

Leasehold and Freehold Reform Bill

Written evidence submitted by Shared Ownership Resources

10 January 2024

Introduction

Shared Ownership Resources champions the interests of shared owners and households considering shared ownership. The project publishes case studies; collaborates with housing, legal and financial experts to offer specialist information and advice; and campaigns for improved transparency and better outcomes and against mis-selling and other poor practices in the sector.

Sue Phillips (FCCA) founded the Shared Ownership Resources project in 2021. In 2023 Sue Phillips published *Shared Ownership: The Consumer Perspective*.¹ This submission includes relevant recommendations from that report in assessing proposed legislative reform from a shared owner perspective.

Main points and recommendations for action are outlined below.

- The Shared Ownership Resources project welcomes reform to empower leaseholders and to improve leaseholder consumer rights. However, it is essential that shared owners not be excluded from such reforms, as this would exacerbate and entrench disadvantages and hazards encountered by this particular category of leaseholders.
- Notwithstanding the promise of affordable home ownership, shared owners have fewer legal and regulatory rights and protections than residential leaseholders more generally.
- The Bill, in its current iteration, does not ensure fairness and transparency for shared owners.
- This submission recommends that:
 - Shared owners are provided with the same rights and protections under the Bill as any other residential leaseholder.
 - The Bill takes account of the findings of the LUHC Committee inquiry into shared ownership, and any related recommendations (as and when they are published).

Response

1. Scope of the Leasehold and Freehold Reform Bill

1.1. Scope and terminology

1.1.1. The Leasehold and Freehold Reform Bill amends the rights of “tenants under long residential leases”, also variously referred to in the Bill as “leaseholders”, “long leaseholders”, “residential tenants”, “qualifying tenants”, “participating tenants”, “sub-tenants” and “tenants”.

1.1.2. The term ‘shared ownership’ is used in Schedule 2, Section 11 - *Collective enfranchisement: property other than relevant flats etc and appurtenant property*:

“(5) But a flat is not a relevant flat if— ...

(b) it, or any part of it, is demised by a shared ownership lease.”

1.1.3. The term ‘shared ownership’ is also used in Schedule 6 which inserts the following definition of a ‘shared ownership lease’ into Section 37 of the LRA 1967 and the LRHUDA 1993:

““shared ownership lease” means a lease of a dwelling—

(a) granted on payment of a premium calculated by reference to a percentage of the value of the dwelling or of the cost of providing it, or

¹ Phillips, S. (2023) *Shared Ownership: The Consumer Perspective*. Available at: <https://www.sharedownershipresources.org/campaigning/reports/consumer-perspective/>.

(b) under which the tenant (or the tenant's personal representatives) will or may be entitled to a sum calculated by reference, directly or indirectly, to the value of the dwelling".

1.1.4. The term 'shared owner' is not used, or defined, in the Bill.

1.1.5. Whether or not shared owners are in scope of the various sections of the Bill is implicit, rather than explicit, in the wording. However, shared owners are currently excluded from at least some of the proposed amendments to the rights of tenants under long residential leases.

1.1.6. Shared owners should not have to rely purely on the goodwill of landlords, whether not-for-profit providers or commercial entities. This is particularly essential given that the cross-subsidy development funding model inherently creates conflicts of interest between shared owners and registered providers.² Shared owners should have the same rights and protections, in law, as any other residential leaseholder.

1.2. Shared ownership and consumer protection

1.2.1. Shared owners currently have fewer rights, more burdens and weaker consumer protections than residential leaseholders more generally.

1.2.2. For example, shared owners are excluded from the scope of the New Homes Quality Board Code of Practice.³ This code gives homebuyers: "a mandatory 14 calendar day Cooling Off Period where the agreement may be cancelled and the Reservation Fee will be refunded without deduction and in full." But - as L&Q's response to the Advertising Standards Authority (ASA) inquiry into a 'Black Friday' promotion of shared ownership homes makes clear - industry standards are considerably less generous when it comes to shared ownership:

"By giving consumers a two-day cooling-off period, they gave prospective buyers more protection than the industry standard. They also referred to a government advice page which stated that reservation fees were unlikely to be returned to buyers if they decided not to proceed with the purchase."⁴

1.2.3. If shared owners remain excluded from the scope of consumer codes, it is even more vital that the law provides necessary protections.

"As a matter of urgency, the Government and the Law Commission should consider options to change the legal status of shared ownership from an assured tenancy to 'conventional' leasehold in order to afford shared owners the same rights and protections as any other leaseholder."

(Recommendation in 'Shared Ownership Resources: The Consumer Perspective' report)

2. Leasehold enfranchisement

2.1. Shared ownership and the problem of short leases

2.1.1. Homes England's *Capital Funding Guide* (2022)⁵ outlines the problems arising for shared owners from 'short' leases:

"Homes England's model Shared Ownership leases were first issued in the late 1970s / early 1980s. Many of these leases would have been issued for a term of 99 years, and the remaining term would now be significantly less than this.

We are aware that this may create difficulties for those shared owners now wishing to sell their share. Lenders have requirements on the minimum lease term they will consider to be adequate security. This may make it difficult for purchasers or those re-mortgaging to obtain a mortgage."

2.1.2. Shared owners are perhaps more likely to encounter short leases than other leaseholders. Inside Housing reports:

'Multiple examples of shared owners being given 99-year leases by housing associations, while market sale buyers on the same development were given 125-year or 999-year leases'.⁶

² Phillips, S. (2023) *Shared Ownership: The Consumer Perspective*. Available at: <https://www.sharedownershipresources.org/campaigning/reports/consumer-perspective/>.

³ <https://www.nhqb.org.uk/resource/new-homes-quality-code-published.html>.

⁴ <https://www.asa.org.uk/rulings/london-and-quadrant-housing-trust-a22-1176010-london-and-quadrant-housing-trust.html>.

⁵ <https://www.gov.uk/guidance/capital-funding-guide>.

2.2. Informal lease extensions

2.2.1. Shared owners do not have a statutory right to lease extension. They are reliant on an informal process, where the landlord has discretion to determine whether or not a lease can be extended, the price and the number of years.

2.2.2. There is a lack of standardisation in the social housing sector, with lease extension policies varying considerably from one housing association to another. Inside Housing report that some housing associations charge shared owners a premium based on 100% of their home's value, while others charge a premium based on the shared owner's percentage share of equity.⁷ Some providers who charge 100% of the lease extension premium then treat it as a home improvement, and allow the shared owner to get a valuation disregarding this at staircasing. However, this approach provides more benefit to the housing association than the shared owner. It is of little value to a shared owner who extends their lease but does not proceed to staircasing.

2.3. Shared owners do not benefit from leasehold enfranchisement reforms

2.3.1. The Bill aims to empower existing leaseholders in houses and flats, by making it cheaper and easier to extend their lease or buy their freehold. However, as assured tenants, shared owners are not qualifying leaseholders with statutory rights to leasehold enfranchisement. Consequently, they do not benefit from the proposed reforms.

2.4. Existing shared owners are disadvantaged by leasehold enfranchisement reforms

2.4.1. The new model for shared ownership, with a 990-year lease replacing the previous 99-year minimum term, disadvantages existing shared owners by creating the likelihood of a two-tier market. Excluding shared owners from lease enfranchisement reforms removes a potential remedy, thereby exacerbating the problems they face.

2.4.2. Even if shared owners were brought into leasehold enfranchisement reform, some households might not be able to afford to take up the new rights. Given a longstanding model lease with a 99-year term – prior to the new model for shared ownership – and widespread misleading marketing of short shared ownership leases, there is a compelling case for making leasehold enfranchisement financially accessible to shared ownership households sold short leases.

2.5. Short shared ownership leases and mis-selling

2.5.1. In 2022, the Advertising Standards Authority (ASA) ruled that it is misleading to omit information relating to the costs of lease extension – particularly once there are fewer than 80 years remaining – from marketing materials.

2.5.2. Government, housing associations and solicitors (including panel solicitors recommended by housing associations) have – over many decades – largely failed to inform entrants to the shared ownership scheme about the cost implications of short leases, including the relationship between:

- a short 99-year or 125-year lease,
- the 80-year threshold (after which lease extension becomes more costly), and
- mortgage terms.

2.5.3. Social housing sector assertions that conveyancing solicitors, not housing providers, are responsible for provision of material information about the cost implications of short leases are at odds with the ASA ruling.

“Government, Homes England, the Greater London Authority and housing associations should consider options to fund lease extension to at least 250-years at an affordable flat fee for all shared owners whose lease term was originally 125-years or less.”

(Recommendation in ‘Shared Ownership Resources: The Consumer Perspective’ report)

⁶ Heath, L. (2021) Shared owners unable to sell flats face having to pay thousands for lease extensions, *Inside Housing*, 25 March. Available at: <https://www.insidehousing.co.uk/news/news/shared-owners-unable-to-sell-flats-face-having-to-pay-thousands-for-lease-extensions-70147>.

⁷ Heath, L. (2021) Shared owners unable to sell 3flats face having to pay thousands for lease extensions, *Inside Housing*, 25 March. Available at: <https://www.insidehousing.co.uk/news/news/shared-owners-unable-to-sell-flats-face-having-to-pay-thousands-for-lease-extensions-70147>.

2.6. Ground rent

2.6.1. Given that shared owners do not qualify for the new right to lease extension, they do not benefit from the related reform of peppercorn ground rent on payment of a premium.

2.6.2. Nor do they benefit from a new right for leaseholders who already have very long leases (with over 150 years remaining) to buy out their ground rent without extending the term of their lease or buying the freehold.

2.6.3. Historically, shared ownership properties were offered with peppercorn ground rent. But at least some housing providers have taken advantage of an opportunity to increase cross-subsidy revenue via the imposition of escalating ground rent.

“Homes England model shared ownership leases suggest that shared ownership leases should not generally contain a more than nominal ground rent, in addition to the rent payable on the unacquired “share”. However, responses to the leaseholder survey which we carried out as part of our Enfranchisement consultation suggest that a number of shared ownership providers do charge a significant annual ground rent.”⁸

(The Law Commission, quoted in a Cambridge Centre for Housing and Planning Research (CCHPR) market review)

2.6.4. As discussed in Section 2.5., housing associations argue that conveyancing solicitors should flag up lease length and ground rent issues to buyers. However, this deflects attention from the underlying question of why charging ground rent to shared owners is seen as a valid source of funding for social housing. This question would become even more pertinent if proposed ground rent reforms for leaseholders excluded shared owners.

2.6.5. At least one housing association has reviewed its ground rent policy, as reported in a University of York report:

“We’ve... taken a view that we’re removing ground rents from all of our stock where we’re the landholder, from April next year. Now that comes at a considerable cost. However, when we weigh up the purpose of why we’re here and what we we’re here to operate, ultimately, we’re seeing that ground rent position as something which creates tension and difficulty for our customers. It’s within our gift to remove it, and we’re happy to do so. So, they’re two policy changes that we’re making currently.”⁹

2.6.6. Ground rent problems can be harder to resolve where the housing association is not the freeholder. Issues arising from complex ownership structures (intermediate leases) are discussed in the following section.

“Government should make peppercorn ground rent a requirement for all parties with an interest in any shared ownership lease, with retrospective application.”

(Recommendation in ‘Shared Ownership Resources: The Consumer Perspective’ report)

2.6.7. Whatever the conclusions of the DLUHC consultation on limiting the level of ground rent that leaseholders can be required to pay in England and Wales¹⁰, shared owners should not be excluded from reforms intended to empower leaseholders.

3. Intermediate leases

3.1. Intermediate leases, shared ownership and short leases

3.1.1. Exclusion from a statutory right to lease extension is most problematic for shared owners where the housing association is not the freeholder. Shared Ownership Resources’ casework includes a shared owner whose housing association has just a 125-year interest in the lease, so can only offer a 25-year lease extension.

“It turns out there are four parties on the Land Registry title for my home: the freeholder, the head leaseholder, my housing association, and me. The head leaseholder has a 999-year interest in the lease. But my housing association only has a 125-year interest in the lease. Which means that if I go down the informal lease extension route they can only offer me an additional 25 years. The only way I

⁸ Burgess, G. (2021) *Shared Ownership Market Review 2020*. London, So Resi/Metropolitan and Thames Valley Housing Association. Available at: https://www.cchpr.landecon.cam.ac.uk/Research/Start-Year/2020/shared_ownership_2020/so_resi_report/moreinfo.

⁹ Wallace, A., Rugg J., & Jiaxin Lui J. (2022) *Do Affordable Homeownership Schemes Reduce Homeownership Risks for Lower Income Households in England?*, University of York. Available at: <https://www.york.ac.uk/business-society/research/spsw/housing-and-environment/affordable-homeownership/>.

¹⁰ <https://www.gov.uk/government/consultations/modern-leasehold-restricting-ground-rent-for-existing-leases/modern-leasehold-restricting-ground-rent-for-existing-leases>

*can extend my lease by more than 25 years is to staircase to 100%. Then I could extend my lease under the statutory route, which would give me the right to a 90-year extension and a peppercorn ground rent. But, because my housing association isn't my freeholder, this is complicated and expensive."*¹¹

(This housing association's proposal that the shared owner sell their share to resolve the issue evidences scant regard for the interests of any prospective purchaser meeting affordability eligibility criteria.)

4. Transparency of service charges and administration charges

4.1. Transparency regarding service charges and administration fees

4.1.1. The Shared Ownership Resources project welcomes reforms intended to improve leaseholder consumer rights by requiring greater transparency regarding service charges and administration fees.

4.2. Transparency regarding 100% liability for service charges and administration fees

4.2.1. Transparency regarding service charges and administration fees is more complex in the shared ownership context, where shared owners bear 100% liability for all costs (other than during the 10-year initial repair period under the new model for shared ownership).

4.2.2. Homes England's model lease is silent on 100% liability for service charges and other costs, regardless of the size of the equity share held by the shared owner. Nor is this clearly explained in Key Information Documents.

*"I was not clearly advised that my responsibility will be 100% for the major building works rather than actual share of the approved 25% affordability. That's the whole reason shared owners would enter the agreement, to have the protection cap of what they can actually afford".*¹²

4.2.3. In 2021, Housemark - a data and insight company for the UK housing sector, which is jointly owned by the National Housing Federation and the Chartered Institute for Housing - published analysis suggesting links between widespread shared owner dissatisfaction and service charges:

"The average percentage of shared owners satisfied with their landlord overall was just 57% last year, 26 percentage points lower than the equivalent figure for social rented tenancies."

Adding:

*"Shared owners are social housing tenants but are responsible for most repairs. This means landlords have less contact and provide fewer services compared to full tenants with perception of value for money and satisfaction rates suffering as a result."*¹³

4.3. Transparency regarding estimated future liabilities

4.3.1. Scrutinising and challenging costs, if they are considered unreasonable, can be a very time consuming task. Focusing exclusively on costs already incurred places the burden on leaseholders to assess and challenge service charges, rather than on landlords to ensure value for money and accurate service charge statements.

4.3.2. Leaseholders should receive an annual forecast of budgeted service charges. This would assist monitoring and assessment of actual service charges and provide shared owners, and other leaseholders, with resources to better plan their finances (including staircasing and/or lease extension).

4.3.3. Leaseholders should receive an annual statement of the year-end balance of any sinking fund/reserve fund, accompanied by a statement of estimated future calls on that fund. Where a shortfall is forecast, the statement should include information about any action to be taken (for example, any likely increase in leaseholder contributions) or recommendations (for example, put aside savings for potential future costs).

¹¹ Phillips, S. (2023) *Shared Ownership: The Consumer Perspective*. Available at: <https://www.sharedownershipresources.org/campaigning/reports/consumer-perspective/>.

¹² Phillips, S. (2022) *Homes England Key Information Document (2016-21)*. Available at: <https://www.sharedownershipresources.org/campaigning/reports/homes-england-key-info-document/>.

¹³ Housemark (2021) *Tenant Satisfaction Measures Exclusive first look at the sector*. Available at: <https://www.housemark.co.uk/news/housemark-reveals-exclusive-first-look-at-the-sector-following-publication-of-draft-tenant-satisfaction-metrics/>.

4.4. Paying landlords' legal costs when challenging poor practice

4.4.1 Many leaseholders consider it unfair that they should pay landlords' legal costs when challenging poor practice. Such costs undoubtedly act as a deterrent if they are perceived as unaffordable, or too risky.

4.5. Fairness

4.5.1. The LUHC Committee's inquiry into shared ownership asked: "What challenges are associated with repair costs being covered by those utilising the shared ownership schemes?" Responses suggested that service charges are a source of confusion, frustration and financial difficulty for many shared owners.¹⁴

"Consumers feel clearly that there is an unfair balance of financial obligations.

(Professor Peter Williams, written submission to the LUHC Committee inquiry into shared ownership)

"The main issue is that shared owners are liable for all costs. A just alternative would be cost sharing between the HA and the shared owner based on percentage owned. This would also provide a strong incentive for HAs to remedy issues early and appoint competent contractors."

(End Our Cladding Scandal, written submission to the LUHC Committee inquiry into shared ownership)

4.5.2. The issue of 100% liability for repair and maintenance costs, regardless of the size of the equity share, is discussed in the report *Shared Ownership: The Consumer Perspective*, which concludes:

"Government should support an independent review of the performance and regulation of service charges over time and implement reform to ensure that service charges are more likely to remain affordable for shared owners. The review should consider the option to apportion liability according to the respective equity shares held by the shared owner and the landlord, plus an overall financial cap on total shared owner liability."

(Recommendation in 'Shared Ownership Resources: The Consumer Perspective' report)

4.5.3. The Public Bill Committee should take account of the findings of the LUHC Committee inquiry, and any recommendations relating to service charges and administration, as the Bill makes its way through the legislative process.

4.6. Shared ownership, affordability and the building safety crisis

4.6.1. The exposure of shared owners to uncapped, and potentially unaffordable, service charges has been thrown into stark relief by the building safety crisis. The campaign group End Our Cladding Scandal found that 83% of leaseholders surveyed for their report *Dereliction of Duty: How housing associations failed leaseholders trapped in the building safety crisis* were shared owners.¹⁵

5. Regulation of estate management and rentcharges

5.1. The Shared Ownership Resources project welcomes reforms to make it easier for residential leaseholders to hold estate management companies to account. Where shared owners are charged for third party estate management and/or are liable for rentcharges, they should not be excluded from the protections available to any other residential leaseholder.

Submitted by Shared Ownership Resources

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info@sharedownershipresources.org

www.sharedownershipresources.org

¹⁴ <https://committees.parliament.uk/work/7833/shared-ownership/publications/>.

¹⁵ End Our Cladding Scandal (2022) *Dereliction of duty: How housing associations failed leaseholders trapped in the building safety crisis*. Available at: <https://endourcladdingscandal.org/building-safety-crisis/new-report-shows-housing-associations-have-failed-leaseholders/>.