FPRA
FEDERATION OF PRIVATE RESIDENTS' ASSOCIATIONS
THE VOICE OF LEASEHOLDERS
Representing Residents' Associations, Residents' Management Companies, Right to Manage Companies and similar groups

Leasehold Enfranchisement Team
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4 March 2019
SENT BY EMAIL AND POST

Dear Sirs

Law Commission's Consultation Paper: Reinvigorating commonhold: the alternative to leasehold ownership

This response to your consultation is on behalf of The Federation of Private Residents' Associations (FPRA), which as far as we know, is the only national body that represents the voice of leaseholders in England and Wales. We start this response in the same manner as our previous response to your consultations. We have only answered specific questions where we have something to contribute.

We have around 500-member associations representing tens of thousands of individual leaseholders. We have drafted this response on the basis of our regular daily contact with our members who inform us of the problems they encounter in the leasehold sector. This was the subject of discussion at our AGM attended by Prof. N Hopkins & Dr. N. Roberts and detailed discussions between our members.

We have a committee of both leasehold representatives and experts from throughout the sector that have also helped with the preparation of this response. Of these, some have a particular interest in Commonhold.

About half of our member Associations are leaseholder-owned companies which own the freehold of and manage their blocks. For those blocks where the freeholder is separate from and independent of the leaseholders of the individual flats, an enfranchisement would seem to be an essential step.

The Overall impression from our members is: -

1. We need clear, simple & easy to understand change – to much complexity already exists and for essential changes to be effective & fair, the proposals need to be easy to understand and easy to apply.

2. The legislation needs to wipe away numerous separate & superimposed acts, to give a single well draw up place for all rights.
3. The Government needs to tell all Leaseholders of the new changes when finalised, and this needs to be part of basic process of purchasing a home in the first place, so that buying the freehold/extending the Lease is the norm.
4. We have concerns that with the "mass" of consultations from different bodies & organisations, that whilst change is desperately needed, we could end up with a mess of uncoordinated and possibly conflicting legislation.
5. We have a general concern, that most legislation is designed for a separate & independent Freeholder/Leaseholder situation, whilst in reality the Leaseholders have often acquired there Freehold and there is a more cooperative situation which is hindered by legislation and rules not helped by them.

Yours faithfully

Richard Williams
Honorary Vice Chairman on behalf of FPRA

FPRA REPLIES TO GENERAL QUESTIONS LAW COMMISSION'S CONSULTATION PAPER: REINVIGORATING COMMONHOLD: THE ALTERNATIVE TO LEASEHOLD OWNERSHIP

Consultation Question 1.

In order to protect freeholders, we provisionally propose that it should only be possible to convert to commonhold if either:
(1) the freeholder consents; or
(2) the leaseholders satisfy the qualifying criteria for collective enfranchisement and acquire the freehold as part of the process of converting to commonhold.
Do consultees agree?

FPRA agree that, in the absence of an agreement with the freeholder, leaseholders should enfranchise as a prelude to conversion to commonhold. Apart from the question of protecting freeholders, we believe that attempts to create a procedure directly to commonhold against the wishes of the freeholder will add greatly to the complexity of what will already be a complex process.

Consultation Question 2.

We provisionally propose that it should be possible to convert to commonhold without the unanimous consent of leaseholders.
Do consultees agree?

FPRA agree that it should be possible to convert to commonhold without the unanimous consent of leaseholders. In practice, in the case of the larger blocks, the problem will not be the leaseholders who object to the proposals, who are at least engaging with the process and whose expressed concerns may be able to be allayed, but the "non-responsive" leaseholders who don't reply at all to the proposals.

Consultation Question 3.

We provisionally propose that only leaseholders who are eligible to participate in a collective enfranchisement claim should take a commonhold unit and should be able to participate in a decision to convert to commonhold.
Do consultees agree?

We agree that only leaseholders who are eligible to participate in a collective enfranchisement claim should be able to take a commonhold unit and participate in a decision to convert to commonhold.

Consultation Question 4.

If non-consenting leaseholders retain their leases following conversion to commonhold (which we call "Option 1"):

(1) We provisionally propose that it should be possible for conversion to take place with the support of long leaseholders of 50% of the flats in the building. Do consultees agree?
(2) We provisionally propose that non-consenting leaseholders should be provided with a statutory right to purchase the commonhold interest in their unit at a later date. Do consultees agree?
(3) We provisionally propose that the right to purchase the commonhold interest should replace non-consenting leaseholders' statutory rights to obtain a lease extension and to participate in a collective enfranchisement. Do consultees agree?
(4) We invite the views of consultees as to whether a purchaser from a nonconsenting leaseholder should be required to purchase the commonhold interest, as well as the leasehold interest.
(5) We provisionally propose that the leaseholders should be able to require the freeholder to take new 999-year leases over any flats not let to qualifying tenants and that such leases should automatically be granted over flats let to statutorily protected non-qualifying tenants and shared ownership leaseholders. Do consultees agree?
(6) We invite the views of consultees as to whether the non-consenting leaseholders' share of the freehold purchase should be capable of being funded:
(a) by the consenting leaseholders, through the commonhold association which holds the commonhold interest;
(b) by the consenting leaseholders, through a company (owned by them) which acquires the commonhold interest;
(c) by a third-party investor, who acquires a long lease of the commonhold unit superior to the non-consenting leaseholder's lease;
(d) by granting a leaseback to the freeholder (who may be compelled to accept the lease), who acquires a long lease of the commonhold unit superior to the non-consenting leaseholder's lease; and/or
(e) by any other means.

1) FPRA consider that that conversion to commonhold should be supported by a majority (i.e. more than 50% of the leaseholders). It should be noted that, as discussed below, even under the relatively straightforward "Option 1" there will be changes to the property rights of the leaseholders who do not participate
2) We agree that non participating leaseholders should be provided with a statutory right to purchase the commonhold interest of their unit at a later date. There may be a question as to what the price should be. It seems reasonable that the price paid by latecomers should be more than it would have been at the start to encourage as many leaseholders as possible to participate and convert as soon as possible. If the purchase, by the leaseholder takes place within a short time after the conversion, then it may be reasonable that he or she should only pay little more than they would have paid at the time of the conversion. Thereafter it may be felt by longer standing commonholders that rather more should be paid, to reflect the declining value of the retained lease, and the effects of inflation as well as incentivising non-participating leaseholders to convert

3) We agree that the right of a non-consenting leaseholder to purchase the commonhold interest in his or her unit should replace the right to extend the lease or enfranchise by a compulsory purchase of the freehold. The loss of these rights, without immediate compensation might be seen as a factor to be taken into account in deciding the price to be paid by the leaseholder converting subsequently.

4) We consider that when the lease of a non-consenting leaseholder is purchased for money the purchaser should be required to purchase the commonhold interest as well. The Consultation does not discuss the position where transfers without payment take place, as on a gift, or perhaps a Court Order in matrimonial proceedings. It would clearly be inappropriate to impose such a requirement in the case of the non-monetary transfer to the personal representatives of a deceased leaseholder, but there may be a question as to whether other transfers, such as gifts, might trigger a requirement to purchase the commonhold interest.

Consultation Question 5.

If non-consenting leaseholders are to be required to take a commonhold unit following conversion to commonhold (which we call "Option 2"):
(1) We provisionally propose that that qualifying leaseholders of 80% of the flats in the building should be required to support the decision to convert. Do consultees agree?
(2) We provisionally propose that the leaseholders should be able to require the freeholder to take the commonhold unit of any flats not let to qualifying tenants and that freeholders should automatically become the unit owner in respect of any flats let to statutorily protected non-qualifying tenants and shared ownership leaseholders. Do consultees agree?
(3) We provisionally propose that it should be possible to place a charge over non-consenting leaseholders' units to recover their share of the initial freehold purchase price upon future sale of their commonhold unit. Do consultees agree?
(4) If consultees do not agree, how should non-consenting leaseholders' share of the purchase price be financed?
(5) We invite the views of consultees as to who should be able to provide such finance and take the benefit of the charge.
(6) We invite the views of consultees as to whether the charge should be set:
(a) as a fixed amount, representing the non-consenting leaseholder's share of the initial freehold purchase;
(b) as that fixed amount, with interest;
(c) as that fixed amount, adjusted in line with house price inflation;
(d) as a percentage of the final sale price, representing the percentage increase in value of the non-consenting leaseholder's property interest (from leasehold to commonhold) on conversion; or
(e) in some other way.
(7) We invite the views of consultees as to what priority this charge should have in relation to any pre-existing charges.

In view of the difficulties and disadvantages of the "Option 2" under which non-consenting leaseholders could be compelled to take commonhold interests, FPRA doubt whether this proposal should be pursued. In particular, the difficult issues in connection with the financing of the non-consenting leaseholders' interests, particularly the unilateral imposition of a charge upon the non-consenting leaseholder's interest suggest that this option is likely to cause many difficulties in practice. After all, what happens if values fall, and "negative equity" situation arises where the sum due under the charge exceeds any additional value from the conversion of the leasehold into commonhold?

Consultation Question 6.

Where a freeholder or non-consenting leaseholder, who has let his or her flat to a non-qualifying tenant on a variable service charge, is required to take a commonhold unit on conversion under Option 2, we invite consultees' views as to whether:
(1) a cap should be placed on the amount of commonhold costs which are recoverable from the former leaseholder or freeholder, to reflect the costs that are recoverable from the non-qualifying tenant;
(2) the non-qualifying tenant's rights should be altered so that he or she no longer has the right to challenge service charge costs after they have been incurred, but instead has the same rights to challenge commonhold costs as other unit owners; or
(3) any other approach would fairly protect and balance the competing interests of the leaseholder or freeholder, and the non-qualifying tenant.

Consultation Question 7.

Under Option 2, we provisionally propose that:
(1) those wishing to convert (with less than unanimous consent) should be required to seek the prior authorisation of the First-tier Tribunal (Property Chamber) or Residential Property Tribunal in Wales ("the Tribunal"); and
(2) the Tribunal should be required to authorise a conversion to commonhold unless:
(a) the necessary consents have not been obtained;
(b) the terms of the CCS do not adequately protect the interests of nonconsenting leaseholders; and/or
(c) the applicants refuse to adopt the Tribunal's proposed revisions to ensure the CCS sufficiently protects the interests of non-consenting leaseholders.
Do consultees agree?

Consultation Question 8.

We provisionally propose that on conversion to commonhold, tenancies granted for 21 years or less should continue automatically on conversion and that the consent of such tenants should not be required in order to convert to commonhold.
Do consultees agree?

We agree that on conversion to commonhold, tenancies granted for 21 years or less should continue automatically and the consent of such tenants should not be required to convert to commonhold, for the reasons given in Paragraph 151 of the consultation.

Consultation Question 9.

We invite consultees' views as to whether it should be possible for charges to transfer automatically from the leasehold title to the commonhold unit title on conversion to commonhold, without requiring lenders' consent.

FPRA consider that it should be possible for charges to transfer automatically from the leasehold title to commonhold unit title without requiring lenders' consent.

Consultation Question 10.

We have set out two options for setting the threshold of leaseholder support which should be required to convert to commonhold. The first would be to require leaseholders (who are qualifying tenants under enfranchisement legislation) owning at least 50% of the flats in the building to consent, provided nonconsenting leaseholders are able to retain their leasehold interest on conversion to commonhold (Option 1). The second would be to require leaseholders (who are qualifying tenants under enfranchisement legislation) owning at least 80% of the flats in the building to consent, on the basis that non-consenting leaseholders are required to take a commonhold unit on conversion (Option 2).

We invite consultees' views as to whether they prefer Option 1 or Option 2.

We invite consultees' views as to any other options for setting the threshold of leaseholder support for conversion, other than Options 1 and 2, which strike an appropriate balance between the interests of those wishing to convert and nonconsenting leaseholders, and provide a mechanism for financing the freehold purchase.

FPRA consider that the Option 1 procedure is preferable to the Option 2 procedure on the grounds of simplicity, and the need to protect the position of non-consenting leaseholders. We are unable to suggest any alternative mechanisms.

Consultation Question 11.

We provisionally propose that, where the freeholder refuses to consent to conversion, the leaseholders will need to follow the collective enfranchisement process to purchase the freehold in order to convert to commonhold.
Do consultees agree?

FPRA think it likely that, where the freeholder refuses consent, leaseholders would be well advised to follow the now well established enfranchisement process so that, collectively, they will have complete control over the transfer into what will, for some time, be a new and untried ownership structure.

Consultation Question 12.

We provisionally propose that, to simplify the procedure for converting to commonhold, any consents given in support of the conversion should not automatically lapse after 12 months.
Do consultees agree?

We invite consultees' views as to whether leaseholders should be able to withdraw their individual consent to conversion after the Claim Notice has been served, or whether leaseholders should be required to make a collective decision no longer to proceed with the conversion.

FPRA agree that any consents given should not automatically lapse after 12 months. We hesitate to express a view on the question of whether individual leaseholders should be able to withdraw their consent after Notice of Claim has been served. While such a withdrawal of consent might be inconvenient, and to the informed onlooker it might seem that the leaseholder will not be exposed to uncertain, open-ended liabilities, some leaseholders might be discouraged from giving a consent, for what will be an unfamiliar process if they feel it would be impossible to extricate themselves.

Consultation Question 13.

We provisionally propose that (in addition to the freeholder) it should be possible for leaseholders who are in the process of acquiring the freehold by collective enfranchisement, to apply to HM Land Registry to create a new commonhold.
Do consultees agree?

We provisionally propose that, where a lender has consented to a conversion to commonhold on the condition that it will be granted new security over the commonhold unit after conversion, a deed of substituted security provided to HM Land Registry will act as sufficient evidence that this condition has been fulfilled.
Do consultees agree?

Consultation Question 14.

Where the freehold of the building is owned by the leaseholders collectively through a freehold management company (a "FMC"), we provisionally propose that the common parts of the building should be transferred to a new commonhold association as part of the process of conversion to commonhold (rather than the FMC changing its articles to become a commonhold association, where this is possible).
Do consultees agree?

Consultation Question 15.

We invite consultees' views as to whether, taking into account our provisional proposals set out in questions 11 to 14, the conversion procedure would operate satisfactorily.

We invite consultees' view on what changes could be made to simplify the procedure and make it more cost-effective.

Consultation Question 16.

We provisionally propose that any new management structure needs to meet the following objectives:
(1) Provide the ability to separate out the management of a variety of different interests within the same development, in particular by:
(a) differentiating voting rights, so that those affected by a decision are entitled to participate in making that decision, and no one else is able to do so; and
(b) allowing shared costs to be allocated in different ways to ensure that only those benefitting from a service pay for it.
(2) Provide a framework which can be used to regulate the relationship between more than one building where there are shared areas, such as shared car parks or gardens.
(3) Strike an appropriate balance between standardisation and flexibility.
(4) Facilitate consumer protection to ensure that abuses that have arisen in the residential leasehold context cannot be transposed into commonhold.
Do consultees agree?
17.22 Are there any other objectives which should be added to the list above?

FPRA agrees with the objectives in principle, and do not propose any other objectives.

Consultation Question 17

We provisionally propose that commonholds with sections (which are not individual corporate bodies) should be introduced as a management structure to make commonhold workable for more complex developments.
Do consultees agree?

If consultees do not agree, do consultees prefer either the flying commonhold model or layered commonhold model? If so, how do consultees suggest addressing the issues with these models?

Are consultees aware of any other options we should be considering?

FPRA do not have sufficient experience to comment on the merits of the different structures which may be required in complex developments. We hope that the need for such complexities will not prevent the adoption of simple section-free structures in straightforward single use developments or estates where all units share in the enjoyment of, and paying for, all common areas and facilities. In the circumstances, we do not feel that we can usefully comment on questions 18 to 24.

Consultation Question 18.

We provisionally propose that it should be optional, rather than mandatory, for a section committee to be set up for each section in a commonhold.
Do consultees agree?

If consultees disagree, which powers do consultees think should be given compulsorily to those committees?

Consultation Question 19.

We invite consultees' views as to whether delegation to section committees should be collateral or exclusive; whether this should vary for different powers; or whether it should be for each commonhold to decide.

Consultation Question 20.

We invite consultees' views as to whether:
(1) directors should be able to revoke or alter the powers delegated to a section committee as they wish;
(2) section committees affected by an alteration of delegated powers should be given the ability to apply to the Tribunal; or
(3) the directors should have to apply to the Tribunal in order to alter or revoke a delegation.

Consultation Question 21.

We provisionally propose that a new section should be able to be created by:
(1) the developer, at the outset; and
(2) the commonhold association at a later date.
Do consultees agree?

If the commonhold association is allowed to create sections after it has been set up, we provisionally propose that this decision should be approved by special resolution, with the additional requirement that at least 75% of the total votes held by the unit owners who would be part of the new section must have been cast in favour of creating the section.
Do consultees agree?

We provisionally propose that unit owners affected by the introduction of a new section should be given the option of applying to the Tribunal.
Do consultees agree?

Consultation Question 22.

We provisionally propose that qualifying criteria for sections should be introduced, so that sections can only be created to give separate classes of vote to:
(1) residential and non-residential units;
(2) non-residential units, which use their units for significantly different purposes;
(3) different types of residential units (such as flats and terraced houses);
(4) separate blocks in the same development; and
(5) other premises falling within the commonhold which, in the interests of practicality and fairness, should form a separate section.
Do consultees agree? Are there any other criteria which consultees feel should be added to the list?

Consultation Question 23.

We provisionally propose that it should be possible for sections to consist of a single unit.
Do consultees agree?

Consultation Question 24.

We provisionally propose that to combine two or more sections, a special resolution of the commonhold association should be required. Additionally, 75% of the votes cast by the unit owners in the sections that are to be combined must have been in favour.

Do consultees agree?

We provisionally propose that unit owners affected by sections being combined should be given the right to apply to the Tribunal as an additional protection.
Do consultees agree?

We provisionally propose that there should be no criteria which must be met before two or more sections in a commonhold can be combined.
Do consultees agree?

Consultation Question 25.

We invite consultees' views as to whether statutory development rights should apply automatically so as to avoid the need to reserve express rights in the CCS.
We invite consultees' views as to whether such statutory rights should be drawn widely to include all matters which are likely to apply in commonhold developments, including (but not limited to) the right to add land, to make consequential variations to commonhold contributions and voting rights, and rights of access.

Consultation Question 26.

We provisionally propose that there should be no specific statutory provisions for the appointment of developers' directors. Instead, a developer's ability to appoint directors should depend on the number of units it retains.
Do consultees agree?

We provisionally propose that developers should be able to exercise all voting rights associated with the units of which they are the registered owners.
Do consultees agree?

Consultation Question 27.

Currently, the Commonhold Regulations place certain restrictions on a developer's exercise of development rights:
(1) the developer must not exercise rights in a way which would interfere unreasonably with unit owners' enjoyment of their units or their ability to exercise rights granted by the CCS;
(2) the developer may not remove land from the commonhold which forms part of a unit unless the owner of that unit provides written consent;
(3) any damage caused to the commonhold land by the developer should be remedied as soon as reasonably practicable; and
(4) the developer may not exercise development rights if the works for which the right was granted have been completed (excluding the developer's right to market units).

We invite consultees' views as to whether any further restrictions should be introduced on the use of development rights: in particular, whether a time limit should be imposed on the exercise of these rights (and if so, what this time limit should be).

FPRA agree that the limitations on developers' exercise of development rights should remain. Whilst in principle it would be desirable that there should be a time limit on the exercise by the developer of those rights, what that time limit should be must surely be dependent on the scale and complexity of the development. A possible solution might be to have a shortish time limit of, say 6 or 12 months and thereafter such longer period as may be reasonable.

Consultation Question 28.

We provisionally propose that "anti-avoidance" provisions should be introduced to ensure that the developer does not attempt to secure a greater degree of control by:
(1) taking powers of attorney from the purchasers (or seeking to control votes in any other way); or
(2) attempting to control how unit owners vote by inserting terms in the purchase contracts.
Do consultees agree?

FPRA agree with proposal that there should be "anti-avoidance" provisions to prevent developers securing excessive levels of control.

Consultation Question 29.

We invite consultees' views as to what advantages there are (if any) of the transitional period in the registration procedure for new commonhold developments.

Consultation Question 30.

We invite consultees' views as to whether any requirements of company law (such as to make an annual confirmation statement, and to file accounts) should be relaxed for commonhold associations.

FPRA would welcome a relaxation of the filing requirements of company law, both for commonhold associations and for FMCs. However, we understand that these requirements are officially regarded as a price that must be paid for the benefit of limited liability. We therefore suggest that in the absence of a relaxation, Companies House procedures could be made more commonhold-friendly. When it has become apparent that that the filings have not taken place, the most likely reason will be that the director who normally dealt with this formality and whose flat may very well have been the registered office has moved away or died and the

need to appoint a successor has been overlooked. It is suggested that reminders be sent to all the directors, at their home addresses before striking off or other sanctions are imposed.

Consultation Question 31.

We invite consultees' views as to whether there are particular difficulties in applying CVAs to commonhold associations.

We invite consultees' views as to whether the CVA procedure needs any adaptations to make it more relevant and effective in dealing with commonhold associations in financial difficulties.

Consultation Question 32.

We provisionally propose that it should not be possible for creditors directly to petition for a commonhold association to be wound-up, and a liquidator appointed. Instead, a petition could lead to the court appointing a commonhold administrator, who would carry out the necessary duties.
Do consultees agree?

We provisionally propose that a commonhold administrator should then be able to petition for the association to be wound-up only if the commonhold association is irretrievably insolvent.
Do consultees agree?

Consultation Question 33.

We provisionally propose that the law should be clarified to ensure that there is a presumption that, on the insolvency of a commonhold association, a successor association should usually be appointed.
Do consultees agree?

We invite consultees' views as to whether there are circumstances in which it would not be appropriate for the court to appoint a successor association and, if so, what these circumstances are.

We provisionally propose that the court should have discretion as to whether to impose conditions for a successor association to be appointed.
Do consultees agree?

(1) what conditions might be imposed; and
(2) if the court's discretion is to be structured, what factors the court should take into account.

Consultation Question 34.

We provisionally propose that, if a liquidator is appointed to wind up a commonhold association, he or she should not be able to demand further contributions from the unit owners to reduce the level of indebtedness of the association.
Do consultees agree?

We provisionally propose that, if a liquidator is appointed to wind up a commonhold association, he or she should not be able to demand further contributions from the unit owners to make up for the shortfall in contributions from members who are bankrupt or from whom it is impossible to recover their contributions.
Do consultees agree?

Consultation Question 35.

We provisionally propose that it should be possible for the CCS to impose restrictions on the short-term letting of units.
Do consultees agree?

We invite consultees' views as to how to ensure that any restriction on short-term letting does not prevent units being rented in the private or social rented sector. In particular:
(1) in relation to the private rented sector, we invite views on whether any restriction imposed by a CCS should be confined to lettings made for less than six-months, or for any other specified period;
(2) in relation to the social rented sector, we invite views on whether any restriction imposed by a CCS should not be able to apply to particular landlords, such as registered providers of social housing and housing associations, or whether there are other ways of ensuring that such lettings cannot be prohibited in the CCS.

FPRA agrees that it should be possible for the CCS to impose restrictions on the short-term letting of units. Short-term lettings are more consistent with holiday letting or other business use rather than residential use of the unit (i.e. use as the home of the unit owner or the tenant). We believe that a restriction preventing lettings of less than six months would achieve this objective.

Consultation Question 36.

We provisionally propose that event fees should be prohibited within commonhold, except for any specific circumstances expressly permitted by statute.
Do consultees agree?

We invite consultees' views as to whether an exception to the proposed prohibition on event fees should be made for specialist retirement properties within commonhold.

We invite consultees' views as to whether there are any other circumstances (apart from specialist retirement properties) in which event fees should be permitted within commonhold.

FPRA suggest that any restriction on "event fees" should not prevent reasonable fees being charged to individual unit holders to meet the administrative the costs of the commonhold association in recording changes of ownership, lettings of units, or the making of alterations by the unit holder. It is suggested that it would be unfair for such costs to have to be met out of the service charges paid by all the unit holders, including those who are not transferring or altering their units.

Consultation Question 37.

We invite consultees' views as to whether any further restrictions should be put in place to limit which local rules may be added to the CCS.

FPRA do not consider that any further restrictions should be put in place to limit which local rules may be added.

Consultation Question 38.

We provisionally propose that a higher threshold for amending the CCS should be introduced, which may apply to some or all local rules.
Do consultees agree?

(1) what voting threshold should be required to amend local rules;
(2) when there should be a right to apply to the Tribunal in relation to amendments of the CCS; and
(3) whether the threshold should be the same for amending all local rules, or whether rules should be differentiated. If consultees are of the view that rules should be differentiated, we invite views as to how the threshold for introducing a rule in an area on which the CCS is currently silent should be determined.

FPRA agree that a higher threshold for amending the CCS should be introduced., and that this would be achieved by requiring the amendment to be made by Special Resolution. The CCS may be regarded as analogous to the Articles of Association of a Company, the amendment of which requires a Special Resolution. We consider that there should be a right to apply to the Tribunal in relation to

amendments of the CCS, and that the existence of such a right would obviate the need for complication of legislating for some rules to be "entrenched".

Consultation Question 39.

We provisionally propose that the mandatory provisions of the CCS should be contained in the regulations, but not be reproduced in the CCS.
Do consultees agree?

If so, we invite consultees' views as to whether the directors of the commonhold association should be under a duty to provide copies of the most up-to-date standard provisions contained in the regulations, along with a copy of the CCS, to any new purchasers, and should provide copies of the updated standard provisions to all unit owners as and when changes are made.

FPRA agree that, as matters stand, it is preferable that that the mandatory CCS should be contained in regulations rather than being reproduced in the CCS. However we doubt whether imposing a duty on the directors of commonhold associations, to provide up-to-date copies of standard provisions to unit owners is going to be useful or helpful. Certainly, it will do nothing to persuade members of commonhold associations to act as directors. No doubt, with the small number of commonhold schemes currently in place, the directors are well informed on the latest regulations. But, if Commonhold is to become widespread, there will be many associations, especially small ones, where the directors do not have professional or business experience. When the association is first formed the professional advisers will doubtless provide full documentation and advice on the regulations then in force, but it will be too much to expect lay directors to keep up to date with the latest mandatory CCS provisions contained in regulations which are unlikely to be particularly well publicised outside the professional and technical press.

Consultation Question 40.

Should our provisional proposals to introduce sections be implemented, we provisionally propose that it should be possible to add schedules to the CCS, where the rights and obligations applying to a specific section can be collated.
Do consultees agree?

Consultation Question 41.

We invite consultees' views as to whether there are any new terms, other than those we have asked about in this Consultation Paper, which should be added to the prescribed terms of the CCS (that is, rules which should apply to every commonhold, rather than local rules which can optionally be adopted by individual commonholds).

FPRA are unable to suggest any new terms, other than those mentioned in the Consultation and listed in Appendix 6 in Appendix 6 of the Consultation which should be added to the prescribed terms of the CCS.

Consultation Question 42.

We provisionally propose that the procedure for the election of directors of a commonhold should be simplified, so that the prescribed articles of association provide that directors should be elected at a general meeting, and also may be coopted by the existing directors.
Do consultees agree?

FPRA agree that the prescribed articles should provide for directors to be elected at a general meeting, with provision for existing directors to coopt additional directors. However, it is suggested that such a coopted appointee should only hold office until the next following AGM at which the appointee may stand for election or choose to stand down.

Consultation Question 43.

We provisionally propose that, if a commonhold association cannot find members able and willing to serve as directors, and is also unwilling to appoint professional directors, any member of the association should be able to apply to a court or tribunal for professional directors to be appointed, who would then be paid by the association.
Do consultees agree?

We provisionally propose that, if members should be able to make such an application, then someone with a mortgage or other charge over a unit should also be able to do so.
Do consultees agree?

We provisionally propose that, if it should be possible for an application to appoint directors to be made, it should be heard by the First-tier Tribunal (Property Chamber) (in Wales, the Residential Property Tribunal).
Do consultees agree?

FPRA agree that, if a commonhold association cannot find members willing and able to serve as directors, and is also unwilling to appoint professional directors, any member of the association should be able to apply to a court or tribunal for professional directors to be appointed, who would then be paid by the association. We also agree that if members should be able to make such an application, then someone with a mortgage or other charge over a unit should also be able to do so. However, we suggest that the circumstances in which such applications have to be made will be unusual and possibly raise issues better dealt with by a Court. If the application is made to the Tribunal, it is suggested that there should be a procedure for the application to be transferred by the Tribunal to a court if this is appropriate.

Consultation Question 44.

We invite consultees' views as to whether a problem is likely to arise whereby a single investor, or a group of investors, who own a majority of units, run a block in their own interests in order to "squeeze out" other owners.

If it is felt that problems are likely to arise, then we invite consultees' views as to the following:
(1) whether the concept of "persistent failure to comply with the CCS in some material respect", offers a satisfactory basis upon which a court or tribunal could intervene on an application by a unit owner;
(2) whether such applications should be made to the court or the Tribunal;
(3) whether, the court or Tribunal should have the power to appoint directors, and to make the supplementary orders set out in paragraph 9.48 above, should they be required;
(4) whether it would be necessary for the court or tribunal to exercise continuing supervision over the directors who were appointed; and
(5) whether other solutions could be used to address the difficulty.

FPRA hope that it is not "likely" that the problem of a single investor, or a group of investors, who own a majority of units, running a block in their own interests in order to "squeeze out" other owners, will arise, but it is certainly possible that it will arise at some time and legislation should allow for this. It is suggested that if the problem does arise the circumstances will be contentious, raising issues that will be better dealt with by the Court, rather than the Tribunal. It would certainly be necessary for the Court or Tribunal to have the power to appoint directors , and make supplementary orders as suggested, and in some cases might need to exercise a continuing supervision. It is suggested that this last is something which the Court will be better able to undertake than the Tribunal.

Consultation Question 45.

We seek consultees' views on whether their experience with other leaseholdercontrolled companies (Freehold Management Companies, Residents' Management Companies and right to manage companies) leads them to believe that provisions for proxy voting may be abused, and, if so, in what way or ways.

We further seek consultees' views on whether any such abuses could be prevented or mitigated by:
(1) a restriction on the number of proxy votes that any individual might hold; or
(2) some other device (please specify).

FPRA are not aware, from experience with leaseholder-controlled companies and right to manage companies, of provisions for proxy voting being likely to lead to abuse, nor do we feel that there should be any limit on the number of proxies held by any individual leaseholder. The standard forms of proxy provide for the leaseholder to direct the proxy to vote in a particular way instead of granting a general proxy leaving him or her to decide how to vote.
It is suggested that, in considering whether there should be any restrictions on the use of proxies, it should be remembered that voting by proxy does allow the views of members not able to be present to be taken into account. This includes those whose flats are held as investments, as well as resident members who are unable to be present on the day of the meeting.

Consultation Question 46.

We provisionally propose that legislation should deem that the commonhold association has an insurable interest in the parts of the building which are owned by the unit owners.
Do consultees agree?

We provisionally propose that legislation should require the commonhold association to reinstate or rebuild (as appropriate) the whole of a horizontally divided building – including the parts owned by the unit owners – in order to satisfy the indemnity principle within insurance law.
Do consultees agree?

We invite consultees' views as to whether any other legal difficulties would arise in arranging buildings insurance for commonholds which have not been addressed by these proposals.

FPRA agree that legislation should confirm that the commonhold association has an insurable interest in the parts of the building which are owned by the unit owners. As regards the question in 17.78, we question whether legislation must categorically require the commonhold association to reinstate or rebuild (as appropriate) the whole of a horizontally divided building – including the parts owned by the unit owners – in order to satisfy the indemnity principle within insurance law. We do not have direct experience of the issues that might arise if a block of flats is totally destroyed. However, it is not difficult to envisage that there might be circumstances where very major repairs or rebuilding might not be appropriate. For example, suppose the block were located in a place where it was known that it was likely to be acquired for demolition so that the site could be used for some infrastructure project, or the block was old fashioned, and any rebuilding would sensibly be very different, perhaps containing many more flats. The sensible answer might be for the existing commonhold association to be wound up, with the insurance proceeds and sale proceeds resulting from disposal the now vacant freehold, being distributed by the association to its members. Long leases of flats usually allow for the possibility of rebuilding or repair not being able to be carried out, and the legislation should also allow for this.

Consultation Question 47.

We provisionally propose that the CCS should be amended so as to require that either a copy of the buildings policy and schedule, or sufficient details of it, should be supplied to all unit owners on or before they acquire a unit, and whenever the terms of the policy change.
Do consultees agree?

We provisionally propose that the commonhold association should confirm to unit owners and their mortgage lenders that the insurance is in existence on an annual basis, and when reasonably required at other times.
Do consultees agree?

Consultation Question 48.

We invite consultees' views as to whether public liability insurance (that is, insurance against liability as an occupier and also as a property owner) is likely to be generally available for commonhold associations.

If it is generally available, we provisionally propose that details of minimum cover, permissible exclusions and excesses, and so on, should be prescribed in regulations to be made by the Secretary of State.
Do consultees agree?

FPRA understand that public liability insurance is available for leaseholder -owned freehold and management companies, whose position is analogous to that of a commonhold association. If the insurance market is unable to accommodate commonhold associations in the same way the reinvigoration of commonhold would be likely to be stopped before it starts. We question whether any regulation is required, beyond that which already applies to leaseholder -owned companies.

Consultation Question 49.

We provisionally propose that the commonhold community statement should contain an express power for the commonhold association to take out directors' and officers' insurance.
Do consultees agree?

FPRA strongly agree the commonhold community statement should contain an express power for the commonhold association to take out directors' and officers' insurance and consider that without such insurance being in force it is likely to be difficult to persuade members to act as directors.

Consultation Question 50.

We provisionally propose that the provisions in the prescribed commonhold community statement requiring the repair of the common parts should be extended to require also "renewals"; that is, the replacement of "like with like" if something should be beyond economic repair.
Do consultees agree?

We provisionally propose that the installation of adequate thermal insulation should be deemed to be a repair.
Do consultees agree?

We provisionally propose that it should be possible for the repairing obligations required by the CCS to be supplemented by a local rule requiring a higher standard of repair, if appropriate.

Do consultees agree?

We provisionally propose that, with horizontally-divided buildings (so including all flats), matters relating to the internal repair of units should be left to local rules.
Do consultees agree?

We provisionally propose that with vertically-divided buildings (that is, all houses, whether detached, semi-detached or terraced) all matters relating to repair (whether internal or external) of the units should be left to local rules.
Do consultees agree?

FPRA agree that the provisions in the prescribed commonhold community statement requiring the repair of the common parts should be extended to require also "renewals"; that is, the replacement of "like with like" if something should be beyond economic repair and that the installation of adequate thermal insulation should be deemed to be a repair.
FPRA also agree that it should be possible for the repairing obligations required by the CCS to be supplemented by a local rule requiring a higher standard of repair as appropriate and that that, with horizontally-divided buildings (so including all flats), matters relating to the internal repair of units should be left to local rules.

Consultation Question 51.

We invite consultees' views as to whether rights of entry are best left to local rules, or whether rights of entry should be prescribed.

If rights of entry are prescribed, we invite consultees' views as to whether it is necessary to make a distinction between different types of buildings.

If it is necessary to distinguish between different types of building,
(1) whether the distinction should be between those that are horizontally divided, and those that are vertically-divided; and
(2) if some other distinction is more appropriate, what that should be.

We invite consultees' views as to what, in each case, the appropriate rights of entry would be.

FPRA feel that it may well be best if rights of entry are left to local rules. Legal advisers will no doubt have experience of drafting appropriate provisions for leasehold flats, and there seems to be no reason to suppose that commonhold will raise separate issues. If rights of entry are to be prescribed then, at least for flats, they will need to be drawn widely, as to the purposes and as to the potential entrants, to include the owners and occupiers of other units (including, but not limited to the adjoining units), as well as the association, and as to the purposes to include access for purposes, such as repairs or alterations , or provision of services relating to any part of the commonhold. The following is an extract from a provision in a flat lease
" Permit the Landlord and each tenant of a flat in the Building or any immediately adjoining Building currently comprised in Title Number XXXX with or without

workmen and all other persons authorised by any of them at all reasonable times by appointment (but at any time in case of emergencies) during the Term to enter into and upon the Demised Premises or any part thereof for the purpose of repairing or altering any part of the Building or executing repairs or alterations to any adjoining or contiguous premises or for the purpose of making repairing maintaining supporting rebuilding cleansing lighting or keeping in good order and condition the Common Parts and all roofs foundations damp courses tanks sewers drains pipes cables watercourses gutters wires party or other structures or other conveniences belonging to or serving or used for the Building or any part thereof and also for the purpose of laying down maintaining repairing and testing drainage gas and water pipes and electric wires and cables and for similar purposes and also for the purpose of cutting off water to the Demised Premises or any other premises in the Building in respect whereof the tenant or occupier shall have made default in paying his share of the water rate the Landlord or the tenant so entering or authorising entry (as the case may be) making good all damage occasioned to the Demised Premises".

Consultation Question 52.

We provisionally propose that the commonhold community statement should be amended to provide that alterations to the common parts which are incidental to internal alterations made by a unit owner to his or her own unit should not require the consent of the members by an ordinary resolution.
Do consultees agree?

We provisionally propose that the giving of consent to such proposals should be delegated to the directors.
Do consultees agree?

We invite consultees' views as to whether:
(1) "minor alterations to the common parts" should be defined as we have outlined at paragraph 9.137 above; or
(2) some other criterion could be adopted to distinguish minor alterations from those which should continue to require the consent of an ordinary resolution by the members.

FPRA agree that the commonhold community statement should be amended to provide that alterations to the common parts which are incidental to internal alterations made by a unit owner to his or her own unit should not require the consent of the members by an ordinary resolution that the giving of consent to such proposals should be delegated to the directors.
The consultation discussion does show that it may be difficult to provide a general definition of what constitute "minor" alterations. A possible solution might be to leave the decision on all alterations to the directors, with a requirement that notice be given to the owners of adjoining units inviting them to raise any concerns with the directors before a decision is made.

Consultation Question 53.

We invite consultees' views as to whether existing long-term contracts have been a problem which leaseholders have encountered.

If they have, then we further invite leaseholders to let us have examples.

Consultation Question 54.

We provisionally propose that commonhold associations should be given the right, within a set period from the date when the unit owners take effective control of the commonhold association, to cancel contracts which were entered into by the association before that date. (It would be necessary to define these terms so as to exclude the scenario where the units were "sold" to associates of the developer).
Do consultees agree?

We provisionally propose that a "long-term contract" should be defined as a contract which must run for more than 12 months.
Do consultees agree? If not, what longer or shorter period would be appropriate?

We provisionally propose that a commonhold association should have to exercise this right within six months from the commonhold coming under the effective control of the unit owners (being actual "arms-length" purchasers of the units).
Do consultees agree? If not, what longer or shorter period would be appropriate?

Consultation Question 55.

We invite consultees' views as to the difficulties that can arise when the long-term contract includes the hire of equipment which remains the property of the contractor and which they have reserved the right to remove if the contract should be terminated. We would appreciate any examples of contracts involving the hire of equipment, or of long-term contracts generally, that consultees are able to provide.

Consultation Question 56.

We provisionally propose that the proposed contributions to shared costs should require the approval of the members of the commonhold association. This approval would generally be given by a resolution passed in a general meeting, though it could be passed by the written procedure.
Do consultees agree?

We provisionally propose that this approval should be given by an ordinary resolution (over 50% majority), rather than by a special resolution (at least 75% majority).
Do consultees agree?

We invite consultees' views as to the suggestion that if the proposed level of contributions failed to secure approval, the level of contributions required in the previous financial year should continue to apply.

We invite consultees' alternative proposals to address the issue of what should happen if the directors' proposed level of commonhold contributions fail to obtain approval.

FPRA agree that the proposed contributions to shared costs should require the approval of the members of the commonhold association, given by a resolution passed in a general meeting, or by the written procedure. We agree that this approval should be given by an ordinary resolution (over 50% majority), rather than by a special resolution requiring at least a 75% majority.
In the event that the directors proposals are not accepted, we feel that the proposal that payments would continue at the same level as in the preceding year represents a practical solution, hopefully giving the directors and the members of the association an opportunity to reconcile their differences.

Consultation Question 57.

We provisionally propose that it should be possible for the CCS to include, as a local rule, an index-linked "cap" on the amount of expenditure which could be incurred on the cost of improvements.
Do consultees agree?

We provisionally propose that it should be possible for the CCS to include, as a local rule, an index-linked "cap" on the amount of expenditure which could be incurred annually on the cost of "enhanced services", as described in paragraph 10.40(1).
Do consultees agree?

We provisionally propose that if a CCS contained such a "cap", then it could be removed only with the unanimous consent of the unit owners, or with the support of 80% of the available votes, and the approval of the Tribunal.
Do consultees agree?

We provisionally propose that any application by a unit owner to challenge proposed expenditure should be made before it was incurred, and expenditure should not be open to challenge later.
Do consultees agree?

FPRA agree that any application by a unit owner to challenge proposed expenditure should be made before it was incurred, and expenditure should not be open to challenge later. We are less certain about the suggestion, that the CCS should impose an index-linked "cap" on the improvement or enhanced service costs.

Experience suggests that, especially in times of economic stringency, there will be pressure on directors to spend too little, especially on repairs, rather than too much. Moreover, there is the problem that such provisions are difficult to draft in a simple and concise way. There is also the problem of selecting a suitable index. Notoriously, property values and building costs do not move in step with the Retail Price Index, which is normally used in such provisions because it is at least well established and well publicised. Economists and statisticians can construct specialised indices, but is this route appropriate for the directors and members of commonhold associations? Rather than have a cap, which must be strictly obeyed, or removed completely by a complex procedure, it is suggested if there is a cap that the association be empowered to exceed the cap limit in a particular year, by ordinary resolution.

Consultation Question 58.

We provisionally propose that it should be compulsory for a commonhold association to have some form of reserve fund.
Do consultees agree?

We provisionally propose that the scheme for the financing of the commonhold should continue to distinguish between contributions for shared (current) expenditure, and contributions to the reserve fund or funds.
Do consultees agree?

We provisionally propose that no minimum annual contribution towards the reserve fund should be specified.
Do consultees agree?

We invite consultees who do not agree to suggest how a requirement for minimum contributions might operate.

We provisionally propose that the directors of commonhold associations should be able to set up such designated reserve funds as they see fit.
Do consultees agree?

We provisionally propose that it should also be possible for the members of a commonhold association to require, by ordinary resolution, that a designated reserve fund or funds should be set up.
Do consultees agree?

We provisionally propose that designated reserve funds should be protected from enforcement action by creditors, unless their claim relates to the specific purpose for which the designated reserve fund was set up.
Do consultees agree?

We provisionally propose that designated reserve funds should continue to receive equivalent protection if the commonhold association should be subject to insolvency proceedings.
Do consultees agree?

We provisionally propose that it should be possible to change the designation of a designated reserve fund only by a resolution supported by 80% of the members, and with the approval of the Tribunal.
Do consultees agree?

We invite consultees' views as to whether the directors (or the members in a general meeting) should be able to "borrow" from a reserve fund in order to meet a shortfall in meeting other expenditure, and, if so, what safeguards, if any, would be appropriate.

We provisionally propose that the proposed annual contributions to the reserve fund or funds should be approved by the members in the same way as the contributions to current expenditure, and, if possible, at the same time.
Do consultees agree?

FPRA agree with the proposals in 17.111 to 17.113 inclusive and with the proposal in 17.121 that the proposed annual contributions to the reserve fund or funds should be approved by the members in the same way as the contributions to current expenditure, and, if possible, at the same time.

In principle we also agree with the proposals in 17.115 and 17.116 as to the respective rights of the directors, and the members in general, to set up reserve funds. We are less certain that, in relation to external creditors, it is right to regard the creation of reserve funds as amounting to more than a form of internal "piggy bank" accounting between the members. External creditors, particularly in the case of insolvency, might well feel that all the funds held by the company should be available to satisfy them.

Subject to consideration of the position of external creditors we agree that the directors (or the members in a general meeting) should be able to "borrow" from a reserve fund in order to meet a shortfall in meeting other expenditure, without further safeguards. We similarly suggest that, to alter the designation of reserve funds, it would be sufficient to have a special resolution of the company, without the need to trouble the Tribunal unless members object. We think that it is possible that, with a newly established commonhold, especially one which was formed directly from a commercially owned freehold rather than an established leaseholder-owned freehold, there could be a temptation to set up all sorts of reserve funds for purposes which are later seen to be impracticable, unnecessary or unfashionable and that there should be a simple and straightforward way of rationalising them.

Consultation Question 59.

We provisionally propose that it should be possible to allocate to individual units within a commonhold different percentages that it must contribute towards different "heads" of cost.
Do consultees agree?

We invite consultees' views as to whether each commonhold should have total flexibility in how different costs are allocated, or whether there should be any limitations on their ability to do so.

FPRA agree that it should be possible to allocate to individual units within a commonhold different percentages that it must contribute towards different "heads" of cost.

Consultation Question 60.

We provisionally propose to retain the possibility of varying the percentage of expenditure allocated to each unit, by amending the CCS by special resolution. Such amendments would remain subject to a unit owner's right not to have a significantly disproportionate amount of the contributions to shared costs, or the reserve funds, allocated to his or her unit.
Do consultees agree?

We invite consultees' views as to whether:
(1) it is likely to be fair and workable to consider any proposed variations to contributions to shared costs, and the reserve funds, on the basis that the originally allocated percentage was fair; and
(2) safeguards need apply only if the allocated percentage is altered.

We invite consultees' views as to whether internal floor area would offer a satisfactory default basis on which to allocate financial contributions in purely residential commonholds.

We invite consultees' views as to whether internal floor area would offer a satisfactory default basis on which to allocate financial contributions in commonholds which include (a) commercial and residential units and (b) commercial units of different kinds. If not, we invite views on alternative methods.

FPRA agree, as noted in the consultation, that the percentage of the contributions to service charges and contributions to reserves payable by the individual units within a commonhold must come to 100%. It is axiomatic that if the percentages paid by one or more units are reduced, then the percentages payable by one or more other units must be increased to ensure that the percentages of all the units still total 100%. In view of this, it is suggested that the possibility of varying the percentage of expenditure allocated to each unit, by amending the CCS by special resolution is likely to prove troublesome. We note that the provisions of the present commonhold legislation allowing service charge percentages of individual units to be varied are said not to have led to any problems, but this may because there are few commonholds, and perhaps it has not been felt necessary to make use of these provisions. No doubt those whose percentages are reduced will approve of such a resolution, but members whose percentages are increased are likely to be deeply resentful, and this will be understandable. They price they paid for the unit will have reflected the percentage of the service charge borne by the unit at the time of the purchase, and this well be regarded as a permanent feature of the property, like the boundaries. This emphasises the importance of ensuring that the service charges and contributions are shared appropriately from the inception of the

commonhold. In general terms, internal floor area does seem to offer a satisfactory default basis on which to allocate financial contributions in purely residential commonholds. We do not feel able to comment on an appropriate basis for allocating charges where there are both commercial and residential properties

Consultation Question 61.

We provisionally propose that the current scheme for the issue of a Commonhold Unit Information Certificate ("CUIC") on the sale of a unit should in its essentials be retained.
Do consultees agree?

We invite consultees' views as to whether the possibility of further contributions (emergency contributions, or contributions to the reserve fund or funds) falling due after the issue of a CUIC is likely to present practical problems to conveyancers.

We provisionally propose that, once a CUIC has been issued, an incoming unit owner should not be liable for further contributions which fall due, unless the commonhold association or its agent has notified the current owner's conveyancers of the further liabilities.
Do consultees agree?

We provisionally propose that the maximum fee for a commonhold association to issue a CUIC should be set by regulation, and kept under review.
Do consultees agree?

We invite consultees' views as to whether the lack of any sanction or convenient remedy for the failure on the part of the commonhold association to issue a Commonhold Unit Information Certificate within the prescribed 14-day period is likely to cause problems in practice.

We further invite consultees' views on how best this may be resolved.

We invite consultees' views as to whether a Commonhold Unit Information Certificate should be conclusive once issued; or whether it should be possible for it to be amended if an error is spotted after it has been issued.

We further invite consultees' views on what problems would arise in practice if a Commonhold Unit Information Certificate could be amended; and on how these might be addressed.

Consultation Question 62.

We invite consultees' views as to whether the need for unit owners to obtain the consent of their mortgage lender to support the commonhold association granting a fixed or floating charge is likely to be a significant difficulty in raising emergency funding.

If consultees consider that there might be difficulties, we invite views on what measures could be put in place to alleviate these difficulties, including whether the Tribunal should be able to override a mortgage lender's refusal to give consent.

Consultation Question 63.

We provisionally propose that express provision should be made for a commonhold association to grant a floating charge.
Do consultees agree?

We provisionally propose that a charge over the common parts or a floating charge should only be able to be granted when either:
(1) The unit owners unanimously consent to the charge: or
(2) 80% of the unit owners consent to the charge, and approval is obtained from the First-tier Tribunal (Property Chamber) or the Residential Property Tribunal Wales.
Do consultees agree?

Consultation Question 64.

We provisionally propose that it should be possible for a commonhold association (having obtained the requisite consent) to grant a charge over part of the common parts. Where such a charge is granted, the part of the common parts so charged may be registered with a separate title number.
Do consultees agree?

Consultation Question 65.

We provisionally propose making an exception to the prohibition on residential leases over seven years, and leases granted at a premium, for shared ownership leases which contain the fundamental clauses prescribed by Homes England in England or the Welsh Government in Wales.
Do consultees agree?

Consultation Question 66.

We provisionally propose that in new commonhold developments, the model shared ownership lease should require the shared ownership leaseholder to comply with all terms of the CCS.
Do consultees agree?

We provisionally propose that shared ownership leaseholders in new commonhold developments should be able to exercise all the votes of the commonhold association in place of the shared ownership provider, apart

from a decision to terminate, which should be exercised jointly with the provider.
Do consultees agree?

We provisionally propose that shared ownership leaseholders in new commonhold developments should not have the same statutory rights as other leaseholders to challenge service charge costs or to be consulted on works and contracts exceeding a certain amount.
Do consultees agree?

We provisionally propose that, in new commonhold developments, on purchasing 100% of the value of the commonhold unit, the shared ownership leaseholder should be transferred the commonhold title of the unit and should become a member of the commonhold association.
Do consultees agree?

Consultation Question 67.

We provisionally propose that in a building which has converted to commonhold, the shared ownership provider should have voting rights in the commonhold association. Delegation of voting rights to the shared owner will be possible on a voluntary basis, but not mandatory.
Do consultees agree?

We provisionally propose that, in a building which has converted to commonhold, the staircasing provisions of any existing shared ownership leases should continue to operate in the same way. On staircasing to 100%, the shared owner will therefore remain a leaseholder.
Do consultees agree?

We provisionally propose that after having staircased to 100% of the value of the leasehold flat, the shared ownership leaseholder should have a statutory right to purchase the commonhold unit and become a member of the commonhold association.
Do consultees agree?

Consultation Question 68.

We invite consultees' views as to whether an exception to the ban on residential leases over seven years is needed to accommodate better community land trusts and co-operatives within the commonhold model.

Consultation Question 69.

Aside from shared ownership leases, community land trusts and housing cooperatives, are consultees aware of any other forms of affordable housing

which it is not possible, or would be difficult, to accommodate in the current commonhold system?

Consultation Question 70.

We provisionally propose that an exception to the prohibition on residential leases of over seven years or granted at a premium should be made for lease-based home purchase plans regulated by the Financial Conduct Authority.
Do consultees agree?

Consultation Question 71.

We provisionally propose that customers of lease-based home purchase plans in new commonhold developments should not have the same statutory rights as other leaseholders to challenge service charge costs or to be consulted on works and contracts exceeding a certain amount.
Do consultees agree?

Consultation Question 72.

We ask consultees for their views and experience of how the relationship between a bank and a customer who is purchasing property through a lease based home purchase plan is, or can be, preserved following a collective enfranchisement.

Consultation Question 73.

We provisionally propose that the commonhold association should not be able to prevent a unit owner or tenant from pursuing direct legal action against another unit owner or tenant. Instead, the association should have the right to notify the unit owner or tenant that it reasonably considers the claim to be frivolous, vexatious or trivial or that the matter complained of is not a breach of the CCS.
Do consultees agree?

FPRA agree that the commonhold association should not be able to prevent a unit owner or tenant from pursuing direct legal action against another unit owner or tenant and that instead the association could have the right to notify the unit owner or tenant that it reasonably considers the claim to be frivolous, vexatious or trivial or that the matter complained of is not a breach of the CCS. Having said this, directors of commonhold associations will need to be aware of the risks of becoming involved in what may essentially be disputes between neighbours, quite possibly fuelled by deeply felt but obscure (to third parties) personal motives. Rather than express a view as to the frivolity, vexatiousness or triviality of the complaint, the wise course for the association may be to ascertain whether there has been a breach of the CCS which is serious enough to require action by the association, and

if not advise the complainant of the alternative routes for resolution of disputes between members of the association.

Consultation Question 74.

We provisionally propose that a failure to use the forms which accompany the commonhold dispute resolution procedure, or forms to the same effect, should not automatically prevent a claim from progressing.
Do consultees agree?

Consultation Question 75.

We provisionally propose that referral to an ombudsman should not be a mandatory part of commonhold's dispute resolution procedure. Instead, it could be used on an optional basis, instead of, or alongside, other forms of alternative dispute resolution.
Do consultees agree?

We provisionally propose that membership of an approved ombudsman scheme should no longer be a requirement for commonhold associations, and that, instead, commonhold associations should be able to decide whether or not to become a member of an ombudsman scheme.
Do consultees agree?

FPRA agree that referral to an ombudsman should not be a mandatory part of commonhold's dispute resolution procedure. Instead, it could be used on an optional basis, instead of, or alongside, other forms of alternative dispute resolution and that commonhold associations should be able to decide whether or not to become a member of an ombudsman scheme.

Consultation Question 76.

We provisionally propose that, where the dispute resolution procedure has not been followed, any court or tribunal, which subsequently considers the dispute, should have full discretion to disregard the non-compliance, or to order the parties to take any steps it considers appropriate, in accordance with its general case management powers.
Do consultees agree?

FPRA agree that, where the dispute resolution procedure has not been followed, any court or tribunal, which subsequently considers the dispute, should have full discretion to disregard the non-compliance, or to order the parties to take any steps it considers appropriate, in accordance with its general case management powers.

Consultation Question 77.

We invite consultees' views as to whether the current commonhold dispute resolution procedure should be transferred to a pre-action protocol.

Consultation Question 78.

We provisionally propose that the jurisdiction of the First-tier Tribunal (Property Chamber) in England and the Residential Property Tribunal Wales should be extended to cover disputes arising within a commonhold.
Do consultees agree?

In view of the FPRA response to Question 73 above, we wonder whether the Tribunal should be invited to rush in to resolve disputes between commonhold members, where we have suggested that commonhold association directors should fear to tread. Tribunal members have experience and knowledge of property law, and property management and this knowledge is invaluable in dealing with the issues that will arise between the commonhold association representing the collective interest and the individual member. Disputes between individual unit owners are likely to involve fact finding exercises which will not make the best use of the Tribunal's technical expertise. Moreover, the nature of such disputes is that, if they have not been able to be resolved informally, they may require remedies which only the Court can grant.

Consultation Question 79.

We invite consultees' views as to whether the prescribed CCS should include a provision that, where a unit owner or tenant breaches the rules of the CCS, the unit owner, or tenant, should be required to indemnify the other unit owners and the commonhold association for any losses they reasonably incur as a result of the breach.

FPRA suggest that the position should remain as at present, so that this type of indemnity may be included in the CCS, and in most cases probably should be, but should not be a prescribed term.

Consultation Question 80.

Elsewhere in this Consultation Paper we provisionally propose that it should be possible for a unit owner (or owners) to apply to the First-tier Tribunal (Property Chamber) in England or the Residential Property Tribunal Wales to challenge a decision of the commonhold association in the following circumstances:
(1) Where the commonhold association approves a budget, which will result in costs above a threshold (set in the CCS) being incurred on works or enhanced services;
(2) Where the minority are outvoted on a decision to vary the local rules of the CCS;
(3) If the directors of the association delegate powers to a committee which has been set up to represent a section of the commonhold, and the unit

owners in the section wish to prevent the directors revoking or amending these powers;
(4) Where the unit owner, or owners, are opposed to the introduction of a new section or the combination of two or more sections.

We invite consultees' views as to whether there are any other circumstances in which it would be appropriate to provide a unit owner (or owners) with a right to challenge a decision taken by the commonhold association.

Consultation Question 81.

We invite consultees' views as to the extent to which the following factors should be taken into account by the First-tier Tribunal (Property Chamber) and the Residential Property Tribunal Wales when deciding whether or not to grant a remedy to a unit owner who challenges a decision taken by the commonhold association:
(1) Whether or not the unit owner(s) making the application voted against the decision complained of, or had a good reason for not doing so.
(2) Whether the decision complained of needs to have a particular impact on the unit owner (or owners) and if so, what degree of impact.
(3) The reason behind the decision taken by the commonhold association, for example, whether the decision is in the best interests of the commonhold and/or is proportionate to the impact on the unit owner in question.
17.165 We also invite consultees' views on whether the same factors would be relevant in all of the circumstances set out in Consultation Question 80 where a unit owner may have the right to apply to the First-tier Tribunal (Property Chamber) or the Residential Property Tribunal (Wales).

Consultation Question 82.

We provisionally propose that on an application by a unit owner challenging a decision of the commonhold association, the First-tier Tribunal (Property Chamber) or the Residential Property Tribunal (Wales) should be able to allow the decision to stand or annul the decision. If the First-tier Tribunal (Property Chamber) or the Residential Property Tribunal (Wales) allows the decision to stand, we propose that the Tribunal should be able to attach conditions to its decision.
Do consultees agree?

Consultation Question 83.

We invite consultees' views as to whether the commonhold association should be provided with enhanced powers to address non-financial breaches of the CCS.
If so, what should these powers be?

FPRA do not consider that the commonhold association should be provided with enhanced powers to address non-financial breaches of the CCS. The examples of the powers available in other jurisdictions appeared to be of a punitive nature, going beyond compensation for loss or damage or the cost of putting things right. We suggest that such powers would be more properly exercised by a court rather than a private association, and then only for contravention of a statute or other public law rather than the terms of a private agreement.

Consultation Question 84.

We provisionally propose that a statutory cap should be introduced on the rate of interest which may be charged by the commonhold association on late payments of commonhold contributions.
Do consultees agree?

Consultation Question 85.

We provisionally propose that a commonhold association should have an automatic statutory charge over commonhold units for the payment of commonhold costs.
Do consultees agree?

We provisionally propose that if the commonhold association has an automatic statutory charge over commonhold units for the payment of commonhold contributions, this charge should take priority over all other charges (such as a mortgage over the property).
Do consultees agree?

FPRA agree that a commonhold association should have an automatic statutory charge over commonhold units for the payment of commonhold costs and this charge should take priority over all other charges (such as a mortgage over the property).

Consultation Question 86.

We provisionally propose that, before taking action to enforce a charge over a commonhold unit, the commonhold association should be required to follow a preaction protocol. We envisage that the protocol will require the association to provide prescribed information to the defaulting unit owner and make reasonable attempts to agree a repayment plan.
Do consultees agree?

We invite consultees' views as to what steps the association should be required to take as part of this protocol.

We provisionally propose that where the commonhold association wishes to enforce a charge over a commonhold unit by selling the unit, it should always be necessary for the association to apply to court for an order for sale.

Do consultees agree?

We provisionally propose that the court should only be able to order the sale of a unit where the amount owing to the commonhold association exceeds a certain amount.
Do consultees agree?

We invite consultees' views as to what this amount should be and on what factors the court should take into account when deciding whether to order the sale of a unit.

We provisionally propose that where the sale of a unit is ordered, the court should appoint a receiver to sell the unit and distribute the proceeds of sale.
Do consultees agree?

We provisionally propose that where a receiver is appointed to sell a commonhold unit, the receiver should distribute the proceeds of sale in the following way.
(1) The receiver should be paid his or her costs of arranging the sale of the property.
(2) The commonhold association should be repaid any outstanding amounts of commonhold contributions, plus any interest and costs awarded by the court.
(3) Any other party who has an interest secured against the unit, such as a mortgage lender, should be repaid.
(4) Any remaining amount should then be returned to the defaulting unit owner.

Do consultees agree?

We provisionally propose that any tenancies granted out of a unit should continue to exist following an order for sale.
Do consultees agree?

Consultation Question 87.

We provisionally propose that voluntary termination of a commonhold should be possible with either:
(1) unanimous support; or
(2) the support of 80% of the available votes plus the approval of the court.
Do consultees agree?

We provisionally propose that on an application for voluntary termination the court should have discretion to decide whether to allow the voluntary termination to take place, as well as the terms on which it may do so.
Do consultees agree?

If the court has discretion as to whether to allow voluntary termination, We invite consultees' views as to the following issues:

(1) whether it would be useful to include factors to guide the court's discretion;
(2) whether the factors mentioned in paragraph 15.52 should be taken into account;
(3) whether the court should be directed to consider the amount of support there is for voluntary termination over and above the 80% required; and
(4) whether others should also be included.

We invite consultees' views as to whether increasing the role of the court would sufficiently address the issue of the final terms of the termination statement not being acceptable to those who supported the termination resolution.

We provisionally propose that an application for voluntary termination should be heard by the court (rather than by the First-tier Tribunal (Property Chamber), or in Wales the Residential Property Tribunal Wales).
Do consultees agree?

Consultation Question 88.

We provisionally propose that where a commonhold is divided into sections, any vote on voluntary termination would need to be taken in sections, and whether it was unanimous or received at least 80% support would have to be determined by section.
Do consultees agree?

Where a commonhold is not divided into sections, we provisionally propose that it should be possible for part of the commonhold to be reconstituted following voluntary termination.
Do consultees agree?

We provisionally propose that reconstitution should require 100% support of the unit owners in the part to be reconstituted, or at least 80% support and an application to the court.
Do consultees agree?

Consultation Question 89.

We provisionally propose that if any statute provides that a landlord should be entitled to recover possession of a property if he or she can prove an intention to demolish or reconstruct the building, such a requirement should also be satisfied if it can be proved that the commonhold association has that intention.
Do consultees agree?

We invite consultees' views as to what further provision, if any, should be made to address the position of tenants on voluntary termination of the commonhold.

FPRA understand that the purpose of commonhold is, as far as possible to give the owner of a flat what will effectively be a freehold. It is possible that a freehold house may be sold on terms that the original owner may re-acquire it for redevelopment, but this is unusual and would be likely to make the house difficult to sell thereafter. We suggest that to give a commonhold association the right to take possession of units demolish or reconstruct the building is inconsistent with the unit owner's rights as a freeholder. We do not think it appropriate for a commonhold association to have this right.

Consultation Question 90.

We provisionally propose that it should be clarified that mortgage lenders and other secured lenders will retain their secured interest in the commonhold units until the commonhold in its entirety is sold.
Do consultees agree?

We provisionally propose that mortgage lenders and other secured lenders should automatically have legal standing to make applications to the court during the termination process with a view to protecting their interests.
Do consultees agree?

We provisionally propose that it should be made clear that, if a unit is subject to negative equity, any shortfall should be met personally by the owner of the unit, and should not be covered by other unit owners.
Do consultees agree?

We invite consultees' views as to any other ways in which the interests of mortgage lenders and other secured lenders may require protection on the voluntary termination of a commonhold.

Consultation Question 91.

We provisionally propose that the CCS should not be required to specify the share of the proceeds of termination that each unit owner is to receive on termination.
Do consultees agree?

We provisionally propose that it should be possible for the unit owners to specify the share of the proceeds of termination that each unit owner is to receive on termination (or some method of ascertaining it) in the CCS.
Do consultees agree?

We provisionally propose that the power to decide an application to disapply a provision in the CCS which determines the distribution of proceeds of sale on termination should lie with the Tribunal.
Do consultees agree?

We invite consultees' views as to whether:
(1) guidance should be provided to the court or Tribunal as to how it should exercise its discretion; and
(2) if guidance should be provided, what factors the court or Tribunal should take into account.

We invite consultees' views as to whether:
(1) the existing rules of the Insolvency Court would be adequate to deal with valuation issues which arise on the voluntary termination of a commonhold, or need to be supplemented by Commonhold Insolvency Rules;
(2) all issues involving the valuation of commonhold units on termination should be referred to the Tribunal (and, if so, whether that would cause any unnecessary delays);
(3) if valuation issues are referred to the Tribunal, the Tribunal should be able to appoint a single valuer.

We provisionally propose that, if a commonhold is substantially destroyed, but remains solvent, for the purposes of the termination statement, the units should be valued on the basis of the best estimate that can be made of their pre-damage value.
Do consultees agree?

We invite consultees' views as to any other issues that might occur in the valuation of units if all or some of them have been partly or entirely destroyed. We also invite any suggested solutions.

Consultation Question 92.

We provisionally propose that if the process of voluntary termination should begin, but it should subsequently turn out that the commonhold is in fact insolvent, the same protections should be given to the assets of the individual unit owners as would have applied if the process had begun as an involuntary insolvency.
Do consultees agree?

We invite consultees' views as to whether the value of the individual units should be preserved for the unit owners if the commonhold is substantially destroyed; and, if so, how this can be achieved.

Consultation Question 93.

We invite consultees' views as to whether, and how, any aspects of our provisional proposals to reform the law of commonhold will affect the position of existing owners of commonhold units, either positively or negatively.

Consultation Question 94.

What advantages do you think commonhold could offer over leasehold?

FPRA consider that a major advantage of commonhold for a block of leasehold flats or an estate of such blocks owned by the leaseholders will be management stability. There will no longer be the risk of the freehold being acquired by groups of leaseholders through the enfranchisement process.

Consultation Question 95.

We ask consultees to provide us with information about the time spent in reading through and considering the terms of leases of residential flats:
(1) when acting for a prospective purchaser;
(2) when acting for a prospective purchaser and mortgage lender;
(3) when acting for a mortgage lender on a re-mortgage;
(4) when some dispute arises within a leasehold block of flats as to responsibility for repairs and maintenance, calculation of the service charge, and similar disputes.

In each case we also invite consultees to give us some idea of the cost that would thereby be incurred to the client.

We further invite their views as to whether time is likely to be saved in reading through and considering the terms of the parts of the CCS which may be varied.
We invite consultees to share with us their experience of commonhold-type arrangements in other countries. Is there scope for savings of time to be made? If so, what would be the estimated time saved on a typical transaction?

Consultation Question 96.

We ask consultees to provide us with information about the prevalence of, and costs incurred in, disputes caused by the terms of one or more residential leases being inconsistent with the terms of another lease (or other leases) within a building or development. We further invite their views as to whether

our provisional proposals for commonhold will reduce the scope for costs to be incurred in interpreting a commonhold community statement.

Consultation Question 97.

We ask consultees to provide us with information about the sort of difficulties that can arise owing to the difficulty in varying and updating the terms of leases:
(1) if the leases are varied as a conveyancing transaction which does not give rise to a dispute; and
(2) if the leases are varied as a result of an application to the Tribunal (whether the application was made because it was contested, or because it was the most convenient way of implementing the variation).

If you have figures – whether they relate to the costs incurred, or the amount of time spent – then please let us have them.

We further invite consultees' views as to whether our proposals regarding the amendment of local rules by resolution of the commonhold association will reduce the costs which are incurred, when compared with the costs incurred under (1) or (2) above.

Consultation Question 98.

We invite consultees to provide us with information about costs generated by service charge disputes. We further invite their views as to whether, and by how much, our provisional proposals for commonhold will reduce the incidence of disputes and the costs that will be incurred in equivalent disputes over contributions to shared costs.

Consultation Question 99.

We invite consultees to provide us with information about costs generated when forfeiture proceedings need to be used to enforce payment of service charges. We further invite their views as to whether our provisional proposals for commonhold will reduce the costs that will be incurred if a commonhold association needs to seek an order for sale.

Consultation Question 100.

(1) whether cases before tribunals are likely to prove more or less expensive than similar cases before courts; and
(2) whether (apart from service charge disputes, which we have already addressed in Consultation Question 98) there appears to be more or less scope for disputes within commonholds which result in litigation, when compared with leasehold developments.

Consultation Question 101.

We are provisionally proposing several new grounds upon which it would be possible for someone to make an application to the Tribunal.

what they consider that the likely impact of these will be on the number of applications made to the Tribunals; and

whether any particular proposals are likely to result in a large number of new applications being made.

Consultation Question 102.

We invite the views of consultees as to how any other aspects of our provisional proposals for reform of commonhold will affect the position of future owners of commonhold units, either positively or negatively.

Consultation Question 103.

We ask consultees to provide us with any information that they may have of:
(1) examples of planning agreements which are practicable under leasehold but which would not appear to be feasible under our reinvigorated model of commonhold; and
(2) services within leasehold developments which are being provided at the residents' expense, but which, if the development had been set up on a commonhold basis, would have been provided, if at all, at public expense.

Consultation Question 104.

We ask consultees to provide us with any evidence they have of management difficulties which may arise where a leaseholder-controlled company is the landlord of (or responsible for the management of) commercial units; and whether this has affected their rental or capital value.

Consultation Question 105.

Which of the following statements best reflects your views on the provisional proposals in this Consultation Paper?
(1) If these proposals are adopted, then developers will be willing to use commonhold for a substantial number of developments.
(2) Even if these proposals are adopted, developers will not be willing to use commonhold unless Government introduces financial incentives for them to do so, either directly by offering financial incentives for the developers, or indirectly, by offering incentives for purchasers of commonhold units.

(3) Even if these proposals are adopted, and financial incentives are given, developers will not use commonhold for developments unless they are prohibited from selling flats on a leasehold basis and they are thus forced to use commonhold.

Consultation Question 106.

(1) what issues prevent the uptake of commonhold; and
(2) what could or should be done to promote the adoption of commonhold.

We invite consultees' views as to the extent to which the suggestions for the invigoration of commonhold set out in paragraph 16.47 above, and any other suggestions that they may make, are likely to result in commonhold being used instead of leasehold.

FPRA consider that the main issue preventing the uptake of commonhold has been the practical impossibility of converting existing leaseholder-owned properties to commonhold by reason of the requirement to obtain the agreement of every single leaseholder. What is most likely to result in commonhold being used instead of leasehold is its widespread adoption so that it becomes the usual way in which flats are owned. This may seem an unhelpful circular argument, but the point is that developers, who face significant financial risks are likely to be reluctant to adopt commonhold until they have seen that it works so that they can reassure their customers that they will not be venturing into uncharted legal waters when buying a commonhold flat. Leaseholder owned blocks of flats, already being run successfully under the leasehold system, will be the best pioneers to lead the way into the new system.

Consultation Question 107.

We invite consultees' views as to whether a reformed commonhold regime should treat particular issues differently in England and in Wales. Consultees are welcome to share their views as to this point here, or in response to questions which we ask throughout the Consultation Paper about particular issues.