold

Consultees who felt that financial incentives were an issue

9.5 Fifty consultees said financial incentives to prefer leasehold were an issue preventing the take up of commonhold.¹⁰ Many of these consultees discussed one or more specific issues in their response:

- (1) 47 consultees specifically noted the loss of financial incentives, such as a loss of control over service charge fees or the absence of ground rent and enfranchisement premiums in commonhold, and the resultant loss of long term investment value;¹¹

⁶ Ellen Andrew; J Brown; John Byrne; Leasehold Reform Group; Peter Williams; The Berkeley Group Holding plc; UK Finance.

⁷ Leasehold Reform Group.

⁸ Leasehold Reform Group; Peter Williams; The Berkeley Group Holding plc; Ellen Andrew; J Brown; John Byrne.

⁹ UK Finance; J Brown.

¹⁰ Association of Retirement Housing Managers; Barbara Gardener; Barbara Thorne; Barratt Plc; Birmingham Law Society; Bramshott Place Village Residents' Association; British Property Federation; Christine Jackson; City of London Law Society; Conveyancing Association; David Croydon; Derrick Fuller-Webster; Emerson Group; Gill Waystrode; Graham Paddock; Hazel Oliver; Heather Keates; Heulwen Egerton; Home Builders Federation; IRPM; Irwin Mitchell LLP; J Brown; Jackie Roe; John Byrne; Laurence Target; Leila Allen; Letitia Crabb; Marathon House RTM Company Ltd; McCarthy & Stone; Michael Bowen; Michael Kucharski; Mrs K Melbye; N A Carnie; National Leasehold Campaign; Nikolas Anderson; Osborne Clarke; Paul Sams; Peter Williams; Places for People; Professor James Driscoll; R M Campbell-Barr; Redrow Homes Limited; Rodney Townson; Sandra Virgo; Shula Rich; Stephen Bedford; Stuart Ryan; Suzanne McGreavy; the Property Ombudsman; Trevor Leigh.

¹¹ Association of Retirement Housing Managers; Barbara Gardener; Barbara Thorne; Barratt Plc; Birmingham Law Society; Bramshott Place Village Residents' Association; British Property Federation; Christine Jackson; City of London Law Society; Conveyancing Association; David Croydon; Derrick Fuller-Webster; Emerson Group; Gill Waystrode; Graham Paddock; Hazel Oliver; Heulwen Egerton; IRPM; Irwin Mitchell LLP; J Brown; Jackie Roe; John Byrne; Laurence Target; Leila Allen; Letitia Crabb; Marathon House RTM Company Ltd; McCarthy & Stone; Michael Kucharski; Mrs K Melbye; N A Carnie; National Leasehold Campaign; Nikolas Anderson; Osborne Clarke; Paul Sams; Peter Williams; Places for People; Prof James Driscoll; R M Campbell-Barr; Redrow Homes Limited; Rodney Townson; Sandra Virgo; Shula Rich; Stephen Bedford; Stuart Ryan; Suzanne McGreavy; the Property Ombudsman; Trevor Leigh.

- (2) four consultees¹² raised concerns over whether commonhold units would be as marketable as leasehold units.

9.6 For example, the Emerson Group explained that developing leasehold properties allowed it to:

benefit from retained ground rents built up over the years, but these rents have always been within the generally accepted bounds of reasonableness Of course, if leaseholds are to be abolished or the rents heavily restricted then [our] clients will have to reconsider the business model, but consider that, as currently constituted, commonholds have no advantage to either the developer or the individual purchasers.

9.7 The Birmingham Law Society referred to the capital returns and enfranchisement premiums available to the developer in leasehold. It stated:

a developer in the current market can secure a better capital return by using leasehold. Even if the freehold is not sold on to a third party by the developer, they can normally count on the slow uptake of leasehold enfranchisement to produce a long term income.

9.8 Letitia Crabb also explained that the:

lure of ground rents and management charges have remained strong enough to ensure that leasehold is the first choice of legal vehicle for developers and investors. ... indeed there has been a resurgence of leasehold tenure in areas of the housing market where it had been thought to have been eradicated, vis. freestanding homes which could and should have been offered for sale with freehold title.

9.9 The Bramshott Place Village Residents' Association noted the draw of financial incentives in the area of retirement housing. It said developers "anticipate substantial profits both from the initial development and the longer term management of such communities". It therefore considered it "highly unlikely" that developers will be prepared to "convert existing developments or to market new developments on a commonhold basis without some element of compulsion".

9.10 Seven consultees¹³ also stated that financial value would be lost for developers through other aspects of commonhold, such as a loss of control over service charges, or that they might face additional costs in choosing to adopt commonhold. Laurence Target summarised:

developers face additional cost in using commonhold - their conveyancers will not be familiar with it, but will have forms of leases that will sell, however inadequate they may actually be for tenants.

¹² Heather Keates; Michael Bowen; Home Builders Federation; Irwin Mitchell LLP.

¹³ Barbara Gardener; Heulwen Egerton; John Byrne; Laurence Target; Stephen Bedford; Gill Waystrode; Jackie Roe.

9.11 Four consultees¹⁴ raised concerns over whether commonhold units would be as marketable as leasehold units. Irwin Mitchell LLP noted:

we have also found that developers were unable to find reliable evidence that the properties being sold would be worth more if they were sold commonhold as opposed to leasehold. ... This added to the lack of appetite for the developers to look at commonhold as a realistic alternative to leasehold.

9.12 The Home Builders' Association expressed concern about the marketability of commonhold units to commercial owners, given the potential for the CCS to be changed at a later date. They said that the ability to vary the CCS "could affect business-critical services such as security or cleansing and the lack of certainty would either make commercial space less valuable or saleable".

Consultees who felt that financial incentives were not an issue

9.13 One consultee specifically stated that financial incentives to prefer leasehold were not an issue preventing the take up of commonhold.¹⁵

9.14 The Leasehold Reform Group said:

there are no incentives to prefer leasehold other than that leasehold is an inherently more flexible structure which encourages investment in housing and the involvement of an institutional freeholder.

Consumer awareness

Consultees who felt that lack of consumer awareness was an issue

9.15 Twenty consultees specifically noted that lack of consumer awareness was an issue preventing the take up of commonhold.¹⁶

9.16 UK Finance said that "it seems likely that lack of consumer awareness is a factor in the low take-up of commonhold". However, it also noted that it is possible "that consumers who are aware of commonhold do not want to take it up for other reasons (such as an unwillingness to be more involved in the development's arrangements)".

9.17 The Conveyancing Association and Places for People agreed that commonhold "might 'put buyers off' due to unfamiliarity".

9.18 Carol Carter reflected that "unless it is 100% clear what we are committing to, and what it will cost us now and in the future, we would be irresponsible to make that commitment".

¹⁴ Heather Keates; Michael Bowen; Home Builders Federation; Irwin Mitchell LLP.

¹⁵ Leasehold Reform Group.

¹⁶ A2Dominion Housing Group Ltd; Prof James Driscoll; Birmingham Law Society; Stephen Bedford; Suzanne McGreavy; UK Finance; Building Societies Association; Carol Carter; IRPM; Leila Allen; Barratt Plc; Quoin Commonhold Association; Conveyancing Association; Alan Mitchell; Places for People; Barbara Thorne; Ray Harling; City of London Law Society; Association of Retirement Housing Managers; N A Carnie.

- 9.19 Alongside this, consultees also referred to certain conceptions that had developed about commonhold, such as a perceived complexity,¹⁷ that it is not a realistic alternative to leasehold,¹⁸ or that it could only be used for flats.¹⁹

Consultees who felt that lack of consumer awareness was not an issue

- 9.20 Six consultees specifically stated that consumer awareness was not an issue preventing the take up of commonhold.²⁰

- 9.21 Peter Williams stated that consumers are not generally concerned about tenure.

I suspect that lack of consumer awareness is unimportant ... I think that people look for homes they like/can afford. They won't worry about what type of tenure it is until they get to the negotiation stage.

- 9.22 The Berkeley Group Holding plc explained that buying any type of property interest is a complex matter.

Consumer awareness is unlikely to be a major factor. For many buyers, buying property is a complex matter. Few have any detailed knowledge on tenure, be it freehold (where use and enjoyment are often dependent on a series of covenants and easements) or leasehold. Similarly, mortgage products are also complex and not fully understood.

Difficulty obtaining finance

Consultees who felt that difficulty obtaining finance was an issue

- 9.23 Twenty consultees²¹ specifically noted that difficulty obtaining finance was an issue preventing the take up of commonhold.

- 9.24 The Berkeley Group Holding plc and the Property Ombudsman both commented that it is crucial to the success of commonhold that lenders are happy to finance commonhold purchases.

- 9.25 The Emerson Group explained that:

the vast majority of our customers do require funding to purchase houses and therefore we have to take notice of the likely availability of funds.

¹⁷ Barbara Thorne; Ray Harling; City of London Law Society.

¹⁸ Association of Retirement Housing Managers.

¹⁹ N A Carnie.

²⁰ Leasehold Reform Group; Peter Williams; The Berkeley Group Holding plc; Ellen Andrew; J Brown; John Byrne.

²¹ Paul Sams; Places for People; Redrow Homes Limited; Birmingham Law Society; Emerson Group; Wrigleys Solicitors LLP; Hazel Oliver; Jackie Roe; Coastline Housing; Barratt Plc; Osborne Clarke Solicitors; Barbara Thorne; Stephen Bedford; Susan Ellis; The Berkeley Group Holding plc; The Property Ombudsman; David Johnson; Ellen Andrew; ARMA; Oliver Yun.

Consultees who felt that difficulty obtaining finance was not an issue

- 9.26 Two consultees specifically stated that difficulty obtaining finance was not an issue preventing the take up of commonhold.²²
- 9.27 UK Finance stated that it was “not aware that difficulty in obtaining finance is a barrier to commonhold per se, given the numbers of mortgage lenders who accept commonhold”.
- 9.28 We analyse the issues affecting mortgage lenders in more detail in question 7.

QUESTION 9(B) WHAT OTHER ISSUES NEED TO BE ADDRESSED IN ORDER TO RE-INVIGORATE COMMONHOLD?

- 9.29 Twenty consultees²³ responded to this question.
- 9.30 The main issues consultees raised in response to this question were:
- (1) the lack of familiarity with commonhold across the property sector as a whole; and
 - (2) the recent reforms to leasehold making commonhold less desirable.

The property sector’s lack of familiarity with commonhold

- 9.31 Eighteen consultees²⁴ discussed the property sector’s lack of familiarity with commonhold, and a corresponding reluctance to embrace commonhold.
- 9.32 Bramshott Place Village Residents’ Association noted:
- the general lack of experience of commonhold creates further disincentives. In Continental Europe, for example, where such systems are much more common, developers can use off-the shelf models for the articles of association of the commonhold association, which can be quickly and easily verified by the notaries or solicitors of purchasers. In the absence of such models, the legal costs of creating bespoke commonhold associations are likely to be very high. The development of model contracts and articles of association might be helpful.
- 9.33 Susan Ellis felt that, additionally, in order for commonhold to be reinvigorated, “lenders need to agree to lend, and then conveyancers need to embrace it or it will not happen”.

²² UK Finance; J Brown.

²³ A2Dominion Housing Group Ltd; Association of Retirement Housing Managers; Bramshott Place Village Residents’ Association; British Property Federation; Graham Paddock; Jackie Roe; Kevin Mullery; Laurence Target; Marathon House RTM Company Ltd; McCarthy & Stone; Michael Bowen; National Trust; Osborne Clark Solicitors; Paul Clark; Paul Sams; Peter Williams; Pinsent Masons LLP; Stuart Ryan; Susan Ellis; Susan Stuckey.

²⁴ Stuart Ryan; Kevin Mullery; Marathon House RTM Company Ltd; McCarthy & Stone; Bramshott Place Village Residents’ Association; Susan Stuckey; Graham Paddock; Jackie Roe; Osborne Clarke Solicitors; Association of Retirement Housing Managers; Paul Sams; Susan Ellis; National Trust; Peter Williams; Pinsent Masons LLP; Laurence Target; Michael Bowen; A2Dominion Housing Group Ltd.

9.34 Graham Paddock suggested that one other issue to be addressed is:

the reluctance of Councils and other low-cost housing providers to become familiar with and use commonhold in releasing new housing stock to the market, outright or on a shared ownership basis.

Reforms to leasehold

9.35 Five consultees²⁵ suggested that the various reforms which have been made to the leasehold system over the last 60 years made commonhold less attractive. Paul Sams, a real estate lawyer, put it in the following terms.

In addition to the legislation which allows for lease extension, enfranchisement and the Right to Manage being in place, the rights of leaseholders have been greatly improved. It is much easier to challenge service charge demands for instance than it has been in the past.

9.36 Graham Paddock suggested that “the average English/Welsh person thinks that leasehold is ‘good enough’; that it may have flaws; but that most of these have been addressed and the system still works”.

QUESTION 9(C) SHOULD THERE BE INCENTIVES TO USE COMMONHOLD (FINANCIAL OR OTHERWISE), IF SO WHAT SHOULD THOSE INCENTIVES BE?

9.37 Forty-six consultees²⁶ responded to this question.

- (1) Twenty-six consultees²⁷ thought that there should be some form of incentive to use commonhold.
- (2) Fourteen consultees²⁸ thought that there should not be some form of incentive to use commonhold.

²⁵ Paul Sams; British Property Federation; Osborne Clark Solicitors; Graham Paddock; Paul Clark.

²⁶ AgeUK; ARMA; Association of Retirement Housing Managers; Barratt Plc; Birmingham Law Society; Building Societies Association; Catherine Margaret Charles; Conveyancing Association.; CRELA; Derrick Fuller-Webster; Graham Paddock; Heather Keates; Heulwen Egerton; Howard Davies; IRPM; J Brown; Jackie Roe; John Byrne; John H Cooney; Laurence Target; Leasehold Reform Group; Leila Allen; Letitia Crabb; Linden Limited; Lord Walker of Gestingthorpe; Mari Knowles; McCarthy & Stone; Michael Bowen; Michael Harvey; Michael Kucharski; National Leasehold Campaign; Oliver Yun; Osborne Clarke Solicitors; Paul Sams; Peter Williams; Places for People; Quoin Commonhold Association; R M Campbell-Barr; Rawdon Crozier; Redrow Homes Limited; Rodney Townson; Stan Marlow; Susan Ellis; Susan Stuckey; Suzanne McGreavy; UK Finance.

²⁷ AgeUK; ARMA; Barratt Plc; Building Societies Association; CRELA; Derrick Fuller-Webster; Howard Davies; John Byrne; John H Cooney; Leila Allen; Linden Limited; Mari Knowles; Michael Kucharski; National Leasehold Campaign; Oliver Yun; Osborne Clarke Solicitors; Paul Sams; Peter Williams; Places for People; Quoin Commonhold Association; R M Campbell-Barr; Rawdon Crozier; Rodney Townson; Stan Marlow; Susan Ellis; UK Finance.

²⁸ Redrow Homes Limited; Leasehold Reform Group; Birmingham Law Society; Suzanne McGreavy; Catherine Margaret Charles; Heulwen Egerton; IRPM; J Brown; Jackie Roe; McCarthy & Stone; Michael Bowen; Michael Harvey; Association of Retirement Housing Managers; Conveyancing Association.

- (3) Six consultees²⁹ discussed some possible incentives, but did not express an opinion as to whether or not such incentives should be used.

Consultees stating there should be some form of incentive to use commonhold

9.38 Of the 26 consultees stating that there should be some form of incentive to use commonhold, a number discussed one or more specific issues in their response.

- (1) Eight suggested there should be incentives for developers and/or freeholders.³⁰
- (2) Two suggested there should be incentives for lenders.³¹
- (3) Five suggested there should be incentives for leaseholders.³²
- (4) Seven suggested there should be a publicity or consumer awareness campaign.³³

Incentives for developers and freeholders

9.39 Paul Sams suggested:

if developers were given a financial incentive to create new commonholds that would attract interest. Dare I suggest perhaps relaxing Community Infrastructure Levy and section 106 payments due for planning if commonholds were created. In addition the need for social housing on some sites could be relaxed if units were sold commonhold.

9.40 Mari Knowles added that “for developers, a form of tax relief would be beneficial”.

9.41 Rodney Townson thought additionally there should be “some form of allowance to freeholders to compensate for the loss of future income”.

9.42 Barratt Plc agreed, stating that:

the provision of a financial incentive for commonhold would assist. When Help to Buy was introduced there was widespread concern amongst property professionals in relation to the additional complications. This interfered in relation to property purchases. These were overcome by the obvious financial incentives provided by Help to Buy. If the intention is to encourage creation as well as conversion of existing arrangements to commonholds, then any incentive needs to benefit all interested parties. ... The incentive should therefore be financial in order to encourage developers and investor owners of freehold reversions ... compensation allowance

²⁹ Susan Stuckey; Graham Paddock; Heather Keates; Laurence Target; Letitia Crabb; Lord Walker of Gestingthorpe.

³⁰ Paul Sams; Places for People; R M Campbell-Barr; Mari Knowles; Barratt Plc; Rodney Townson; National Leasehold Campaign; AgeUK.

³¹ Paul Sams; Peter Williams.

³² Mari Knowles; Osborne Clarke Solicitors; Barratt Plc; Oliver Yun; ARMA.

³³ UK Finance; Building Societies Association; Derrick Fuller-Webster; John Byrne; John H Cooney; Quoin Commonhold Association; CRELA.

for the effects of additional costs associated with a new form of tenure needs to be considered

9.43 AgeUK stated that:

Government support is essential: It still seems unlikely that any form of commonhold retirement housing will take off without the Government making a firm commitment to targets and practical support for new developments. Planning legislation or financial incentives could be used to help establish new commonhold schemes: these could include time limited incentives to boost investment and reducing some of the costs for developers to help make schemes financially viable. With more schemes being built, we believe this would in turn help to increase consumer demand and awareness of alternative housing options.

Incentives for lenders

9.44 Paul Sams stated:

financial institutions should be educated about [commonhold] and government back subsidies for commonhold properties could be offered to assist lenders in deciding to lend against the same.

9.45 Peter Williams agreed, noting “the vital importance of keeping lenders onside”.

Incentives for leaseholders

9.46 Mari Knowles stated:

for leaseholders who already own their freeholds, either a free Government-backed conversion scheme should be offered, or a discount on commonhold products such as insurance or managing agent services.

9.47 Osborne Clarke Solicitors alternatively suggested:

some kind of SDLT holiday or relief given to the first owner of a commonhold unit. Increased funding for help to buy dwellings sold on a help to buy mortgage. This will quickly drive market demand for new commonholds.

Publicity and consumer awareness campaigns

9.48 The Building Societies Association stated:

we believe there should be a significant piece of consumer education work to raise knowledge of commonhold and its benefits to homeowners. There was very little of this done in 2004 meaning that appetite to convert and awareness is practically non-existent. The education piece should focus on the simplicity and standardisation of commonhold, which makes it easier for homeowners to understand their rights and obligations and not be caught out by, sometimes deliberately, confusing lease terms.

9.49 UK Finance agreed and explained that “instigating a significant publicity campaign around commonhold” would help with take-up.

9.50 CRELA said:

if commonhold is to gain a foothold in the market it needs some “champions” to adopt it. Those entities would need to be market leaders who could also influence the lending institutions.

9.51 However, Redrow Homes Limited cautioned that:

the Government must be careful it does not create or unwittingly promote publicity which has the effect of establishing in the public's minds that “leasehold is fundamentally bad” and freehold or commonhold is “good” which is effectively how some parts of the press have been reporting it.

Consultees stating there should not be some form of incentive to use commonhold

9.52 Fourteen consultees³⁴ thought that there should not be some form of incentive to use commonhold.

9.53 The Birmingham Law Society felt that “financial incentives are for the market to decide but there is a distinct advantage to the consumer in that they do not have the depreciating asset of a lease”.

9.54 IRPM stated:

with the recent proposed changes to leasehold, we do not see a compelling need for commonhold to be incentivised if such incentives are at the tax-payer's expense.

9.55 J Brown argued that:

it is these very "incentives" i.e. long-term income-generating streams, that made the leasehold system so exploitative against leaseholders. Do not allow this to be transferred to commonhold. Why do there have to be incentives and for who? Builders/developers should build. If they want an ongoing rental income, then they purchase one of their properties. If they want control, become a democratically elected member of the Commonhold Association or get elected as a Director of the CA by the other members/Unit Holders. If they want the contract to manage the commonhold, then put in a bid and get democratically chosen by the other Unit Holders/Members.

Consultees who discuss incentives to commonhold but do not give a view on which incentives should be introduced

9.56 Six consultees³⁵ discussed some possible incentives, but did not express an opinion as to whether or not such incentives should be used.

9.57 Graham Paddock provided his impressions of why South African sectional title system took off after having stagnated for five or more years:

³⁴ Redrow Homes Limited; Leasehold Reform Group; Birmingham Law Society; Suzanne McGreavy; Catherine Margaret Charles; Heulwen Egerton; IRPM; J Brown; Jackie Roe; McCarthy & Stone; Michael Bowen; Michael Harvey; Association of Retirement Housing Managers; Conveyancing Association.

³⁵ Susan Stuckey; Graham Paddock; Heather Keates; Laurence Target; Letitia Crabb; Lord Walker of Gestingthorpe.

- (1) it became financially disadvantageous for financial institutions to hold blocks of flats as investments;
- (2) the prescribed management conditions were revised to satisfy the requirements of bondholders; and
- (3) for a South African developer, a sectional title development methodology is a faster route than any other from conception of the development to receipt of the profit.

9.58 Lord Walker of Gestingthorpe explained:

local planning authorities should be encouraged to favour commonhold schemes (participation by occupiers in the management of their environment must surely be a relevant planning consideration). There might also be stamp duty concessions aimed at encouraging this form of tenure (there are of course precedents for such concessions, and similarly for disincentives for other ownership arrangements). Consideration might also be given to simplifying the procedure, and regulatory requirements, for commonhold management companies. But those requirements do not seem to have been much of a disincentive to Community Interest Companies under the Localism Act 2011.

QUESTION 9(D) SHOULD COMMONHOLD BE COMPELLED? IF SO, IN WHAT CIRCUMSTANCES?

9.59 Seventy-four consultees³⁶ responded to this question. Of those:

- (1) 32 stated that commonhold should be compelled;³⁷

³⁶ A2Dominion Housing Group Ltd; Alan Davis; Alan Mitchell; ARMA; Association of Retirement Housing Managers; Barbara Gardener; Barbara Thorne; Barratt Plc; Birmingham Law Society; Building Societies Association; Carol Carter; Catherine Margaret Charles; Christine Jackson; Coastline Housing; Colette Boughton; Conveyancing Association; CRELA; David Croydon; David Johnson; David Robinson; Derrick Fuller-Webster; Dr C Hakim; Ellen Andrew; Fieldfisher LLP; Fiona Campbell; FirstPort; Gerlinde Gniewosz; Graham Paddock; Heather Keates; Heulwen Egerton; Howard Davies; IRPM; Irwin Mitchell LLP; J Brown; Jackie Roe; Jo Rostron; John Byrne; John H Cooney; Kheya Bag; Laurence Target; Leasehold Reform Group; Leila Allen; Letitia Crabb; Linden Limited; Marathon House RTM Company Ltd; Mari Knowles; McCarthy & Stone; Michael Bowen; Michael Harvey; Michael Kucharski; Mrs K Melbye; National Leasehold Campaign; National Trust; Nikolas Andersen; Osborne Clarke Solicitors; Peter Bellenes; Peter Smith; Philip Griffiths; Places for People; Professor James Driscoll; R M Campbell-Barr; Redrow Homes Limited; Rodney Townson; Roger Jenking; Stan Marlow; Susan Ellis; Susan Stuckey; The Berkeley Group Holding plc; the Law Society; Tony Martin; Trowers & Hamblins LLP; UK Finance; Wrigleys Solicitors LLP; Yorkshire Building Society Group.

³⁷ UK Finance; Barbara Gardener; Peter Bellenes; Philip Griffiths; Prof James Driscoll; R M Campbell-Barr; Rodney Townson; Stan Marlow; Tony Martin; Christine Jackson; Colette Boughton; CRELA; Alan Davis; David Johnson; Derrick Fuller-Webster; Fiona Campbell; Gerlinde Gniewosz; Heulwen Egerton; Howard Davies; J Brown; Jo Rostron; John Byrne; John H Cooney; Kheya Bag; Leila Allen; Linden Limited; Marathon House RTM Company Ltd; Mari Knowles; Mrs K Melbye; National Leasehold Campaign; Nikolas Andersen; Conveyancing Association.

- (2) 25 stated that commonhold should not be compelled;³⁸ and
- (3) 17 expressed other views.³⁹

Commonhold should be compelled

9.60 Of the 32 consultees that felt commonhold should be compelled:

- (1) 12 specifically felt that it should be compelled for new developments;⁴⁰
- (2) seven discussed the possibility of making conversion to commonhold compulsory;⁴¹ and
- (3) two argued that commonhold could only be compelled once the market is more familiar with this form of ownership.⁴²

New developments

9.61 Philip Griffiths stated:

in my opinion developers should be compelled to offer commonhold to leaseholders - could it even be a condition of receiving planning permission? It is acknowledged that during the building phase and before the building is fully occupied there may be a need for the freeholder to oversee the maintenance but after that, commonhold should be the default arrangement. Indeed, developers should not regard the project as being complete until a commonhold structure is in place. This might add a small amount to the initial expense but the long term savings for residents both financial and in terms of wasted time and ongoing aggravation could be significant.

9.62 Professor James Driscoll and Mari Knowles agreed that commonhold should be “mandatory ... from a certain date, with sunset provisions”.

9.63 R M Campbell-Barr agreed that commonhold should become mandatory, and explained that land should not be transferred on a leasehold basis. He said:

³⁸ A2Dominion Housing Group Ltd; Places for People; Redrow Homes Limited; Leasehold Reform Group; Birmingham Law Society; Susan Ellis; Susan Stuckey; The Berkeley Group Holding plc; Carol Carter; Catherine Margaret Charles; Dr C Hakim; Wrigleys Solicitors LLP; Fieldfisher LLP; FirstPort; Graham Paddock; Heather Keates; IRPM; Coastline Housing; ARMA; McCarthy & Stone; Michael Bowen; Michael Harvey; Michael Kucharski; Barratt Plc; National Trust.

³⁹ Peter Smith; Barbara Thorne; Roger Jenking; Trowers & Hamlins LLP; Yorkshire Building Society Group; Building Societies Association; David Croydon; David Robinson; Ellen Andrew; Alan Mitchell; Irwin Mitchell LLP; Jackie Roe; Laurence Target; Letitia Crabb; Osborne Clarke Solicitors; Association of Retirement Housing Managers; the Law Society.

⁴⁰ Philip Griffiths; Prof James Driscoll; R M Campbell-Barr; Rodney Townson; Tony Martin; Colette Boughton; Heulwen Egerton; Howard Davies; Jo Rostron; Mari Knowles; Nikolas Andersen; Conveyancing Association.

⁴¹ Peter Bellenes; Rodney Townson; Gerlinde Gniewosz; Heulwen Egerton; Howard Davies; Mrs K Melbye; Conveyancing Association.

⁴² CRELA; UK Finance.

historically, any developed land that was not conveyed [as freehold] to individual purchasers would be transferred to the relevant public authority. This must now be made compulsory through the planning process.

9.64 Colette Boughton agreed, stating that:

the role of the developer or builder should end at the sale - be it for houses or flats. Building houses used to work in this way and streets and areas of houses - all "full" freehold - work well with this arrangement. Private fiefdoms have been allowed in recent years for housing 'estates' with leasehold tenure. For apartments, they can go straight to commonhold as in other countries. No 'temporary leasehold' then conversion after xx number of years, which will always be complex and off-putting to 'owners' (leaseholders). Do not give builders the option of anything other than direct freehold or commonhold.

Existing developments

9.65 Heulwen Egerton noted that applying compulsion:

to existing tenants of houses and blocks of flats may require further thought, but existing leaseholders should not be discriminated against by being kept tied to existing leasehold arrangements. In this process the particular needs of those living in retirement properties (this may include retirement villages as well as blocks of flats, and I am not sure on what basis mobile homes, such as Park Homes, are sold) should be taken into account. These issues should be resolved no more than 6 months after commonhold is implemented for newbuild properties.

9.66 Peter Bellenes suggested "commonhold should be the default arrangement unless a majority of leaseholders wish to remain as such".

9.67 Gerlinde Gniewosz felt that:

local authorities should be compelled to convert their estates to commonhold, especially as up to 50% of homes are now leasehold or service-charge paying freeholders. This will enable homeowners to have more say in how the estate is managed. They have a better understanding and invested interest than the local authorities who have been hit by austerity and have such large property portfolios that they simply have no clue what is happening on the ground. Contractors are aware that local authorities have insufficient performance management capability and thus are getting away with high pricing, over-charging for works and poor quality repairs. Furthermore, commonhold on an estate-by-estate-basis would provide more transparency over what is being spent on individual estates.

Commonhold should only be compelled once familiarity has increased

9.68 CRELA stated that compulsion could only be used:

in circumstances where the market is ready on all fronts, i.e. the relevant professionals are familiar with the system as well as valuers and lenders. If it is compelled at a point in time when the market is not ready for it then that might have an adverse effect on the property market if transactions then stall as a result. The system must first be simplified, understood and be ready on all fronts before any such action is taken.

9.69 UK Finance explained it “would be wary about compelling commonhold until there is a greater take-up and experience of it”.

Commonhold should not be compelled

9.70 The Berkeley Group Holding plc argued that a forced transition to commonhold by the abolition of leasehold will be very dangerous because:

(i) the legislation must be immediately workable so as to accommodate complex mixed-use developments. There has been little legislation in recent years that has been well drafted. If commonhold is made compulsory and is not well drafted to meet the flexibility required by developers, the Government's agenda for the creation of sustainable communities will fail. There is also the risk that while developers, lawyers and the Land Registry get to grips with the legislation housing numbers will fall at a time that they are urgently needed;

(ii) the legislation will need to include transition provisions where developments are already part completed with leasehold units or contracts for leasehold units. This will be complicated for sites that have been in build for a number of years and may still have 10-15 years' build yet to come. We have a number of sites that fall into this category;

(iii) the Government may create a two-tier housing market in which it is saying (although not a fact) that leasehold is second rate. This may result in leasehold properties losing value;

(iv) ... whilst we abhor the ground rent abuses, to remove a tried and tested form of land tenure to right a wrong to a small number of people, is a strange response.

9.71 FirstPort said that it “believe[s] that leasehold has an equal place to commonhold and both should be allowed to thrive. Solving the technical issues with the legislation is the first step to making commonhold a successful alternative”.

9.72 The National Trust noted that it:

consider[s] that the property market would be best serviced by having a range of structures so the most appropriate can be used in any specific situation rather than having a ‘one size fits all’ approach and compelling the use of commonhold. Were there any move to make commonhold a compulsory form of ownership then we consider there should be an exemption for situations when ... it is appropriate for a third party to retain a significant element of control over certain properties.

Other views raised by consultees

9.73 Seventeen consultees discussed the possibility of compulsion, but did not express a view as to whether or not commonhold should be compelled.⁴³

⁴³ Peter Smith; Barbara Thorne; Roger Jenking; Trowers & Hamblins LLP; Yorkshire Building Society Group; Building Societies Association; David Croydon; David Robinson; Ellen Andrew; Alan Mitchell; Irwin Mitchell LLP; Jackie Roe; Laurence Target; Letitia Crabb; Osborne Clarke Solicitors; Association of Retirement Housing Managers; the Law Society.

9.74 The Law Society noted that:

if commonhold were the only tenure other than freehold available for selling long term interest in units in a multi-unit development, the market would have to accept it; the market adapts to unavoidable changes.

9.75 Osborne Clarke Solicitors cautioned that:

if you make all new build flats you will create a two tier market in the residential market for multi-occupancy buildings. This is likely to make commonhold a premium product and cause a dip in prices of second hand leasehold stock. If you are going to compel commonhold you should abolish leasehold (at least in the residential sector) at the same time.

9.76 Peter Smith agreed, stating that:

forcing developers to use commonholds might cast a blight on existing residential long lease schemes, unless the 2002 Act conversion rules are relaxed, to avoid people being forced to stay with what might then seem a second-class and dying tenure form.

...

It might be worth considering forcing developers to choose between granting unit holders long leases for a minimum term such as 250, 500 or even 999 years certain, or creating a commonhold, subject only to short-term retention of some control of the scheme body corporate as through a steadily reducing number of developers' directors.

By contrast, It is believed that the use of leases in the business sector retains its place precisely because of the trend to relatively short length of leases, with the flexibility this can bring, both for tenants as well as landlords. ... If one assumes some degree of equality of bargaining power between business parties to a lease in this sector, there seems no particularly strong reason for removing potential choice between unfamiliar but more long term tenure commonhold or familiar but normally short term leasehold in this sector.

9.77 These concerns are similar to those raised by Redrow Homes Ltd regarding potential consequences of any consumer awareness campaign, discussed above at paragraph 9.51.

9.78 On another note, Irwin Mitchell LLP stated:

compelling commonhold as a structure will not alleviate the difficulties faced by many leaseholder owned developments where individuals are content to allow others to deal with administration and do not contribute towards management... These are the same problems that arise in leasehold developments but in it's current form, the commonhold system has no greater effective way to deal with these matters.

Question 10: consultees comparing experience of commonhold and leasehold

Question 10

If you have experience of both commonhold and leasehold:

How does your experience of commonhold compare to your experience of leasehold?

10.1 Nineteen consultees⁴⁴ answered this question. Of those:

- (1) seven suggested that commonhold was preferable to leasehold;⁴⁵
- (2) seven suggested that leasehold was preferable to commonhold;⁴⁶ and
- (3) five discussed both commonhold and leasehold, but did not express a view as to which was preferable.⁴⁷

Commonhold is preferable to leasehold

10.2 Seven consultees suggested that commonhold was preferable to leasehold.⁴⁸

10.3 Peter Bellenes, the Birmingham Law Society and J Brown all noted that commonhold gives property owners more control. Peter Bellenes stated:

commonhold involved greater control of insurance, maintenance, and other costs and hence lower outgoings avoiding the inflated costs of leasehold managing agents and freeholders.

10.4 Rodney Townson added, “commonhold is generally more consensual with more of a common good approach than a leasehold”.

⁴⁴ Peter Bellenes; J Brown; Birmingham Law Society; Rodney Townson; Derrick Fuller-Webster; Linden Limited; Quoin Commonhold Association; Redrow Homes Limited; Trowers & Hamblins LLP; Catherine Margaret Charles; Carol Carter; Dr C Hakim; Fieldfisher LLP; Osborne Clarke Solicitors; The Property Ombudsman; Irwin Mitchell LLP; British Insurance Brokers' Association; Mari Knowles; McCarthy & Stone.

⁴⁵ Peter Bellenes; J Brown; Birmingham Law Society; Rodney Townson; Derrick Fuller-Webster; Linden Limited; Quoin Commonhold Association.

⁴⁶ Redrow Homes Limited; Trowers & Hamblins LLP; Catherine Margaret Charles; Carol Carter; Dr C Hakim; Fieldfisher LLP; Osborne Clarke Solicitors.

⁴⁷ The Property Ombudsman; Irwin Mitchell LLP; British Insurance Brokers' Association; Mari Knowles; McCarthy & Stone.

⁴⁸ Peter Bellenes; J Brown; Birmingham Law Society; Rodney Townson; Derrick Fuller-Webster; Linden Limited; Quoin Commonhold Association.

- 10.5 Derrick Fuller-Webster explained that, additionally, “commonhold offers security of tenure and capital appreciation not available to leasehold”.
- 10.6 On a different note, Linden Limited stated that “strata title has the benefit of a statutory structure. Leasehold law in the UK is complex and open to abuse”.

Leasehold is preferable to commonhold

- 10.7 Seven consultees were of the view that leasehold is preferable to commonhold.⁴⁹
- 10.8 Trowers & Hamlins LLP and Catherine Margaret Charles all said that commonhold was harder to set up than leasehold. Trowers & Hamlins LLP stated that:
- it is much more difficult to get a commonhold scheme off the ground, and in fact we were unsuccessful in doing so. This is due to market perception, lack of lender engagement and ATED.⁵⁰
- 10.9 Fieldfisher LLP and Osborne Clarke Solicitors disagreed, stating instead that the problem was commonhold’s lack of flexibility. Osborne Clarke Solicitors explained that:

commonhold is good in theory and the incorporation of the commonhold association and working with the land registry was satisfactory. The difficult with it is not in the process of setting up – it is in the flexibility of the product to deliver something similar to the flexibility of leasehold at the moment.

⁴⁹ Redrow Homes Limited; Trowers & Hamlins LLP; Catherine Margaret Charles; Carol Carter; Dr C Hakim; Fieldfisher LLP; Osborne Clarke Solicitors.

⁵⁰ “ATED” stands for “annual tax on enveloped buildings”.

Question 11: consultees with experience of commonhold only

Question 11

If you only have experience of commonhold:

How would you describe your experience?

- 11.1 Three consultees⁵¹ responded to this question.
- 11.2 David Robinson explained that his experience has been “so far very good. We have had some issues... in getting people to work together but in the main it is a positive experience so far”.
- 11.3 Derrick Fuller-Webster also commented that his experience has been “favourable” and Linden Limited noted that “strata title works perfectly well in New South Wales”.
- 11.4 Alongside the Call for Evidence, we carried out a survey of those involved with the existing commonholds. The responses we received to this survey are discussed at the end of this analysis of responses.

⁵¹ David Robinson; Derrick Fuller-Webster; Linden Limited.

Question 12: potential advantages of commonhold

Question 12

If you only have experience of leasehold:

What advantages do you think commonhold could offer?

12.1 Eighty-two consultees answered this question.⁵² Of those:

- (1) 60 discussed some possible advantages of commonhold,⁵³ and
- (2) 22 stated that commonhold did not have advantages over leasehold.⁵⁴

Possible advantages of commonhold over leasehold

12.2 The 60 consultees who discussed possible advantages of commonhold referred to one or more of the following advantages:

⁵² A2Dominion Housing Group Ltd; AgeUK; Alan Davis; Alan Mitchell; Andrew Hinds; ARMA; Association of Retirement Housing Managers; Barbara Gardener; Barbara Thorne; Barratt Plc; Birmingham Law Society; Boodle Hatfield LLP; Bramshott Place Village Residents' Association; Building Societies Association; Carol Kerby; Catherine Margaret Charles; Christopher Jessel; Coastline Housing; Colette Boughton; CRELA; David Johnson; David McArthur; Dawn Barnes; Derrick Fuller-Webster; Ernest Whittaker; Federation of Private Residents' Associations; Fieldfisher LLP; FirstPort; George Newsom; Gerlinde Gniewosz; Graham Paddock; Heather Keates; Heulwen Egerton; Home Builders Federation; Howard Davies; IRPM; Jackie Roe; Jo Rostron; John Byrne; John H Cooney; Kevin Mullery; Kheya Bag; Laurence Target; Leasehold Reform Group; Leila Allen; Linden Limited; Liz Justice; Malika Kassemi; Marathon House RTM Company Ltd; Mari Knowles; Martin Wood; McCarthy & Stone; Michael Bowen; Michael Harvey; Michael Kucharski; Mike Paley; National Leasehold Campaign; National Trust; Nigel Shingler; Oliver Yun; Paul Sams; Peter Smith; Peter Williams; Philip Griffiths; Places for People; Professor James Driscoll; R M Campbell-Barr; Ray Harling; Redrow Homes Limited; Stan Marlow; Stephen Bedford; Susan Ellis; Susan Stuckey; Suzanne McGreavy; The Berkeley Group Holding plc; The Property Ombudsman; Tony Martin; Trevor Leigh; Trowers & Hamblins LLP; UK Finance; Wrigleys Solicitors LLP; Yorkshire Building Society Group.

⁵³ A2Dominion Housing Group Ltd; AgeUK; Alan Davis; Andrew Hinds; ARMA; Barbara Gardener; Barbara Thorne; Barratt Plc; Birmingham Law Society; Bramshott Place Village Residents' Association; Building Societies Association; Carol Kerby; Coastline Housing; Colette Boughton; CRELA; David Johnson; David McArthur; Dawn Barnes; Derrick Fuller-Webster; Ernest Whittaker; Federation of Private Residents' Associations (FPRA); FirstPort; Gerlinde Gniewosz; Graham Paddock; Heather Keates; Heulwen Egerton; Howard Davies; Jackie Roe; Jo Rostron; John Byrne; John H Cooney; Kevin Mullery; Kheya Bag; Laurence Target; Leila Allen; Linden Limited; Malika Kassemi; Marathon House RTM Company Ltd; Mari Knowles; Martin Wood; Michael Kucharski; National Leasehold Campaign; Oliver Yun; Paul Sams; Peter Smith; Peter Williams; Philip Griffiths; Places for People; Prof James Driscoll; R M Campbell-Barr; Ray Harling; Stan Marlow; Stephen Bedford; Susan Ellis; Suzanne McGreavy; The Property Ombudsman; Trowers & Hamblins LLP; UK Finance; Wrigleys Solicitors LLP; Yorkshire Building Society Group.

⁵⁴ Alan Mitchell; Association of Retirement Housing Managers; Boodle Hatfield LLP; Catherine Margaret Charles; Christopher Jessel; Fieldfisher LLP; George Newsom; Home Builders Federation; IRPM; Leasehold Reform Group; Liz Justice; McCarthy & Stone; Michael Bowen; Michael Harvey; Mike Paley; National Trust; Nigel Shingler; Redrow Homes Limited; Susan Stuckey; The Berkeley Group Holding plc; Tony Martin; Trevor Leigh.

- (1) 36 commented that commonhold provides freehold ownership;⁵⁵
- (2) 30 said that commonhold provides more control to property owners;⁵⁶
- (3) 22 noted the benefits of standardisation and greater simplicity in commonhold;⁵⁷ and
- (4) three discussed other advantages.⁵⁸

Freehold ownership, and consequential advantages

12.3 Thirty-six consultees commented that commonhold offers freehold ownership to homeowners, and noted the benefits of freehold ownership.⁵⁹

12.4 Professor James Driscoll stated:

the principal advantage is that flats or other units (such as a leasehold shop) are held on a freehold basis. This solves at a stroke the problem with leases which are by their very nature declining assets. Other advantages follow from this freehold ownership. For example, there can be no restrictions on selling or transferring a commonhold unit.

12.5 The Birmingham Law Society referred to the advantages of commonhold for homeowners:

from the consumer's point of view, the main advantage is that they do not have a depreciating asset i.e. a lease and therefore will enjoy similar benefits to a freehold

⁵⁵ AgeUK; Alan Davis; Barbara Gardener; Birmingham Law Society; Carol Kerby; Coastline Housing; CRELA; David Johnson; David McArthur; Derrick Fuller-Webster; Ernest Whittaker; Federation of Private Residents' Associations; Graham Paddock; Heulwen Egerton; Howard Davies; Jackie Roe; Jo Rostron; John H Cooney; Kheya Bag; Laurence Target; Malika Kassemi; Mari Knowles; National Leasehold Campaign; Oliver Yun; Paul Sams; Peter Smith; Peter Williams; Philip Griffiths; Prof James Driscoll; R M Campbell-Barr; Stephen Bedford; Susan Ellis; Suzanne McGreavy; The Property Ombudsman; Wrigleys Solicitors LLP; Yorkshire Building Society Group.

⁵⁶ A2Dominion Housing Group Ltd; AgeUK; Andrew Hinds; ARMA; Barbara Gardener; Barratt Plc; Bramshott Place Village Residents' Association; Carol Kerby; Coastline Housing; Colette Boughton; David Johnson; Dawn Barnes; Federation of Private Residents' Associations; FirstPort; Gerlinde Gniewosz; Graham Paddock; Heulwen Egerton; John Byrne; John H Cooney; Kevin Mullery; Leila Allen; Mari Knowles; Michael Kucharski; National Leasehold Campaign; Philip Griffiths; Professor James Driscoll; Stephen Bedford; Susan Ellis; The Property Ombudsman; UK Finance.

⁵⁷ Peter Smith; Places for People; Prof James Driscoll; Barbara Thorne; Birmingham Law Society; Stephen Bedford; Susan Ellis; Trowers & Hamlins LLP; Carol Kerby; FirstPort; Heather Keates; Heulwen Egerton; Laurence Target; Linden Limited; Marathon House RTM Company Ltd; ARMA; National Leasehold Campaign; Building Societies Association; Ray Harling; The Property Ombudsman; Peter Williams; Martin Wood.

⁵⁸ Ray Harling; Stan Marlow; The Property Ombudsman; UK Finance; Wrigleys Solicitors LLP; Heulwen Egerton; Jo Rostron; National Leasehold Campaign; Peter Smith; Philip Griffiths; AgeUK.

⁵⁹ AgeUK; Alan Davis; Barbara Gardener; Birmingham Law Society; Carol Kerby; Coastline Housing; CRELA; David Johnson; David McArthur; Derrick Fuller-Webster; Ernest Whittaker; Federation of Private Residents' Associations FPRA; Graham Paddock; Heulwen Egerton; Howard Davies; Jackie Roe; Jo Rostron; John H Cooney; Kheya Bag; Laurence Target; Malika Kassemi; Mari Knowles; National Leasehold Campaign; Oliver Yun; Paul Sams; Peter Smith; Peter Williams; Philip Griffiths; Prof James Driscoll; R M Campbell-Barr; Stephen Bedford; Susan Ellis; Suzanne McGreavy; The Property Ombudsman; Wrigleys Solicitors LLP; Yorkshire Building Society Group.

owner in this respect. This means that they will have protection from the worst leasehold abuses such as escalating ground rents, extortionate management fees and manipulated service charges.

- 12.6 The Yorkshire Building Society Group discussed the benefits of freehold ownership from a lender's perspective.

Commonhold could offer a distinct advantage over leasehold in relation to forfeiture of leases. This is because a borrower who owns a commonhold property is not at risk of forfeiture...and the property owner's interest, along with any mortgage lender's security, would be safe from being lost...

In addition, unlike a leasehold interest, the value of a commonhold unit is unlikely to decrease over time as there is no reducing lease term. A leaseholder may have to extend their lease often paying a significant premium for this. A commonhold unit could have a higher value than an equivalent leasehold interest as a result.

- 12.7 AgeUK said that:

a viable model for commonhold in the UK could provide a more uniform, transparent and consistent approach to buying a retirement flat which is difficult to achieve under the leasehold system. ...It would prevent the value of properties diminishing due to fixed lease terms which are a common feature of many leasehold retirement schemes.

Greater control given to property owners

- 12.8 Thirty consultees said that commonhold offers more control to property owners. Some of these consultees discussed other potential benefits arising from this increased control.⁶⁰

- 12.9 In particular, Barratt Plc stated that:

the advantages of a commonhold structure are that it vests control within individual owners as a body. With that control goes responsibility and therefore, provided that safeguards are put in place to protect responsible owners together with ensuring a system is in place which reflects the differing interests of differing types of owner, then commonhold can have an advantage over leasehold.

- 12.10 Bramshott Place Village Residents' Association and Age UK referred to this advantage in a retirement context:

for residents of retirement communities, commonhold offers the residents the possibility to be actively involved in defining and implementing the levels of service appropriate to their needs, rather than having to accept decisions taken by the landlord after limited or no consultation.

⁶⁰ A2Dominion Housing Group Ltd; AgeUK; Andrew Hinds; ARMA; Barbara Gardener; Barratt Plc; Bramshott Place Village Residents' Association; Carol Kerby; Coastline Housing; Colette Boughton; David Johnson; Dawn Barnes; Federation of Private Residents' Associations; FirstPort; Gerlinde Gniewosz; Graham Paddock; Heulwen Egerton; John Byrne; John H Cooney; Kevin Mullery; Leila Allen; Mari Knowles; Michael Kucharski; National Leasehold Campaign; Philip Griffiths; Prof James Driscoll; Stephen Bedford; Susan Ellis; The Property Ombudsman; UK Finance.

12.11 Age UK said “it would automatically give older people greater self-determination over managing agents, service charges and fees through a commonhold association”.

12.12 Nine consultees noted that the increased control of unit owners would result in better management of blocks.⁶¹

12.13 Philip Griffiths said that commonhold would give homeowners:

better oversight to ensure work is done promptly and to a high standard. ... an additional benefit might be a more competitive environment for management companies who would be employed by residents rather than a distant freeholder. This could create a new 'ecosystem' of Management Companies who would have to be more focussed on the needs of residents. It would become easier for residents to change Management Company in response to poor service. ... it would [also] force leaseholders to be realistic about the costs of maintaining a building. They would no longer be able to 'blame' managing agents for necessary repairs.

12.14 ARMA added that providing owners with more control may reduce apathy and encourage more active management of the building:

it would give the unit owners a higher sense of ownership over their development than a landlord/leasehold scheme. This may encourage greater participation in the decision making process regarding the day to day running of the development.

12.15 Two consultees⁶² also noted the financial benefits that might arise from unit owners having more control. UK Finance said that commonhold could:

ensure that commonhold owners have greater oversight of the costs they are responsible for and the ability to ensure value-for-money, as well as a potentially quicker and easier sale process.

12.16 Heulwen Egerton agreed, explaining that commonhold would “allow transparency in service charge costs”.

Standardisation and simplicity in commonhold

12.17 Twenty-two consultees noted the benefits of standardisation and the simplicity of commonhold.⁶³

12.18 Peter Smith said that one benefit of commonhold is the:

standard form conveyancing documentation (at the risk of some rigidity which can be met by allowing minor variations to suit given schemes as with local or house rules)

⁶¹ Philip Griffiths; Prof James Driscoll; Stephen Bedford; The Property Ombudsman; FirstPort; Heulwen Egerton; Coastline Housing; ARMA; Bramshott Place Village Residents' Association.

⁶² UK Finance; Heulwen Egerton.

⁶³ Peter Smith; Places for People; Prof James Driscoll; Barbara Thorne; Birmingham Law Society; Stephen Bedford; Susan Ellis; Trowers & Hamblins LLP; Carol Kerby; FirstPort; Heather Keates; Heulwen Egerton; Laurence Target; Linden Limited; Marathon House RTM Company Ltd; ARMA; National Leasehold Campaign; Building Societies Association; Ray Harling; The Property Ombudsman; Peter Williams; Martin Wood.

so as to avoid the risk of poorly drafted long leases or of company articles of association or both.

12.19 Professor James Driscoll agreed, adding that a prescribed set of rules is:

far simpler than the leasehold system where the leases are often difficult to interpret and to apply. ... Allied to this is the requirement that every commonhold must have a commonhold association ('CA') which owns the common parts and manages the commonhold development. Like the CCS the constitution of the CA is prescribed by regulations made under the 2002 Act.

12.20 Birmingham Law Society noted the advantages standardisation can bring to conveyancers and other lawyers:

commonhold would also be advantageous to lawyers. The leasehold system can be complex and complicated for the most experienced lawyer, let alone the general public Conveyancing solicitors should find the transfer of flats easier, as there would be no need to wade through a lengthy lease each time.

Other advantages discussed by consultees

12.21 Three consultees discussed other advantages of commonhold.⁶⁴

Financial benefits

12.22 Wrigleys Solicitors LLP suggested that commonhold "could avoid the double-hit of SDLT that community-led housing groups face".

Greater sense of community

12.23 Philip Griffiths said that commonhold "could also create a greater sense of community". The Property Ombudsman agreed with this point.

Commonhold does not have advantages over leasehold

12.24 Twenty-two consultees stated that commonhold does not have advantages over leasehold.⁶⁵

12.25 The Leasehold Reform Group argued:

an institutional freeholder is able to provide important services which homeowners, by themselves, cannot. ... Self-management is already a possibility under leasehold, and we agree that the process by which leaseholders exercise their right to self-manage should be simplified.

12.26 The Berkeley Group Holding plc agreed that the right to lease extensions, or to enfranchise, "invalidates" the argument that commonhold is preferable as it is not a

⁶⁴ The Property Ombudsman; Wrigleys Solicitors LLP; Philip Griffiths.

⁶⁵ Alan Mitchell; Association of Retirement Housing Managers; Boodle Hatfield LLP; Catherine Margaret Charles; Christopher Jessel; Fieldfisher LLP; George Newsom; Home Builders Federation; IRPM; Leasehold Reform Group; Liz Justice; McCarthy & Stone; Michael Bowen; Michael Harvey; Mike Paley; National Trust; Nigel Shingler; Redrow Homes Limited; Susan Stuckey; The Berkeley Group Holding plc; Tony Martin; Trevor Leigh.

wasting asset. Additionally, it argued that there is a lack of protection within commonhold:

leaseholders presently enjoy a number of statutory protections that do not seem to be available to commonhold owners... If commonhold is to be introduced, where appropriate, similar protections need to be set around it.

12.27 Boodle Hatfield LLP also agreed with the Leasehold Reform Group and the Berkeley Group Holding plc, but added that:

care should be taken in assuming that a commonhold system will correct perceived faults in the leasehold system which has existed over hundreds of years. ... the fundamental problem is that a Commonhold system, like a leasehold system, will only work when flat owners, in practice, get on with each other. A property operating on a Commonhold scheme still holds just the same potential for disagreements between flat owners as does one operating on a leasehold scheme.

12.28 McCarthy & Stone referred to certain advantages of leasehold in the retirement sector. It said:

While we are not opposed to a better system of commonhold, it is essential that the Law Commission recognises two fundamental benefits of the current leasehold system that underpin the provision of specialist retirement housing...

1. Ground rent is essential for retirement housing as it pays for the construction of the significant shared areas that are integral to this form of housing. Unlike other housebuilders, developers providing 90% of the UK's owner-occupied retirement housing use capitalised ground rents to fund the cost of constructing the large shared communal spaces that are integral to these developments.

2. Retirement housing needs a long-term steward to provide the care, support and maintenance services that are also fundamental to the retirement living lifestyle.

Commonhold Survey

13.1 Alongside the Call for Evidence, we carried out a survey of those involved with the 16 existing commonholds.⁶⁶ We contacted over 150 unit owners and commonhold association directors. We received 31 responses to our survey, representing 20% of those we contacted. Thirty of those responding were commonhold unit owners, and one was a managing agent.⁶⁷

13.2 The survey asked questions relating to:

- (1) the particular commonhold, such as the number of units in the commonhold, and what common parts the commonhold had;
- (2) satisfaction with the commonhold community statement and the ease with which it could be varied;
- (3) satisfaction with the dispute resolution procedure and in what circumstances the procedure had been used;
- (4) the commonhold association, such as who the directors in the particular commonhold were, and to what extent the unit owners understood the rules governing the commonhold association;
- (5) whether unit owners had ever tried to bring the commonhold to an end; and
- (6) any further comments about commonhold.

13.3 The responses to each of these sections are analysed below.

About the commonhold and the commonhold units

13.4 We asked what areas and services were shared between all the unit owners. We were told that the shared areas and services across the various commonholds included: driveways, parking spaces, bike store, security gates, gardens, wooden shed, paths, walls, roof and roof space, shared hallways, staircases, external / communal lighting, waste disposal bins, access lift between levels, communal washing line, heat network, guest suite, swimming pool, orangery and meeting room.

13.5 We asked whether the commonhold units were mostly occupied by the unit owners, or mostly rented out. In response:

- (1) 18 said they were mostly occupied by the owners;
- (2) three said they were mostly rented out;
- (3) nine said they were half owned by the occupiers, half rented out; and
- (4) one said he or she did not know.

⁶⁶ A 17th commonhold is currently being developed, but this was not established at the time we conducted our survey.

⁶⁷ This survey was conducted anonymously so comments cannot be attributed throughout this analysis.

- 13.6 We asked whether the commonhold units were residential or commercial. Thirty consultees said their commonhold was entirely residential. One consultee said his or her commonhold had one commercial unit as well as residential units, with a computer consultancy occupying the commercial unit.
- 13.7 We asked whether respondents had faced any problems buying or selling commonhold units. Seventeen responded that they had not encountered any problems with buying or selling their units. Fourteen said that they had encountered problems. These included:
- (1) eight consultees who referred to difficulties obtaining legal advice;
 - (2) nine consultees who referred to difficulties obtaining a mortgage; and
 - (3) one consultee who explained that purchasers were “put off by additional costs and unknown responsibilities”.
- 13.8 We asked whether unit owners bought a commonhold unit in an existing commonhold, or originally owned their unit in a different way. Twenty-four consultees said they bought their unit in an existing commonhold. Seven consultees said they originally owned the unit in another way, and then converted to commonhold.

Those who bought their unit in an existing commonhold

- 13.9 We asked why those who bought a commonhold unit chose to do so, rather than another type of property such as a leasehold flat. Consultees said this was because.
- (1) they “liked the property” (10 consultees);
 - (2) it was what was available at the time they wanted to move (four consultees);
 - (3) it gave them greater control (three consultees);
 - (4) commonhold was a better alternative than leasehold (two consultees); and
 - (5) it gave them security of tenure (one consultee).
- 13.10 We also asked whether the developer had entered into any contracts before any of the commonhold units were sold (for instance, with a managing agent). Of those who bought their unit in an existing commonhold:
- (1) four said the developer had entered into contracts before the commonhold units were sold;
 - (2) seven said the developer had not entered into contracts before the commonhold units were sold; and
 - (3) 13 said they did not know.
- 13.11 The four consultees who said the developer had entered into contracts before the units were sold, explained that these contracts were disadvantageous because, “the managers were inefficient and only interested in profit. The residents took back control as soon as we could”; the contractors were “expensive and unresponsive”; “the developer failed to explain the full extent of responsibilities that go with the commonhold”; and “[the] managing agents were overcharging and not performing. Now taken over by residents”.

Those who converted to commonhold

13.12 We asked how those who originally owned the unit in another way, and then converted to commonhold, owned the property to begin with. In response:

- (1) five said they owned the freehold of the property;
- (2) one said he or she owned a leasehold of the property; and
- (3) one said he or she did not know.

13.13 We asked what influenced their decision to convert. Consultees said: “we converted our freehold house to four commonhold units. Commonhold was new at the time and seemed a very good alternative to leasehold/share of freehold”; “pressure from other owners and advice from my solicitor”; “the flats were freehold without upkeep agreement and we were advised to that convert to leasehold would cost two lots of stamp duty”; “we built three houses but it made sense to have a shared frontage and car parking area”; “more secure than freehold and self-managed”; the “opportunity to own the plot”; and “the freeholder's decision”.

13.14 We asked consultees to describe their experience of converting to commonhold by rating how strongly they agreed with the following statements, on a scale of one to five (one being strongly disagree, and five being strongly agree).

- (1) The procedure was easy to understand. Three consultees scored this as neutral; one consultee agreed the procedure was easy to understand; and two consultees strongly agreed.
- (2) The procedure was easy to follow. Three consultees scored this as neutral; one consultee agreed; and two consultees strongly agreed.
- (3) The procedure was quick. One consultee scored this as neutral; four consultees agreed and five consultees strongly agreed.

13.15 We asked consultees to explain any factors which affected how they had rated these statements: one consultee who responded neutrally to all the statements said “other owners were unsure what to do and solicitors dragged their feet”. A consultee who agreed with all the statements said ““experience”. One consultee, who strongly agreed with the first two statements and agreed with the third statement, said “[the] landlord explained and gave us copies explaining all the laws and regulations”. One consultee who did not rate any of the statements said it was “complicated”.

Consultees' experience of commonhold

13.16 We asked whether consultees had previous experience of leasehold. Eight consultees said that they did have previous experience of leasehold, 22 said that they did not, and one said he or she did not know.

13.17 We asked those with experience of leasehold what aspects of commonhold were the same as or different from leasehold, and which they preferred. Consultees said: it is “completely different”; “commonhold appears freer”; “we have a management co[mpany] of the commonholders but no need to extend lease/and pay ground rent - it seemed a simpler arrangement”; it is “much the same”; “we have found the problems and advantages of commonhold no different to where the lessees own the freehold. As the housing association bought a majority of the flats they hold a majority when decisions are made.”

13.18 We asked all consultees what the benefits of commonhold were. In response:

- (1) 10 consultees said “owning the freehold of the unit”, and raised connected benefits, such as not having to pay ground rent and not having a wasting asset;
- (2) six consultees highlighted benefits relating to maintenance. These included “establishing a natural network for management of common areas” and that owners are able to get work “done quicker”;
- (3) four consultees said “the ability of the residents to run the building”;
- (4) two consultees raised benefits relating to the community in a commonhold. One of these consultees said it gave them a “safer place to live [with] nearly all pensioners and we live as a community and a lot cheaper”;
- (5) one consultee said “one insurance covers all the site”;
- (6) one consultee said “there is a clear structure in the form of the Commonhold Association and Commonhold Community Statement although remedy in the event of dispute has yet to be tested”; and
- (7) five consultees said “none”. One of these consultees said that the commonhold was only set up to manage a shared road.

13.19 We asked all consultees about the problems with commonhold, and how it could be improved. In response:

- (1) Six consultees said that there were problems with “solicitors and mortgage lenders” not liking commonhold, which had created a “lack of interest” and had led to consultees experiencing difficulty selling their units.
- (2) Three consultees raised these other issues surrounding the buying and selling of units. They said: “Bit involved when buying and selling”; “worried that it might put buyers off”; “Simplify the transfer, why charge to be on the register?”
- (3) Seven consultees said there were problems with the running and management of the commonhold. These included difficulties “getting people to work together” and take and interest (particularly with regards to financial decisions) as well as “control freaks/personalities” which it was suggested could be addressed by “rotating official responsibilities [and] sub-committees”.
- (4) Two consultees said that there were problems ensuring repairing obligations were met, and enforcing the payment of contributions to the commonhold association.
- (5) One consultee explained: “within our units there are three separate commonhold associations” co-existing in the same place, with a shared car park. “To have established one initially would have made things easier.” In particular, this consultee described issues arising over who was responsible for the maintenance of various shared areas which were owned by one commonhold, but used by owners in all three commonholds.
- (6) Seven consultees said they had “found no problems” or could not think of any improvements.

13.20 We asked consultees to describe how they found living in a commonhold by rating how strongly they agreed with the following statement, on a scale of one to five (one being strongly disagree, and five being strongly agree).

"I enjoy living in a commonhold"

- (1) Three consultees strongly disagreed.

They said: "I find it overly complicated, I have lived here [for] 10 years and still don't know what my charges are or what my responsibilities are."; "the development is fine but the commonhold element is something that no one on the estate likes"; "a number of properties have changed hands some have had problems selling. I am concerned that I might have problems when I put my property on the market"

- (2) Three consultees scored this as neutral.

They said: "Mixed feelings regarding the ability to re-sell hardly any local estate agents are aware of it let alone potential buyers"; "I like my property and the location etc. I just have serious reservations about future saleability (despite houses having changed hands already in the street), simply because mortgage companies are unwilling to lend and solicitors not knowing enough about"; "It seems to make no difference".

- (3) Eight consultees agreed.

They said: "I enjoy living in this commonhold as it is modern and very eco friendly"; "Peace & quiet, proximity to town centre facilities"; "I have enjoyed it on the whole despite some noise issues - and hope to in the future"; "Peace of mind that commonhold areas are well maintained giving a relaxed enjoyable area to spend time"; "It is a good and sensible way of community living"; "Need to reconcile differences between unit holders and lack of enforcement in event to default"

- (4) Nine consultees strongly agreed.

They said: "Under freehold the property was managed by informal agreement. Under commonhold it is managed under formal agreement"; "Get on well with my other commonholders and maintenance is low compared to other properties"; "We live as a community and help each other"; "All the neighbours get on with each other and I only pay the actual cost of the insurance and grounds maintenance"; "We have coffee mornings, garden parties. Now we are self managed we control all the things needed to run the site. Managing companys are useless and v/expensive"; "The building is well run and looked after thanks to the existing residents"; "It is a simple way to share a property, no lease to extend, no extra cost to purchase a share of the freehold (which I believe then becomes very much like our commonhold arrangement)"; "All the 6 residen[ts] have input to the running and maintenance of the propertied and site , we are not under the control of a landlord".

The Commonhold Community Statement

13.21 We asked consultees whether they had ever wanted to add or change any rules in the commonhold community statement. In response:

- (1) seven consultees said yes;
- (2) 23 consultees said no; and
- (3) one consultee said he or she did not know.

13.22 We asked those who said they had wanted to change the community statement what change they wanted to make. Consultees said: “banning holiday homes”; “make the properties more sound proof”; “to restrict movement through the car park”; “pets, age limitations on ownership, display of washing”; “the external staircase only serves the two first floor flats & so I don't think the ground floor flats should pay for their upkeep”; “no more holiday homes and no pets”. One consultee also noted that “on the original documents there should not be boats/caravans kept on drives. But there are a number.”

13.23 The six consultees who explained the changes they had wanted to make to the CCS all said that they had been unable to make the change. When asked why, consultees said (in order, corresponding to the changes outlined above): “It needed the agreement of the holiday home owner”; “not a builder”; “we decided that it would be too difficult”; “too much disagreement amongst unit holders, so wrote a welcome document outlining conventions agreed by majority of unit holders”; “would not be agreed unanimously”; “couldn't make the change due to vote”.

Disputes

13.24 We asked whether consultees had been involved in any disputes with the commonhold association or other unit owners. In response:

- (1) three consultees said yes;
- (2) 23 consultees said no; and
- (3) five consultees preferred not to say.

13.25 We asked those who had been involved in a dispute what the dispute was about. Consultees said: “we have not been able to persuade the two other commonholds within the units to insure themselves against issues on the commonly held land”; “not personally but company put in charge of fee collections has issues collecting all fees”.

13.26 One of these consultees said that he or she did follow the dispute resolution procedure set out in the CCS, one said he or she did not, and one said he or she did not know.

Resolving disputes using the procedure in the CCS

13.27 We asked the consultee who did use the dispute resolution procedure to explain how he or she found the procedure by rating a number of statements. The consultee strongly agreed that the procedure was easy to understand and easy to follow. The consultee agreed that the procedure was quick.

13.28 When asked to explain any factors which affected these scores, the consultee said that “law action [was] required”, and said he or she was “not sure” how the procedure could be improved.

Resolving disputes without using the procedure in the CCS

13.29 We asked consultees who had not used the dispute resolution procedure in the CCS how they had resolved the dispute. One consultee responded, who said the dispute was “ongoing” and that to make it easier to resolve disputes, a change could be made to have a “legal requirement to arrange appropriate insurance”.

The commonhold association

13.30 We asked consultees how familiar they were with the rules that govern the commonhold association, on a scale of one (not at all familiar) to five (very familiar). Three consultees said they were not at all familiar; three said they were a little familiar; five consultees were somewhat familiar; 10 consultees said they were fairly familiar; and eight consultees said they were very familiar.

13.31 We asked who the directors of consultees’ commonhold associations were. In response:

- (1) 17 consultees said homeowners;
- (2) three consultees said professionals;
- (3) one consultee said the developer
- (4) four consultees said there was a mixture, including one consultee mentioning a housing association nominee;
- (5) two consultees said they did not know; and
- (6) one consultee said no one.

13.32 We asked consultees who are, or have been, a director, how they found that role. In response:

- (1) Seven consultees said it was “fine” / they had “no issues” including the following comments: “No issues, easy process to follow and has not been too complicated”; “No problem, I have been a company director before”.
- (2) Four consultees said it was “easy” / “relatively simple”, including the following comments: “Not arduous since the managing agents deal with day-to-day running and we pay them a service charge to do so.”; “I am the Secretary, and I take charge of the annual meeting. My ex husband is in charge of doing the annual return and accounts. It is fairly simple because there are only four units in our communal home.”
- (3) One consultee said it was “demanding” because of a “tendency to treat directors as bogie persons responsible for all that is apparently wrong with complex, simplistic and unrealistic approach of some unit holders”.
- (4) One consultee said “I am no longer a director owing to differences with another director in the management”.

13.33 We asked whether the commonhold association has faced any financial difficulties. All consultees answered “no”.

13.34 We asked consultees to share any further comments about the commonhold association, including how it could be improved. Responses included: “more knowledge on commonhold”; “residents are the managing agency of our commonhold. Difficulties in finding people interested enough and competent to assume leadership roles”; “as part of the commonhold we have a private road. Clearing this is a major headache! With threats and actual violence taking place”; “more democracy”; “the standard forms for approval of expenditure, etc are too complex”; “when ever possible should be run by owners not management company”; “could be improved by all members of the commonhold agreeing to meet”.

Ending the commonhold

13.35 We asked whether or not the unit owners had ever tried to bring the commonhold to an end. In response:

- (1) one consultee said “yes”;
- (2) 26 consultees said “no”; and
- (3) four consultees said “don’t know”.

13.36 The consultee who answered yes explained that they were not successful because “the council will not take over the site because of access to the site [and] visibility”.

- The other consultees were asked if they could foresee any circumstances in which they might want to end the commonhold. Seventeen consultees said “no”. Other comments from consultees included: “no, on condition that it becomes easier to buy and sell”; “if we experienced difficulties in selling” (two consultees); “if the road was ever adopted by the council there would be no need for the commonhold” (three consultees); “financial issues or unresolved dispute between the commonholds”; “yes, because of the fact that mortgage companies are unwilling to lend. If it is an option to end this type [of] ownership and revert to freehold with a management company to manage the roads that would be my preferred option. If this is possible then I would be very interested to hear from you.”; “if the building was badly run and the current residents changed to more difficult ones.”

Further comments about commonhold

13.37 Consultees were asked to share any further comments they had about their experience of commonhold. Consultees said:

- “It was clear to us when we bought that the local estate agent had no experience or knowledge of commonhold.”
- “I know of people who have leasehold/share of freehold flats and there are more problems associated with the sale of individual units. There are only a small selection of lenders who understand commonhold but we have never had any problems in selling. We have sold three of our four units a few times and a mortgage has always been available. We set our own maintenance charge, and don’t use a property management company. Any expenses over and above the amount in the bank are met by all homeowners coming to an agreement over a specific item and then contributing to that item, i.e. a new carpet for the communal hall, stairs and landings. We meet once a year to discuss the accounts, etc., and have never had any problems. I really can’t understand why this method of ownership hasn’t taken off.”

- “We have been a commonhold association ltd for about 5 years - it's time for solicitors, conveyancers and building societies to catch up.”
- “If the acceptance by solicitors and money lenders does not happen to exempt stamp duty on conversion.”
- “Solicitors find commonhold difficult and tell most people to walk away.”
- “Our commonhold is in its early stages. still settling down. need of residents to recognise that talking to each other is better than emailing or other impersonal means of communication! we're still learning.”
- “I have left management matters to others - the fact of it being commonhold was incidental for me - i just liked the property.”
- “It is so much cheaper to live this way when you only have a limited income and elderly have no reason to be on there own without visitors very friendly.”
- “There are difficulties when a commonholder becomes incapable of comprehending issues due to poor mental health.”
- “I believe it to be a good form of ownership and cannot see why the government cannot promote it more.”
- “No apart from the fact one needs a reputable managing agent if you dont DIY the day to day running. People who let their property really only need the income and are happy (in our block of 8 flats) to have professional managing agent.”
- “In theory could work very well, however it needs all members embracing the concept unfortunately has not happened in this example.”

Appendix 1: List of respondents

A2Dominion Housing Group Ltd	Cecilia Yeung	Gerlinde Gniewosz
AgeUK	Charities' Property Association	Gill Waystrode
Alan Davis	Christine Jackson	Graham Paddock
Alan Mitchell	Christopher Jessel	Hazel Oliver
Alec Stanley	City of London Law Society	Heather Keates
Alex Quinn	Cliff Barry	Heulwen Egerton
Andrew Hinds	Coastline Housing	HM Land Registry
Anonymous Member of the Public	Colette Boughton	Home Builders Federation
Associated Retirement Community Operators ("ARCO")	Commercial Real Estate Legal Association ("CRELA")	Howard Davies
Association of Residential Managing Agents ("ARMA")	Conveyancing Association	Institute of Residential Property Management ("IRPM")
Association of Retirement Housing Managers	David Brown	Irwin Mitchell LLP
Barbara Gardener	David Croydon	J Brown
Barbara Thorne	David Johnson	Jackie Roe
Barratt Plc	David McArthur	Jo Rostron
Birmingham Law Society	David Robinson	John Bunting PhD
Boodle Hatfield LLP	Dawn Barnes	John Byrne
Bramshott Place Village Residents' Association	Derrick Fuller-Webster	John H Cooney
British Insurance Brokers' Association	Dr C Hakim	John Harvey
British Property Federation	Ellen Andrew	Julian Maples
Building Societies Association	Emerson Group	Kamesh Venkataswamy
Carol Carter	Ernest Whittaker	Kate Stephenson
Carol Kerby	Estates and Management Limited	Kathy Allen
Catherine Margaret Charles	Federation of Private Residents' Associations ("FPRA")	Kevin Mullery
Catherine Tuckwood	Fieldfisher LLP	Kheya Bag
	Fiona Campbell	Laurence Target
	FirstPort	Law Society
	George Newsom	Leasehold Reform Group
		Leila Allen
		Letitia Crabb
		Linden Limited

Liz Clayton and Carol Williams
Liz Justice
Lord Walker of Gestingthorpe
M D Sinclair
Malika Kassemi
Marathon House RTM Company Ltd
Mari Knowles
Martin Foulds
Martin Wood
Mary Dudley Seaver
McCarthy & Stone
Michael Bowen
Michael Harvey
Michael Kucharski
Mike Paley
Mrs K Melbye
Mrs Pat Meyrick
N A Carnie
National Leasehold Campaign
National Trust

Nicholas Warren
Nigel Shingler
Nikolas Andersen
Oliver Yun
Osborne Clarke Solicitors
Paul Clark
Paul Sams
Peter Bellenes
Peter Smith
Peter Williams
Philip Griffiths
Pinsent Masons LLP
Places for People
Professor James Driscoll
Quoin Commonhold Association
R M Campbell-Barr
Rawdon Crozier
Ray Harling
Raymond Hayes
Redrow Homes Ltd
Residents of Park House
Retirement Housing Group ("RHG")

Rodney Townson
Roger Huxtable
Roger Jenking
Rosemary Herbert
Sandra Virgo
Shula Rich
Stan Marlow
Stephen Bedford
Stuart Ryan
Susan Ellis
Susan Stuckey
Suzanne McGreavy
The Berkeley Group Holding plc
The Property Ombudsman
Tony Martin
Trevor Leigh
Trowers & Hamblins LLP
UK Finance
Wrigleys Solicitors LLP
Yorkshire Building Society Group