

The Future of Homeownership – Reinvigorating Commonhold in the 21st Century



The reform of leasehold home ownership is at the forefront of the political agenda and the Law Commission has recently recommended wholesale changes which will transform the residential landscape. [Anna Favre](#) considers the drivers behind the need for reform and why commonhold is advanced as a solution.

Anyone with even a passing interest in home ownership will know that housing policy forms a key feature of the political agenda. Government scrutiny has recently centred on leasehold ownership of property and the perceived injustices in the landlord and leaseholder relationship. This led to the government's 2017 Housing White Paper entitled *Fixing our broken housing market*, swiftly followed by a consultation paper on *Tackling unfair practices in the Leasehold market*. Then, in 2018 the government asked the Law Commission to carry out a wholesale review of three key areas: leasehold enfranchisement, commonhold and right to manage.

The Law Commission's terms of reference (reflecting the underlying policy objectives) were to promote transparency and fairness in the residential sector and to provide a better deal for leaseholders as consumers.

Central to this remit was reinvigorating the much vaunted but seldom exercised form of flat ownership known as commonhold; introduced under the Commonhold and Leasehold Reform Act 2002, it combines freehold tenure of property with shared ownership of common areas and services.

The concept of freehold and leasehold is unique to English law. Freehold ownership is not time limited and generally gives extensive control of the land. In contrast, leasehold provides a fixed period of ownership of a property, the use and control of which is shared with the freeholder. By its nature a lease is a wasting asset, losing value as it grows shorter while the cost of extending it becomes exponentially greater.



Criticism of the use of leasehold ownership intensified following the widely reported 'leasehold houses scandal' concerning new build properties principally located in the north of England, although the same issues arise nationwide. Obligations to pay high ground rents to freeholders, in some cases doubling every 10 years, weighty administration charges and commensurate falls in the value of leaseholders' property left many unable to meet their financial obligations and unable to sell or mortgage their homes. This led to a growing sense of injustice and a perception that external investors holding a stake in a person's home (as a source of income) created imbalance and unfairness. The case for reform and an appraisal of alternative forms of ownership was set in motion.

In July 2020 the Law Commission published its recommendations on the reform of all three areas of law. They include, significantly, proposals for a 'fit for purpose' commonhold which could render leasehold ownership obsolete.. In an ambitious statement, the Law Commission's Nick Hopkins urged the government "to ensure that commonhold becomes the primary model of ownership of flats in England and Wales". If the government adopts these recommendations, as is anticipated, homeownership as currently understood will change radically.

Commonhold is fundamentally different from leasehold. Analogous to the Australian 'strata' system, commonhold provides indefinite freehold ownership of property with shared ownership of common areas and services. There is no concept of a flat but instead the land is divided into units, whether commercial or residential, and managed jointly by each unit owner as a member of a commonhold association. The commonhold association must keep to the rules of a commonhold community statement (the CCS) which defines the physical extent of each unit and the common parts, fixes the amount of each owner's contribution to maintenance costs and sets out the duties and obligations of each owner. It is perceived as conferring on property owners greater control of their property, regulating the affairs of a group whose interests are broadly aligned. This is in contrast to what the government considers the competing interests of landlord and leaseholder.

Despite its much lauded introduction in 2002, commonhold has not been readily adopted. Fewer than 20 commonholds have been created since the legislation was introduced, principally, it is thought, because of its unworkability in practice. Low uptake by mortgage lenders and developers, a lack of consumer awareness and a general reluctance to change the leasehold status quo are also considered to have been contributing factors.

In a bid to address these deficiencies and reinvigorate commonhold as a workable leasehold alternative, the Law Commission report contains over 120 proposals for its reform. These include protecting the interests of lenders, facilitating easier conversion from leasehold to commonhold, and improving the clarity and flexibility of the CCS. Detailed consideration is also given to enforcement of the CCS and dispute resolution – a tacit acknowledgment perhaps of the human capacity to fall out with one's neighbours, irrespective of how a home is owned.

The Law Commission makes a compelling case for the adoption of commonhold as an alternative form of tenure. It remains to be seen what path the government will now take but it is clear in its objective to make commonhold a viable mechanism for home ownership. The biggest hurdle may be persuading land owners to embrace the change. Legislative change will probably be required to ensure its objectives are met.



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