



Report on mis-selling in the home moving process

The Conveyancing Association is a trade association representing ‘serious conveyancers’ across England and Wales. We have 75 members who together deal with 30% of the transactions for value recorded at HM Land Registry.

Our aim is to improve the home moving process for the consumer.

Our response is in the main are critical of leasehold; although in the past it has been an adequate vehicle for the enforcement of covenants required to maintain shared amenities, the balance of power between landlord and leaseholder is one that it is open to abuse and there is increasing evidence that – in a minority of cases - it is in fact being abused.

Whilst we recognise that the vast majority of existing leases can work well to balance the interests of the parties, the growing number of these abusive behaviours means that leasehold can no longer be considered a trusted means to balance the benefits and burdens of community living without some form of legislative intervention.

Our report will look at ways in which the leasehold system is being manipulated to the detriment of consumers; but we also note two economic factors which have affected the operation of leasehold.

First, the low levels of new housing supply now means there is rarely a true discount on the amount paid for the purchase of leasehold property which, in the past, reflected in future ground rent payments.

Second, leasehold is by nature a wasting asset and is a continuing challenge for future generations who will have to deal with leases considered technically ‘short’ and requiring additional premiums to be paid to create an acceptable asset value for mortgage lenders.

We have set out below the main issues which we have identified and would welcome the opportunity to share the evidence which we have accumulated around leasehold abuse but also more widely the failure of those marketing property to comply with CPRs and the resultant impact on the home mover.

Evidence of Non-Compliance with The Consumer Protection From Unfair Trading Regulations

In 2017 the Conveyancing Association launched our Homemover experience survey.

The survey asked questions of home movers as to when they had been provided with information about the property which they were buying.

The options were:-

- Before viewing the property.
- Before making an offer.
- Via their Property Lawyer.
 - Within two weeks of acceptance of their offer.
 - With a report on the contract.
 - Before exchange of contracts.
 - On the day of exchange.
- After they moved.
- No information received at all.

The reason for the choice of these options was that the Consumer Protection from Unfair Trading Regulations 2008 indicate that a consumer should be provided with a disclosure of information that would materially affect their transactional decision with any invitation to purchase.

An Invitation to purchase means a commercial communication which indicates characteristics of the product and the price in a way appropriate to the means of that commercial communication and thereby enables the consumer to make a purchase.

In the case of a property transaction this could be as early as being at the point of advertisement, or listing of a property on a property portal, and certainly be provided in response to a request for full property particulars.

A viewing is clearly an invitation to purchase and before getting in the car to go to that viewing a consumer should have all the material facts about the property.

To decide how much value they would place on a property a consumer would need to be in possession of the material facts, particularly in regard to leasehold where there may be financial considerations such as their ability to afford ground rent and service charges or permission fees or event fees if they intended to alter or let the property.

In the context of the conveyancing process a conveyancer will in general provide copies of information received from the seller's conveyancer, ideally with a report highlighting the content of the information and issues which might impact the buyer's intended use and enjoyment of the property.

Some Property Lawyers will 'drip feed' this information so that they provide reports as each piece of information is received, eg search reports, title reports, contract reports, mortgage instruction reports and others will collate all information and resolve any conflicts within the information by way of additional enquiries, before sending a full contract report to the buyer.

Delays in the aggregation of the data or in resolving the conflicting information will mean that the buyer is under huge pressure to exchange contracts from the seller and the rest of the chain.

A survey of a CA member's data indicates that lease administrators often take more than 50 days to provide the information. This means that often the information is received on the day of exchange and the buyer has little or no time to digest the information and is in a position of high emotion and potentially fear of losing the deal.

We also know that in some cases consumers do receive and acknowledge to have received the information prior to exchange of contracts, however, the overwhelming volumes of information may mean that they do not fully appreciate the impact of a particular issue contacted in the information on their intended use and enjoyment of the property. It is only after they have moved in that this becomes clear.

Other Considerations

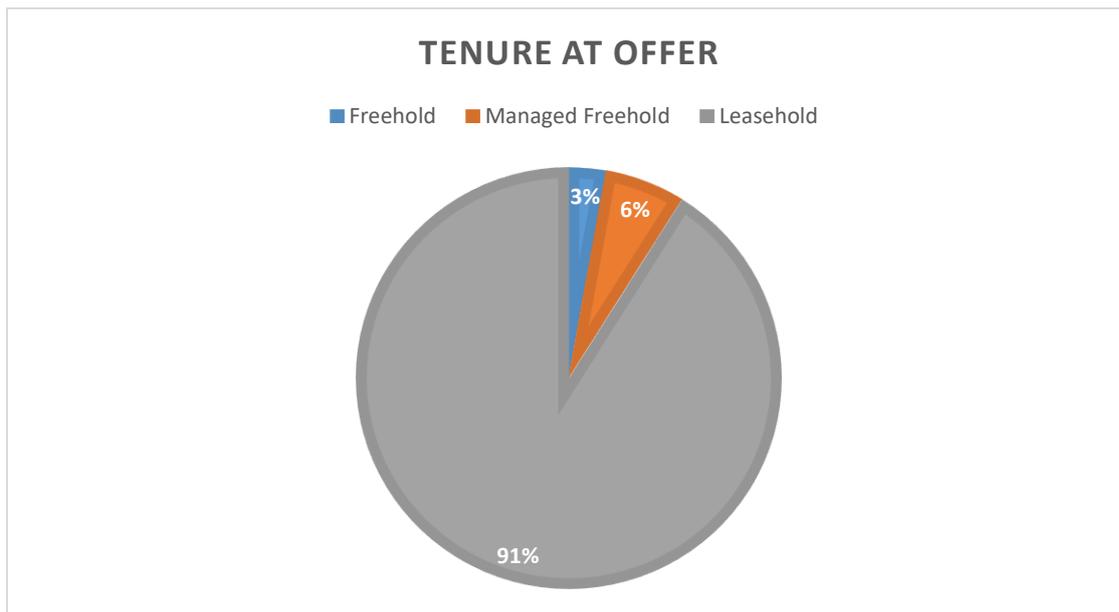
We also asked respondents whether the property was:-

- Leasehold.
- Freehold.
- Managed freehold (e.g. with an estate rentcharge or contribution towards a shared amenity).
- New-build.
- Second hand.

The Respondents

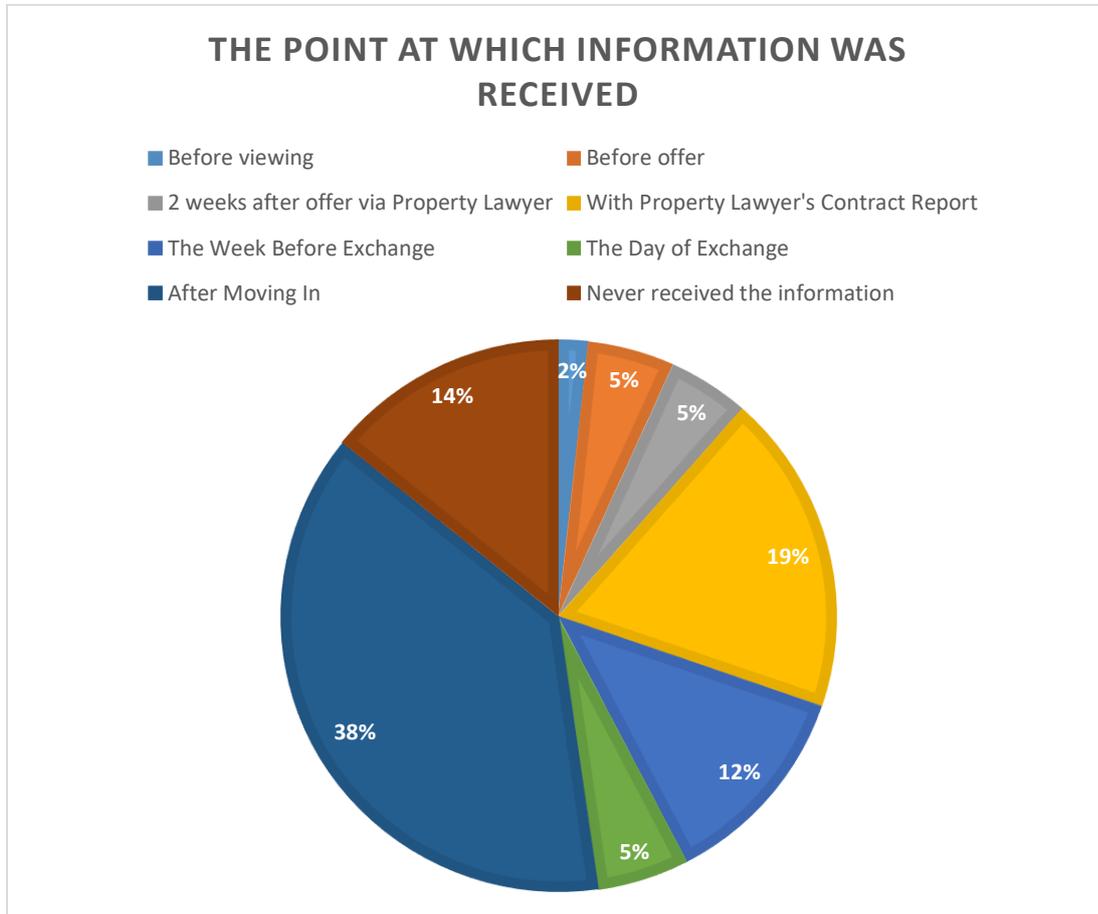
The survey was circulated through trade press, asking conveyancers and estate agents to share with their customers and it was also circulated through the National Leasehold Campaign and Home Owners Alliance.

1,170 home movers responded. The majority of respondents were leaseholders.



The Results

Of the 1,170 home owners who responded to the survey, only 2% stated that they received information prior to viewing the property.



94% indicated they did not believe they received enough information through the whole buying process and, as a result of this, 87% felt they had suffered stress and almost 20% attributed personal illness to their home buying experience.

566 respondents said that they would not have viewed the property if they had had all the information prior to viewing.

Pockets of Complaint

We asked the respondents to provide the name of the seller and the postcode of the property.

Of the new build properties included in the survey, three developers were named by 613 of the respondents as not providing sufficient information.

There were also geographical pockets of complaint and it was noticeable that in areas where one of these developers were operating other developers were also complained about indicating that the abuses were spreading.

Our concerns about leasehold go wider than the provision and timeliness of information

Unfair Leasehold Terms and Fees

The percentage of 'unreasonable' fees

One of the CA members, the largest conveyancing operation in the UK, provided an extract from their case management data for the period 2014 to 2017 - 21,800 data records in all. This is a computer-generated report of the data which was completed by their staff during the transactions and is used to generate the payment requests so is likely to be as accurate as it is possible to get.

Using data from Lease Administrators on the time taken to undertake the administrative work, we created a schedule of reasonable fees based on an hourly rate of £100 and using the top end of the time taken to complete the administrative activities (according to the Lease Administrators).

From this we calculated the percentage of transactions over the reasonable fee.

	Administrative Time in Mins	Reasonable Fee ¹	Average Fee in 2017	% of all fees charged which were more than a reasonable fee in 2017
Notice of Assignment	15	£25	£95.49	94%
Notice of Charge	15	£25	£84.34	94%
Notice of Assignment & Charge	20	£35	£145.10	95%
Deed of Covenant	45	£75	£131.97	78%
Certificate of Compliance	30	£50	£123.62	88%
Stock Transfer	30	£50	£76.43	72%

It would be reasonable to suppose therefore that at least 78% of leaseholders are being charged excessive fees. Based on 260,000 transactions a year that's 202,800 buyers. But add to that the sellers who have to pay for Leasehold Property Enquiries (LPE1) which contains the information required by the buyer's lawyer for the sale of the property and there are 405,000 consumers affected per year.

Deed of Covenant – A Void Document

Under the Landlord and Tenant (Covenants) Act 1995, leasehold covenants are enforceable against subsequent leaseholders by landlords and management companies, without further legal stipulation. However, leases continue to have terms requiring that a deed be entered into and paid for and leaseholders continue to be asked to pay for such deeds in 30% of transactions. Further, whilst the First Tier Tribunal has ruled that a Deed of Covenants should, when required, cost no more than £80 our evidence shows that they are charged out at up to £500.

HM Land Registry Restrictions

Landlords write into their lease a term that a restriction be registered at HM Land Registry which requires that the term of the lease be satisfied prior to registration of a disposition and that a certificate showing that the term has been complied with be supplied by the lease administrator.

The percentage of leasehold titles registered with the restriction has rose from 49% to 64% between 2014 and 2017.

The lease term will usually require that:-

- Notice of assignment be receipted by the lease administrator at a fee set by them.
- Notice of charge be receipted by the lease administrator at a fee set by them.
- A Deed of Covenant be entered into at a fee set by the lease administrator.
- A Certificate of Compliance be obtained to confirm that the above items have been completed and paid for, at a fee set by the lease administrator.

These lease terms are unfair because they require a Deed of Covenant which is unnecessary since the 1995 Act and that a certificate of compliance be obtained and paid for.

If this requirement was removed from the lease term then the only requirements would be to service notice on the lease administrator of the change in ownership. The receipted notice in and of itself is proof that this has been done so a 'certificate' confirming it has been done is a duplication. The deed of covenant required by the lease does not serve any legal purpose yet causes a fee to have to be paid to the lease administrator.

We estimate that average fees of £433 are being paid to the lease administrator; a reasonable fee for notifying the administrator of the change in ownership (and the lender) should be no more than £35 on our calculation.

The impact is not just the cost to the incoming lessee however; 63% of applications to register a dealing on a leasehold title require follow-up letters and 32% of applications are cancelled which equates to 205 applications per week.

This means the leaseholder has to pay another Land Registration Fee and the application has to be resubmitted, whilst during that time the leaseholder's title and the security of their lender is in jeopardy.

Transactional Delays

The data shows that in 37% of cases it takes over 30 days for the Leasehold Information to be provided by the Leasehold Administrator after request. This is the information necessary to comply with CPRs. A further 30% take over 50 days from receipt of payment of the (often unreasonable) fee.

Unfair Ground Rents

Creators of new leases are also routinely breaching the rule of law through derogation of grant.

The lessor purports to grant a long lease but then includes a lease term which increases the ground rent to a level which would render the long lease an Assured Shorthold Tenancy under the Housing Act 1988. This then also means that the requirement under the Landlord and Tenant Act for a landlord to give first refusal to a flat owner on the sale of the freehold is avoided as it is subject to the Housing Act rent threshold of £250 outside of London and

£1,000 within London. We have recommended to MHCLG that all lease terms which take ground rents in long leases over the Housing Act threshold should be rendered void.

Unfair Permission Fees

Restrictive covenants are routinely included in leases which require permission for alteration or uses even when these would not impact the lessor or other lessees. These covenants would not meet the tests set down for the First Tier Tribunal when considering claims for waiver or cancellation of covenants and should be banned.