Law Commission
Leasehold ownership: buying your freehold or extending your lease. Response to Consultation paper

The British Property Federation

1. The BPF represents the commercial real estate sector. We promote the interests of those with a stake in the UK built environment, and our membership comprises a broad range of owners, managers and developers of real estate as well as those who support them. Their investments help provides essential infrastructure and create great places where people can live, work and relax.

2. The UK's commercial real estate sector contributes about 5.4% of GDP, and directly employs 1 million people, or 6.8% of the labour force. It provides the nation's built environment and is diversifying from its core investment in the nation's offices, shops, leisure facilities and factories, to support the new economy through investments in logistics, healthcare, student accommodation, infrastructure, residential and increasingly through Build to Rent investment in new housing.

3. The Law Commission is conducting a wide-ranging review of the current law of enfranchisement; that is the laws that allow leaseholders of houses to buy their freeholds or extend their lease, leaseholders of flats to extend their leases or join in with other leaseholders to buy the freehold of their buildings. This is a major consultation, running to almost 500 pages with 135 specific questions. In this response, we attempt to answer these questions within the context of the BPF membership. This membership includes financial institutions, pension funds and responsible landlords large and small.

4. The policy objectives of enfranchisement reform identified by Government and expanded upon by the Law Commission in this consultation are;

   (1) To promote transparency and fairness in the residential leasehold sector;

   (2) To provide a better deal for leaseholders as consumers;

   (3) To simplify enfranchisement legislation;

   (4) To consider the case to improve access to enfranchisement and, where this is not possible, reforms that may be needed to better protect leaseholders, including the ability for leaseholders of houses to enfranchise on similar terms to leaseholders of flats;

   (5) To examine the options to reduce premiums (price payable) by existing and future leaseholders to enfranchise, whilst ensuring **sufficient compensation** is paid to landlords to reflect their **legitimate property interests;**

   (6) To make enfranchisement easier, quicker and more cost effective (by reducing the legal and other associated costs), particularly for leaseholders, including by introducing a clear prescribed methodology for calculating the premium (price) and by reducing or removing the requirement for leaseholders (i) to have owned their lease for two years before enfranchising and (ii) to pay their landlord's costs of enfranchisement; and

   (7) To bring forward proposal for leasehold flat owners, and house owners, but prioritising solutions for existing leaseholders of houses.

5. We consider that many of these policy objectives can be supported, as we will show in our responses to the individual questions in the consultation. We are concerned that the concepts of sufficient compensation and the strict definition of legitimate property interests are not explored in the same detail as other issues in the consultation and these are of crucial importance to our Members. We will comment more fully on these points in our responses, but we note the likely application of Human Rights legislation and the relevance of Article 1 to the First Protocol to ECHR (A1P1)

6. We consider that there are essentially two differing types of freehold owner that we represent. Firstly, those property owners, such as the London estates, who predominately own shorter lease reversion (less than 100 years) with some very valuable reversions being very much shorter, where the main driver to enfranchisement premiums has been capital value and thus the value of these reversions.

7. The second group of owners are those ground rent owners and operators who predominantly own leases with long reversions, (100-999 years), where the value of the reversions in unlikely to be significant but it is the valuation of the capital value of the rents, and the appropriate capitalisation of those rents, which is their primary concern in this consultation. We will comment appropriately in respect of both main groups, and others, in the course of this response.

8. The existing leasehold reform legislation regime has been built up through successive legislation since the original 1967 Act, and we agree that it is currently unnecessarily complicated and cumbersome. However, we do not consider that this is indicative of wholesale failure of the leasehold system that has generally operated satisfactorily over many decades.

9. There has been a great deal of litigation and argument over the applicable basis of valuation and over the main valuation factors since the legislation came into being. There have however fairly recently been a number of key Tribunal decisions on valuation issues, that have been expensive and contentious to mount, but have largely established a status quo on the valuation of shorter reversions (less than 100 years unexpired). We will explore in the response how we think this current position can be simplified going forward.

10. We welcome the chance to respond to this consultation and look forward to working with the Government on developing the policy proposals into real actions.

Q. 1. Should there be a different treatment of particular issues in a reformed enfranchisement regime between England and Wales.

We are not aware of major issues on this score. It is noted that the impetus for the 1967 Act came from issues of long leases of houses in South Wales coming to expiry and a similar regime to the rest of England has subsisted since that time.

Q. 2. Should leaseholders of both flats and houses be entitled to a new extended lease at a nominal ground rent. What is the appropriate length of such an extension and at what points should there be a right to terminate for purposes of redevelopment (on payment of appropriate compensation).

We support this proposal, provided that it is subject to appropriate compensation. We consider that 125 years is an appropriate length for such extensions as many buildings will be reaching the end of their useful life at that point. Granting 999-year leases, although perhaps superficially attractive, does not reflect the lifespan of buildings generally.

Bearing in mind that redevelopment may be necessary at future points, a landlord should have the right to terminate at the original expiry date as well as the extended expiry date, in both cases subject to payment of appropriate compensation.

Q. 3. Should all lease extensions be at a nominal ground rent or should there be a choice to (a) extend the lease without changing the ground rent, or (b) extinguish the rent without extending the lease.

We think it likely under a new regime, with a more standardised and transparent valuation methodology, that the great majority of lease extensions will be at a nominal ground rent, but we do not consider it necessary to legislate to restrict the other options, if so chosen by a leaseholder.

Q. 4. We propose that:

(1) a leaseholder claiming a lease extension should be entitled to a lease extension of the whole premises let under his or her existing lease, whether or not the entirety of the premises falls within the curtilage of the building;

(2) landlords should be able to propose that other land be included within the lease extension and that there should be no time limit to such a proposal and

(3) there should be no power for landlords to argue that parts of the premises let under a leaseholders existing lease should be excluded from a lease extension

Do consultees agree?

We consider this proposal is misconceived. Where this proposal to be limited to purely residential buildings it might be supported. However, the consequence of this proposal is that once a leaseholder has established a right to a new lease of a residential unit, that right is effectively extended to all the land included in the lease, regardless of its nature and extent and whether it has any connection with the residential units. If, for example a leaseholder has a lease of a building comprising offices with a top floor flat, then this proposal suggests that, having established a right to a new lease of the flat, the leaseholder can include within that lease all the offices. That cannot be right.

Q. 5. Should a lease extension automatically be subject to any mortgage secured over an existing lease and should this bind the landlord's mortgagee.

We support this proposal.

Q. 6. (a) Should the terms of a lease extension (other than the length of term and the ground rent) generally be identical to the terms of the existing lease save for a prescribed list of non-contentious modernisations.

(b) What terms should be included in the prescribed list and (c) should there be a standard model lease for Aggio-style leases.

With some reservations, we support this proposal. We know that some existing leases have serious defects which currently have an opportunity for correction during the lease extension process. However, if the new proposed regime is to make the lease extension process easier faster and more cost effective, then this proposal should assist in achieving this goal. Although as is suggested there are other forums where defective

lease terms can be addressed, it is important that there are enough issues covered in the prescribed list to allow for obvious and serious defects in exiting leases to be corrected.

The term to be included in the prescribed list should include:

a. A mutual enforceability covenant.

b. Covenants on a Landlord to enforce third-party management covenants.

c. An insurance covenant that is CML compliant.

d. A clause that allows landlords to recover costs incurred in dealing with service charge disputes via the service charge or through the lessee seeking to get the landlord to enforce existing covenants within the lease.

Q.7. Do lease extensions outside the 1967 and 1993 Acts create problems in practice and should such extensions be permitted under a new statutory enfranchisement regime.

We are concerned if the ability of parties to enter into agreements outside the scope of the legislation is prohibited. If, as seems likely, the new regime encourages the use of the proposed legislative framework and makes it simpler and easier, then the desire to enter into agreements outside this framework may well diminish, but we are instinctively wary of prescription on this issue. We would have no issue with a requirement for the leaseholder to be given a statement setting out their statutory rights, so that they are aware of such rights, but had chosen not to exercise them.

Q.8. What is the experience in practice of contracting out of the 1967 and 1993 Acts and should such provisions, by agreement, be continued under any new enfranchisement regime.

We reiterate our answer to Q.7. above

Q.9. To what extent would a uniform right to a lease extension at a nominal ground rents for both flats and houses increase the likelihood of leaseholders seeking lease extensions under (future) enfranchisement legislation?

We assume this question refers primarily to house owners, as the existing framework gives flat owners this right already. We are not sure how many house owners will opt for a lease extension rather than opting for a freehold purchase, but under current 1967 Act rules, leaseholders of houses are only entitled to one lease extension, for a term of 50 years, and once the original term has expired, they are required to pay a modern ground rent. This is generally a most unattractive option and compares very unfavourably with the 1993 Act, which stimulates an additional 90 years at a nominal rent. We assume therefore, that such a uniform right, as proposed will increase the number of lease extension claims pursued in respect of houses.

Q.10. How would an increase in the length of a statutory lease extension affect the leasehold market and the mortgageability of leases?

In valuation terms there is no material difference in value once leases have over 100-125 years unexpired. We therefore do not anticipate any change in the market or the mortgageability of leases of this length and over.

Q.11. What is the likely uptake of leaseholders extending their leases without changing their ground rents or extinguishing their ground rent without extending their lease if these options remain open?

We have discussed this issue with some of our Membership. We observe that a number of leaseholders are more concerned with extending their unexpired term rather than extinguishing their rent. This may be driven by requirements and perceptions of mortgagees. Were such perceptions to change, then it may be that there would be a greater uptake of the latter option, which we have not seen as a major route to date.

Q.12. To what extent does the current regime of negotiating lease terms increase the duration and cost of the enfranchisement process, increase the potential for disputes and lead to the imposition of onerous or undesirable terms upon leaseholders and

To what extent would restricting parties' ability to introduce new terms into a lease extension to terms drawn from a prescribed list, reduce the time and cost in acquiring a lease extension, reduce potential for disputes and reduce future costs to leaseholders?

Would this reform lead to a higher proportion of leaseholders seeking to exercise their right to a lease extension?

We consider the existing regime gives both landlords and leaseholders opportunities to dispute and delay the process to their respective advantage, which generally adds to the time and cost in acquiring a lease extension.

We think the proposed new regime will assist in making the lease extension process cheaper quicker and generally less contentious.

We think, other things being equal, this will lead to more leaseholders seeking to exercise their rights.

Q.13. It is proposed that, where an individual freehold acquisition claim is made:

(1) the leaseholder should be entitled to the transfer of:

(a) the whole of the building in which his or her residential unit is situated, even if parts of that building are not included within his or her existing lease, and

(b) the whole of his or her premises let under the existing lease, whether or not the entirety of those premises falls within the curtilage of the building: and

(2) there should be no statutory deadline or time limit for landlords to propose that other land originally let to the leaseholder, but now assigned to another, should also be included in the transfer, or that parts of the premises that are above or below other premises in which he has an interest should be excluded from the transfer.

We reiterate our concern expressed in our answer to Q.4, particularly with regards to paragraph (1) (b) above. In a mixed use block with shops and flats above on long leases, it cannot be reasonable for flat owners to enfranchise where the majority of the value is in the commercial element of the block. An additional important proviso is that if the existing landlord has granted a roof space lease or the like, then he should be in a position to exclude this from the statutory claim, as appears to be the exemption in paragraph (2) above. Mixed use developments can pose a more difficult problem where the whole of the freehold is to be passed to the leaseholder. If a valuable interest has been retained by a landlord, then there should be a mechanism to protect the value of that interest.

Q.14. It is proposed that, where an individual freehold acquisition claim is made:
(1) any mortgage secured against the freehold title should automatically be discharged upon execution of the transfer; but
(2) the leaseholder should be under a duty to pay:
(a) the whole price; or
(b) (if less) the sum outstanding under the mortgage; to the mortgagee, or alternatively, into court; and
(3) any sums due from the leaseholder to the landlord should be reduced by any sums paid under (2) above
We also propose that where an individual freehold acquisition claim is made – save in the case of estate rentcharges imposed to secure positive covenants – a landlord should be under a duty to use his or her best endeavours to redeem any rentcharge.

We support this proposal in principle although landlords may face unfair early termination costs on their mortgages, so the landlord should have the right to postpone the transfer for a defined period (say five years) to avoid such costs.

In relation to (3) the cost of any such redemption should be passed down to the tenant. Alternatively, it could be possible to legislate for the compulsory redemption of rentcharges in the same way as it is proposed to legislate for the compulsory redemption of mortgages.

Q.15. (1) We invite the views of consultees as to whether a leaseholder making an individual freehold acquisition claim should acquire the freehold subject to the rights and obligations on which the freehold is currently held, or on terms reflecting the rights and obligations contained in the existing lease.

(2) We propose that, on an individual freehold acquisition claim, additional terms may only be added to the transfer where the leaseholder elects to include a term drawn from a prescribed list of terms.

(3) We invite the views of consultees as to the types of additional terms that should be included within such a prescribed list.

(1) We consider that legally it would be difficult to provide for anything other than acquiring the freehold subject to the rights and obligations affecting the freehold.

(2) Where additional terms are proposed, which include restrictive covenants which have the effect of reducing the price payable, we question how a freeholder can retain the right to recover additional sums in the event of redevelopment etc, in the absence of a covenant being a restrictive covenant that binds and runs with the land. Accordingly, one view is that no restriction should be added unless mutually agreed by the parties. If the leaseholder is intending to acquire the freehold, he should be acquiring this interest for what it is worth at the relevant time.

Q.16. We invite the views of consultees as to whether, where a leaseholder's existing lease contains rights and obligations in respect of land that is to be retained by the landlord, the leaseholder should (where there is no current estate management scheme in place) acquire the freehold subject to terms in respect of the retained land that:
(1) reflect the rights and obligations set out in the leaseholder's existing lease; or
(2) appear within a prescribed list of appropriate covenants.

We invite the view of consultees as to the types of terms that should be included within such a prescribed list.

See comments in relation to Q.15 above.

Q.17. (1) We propose that any obligation owed to a landlord of an estate by a leaseholder who has acquired the freehold of their premises should be enforceable whether or not the landlord has retained land that benefits from that obligation.

(2) We invite the views of consultees as to whether unpaid sums due from a leaseholder who has acquired the freehold of their premises to a landlord of an estate should be capable of being charged against the freehold and enforced by the landlord as if he or she were a mortgagee of the property.

(1) We agree although we can see difficulties with the transmission of the benefit of those obligations through the estate of the landlord. It might be preferable to have a provision for the registration of such interests so that they can be recorded and established over the longer term.

(2) A preferable alternative might be to require payment of all sums due before the transfer of the freehold, with a deposit to cover adjustments paid into a stakeholder account or into court (where agreement cannot be reached). A charge over the freehold to secure such unpaid sums might interfere with the ability of the leaseholder to obtain a mortgage in relation to the freehold or affect the issue of priorities between the leaseholder's existing mortgage and the landlord's rights.

Q.18. We propose that where a leaseholder's existing lease does not contain any rights and obligations in respect of land that is to be retained by the landlord, the leaseholder should (where there is no current estate management scheme in place) acquire the freehold subject to terms in respect of the retained land that appear within the prescribed list of appropriate covenants. Do consultees agree?

We agree.

Q.19. Do consultees believe that the ability of parties to enter into a transfer of the freehold of a house outside the 1967 Act creates significant problems in practice?

What steps, if any, do consultees believe could be taken to control or limit the use or impact of parties entering into a freehold transfer to an individual leaseholder outside of a new statutory enfranchisement regime?

We reiterate our answer to Q.7, which referred to lease extensions outside the statutory regime. As indicated previously, we are instinctively wary of prescription of the right to freely enter into such arrangements.

Q.20.To what extent does the current ability of parties negotiating the terms of a claim to acquire the freehold of a house to agree the terms of the freehold transfer without restriction:
(1) increase the duration and cost of the enfranchisement process;
(2) increase the potential for disputes; and
(3) lead to the inclusion of unusual terms within the freehold transfer, resulting in additional future costs to former leaseholders?
To what extent would limitations on the ability of parties to include new rights and obligations in a freehold transfer to an individual leaseholder:
(1) reduce the time and cost involved in acquiring the freehold individually;
(2) reduce the potential for disputes; and
(3) reduce future costs to former leaseholders arising from the terms of the freehold transfer?

Would this reform result in a higher proportion of leaseholders seeking to exercise their right of individual freehold acquisition?

In our experience the conveyance of houses following enfranchisement in areas subject to an Estate Management Schemes prove less problematic and are less contentious than in other cases. This is no doubt because the terms of the transfer are established and not subject to amendment. We assume therefore, on the same basis that a regime which limits the ability of parties to include new rights and obligation will have a similar effect.

Q.21. We propose:
(1) a general requirement that a collective freehold acquisition claim must be carried out by a nominee purchaser which is a company; and
(2) an exception to the above requirement where:
(a) the premises to be acquired contain four residential units or fewer;
(b) all residential units are held on long leases;
(c) the leaseholders of all residential units are participating in the claim; and
(d) all those leaseholders agree.

Do consultees consider that some of the requirements of company law are inappropriate or onerous for a nominee purchaser company and should be relaxed? If so, please tell us which.

We note the reasoning for this proposal set out in the consultation, and on balance, agree.

Q.22. Must a nominee purchaser company used for a freehold acquisition claim be a company limited by guarantee?

We note the arguments in favour of this proposal and understand that such an entity will make it simpler for late joiners and others to participate. We are however concerned that such proposals might restrict leaseholders' willingness to make collective claims if they are deprived of the flexibility to organise their affairs in a financial and tax efficient way.

Q.23. It is proposed that the articles of association of any nominee purchaser company exercising the right of collective freehold acquisition must contain certain prescribed articles. It is also proposed that these prescribed articles may only be departed from where:
(1) all the residential units within the premises are held on long leases; and
(2) the leaseholders of all the residential units are members of the nominee purchaser company
We invite the views of consultees as to;
(1) the matters in respect of which it would be desirable for articles to be prescribed; and
(2) any matters in respect of which it would be desirable to require provision in the articles of association, albeit with some freedom as to that provision.

We agree and consider that the propositions put forward in paragraphs 6.80 - 6.85 of the consultation cover these points.

Q.24. It is proposed that a nominee purchaser company, having carried out a collective freehold acquisition, be restricted from disposing of the premises acquired, save where:
(1) all the residential units within the premises are held on long leases;

(2) the leaseholders of all the residential units are members of the nominee purchaser company; and
(3) all members of the company agree with the proposed disposition;
OR
(4) the Tribunal makes an order permitting the proposed disposition.
We invite the views of consultees as to the grounds on which the Tribunal should be empowered to permit a disposition of the premises acquired collectively by a nominee purchaser company.

We agree with the reasoning set out in paragraphs 6.88- 6.90.

Q.25. It is proposed that the right of collective freehold acquisition should extend to the acquisition of the freehold of an entire estate consisting of multiple buildings.

We invite the views of consultees as to how such a right might operate. Do consultees consider that there are any problems with the approach we have suggested at paragraph 6.95, or any other issues for which we would need to provide?

We agree that where different buildings contribute to a common service charge and where there are other management issues in common, then the concept of extending the right of collective acquisition to an entire estate of similar building makes sense. We are cautious however of the strict definition of common services, and for instance, in the case of a London estate, the common access to a communal garden would not in our view provide enough communality for this provision to apply.

Q.26. It is proposed that a nominee purchaser carrying out a collective freehold acquisition should acquire:
(1) the freehold of the building or buildings in which the flats are situated, including any common parts; and
(2) any other land let with the flats within the building.
We propose that a nominee purchaser carrying out a collective freehold acquisition should be entitled to acquire the freehold of other land over which the leaseholders exercise rights in common, provided that the right is shared only with other occupants within the building(s) being acquired.

We reiterate our concern expressed in our answer to Q4, particularly applying to paragraph (2) above.

Q.27. It is proposed that, on a collective freehold acquisition:
(1) any mortgage secured against the freehold title should automatically be discharged upon execution of the transfer; but
(2) the nominee purchaser would be under a duty to pay
(a) the whole of the price, or
(b) (if less) the sum outstanding on the mortgage.
(3) any sums due from the nominee purchaser to the landlord should be reduced by any sums paid under (2) above.
It is also proposed that on a collective freehold acquisition- save in the case of estate rentcharges imposed to secure positive covenants- a landlord should be under a duty to use his or her best endeavours to redeem any rentcharge.

We refer to our comments on Q.14. Where there is a leaseback, then the relevant mortgage should automatically transfer to that interest.

Q.28. We propose that, where a nominee purchaser making a collective freehold acquisition claim is to acquire the whole of the landlord's freehold interest, any rights and obligations that are not ordinarily discharged upon payment of the purchase price should be continued automatically. Do consultees agree? What do consultees consider would be the best statutory means by which this could be achieved?

We propose that, where a nominee purchaser making a collective freehold acquisition claim is to acquire the whole of the landlord's freehold interest, the parties should only be able to adopt additional covenants if those covenants are drawn from a list of prescribed covenants. Do consultees agree? Which covenants do consultees consider should be included within such a prescribed list?

We agree.

Q.29. We invite the views of consultees as to whether, on a collective freehold acquisition claim where the leaseholders' existing leases contain rights and obligations in respect of land that is to be retained by the landlord, the nominee purchaser should (where there is no current estate management scheme in place) acquire the freehold subject to terms in respect of the retained land that:
(1) reflect the rights and obligations set out in the leaseholders' existing leases; or
(2) appear within a prescribed list of appropriate covenants.

We invite the views of consultees as to the types of term that should be included within such a prescribed list.

We agree. We would welcome the opportunity of reviewing details of any prescribed list that is to be proposed.

Q.30. We provisionally propose that, on a collective freehold acquisition claim where the leaseholders' existing leases do not contain rights and obligations in respect of land that is to be retained by the landlord, the nominee purchaser should (where there is no current estate management scheme in place) acquire the freehold subject to terms in respect of the retained land that appear within a prescribed list of appropriate covenants.

We invite the views of consultees as to the types of terms that should be included within such a prescribed list.

We agree and reiterate our response to Q.29 above.

Q.31. We propose to introduce a new power for leaseholders exercising the right to collective freehold acquisition be able to insist that the freeholder takes a leaseback of all parts of the premises (other than common parts) which are not let to participating leaseholders?

We understand the purpose of this proposal as it would make enfranchisement easier and cheaper for enfranchising lessees. It is not true to say however that the landlord suffers no disadvantage in being required to take a leaseback. He may not want to retain an interest in the building particularly if he has concerns about the ability of the nominee purchaser to manage the building. Under the current provisional proposals, he may be very restricted as to whom he can sell. He would be at risk in the event of a second enfranchisement (Ch 16) and may be caught by a ban on voluntary sales if he wanted to sell to the leaseholder (Ch 4). What is his position if a leaseholder exercises his "right to participate", and the valuation basis under which he might be forced to sell? He may also suffer a significant tax disadvantage; assuming he can find someone to whom he can sell, he cannot roll-over the CGT. He could of course simply wait for the leaseholder to claim a lease extension but that could not apply to commercial, let or vacant units.

Any proposed legislation should provide appropriate safeguards around repair, rebuilding, insurance and service charges in those circumstances. Commercial tenants, landlords and their mortgagees will be concerned to ensure that there is no adverse effect on value or maintenance.

Q.32. It is proposed that, where premises have been the subject of a collective freehold acquisition claim, the leaseholders in those premises should be prohibited from making a further freehold acquisition claim in respect of the same premises for a set period and if so, it is proposed that five years would be an appropriate duration for such a prohibition.

We agree. We are aware of cases of 'tit for tat' enfranchisements, but these have largely come about because of the current regime where leaseholders can legally be excluded from participating. There are current proposals, explored elsewhere in this consultation, providing for retrospective participation, although no proposals for all parties to be able to participate, which we consider to be a serious omission. We consider the problem is effectively overcome by providing for a minimum 51% participation, rather than 50%.

Q.33. Does the ability of parties to enter into a transfer of the freehold of a block of flats outside the 1993 Act create significant problems in practice?

What steps, if any do consultees believe could be taken to control or limit the use or impact of parties entering into a freehold transfer to a group of leaseholders outside of a new statutory enfranchisement regime?

We reiterate our answers to Q.7 and Q.19. Our concern about prescription in these areas remains.

Q.34. (1) We propose a new right to participate: the right for leaseholders who did not participate in a prior collective freehold acquisition claim, or who did not qualify for the right at the time of the prior claim, subsequently to purchase a share of the freehold interest held by those who did participate.

(2) Do consultees consider that the right to participate should be available only in respect of collective freehold acquisition claims completed in the future, or also in respect of collective freehold acquisition claims completed before the commencement of the new regime?

(3) We have identified at Paragraph 6.156 a number of issues which will need to be addressed in order for the right to participate to operate successfully. We invite consultees to share with us their views on how these issues might be resolved and tell us of any further difficulties they foresee with the operation of the proposed right.

Whilst we recognise that there may be some practical difficulties in extending the right to participate in cases of already completed claims, we would support the principle of extending the right to participate as far as is practically possible, which should include the right to participate in current claims.

In relation to (2) it is difficult to see how one could provide for a current leaseholder to participate now in a claim that took place many years previous.

In relation to (3), there are likely to be practical issues on how premiums might be calculated in cases of prior non-participators being given a new right to participate. It is important in this context that the premium calculation follows existing practice and current values, as otherwise such new participants could receive a windfall benefit at the cost of the enfranchised owners.

Q.35. We welcome evidence as to the costs and benefits of requiring leaseholders pursuing a collective acquisition claim to:

(1) use a company limited by guarantee as the nominee purchaser
(2) comply with the applicable rules of company law; and
(3) use a set of partly-prescribed articles of association for the company limited by guarantee.

We are not able to give evidence in this response, but we presume that these proposals will be generally helpful in achieving a greater degree of participation and should make the process more uniform.

Q.36. To what extent does the current ability of parties negotiating the terms of a collective enfranchisement
(1) increase the duration and cost of the enfranchisement process,
(2) increase the potential for disputes; and
(3) lead to future difficulties (financial or otherwise), resulting from the inclusion of unusual terms within the freehold transfer?
How much would limiting parties' ability to include new rights and obligations into a freehold transfer to a nominee purchaser:
reduce the time and cost in acquiring the freehold collectively;
reduce potential for disputes; and
reduce future difficulties (financial or otherwise) resulting from the inclusion of unusual terms within the freehold transfer?
Would such a reform result in a higher proportion of leaseholders seeking to exercise the right to collective enfranchisement?

We consider that the current regime can lead to unnecessary cost and delay, as much due to prevarication on the part of leaseholders seeking to make use of the protracted statutory timetable, as freeholders attempting to impose onerous terms.

A simplified regime, where costs are more likely to be limited will probably result in a greater take up of collective enfranchisement. Rather than detailed prescription of terms, an effective alternative could be a third-party referral, particularly if it includes an ability to order payment of costs.

Q.37. To what extent would a new right for leaseholders who are collectively enfranchising, to require the freeholder to take leasebacks of all parts of the premises (other than common parts) and which are not let to participating leaseholders, make a collective acquisition more affordable.

Would such a reform result in a higher proportion of leaseholders seeking to exercise the right to collective enfranchisement?

We consider that this proposal will make collective enfranchisement more affordable. Most leaseholders are not property investors and a common issue for leaseholders is the funding of the non-participators in the building. Similarly, in a mixed-use building, the premium attributable to the commercial parts can be considerable and is often more valuable than the residential interest. In such cases the introduction of compulsory leasebacks will substantially reduce the premium payable by the participating leaseholders.

However, in circumstances where a building has greater value in the commercial property, is it right that a landlord should be forced to sell his asset (and take a leaseback on the commercial units) to a nominee purchaser who may have no experience in property management and whose concerns for the future of the building may be very different from those of the landlord? Furthermore, the proposals suggest that the landlord will have no right to participate in the future running or management of the building.

We think this reform will lead to a higher proportion of leaseholders seeking to exercise the right to collectively enfranchise. Most participating leaseholders simply do not want to pay more than their share of the collective price, but such new rights should be mitigated in circumstances set out in the paragraph above.

Q.38. Should the concept of "houses" and "flats" be replaced with "residential unit"?

Will the concept of "residential unit" work in practice?

Should business leases be excluded and is the best method of achieving this exclusion by restricting enfranchisement rights to leases which permit residential use?

We support this proposal and see no reason why this should not work in practice. We agree that the exclusion of business leases is probably best achieved by restricting enfranchisement to leases which permit residential use only. Care must be exercised in this area as it has proved a fruitful area of litigation under the current regime.

Q.39. Should the existing requirement that a leaseholder must have a lease which exceeds 21 years to qualify for enfranchisement rights be maintained?

We support this proposal.

Q.40. The proposal is that the current legal position that separate, concurrent long leases between the same landlord and leaseholder mat be treated as if they were a single long lease should be maintained

Further it is proposed maintaining the current legal position that renewals or statutory continuations of long leases are also treated as long leases and also adopting (across the board) the 1967 Act's approach to consecutive long leases, in treating them as a single long lease.

We support this proposal.

Q.41. Should all qualifying criteria for enfranchisement rights based on financial limits (both low rent test and rateable value) be removed?

We agree with this proposal. The existing regime is unnecessarily complicated and based on historic data that is often difficult to ascertain or retrieve. However, residential blocks, including care homes and student accommodation blocks are often let on long leases and could inadvertently qualify, so these type of "investment or commercial lettings" should not permit enfranchisement rights. Enfranchisements should therefore be restricted to privately owned residential units, or units that are effectively owner occupied or let by owners on short leases.

Q.42. Should the current requirement to own premises for two years before exercising enfranchisement rights be abolished?

We agree with this proposal. There are currently differential rules between individual leaseholders and those involved in collective claims and individual leaseholders currently also have rights to assign the benefit of a Claim Notice, so that an incoming purchaser does not have to satisfy a two-year ownership requirement in such circumstances.

Q.43. We propose that the right of individual freehold acquisition should be available where:
(1) a leaseholder has a long lease over premises which include at least one residential unit which is not sublet to another person on a long lease;
(2) there are no units in the building save for the unit(s) let to the leaseholder under his or her long lease; and
(3) the premises let to the leaseholder comprise either:
(a) one unit; or
(b) more than one unit, but:
(i) none of those units are residential units that are sublet to another person under a long lease; and
(ii) the floor space of any non-residential units does not exceed 25% of the floor space of all the units combined.

We consider that there should be a minimum of two units in such circumstances.

Q.44. We propose that the premises which may be the subject of a freehold acquisition claim (whether individual or collective) should be identified in line with the 1993 Act's definitions of "self-contained building" and "self-contained part of a building".

We propose that, otherwise, the "building" in which a unit is contained can be defined simply as a built structure with a significant degree of permanence which can be said to change the physical character of the land.

We agree.

Q.45. We invite consultees' views on the desirability and workability of creating a discretion for the Tribunal to authorise, in limited circumstances, a freehold acquisition (whether individual or collective) where this would not otherwise be possible because the building or part of building concerned is not, or might not be, self-contained.

We do not agree with this proposal. It is not helpful on the one hand to set out clear qualification rules and then to say that the tribunal will have jurisdiction to determine that a building can be enfranchised notwithstanding that it does not comply with those rules. Far from resulting in "swifter and cheaper resolution", this proposal is likely to encourage litigation. A landlord is entitled to know whether or not his building is potentially enfranchiseable.

Q.46. We propose that it is appropriate to apply a maximum percentage limit on non-residential use to individual freehold acquisition claims concerning premises containing multiple units.

We propose that that limit should be the same as that which applies to collective freehold acquisition claims

We propose that the limit should be set at 25% of the internal floor space (excluding common parts).

We agree that it is appropriate to apply a maximum percentage limit on non-residential use. The proposed reforms are generally aimed at protecting and to a degree extending leaseholders rights in respect of residential properties, and these proposals, should therefore only affect those buildings which are predominantly in residential use.

We agree that the proposed limit should be the same as that applied to collective freehold acquisition claims and that limit should be set at 25% of the internal floor space (excluding common parts)

Q.47. We propose to maintain an equivalent of the current requirement that, for a collective enfranchisement, there must be a minimum of two or more flats held by qualifying tenants in the premises to be acquired.

We agree.

Q.48. Should the current requirement be maintained that for collective enfranchisement at least two thirds of the flats in the premises to be acquired must be held on long lease?

We agree with this proposal which secures the continued ownership of buildings held by commercial investors who own a majority of short terms rental tenancies.

Q.49. Should at least half of the residential units in premises to be acquired, be required to participate in a collective acquisition?

We think 51% is more appropriate proposal so that a majority of leaseholders need to participate in acquiring a freeholder's interest.

Q.50. Should the current requirement that in the case of a building containing two residential units that both leaseholders must participate in a collective acquisition claim be retained.

This s a slightly two-edged proposal. On the one hand it seems equitable that a single leaseholder should not be prevented from enfranchising but in practice, in such a two-unit building, removing the requirement for agreement could lead to a situation where one leaseholder enfranchises against another successively. This would be undesirable for both parties.

Q.51. Should the current prohibition on leaseholders of three or more flats in a building being qualifying tenants for the purposes of a collective enfranchisement claim be retained?

We agree that this prohibition should be removed. It is possible for well advised multiple flat owners to rearrange their ownership entities of their units to get around this prohibition in any event. Whilst there may be sense in preventing circumstances which could result in one leasehold owner monopolising the freehold once acquired, we do not consider this concern overrides the current proposal which facilitates a collective claim, albeit it could allow a commercial headlessee investor to enfranchise.

Q. 52. We propose the continuation of the 25% limit on non-residential use in collective freehold acquisition claims.

We agree. This mirrors the current regime and chimes with the proposed reforms which are aimed at protecting leaseholders' rights in respect of residential leasehold properties but excludes those buildings which are commercial to a material degree.

Q.53. We propose the continuation of the exception from collective freehold acquisition claims for resident landlords and operational railway tracks.

We agree.

Q.54. We propose that the qualifying criteria for the collective freehold acquisition of an estate ought to correspond to those for the collective freehold acquisition of a single building.

We agree.

Q.55. We invite the views of consultees as to whether there should be an exception to the two-or-more flat requirement and the two thirds condition in the case of buildings consisting of two residential units, so as to enable a "collective" freehold acquisition by the leaseholder of one unit where the other is retained by the landlord of the building.

We do not consider that there should be an exception in this case. It seems reasonable that the freeholder should be able to retain his freehold interest unless there is a clear majority of occupiers or lessees in favour of a collective freehold acquisition.

Q.56. We propose that the 25% limit on non-residential use should apply to two-unit build as it does to any other multi-unit building. Do consultees agree?

If consultees disagree, how should two-unit buildings be treated differently? Do consultees favour:

(1) A proviso to the effect that a non-residential unit can be treated as residential where its use is "ancillary" or "complementary" to residential use of another unit;

(2) A higher percentage limit; or

(3) A sunset clause?

Alternatively, is there another potential approach we should consider?

We agree the proposal that the 25% limit should apply to a two-unit building.

Q.57. Do consultees think that the ability of the head lessee of a block of flats to acquire the freehold of that block individually is a significant problem with our proposed scheme, compared with the reality under the current law?

We do not see this as a significant problem, as is suggested, it is currently possible for a head lessee to arrange matters so as to acquire the freehold in any event.

Q.58. Do consultees consider it desirable to attempt to restrict enfranchisement rights of commercial investors further than the current law does?

If so, do consultees consider that it might be possible successfully to restrict the enfranchisement rights of commercial investors:

(1) By means of a residence test; or

(2) By the adoption of a reduced definition of a residential unit, to exclude units which are let on short residential tenancies?

Are there any other options we should consider?

The options are fully explored in the consultation document. We do not consider it practical to restrict enfranchisement rights of commercial investors. We consider that they should be dealt with on all fours with leaseholders who are homeowners, both as to enfranchisement rights and as to the calculation of the premium. We will comment further on this aspect further in the relevant section of this response.

In relation to what we consider to be commercial blocks, albeit in residential use, such as student accommodation blocks or PRS investment blocks we suggest it might be possible to bring forward a contracting out procedure whereby such a lease is contracted out day one. This could be through the service of an appropriate notice and an agreement between well advised parties as to the circumstances that apply to this arrangement. Any sub-lettings out of those would therefore not qualify provided that the sub- lettings were short term tenancies. Long term sub-letting could be prohibited by the terms of the relevant letting or lease in any event.

Q.59. How and to what extent has the exercise of enfranchisement rights been slowed down, prevented, or made more costly by:
(1) the qualifying criteria based on financial limits (the low rent test and rateable values) under the 1967 Act;
(2) the difficulty in categorising premises as either flats or houses;
(3) the uncertainty surrounding the definition of a "house" under the 1967 Act and the definition of a "self-contained building" under the 1993 Act
(4) the two-year ownership rule under the 1967 Act and (in respect of lease extensions) the 1993 Act; and
(5) the general complexity and inaccessibility of the qualifying criteria for enfranchisement rights?
To what extent would our proposed reforms to qualifying criteria reduce:

1. ***The duration and cost of the enfranchisement process; and***
2. ***The number of disputes arising under the enfranchisement regime?***

We have commented earlier that the current legislative regime is unnecessarily complicated and to that extent we agree that if the proposed regime provides easier, quicker and more cost-effective access to enfranchisement then the process is likely to accelerate.

Q.60. We welcome evidence as to the likely effect of further restrictions on the ability of commercial leaseholders to enfranchise (whether at all or at a higher premium than other leaseholders) on:

(1) the leasehold market

(2) the wider housing market; and

(3) the economy more broadly.

We consider that differential qualification rules as well as differential pricing of premiums in such cases is fraught with complication and difficulty and we do not support such restrictions. If the purpose of this consultation is to examine ways to simplify the enfranchisement regime and its valuation elements, we do not think this proposal assists.

The effect such proposals might have on the leasehold market, the wider housing market and the economy more broadly are difficult to judge but we do not consider they would assist in promoting transparency or consistency in the property market.

We would be concerned as to the impact that this legislation may have (as the current legislation already does) on lettings in the commercial sector including care homes, student accommodation and PRS blocks.

Q.61. We propose:

(1) that shared ownership leaseholders should be entitled to a lease extension which is of the same length as that available to any other leaseholder; and

(2) that the terms of the lease extension must replicate any terms of the existing lease which relate to its shared ownership nature.

Do consultees agree?

We invite the views of consultees as to:

(1) the calculation of the premium payable by a shared ownership leaseholder for a lease extension;

(2) any issues of valuation and procedure which arise where the provider of the shared ownership lease is itself a leaseholder; and

(3) any other issues which may arise on the exercise of the right to a lease extension by a shared ownership leaseholder.

We have no particular knowledge of shared ownership properties and have no relevant comments to make.

Q.62. We invite the views of consultees as to whether the proposed requirements for a collective freehold acquisition claim that:

(1) two-thirds of the residential units in a building or on an estate must be let on long leases; and

(2) leaseholders of at least half of the residential units in the building or on the estate must participate in the claim;

should be relaxed where a building or estate includes residential units let on shared ownership leases.

If consultees think that the requirements should be relaxed, then how should this be done?

(1) Should shared ownership properties be ignored altogether when determining the number of residential units in a building or on an estate, and whether the necessary percentage requirements are met?

(2) Alternatively, should shared ownership leaseholders be treated as long leaseholders for these purposes, even though they cannot themselves participate in the collective freehold acquisition?

(3) Is there another approach which could be used?

Our response to Q 61 applies.

Q.63. We propose that:

(1) shared ownership leases should be required to comply with particular statutory criteria in order to be exempt from rights of freehold acquisition; and

(2) those criteria should be the same regardless of the type of landlord.

We provisionally propose that those statutory criteria should require that the shared

ownership lease:

(1) entitles the leaseholder to acquire additional shares in the house at any time, up to a maximum of 100%, in increments of 25% or less (save in the case of properties in designated protected areas, where a lower maximum

entitlement should be permissible);

(2) provides that the price payable for such shares shall be proportionate to the market value of the property at the time of acquisition of the shares, and provide for a corresponding reduction in rent payable by the leaseholder; and

(3) entitles the leaseholder to require the landlord's interest to be transferred to him or her, free of charge, at any time after he or she has acquired 100% of the shares in the property.

Do consultees agree? We also invite the views of consultees as to any other criteria which they consider shared ownership leases should be required to satisfy in order to be exempt from rights of freehold acquisition.

Our response to Q 61 applies.

Q.64. We invite the views of consultees as to the treatment of long leases of National Trust properties within our new enfranchisement regime. Should National Trust property let on long residential leases:

(1) be excluded altogether from statutory enfranchisement rights;

(2) be subject to enfranchisement claims in the same way as any other property;

or

(3) be subject to more limited enfranchisement rights than other property?

If National Trust properties are to enjoy more limited enfranchisement rights than other property, how should this limitation be achieved?

We propose that the current arrangements should continue.

Q.65. We would like to hear from any consultees who have made lease extension or freehold acquisition claims against the Crown (whether pursuant to the Crown's undertaking to Parliament or its voluntary policy). What has been your experience? Have you encountered any difficulties?

In our experience the rules of The Crown Estate, either in Excepted or Non-Excepted areas are generally well understood by their leaseholders and we see no reason why a similar set of processes, suitably amended to reflect the conclusions of this consultation, should not transfer into any new enfranchisement regime proposed.

Q.66. We invite consultees' views as to whether there should be a new exemption from enfranchisement rights for community land trusts and other forms of community-led housing.

If so, we invite the views of consultees as to:

(1) the housing models to which the exemption should apply;

(2) the way in which the exemption should work, and the circumstances in which it should apply;

(3) the enfranchisement rights which should fall within the exemption; and

(4) any other issues which consultees consider relevant to such an exemption.

We have no experience of this sector, nor comment to make.

Q.67. We invite consultees to share their experiences of the existing exemptions and qualifications to enfranchisement rights. We also invite consultees' views as to whether these exemptions and qualifications should be retained in any new enfranchisement regime.

As above.

Q.68. If you have experience of the grant of lease extensions to shared ownership leaseholders (either under the 1993 Act or on a voluntary basis), please tell us about the terms on which these lease extensions have been granted.

We have no such experience.

Q.69. We welcome evidence as to how Government's policy decision to give shared ownership leaseholders a statutory right to a lease extension would affect:

(1) the willingness of landlords and developers to offer shared ownership leases;

and

(2) the market value of shared ownership leases.

We have no relevant comment to make

Q.70. We propose that a single procedure should apply to all enfranchisement rights.

We agree.

Q.71. We propose that a single set of prescribed forms be introduced for bringing and responding to enfranchisement claims, namely an Information Notice, a Claim Notice and a Response Notice.

We agree.

Q.72. Do consultees consider that a party who is giving an enfranchisement notice should be required to sign that notice?

Do consultees consider that an enfranchisement notice should only be challengeable for validity if it has not been signed by or on behalf of the minimum number of leaseholders required to bring the claim? If not, what do consultees believe the minimum requirement should be for such a notice to remain valid?

Do consultees consider that a Claim Notice should include a statement of truth confirming that specified checks (if required) have been carried out?

We agree.

Q.73. We propose that:

(1) leaseholders be permitted to serve an Information Notice on their immediate landlord or superior landlord requiring the recipient to provide the name and address of his or her landlord and any other superior landlord of whom he or she is aware of; and

(2) the recipient of an Information Notice who fails to respond should be liable to pay any costs of leaseholders that are wasted as a result of the information not having been provided.

We agree.

Q.74. We propose that Claim Notices should include full details about leaseholders' claims and proof of the leaseholders' title.

We invite the views of consultees as to whether a single prescribed Claim Notice should apply to all enfranchisement claims, or whether separate forms should be provided for different enfranchisement claims.

We agree that a single prescribed Claim Notice, if suitably constructed and containing all the necessary relevant details completed by the claimants, should make the whole process easier, quicker and less contentious.

Q.75. We propose that leaseholders seeking to bring a collective claim should not be required to serve notices on other leaseholders inviting their participation in the proposed claim.

We note the difficulties experienced by collective claimants under the current regime and further note the proposal to create the right to participate which should allow all leaseholders who wish to participate, to do so. We therefore agree with this proposal.

Q.76. We propose that the service of a Claim Notice upon a competent landlord should not create a statutory contract between the leaseholders and the landlord.

We invite the views of consultees as to whether there are any other effects of a statutory contract that we would need to provide for in some other way.

We agree. As suggested, the obligations on the parties, would, where relevant, be statutory rather than contractual in any event.

Q.77. We propose that Response Notices should:

(1) state whether the leaseholder's right to enfranchise is admitted or denied, and the basis for any such admission or denial;

(2) state whether the landlord accepts or rejects the leaseholder's proposals, and set out the landlord's proposed terms;

(3) attach a draft contract, lease or transfer;

(4) contain an address within England and Wales at which the landlord can be served, and

(5) be accompanied by proof of the landlord's title.

We agree.

Q.78. We propose that:

(1) leaseholders making an enfranchisement claim should serve their Claim Notice on their competent landlord (the first superior landlord who holds a sufficient interest in the premises to be able to grant the interest claimed); and

(2) in the case of joint owners of a single freehold, or in the case of split freehold or other reversion, leaseholders will only be required to serve the Claim Notice on one landlord, and it will be for that landlord to serve copies of that notice on other landlords.

We agree

Q.79. We propose that:

(1) Claim Notices sent by post or delivered by hand to competent landlords at specified categories of address (falling within Group A or B, as set out at paragraphs 11.69 and 11.70) should be deemed served; and

(2) where it is not possible to serve competent landlords in that way, leaseholders should be able to apply to the Tribunal for an order allowing them to proceed with the enfranchisement claim.

We agree

Q.80. We propose that:
(1) before serving a Claim Notice, leaseholders should be required to check their competent landlord's address as shown on HM Land Registry;
(2) before serving a Claim Notice using Service Route B leaseholders should be required to:
(a) search the Probate Register
(b) search the Insolvency Register; and
(c) (in the case of a company landlord) check its status at Companies House
(3) if an individual landlord is dead, the designated address for service should be the address of any personal representative at the address given in any grant of probate;
(4) if an individual landlord is insolvent, the designated address for service should be the address for his or her trustee in bankruptcy as shown on the Insolvency Service website;

(5) if a company landlord is insolvent, the designated address for service should be the address of its administrator, liquidator, or receiver as listed at Companies House: if no such person has been appointed, the Official Receiver should be served;
(6) before serving a Claim Notice using the No Service Route, leaseholders should place an advertisement in the London Gazette inviting owners of the premises to contact the leaseholders within 28 days; and
(7) where leaseholders know the identity of the landlord but do not have an address for him or her falling within Group A or B, they should carry out the checks referred to in (2) above, before placing an advertisement in the London Gazette.

We agree.

Q.81. We propose that landlords who fail to serve a Response Notice within the prescribed period should no longer be required to transfer their freehold interest, or grant a lease extension, upon the terms set out in the Claim Notice

We agree.

Q.82. We propose that:

(1) the competent landlord (rather than the leaseholder) should be responsible for serving copies of the Claim Notice upon intermediate leaseholders or third parties; and

(2) where the competent landlord fails to serve a copy of a notice on an intermediate landlord, the intermediate landlord should be able to bring a claim against the competent landlord for any losses arising.

We do not agree to question 82(1). The current regime requires the leaseholder claimant to serve on all intermediate interests and third parties on commencing a claim. We do not consider it reasonable to transfer that obligation to the competent landlord.

In relation to 82(2) there is an existing duty of care of a competent landlord in dealing with intermediate interests and we see no reason why this lability should be extended further, as is currently proposed.

Q.83. We invite the views of consultees as to:

(1) whether a landlord should be entitled to apply to the Tribunal for an order setting aside a determination of an enfranchisement claim that has been made in his or her absence; and

(2) if so, the criteria which the landlord should be required to satisfy before any such adored can be made.

We agree that there may be circumstances where an application for an order setting aside a determination should be allowed, and we would rely in general on the good sense of the Tribunal to decide the merits of any such application.

Q.84. We propose that detailed conveyancing regulations need not generally be made in relation to enfranchisement claims. Do consultees agree? Notwithstanding the general proposition, are there particular stages of the conveyancing process, or particular types of claim, in relation to which conveyancing regulations would still need to be made?

We agree.

Q. 85. We propose that:

(1) a landlord should serve a Response Notice no later than six weeks after the date on which the Claim Notice was sent by post or delivered by hand to the competent landlord:

(2) a landlord who has received a Claim Notice should serve any intermediate landlords and third parties to the existing lease within 14 days; and

(3) if a Response Notice has been served, either party should be entitled to apply to the Tribunal for a determination of the claim 21 days thereafter.

These time limits seem very short.

(1) If a Response Notice is to contain a considered valuation response even the existing time limit of eight weeks is often tight, if access to inspect proves difficult due to a leaseholder's absence or failure to respond to requests for access.

(2) We consider fourteen days insufficient and suggest a minimum of twenty-eight days.

(3) Again, this seems unnecessarily hurried. In our experience the current two month for 1993 Act claims seems about right and allows for a sensible period of discussion and negotiation before making a protective application with its costs and time resources which can be a burden on the Tribunal. We would suggest that the 1967 Act claims be brought into line with this under the new regime.

Q.86. We propose that:

(1) an enfranchisement claim should not be deemed to have been withdrawn because procedural time limits have been missed by the leaseholder;

(2) a landlord who has served a Response notice should be able to apply to the Tribunal for an order striking out a Claim Notice if procedural time limit has been missed by the leaseholder;

(3) in a collective freehold acquisition claim, other groups of leaseholders should also be able to apply to the Tribunal for an order striking out the Claim Notice if the leaseholder bringing that claim have missed a procedural time limit; and

(4) In either case (2) or (3) above, the applicant for such an order should be required to give the leaseholder(s) bringing the claim 14 days' written notice of the intended application.

We agree.

Q.87. We propose that the benefit of a Claim Notice should be transferred automatically upon assignment of the leaseholder's lease, save where the assignment expressly states that the benefit of the claim will not be transferred.

We propose that when a Claim Notice has been assigned, the landlord should continue to be able to serve documents on the assignor until he or she is given notice of the assignment of the lease.

We agree, although allowance should be made for circumstances where a landlord has already contracted to sell at the time of the claim notice and that contract is noted on the landlord's title (or an application to note has been disclosed by a search). In such circumstances there should be provision for the claimants to pay the landlord's wasted costs.

Q.88. We propose that a landlord who has been deemed served with a Claim Notice will be liable to pay the leaseholder's wasted costs if the landlord disposes of his or her interest between the dates on which the Claim Notice was deemed served and the point at which the notice appeared on the register of title or is entered as a land charge, provided that the leaseholder's application to register was made not less than 14 days after the Claim Notice was posted delivered by hand to the competent landlord.

We agree.

Q.89. We propose that, in the case of a lease extension claim, where the landlord's interest is held subject to a mortgage:

(1) a landlord should be under an obligation to:

(a) inform his or her mortgagee of the grant of a lease extension not less than 21 days before completion;

(b) give his or her leaseholder written confirmation that such notice has been given; and

(2) the leaseholder should be required to pay the purchase money into court if:

(a) the landlord's mortgagee requests; or

(b) the leaseholder has not received confirmation that the required notice has been given to the landlord's mortgagee.

We agree.

Q.90. We propose that in the case of a lease extension claim, where the leaseholder's interest is held subject to a mortgage:

(1) the leaseholder should be under an obligation to give the lease extension to his or her mortgagee within one month of registration; and

(2) if the leaseholder does not do so, he or she will be liable for any losses that occur as a result.

We propose that, in the case of an individual freehold acquisition claim, where a leaseholder elects to merge his or her leasehold and freehold titles, a deed of substituted security will not be required if written notice has been given to the leaseholder's mortgagee and no objection has been raised.

We agree.

Q.91. We propose that where the consent of a third party to any grant or transfer is required:

(1) the grant or transfer may be registered without such consent being given; but

(2) the landlord should be required to inform the beneficiary of the transaction not less than 21 days before completion, and also within 14 days of completion; and

(3) if the landlord fails to inform the beneficiary as required, he or she will be liable for any losses that occur as a result.

We agree.

Q.92. We propose the following.

(1) any lease extension, leaseback or transfer executed as part of an enfranchisement claim must contain a statement recording that it was executed pursuant to the relevant statutory provisions.

(2) HM Land Registry should:

(a) include a note on the relevant registered title(s) of any interest granted or transferred (or in the case of an intermediate lease, surrendered and re-granted) as part of an enfranchisement claim that the interest had been executed pursuant to the relevant statutory provisions;

(b) in the case of a collective freehold acquisition, include a note of any period which a further such claim cannot be made without the permission of the Tribunal.

We agree.

Q.93. How and to what extent has the exercise of enfranchisement rights been slowed down, prevented or made more costly by:
(1) the existence of separate procedural regimes for different enfranchisement rights;
(2) the current rules on missing and uncooperative landlords;
(3) the time taken collecting up-to-date landlord contact details;
(4) the time it takes to prepare enfranchisement notices;
(5) the current law on the service and validity of notices;
(6) the consequences of a landlord's failure to serve a counter-notice under the 1993 Act; and
(7) the provisions for deemed withdrawal of a notice of claim set out in the 1993 Act?
Where possible, please provide figures to support your response.
To what extent would our proposals for a united and consolidated enfranchisement procedure, with prescribed notices and forms, reduce;
The duration and cost of the enfranchisement process; and
the number of disputes arising under the enfranchisement regime
To what extent would our proposals for dealing with missing and uncooperative landlords speed up the enfranchisement process and reduce the costs typically incurred by leaseholders in these cases?

It is self-evident that the existing enfranchisement regime, that has evolved since 1967, is over complicated, and we welcome the proposals for a unified and consolidated enfranchisement procedure which is likely to reduce the duration, costs and the number of disputes arising under a new regime nationwide.

Q.94. We propose that the current division of responsibility for the resolution of enfranchisement disputes and issues between the county court and the Tribunal should end. All such matters should be determined by the Tribunal.

We agree.

Q.95. We invite the views of consultees as to whether it would be desirable for certain valuation-only disputes to be determined by a single valuation expert rather than by the Tribunal at a full hearing. If so, we invite consultees' views as to:

(1) the types of case in which such an alternative track for dispute resolution would be appropriate (in particular, whether it should operate only in respect of low value claims, or wherever the difference between the parties' positions is such that it would be disproportionate to proceed with a full hearing): and

(2) the rules that should govern its operation.

It should be possible for a single valuation expert to be appointed in a wide variety of valuation-only disputes particularly in low value cases or where most of the valuation elements have either been prescribed or are not at issue. This would be analogous to a single joint expert valuer acting in a divorce case. Their duty is to the Tribunal in all such cases.

Q.96. We welcome evidence as to the typical cost and duration of an enfranchisement dispute:

(1) in the county court; and

(2) in the Tribunal.

How and to what extent has the exercise of enfranchisement rights been slowed down, prevented or made more costly by:

- ***(1) The threat of lengthy and potentially expensive litigation; and***
- ***(2) The fact that some disputes arising during an enfranchisement claim may need to be resolved by the Tribunal whilst others fall to be determined by the court?***
- ***(3) To what extent would our proposal that all enfranchisement disputes be dealt with in a single forum save landlords and leaseholders time and money?***

We do not have such financial evidence, but it is self-evident to us that the exiting regime, with split jurisdiction, can be extremely cumbersome, and provided the Tribunal in its new role has the required legal as well as valuation expertise, then we must assume the new proposed regime will save landlords and leaseholders both time and money.

Q.97. We welcome evidence as to the proportion of leases likely to be suitable for resolution by a single valuation expert. Do consultees consider that dealing with cases on this alternative track is likely to save landlords and leaseholders' time and money?

The answer to this question is to a degree dependant on the number of valuation issues that will remain to be argued under the new regime. If, as we propose elsewhere in this response, there is a degree of prescription on some of the key valuation elements (albeit such element should reflect the current level of

premium expectation), then it should be possible for a single valuation expert to fulfil his professional duty and arrive at a proper and fair valuation opinion on a wide range of cases.

Q.98 We invite the views of consultees as to whether leaseholders should be required to make any contribution to their landlords' non-litigation costs.

We consider the current regime on costs is fair and reflects the compulsory nature of leasehold reform act claims, where most landlords are unwilling sellers.

If, as is anticipated, the new regime will be easier, quicker and more cost effective generally, then the quantum of recoverable landlords' fees should reduce, and we are happy to see greater transparency on the basis of these fees being calculated, which should reflect no more than the time cost involvement.

Q.99 We invite the views of consultees as to how any contribution that is to be made by leaseholders to their landlords' non-litigation costs should be calculated. Should the contribution be based on;

(1) fixed costs

(2) capped costs

(3) fixed costs subject to a cap on the total costs payable;

(4) the price paid for the interest in land acquired by the leaseholder;

(5) the landlord's response to the Claim Notice and/or whether the landlord succeeds in relation to any points in his or her Response Notice

(6) fewer categories of recoverable costs than currently set out in the1967 and 1993 Acts

(7) the same categories of recoverable costs set out in the Acts, but with a reformed assessment procedure; or

(8) wider categories of recoverable costs than currently set out in the Acts?

We also invite consultees' views as to whether, if a fixed costs regime were to be adopted:

- ***(1) such a regime should apply to collective freehold acquisition claims as well as individual enfranchisement claims; and***

- ***(2) If a fixed costs regime were to apply to collective freehold acquisition claims;***

  - ***(a) What additional features might justify the recovery of additional sums; and***

  - ***(b) Whether landlords should be able to recover all their reasonably incurred costs in respect of these additional features (subject to assessment0, or only further fixed sums.***

We propose that:

- ***(1) No additional costs should be recoverable in the case of split freeholds or other reversions, or where there are intermediate landlords; and***

(2) a small additional sum should be recoverable where a management company seeks advice in relation to an enfranchisement claim.

We consider the costs regime should broadly retain the same categories as at present. We think that landlords would be unduly prejudiced if the ability to recover non-litigation costs was removed.

We are not in favour of fixed or capped costs generally, although this may be suitable in some low value claims, but clarity and accountability are essential.

Particularly in PCL, claims cover a broad range of values and can raise complex legal and valuation issues for which expert professional fees are required and justifiable and for which landlords may well not be adequately compensated under a fixed or capped costs regime.

We do consider however that there should be much greater transparency on fees, perhaps based on CPR recovery categories and be subject to a "reasonableness" test.

We do not agree that no additional cost should be recovered where there is an intermediate interest, particularly as the current proposals suggest that the competent landlord will be required to take on more obligations in dealing with these interests in future enfranchisement claims.

Q.100. We propose that where an enfranchisement claim fails or is withdrawn, or a Claim Notice is struck out, leaseholders should be liable to pay a percentage of the fixed non -litigation costs that would have been payable had the claim completed.

We also propose that the percentage of the fixed non-litigation costs that should be payable in those circumstances should vary depending on the stage that the claim has reached.

If so, what percentages should apply at particular stages of the claim?

We consider these proposals are unnecessarily prescriptive. We think that in such cases the reasonable costs incurred by the landlord, (properly computed and if necessarily taxed), should be reimbursed.

Q.101. We propose that a landlord should have a right to seek security for his or her non-litigation costs.

If there is no requirement to pay a statutory deposit under the new regime, we agree that there should be a right to seek a security deposit which should give some comfort to landlords as otherwise they would be without security for their reasonable recoverable costs. This right to seek a deposit should be extended to collective claims where currently landlords have no security for their costs.

Q.102. We propose that a landlord should have a right to apply to the Tribunal for an order prohibiting named leaseholders from serving any further Claim Notice without the permission of the Tribunal.

We agree.

Q.103. We propose that the existing limited powers of the Tribunal to order one party to pay the litigation costs of another party in an enfranchisement claim should apply to all disputes and issues that it is to decide (except in respect of orders made under the No Service Route, orders permitting a landlord to participate in a claim or to set aside a determination, and orders striking out a Claim Notice)

Do consultees agree? If not, what types of dispute and/or issues should be excluded from such restrictions and why? What powers to make orders in respect of litigation costs should apply in such excluded cases? Should parties be able to agree that costs shifting will apply to all or part of a claim?

We agree, but we also refer to our answer to Q.104 below.

Q.104. We propose that the scope of the Tribunal's existing power to order one party to pay any of the litigation costs of another party should not be extended.

We disagree. In our view the ability to make orders on costs, concentrates the minds of parties to litigation and would reduce the element of 'gaming' that can currently take place where there is no effective cost sanction. We consider that the risk of a cost's liability would act as a deterrent to both landlords and leaseholders in pursuing poor arguments or bad claims before the Tribunal.

Q.105. We welcome evidence as to:
(1) the typical costs incurred by landlords in dealing with enfranchisement claims; and
(2) the proportion of those costs which can be recovered from leaseholders.
To what extent does the obligation on leaseholders to pay their landlords reasonable costs arising from the enfranchisement process have an impact on leaseholders' willingness to bring or pursue claims?
Do consultees consider that any of the options we have set out at paragraphs 13.56 to 13.77 for reforming non-litigation costs would make leaseholders more willing to bring or pursue enfranchisement claims?
What would the impact be on landlords of removing or capping their entitlement to recover their non-litigation costs from leaseholders (other than the fact that they would have to meet the costs themselves)?

We do not have specific data on typical costs, but the scope of cost recovery is clear under current rules. If such costs were reduced and made more transparent under a new simplified regime, then this will reduce the costs associated with the enfranchisement process. We think it inappropriate for landlords to be responsible for all the costs associated with compulsory acquisition, where in most cases a landlord is an unwilling seller and a claimant is receiving a built-in discount from market value.

Q.106. How and to what extent do the different powers of the Tribunal and the county court to award litigation costs in enfranchisement disputes have an impact on the behaviour of both landlords and leaseholders with respect to such disputes?

We refer to our answer to Q.104. above. We reiterate the points we have made previously and consider that the ability to award litigation costs is generally helpful in 'improving' the behaviour of both landlords and leaseholders.

Q.107. We invite the views of consultees as to:
(1) whether the section 9(1) valuation methodology should be retained indefinitely or temporarily, and if so for how long; or
(2) whether the section 9(1) valuation methodology should be replaced with a fixed proportion of a "term and reversion" valuation or another simplified methodology; and
(3) whether the test for whether section 9(1) (or a simplified methodology) applies should be determined:
(a) by reference to capital value;
(b) by reference to council tax banding;
(c) by reference to the location of the property;

(d) by reference to an amended version of the current test for leases granted after 1 April 1990 (in other words, calculating "R" under section 1(1)(a)(ii) of the 1967 Act); or
(e) by some other means.

We consider option (2) is the most sensible replacement of the existing, over complicated methodology. If the basis of a 9(1) valuation is to value the site in reversion, then applying an appropriate percentage to the freehold reversion would achieve much the same result. The proportion of freehold value that the site represents would vary nationwide but this variation should reflect the local market, as currently. Council Tax bands are probably the fairest way of identifying the 'low value houses' where 9(1) valuations currently apply.

Q.108. We invite the views of consultees as to:

(1) whether a separate, simplified valuation regime should be created for low value and/or straightforward enfranchisement claims; and

(2) how such low value and/or straightforward claims should be identified.

We agree with this proposal in principle. The simplest way of identifying such claims would be by reference to lease length and the ground rents payable. We consider that all leases of 125 years and over with fixed or stepped reviews should fall within this regime.

We do not consider that such a simplified regime would easily work for collective claims, even those with long reversions.

Q.109, Do consultees consider it desirable to seek to treat commercial investors differently from owner-occupier leaseholders in respect of the premium payable for the exercise of enfranchisement rights?
If so:
(1) do consultees consider that it might be possible to distinguish between such leaseholders:
(a) by reference to whether the leaseholder is exercising enfranchisement rights for the first time;
(b) by reference to whether the leaseholder is exercising enfranchisement rights in respect of his or her only or main home; or
(c) by some other means?
(2) how might the valuation methodology be varied so as to produce different premiums for different types of leaseholder?

We do not consider this proposal is either desirable or workable in practice. It is very apparent from the working of the Acts since inception that the distinction between types of claimant has eroded, and we do not see how such distinctions could sensibly be reintroduced at this stage.

It appears that the main driver for this proposal is that differential premiums could be charged to different categories of leaseholder claimants, as this might get over difficulties with ECHR A1P1. We think this fundamentally unfair and fraught with complication and the effect on the market would be very severe in PCL with differential pricing effects.

The proper solution is to decide on a basis of valuation which takes account of ECHR requirements and reflects fairly the value of the landlords' property assets.

We consider that great care should be taken to ensure that student accommodation blocks and PRS units as well as care homes that are let are not unduly burdened by these enfranchisement rights. There would be a significant impact on the market for these types of schemes if they were at risk form enfranchisement claims in the future. This might lead to a lack of product and lack of development from the private sector.

Q 110: Should Ground Rent Reviews be restricted

We understand the concern that has arisen on this subject. However, many ground rents have simple and uncontentious review mechanisms and most new build properties link ground rent reviews to RPI.

There has been well publicised concern at doubling ground rents on a 10 year or similar basis. We understand that these relatively small total number of cases are being dealt with sympathetically by the majority of housebuilders and ground rent owners and subsequently this concern should abate. We see no difficulty in prohibiting the creation of such ground rents going forward.

We think that the valuation of ground rents should be linked to the market (which has been the basis of most recent purchases of such rents in recent years). We consider it is possible and desirable to set up an on-line calculator, free or at nominal cost at the point of access, which takes account of essential parameters such as rent and review pattern. Provided the calculator reflects publicly available market data, and that this is reviewed at regular intervals by a Council of Experts, be it Land Registry, RICS or some other body, then the output calculation which form the basis of purchase and sale, should be fair, transparent and easily available. Several of the larger Ground Rent funds have fully endorsed this proposal.

***Q. 111. Should Capitalisation Rates for enfranchisement valuations be prescribed and, if so, how, by whom, how often and in respect of what different types of interest*.**

As indicated above, most ground rents have been bought in the market, at market driven prices. We agree that the calculation and valuation of ground rents should be simplified and made more transparent, and in this context the appointed Council of Experts should give input to the data behind the on-line calculator. This should reflect market rates and perceptions, which will change over time. The crucial thing is for the end-user leaseholder to be able to ascertain the cost of extinguishing their rent, in the knowledge that there is competent and independent oversight on the method of calculation.

Q.112. Should deferment rates for enfranchisement valuations be prescribed and, if so, how, by whom, how often and in respect of which geographical areas.

Since Sportelli there has in effect been prescription of deferment rates, with some regional variation. We do not see a problem with this, but it is important that such rates are kept under periodic review by an appointed Council of Experts. Sportelli is now some 15 years old and there are certainly arguments that a review of the elements that make up the Sportelli formula, (the risk-free rate, the real growth rate and the risk premium), should be reviewed. No rates should remain immutable over time and changing circumstances should allow for amendment.
We agree with the principle that an easily discernible deferment rate is an important element in arriving at quicker, easier and more cost-effective valuations.

Q.113. Should relativity or a No Act deduction be prescribed for enfranchisement valuations and, if so, how, by whom, how often, in respect of which geographical areas and whether the 80 year cut-off should be removed.

We consider it could be possible to prescribe relativity in a fair and comprehensive manner. In effect the Gerald Eve graph has become the market norm for PCL, with some shift away from this outside London. It is apparent that a different basis of calculation is appropriate for very short leases and the *Vale Court* formula has given a good steer on these limited, but valuable cases in PCL. Any graph based on the Parthenia model has been totally rejected and has no place in any future regime.
The market has become accustomed to the 80year cut off, although there is no real valuation justification for it, and we assume it will remain. There is certainly no justification for reducing this cut off.

Q.114. We invite the views of consultees as to whether the possible right to hold over at the end of a long lease should be disregarded on an enfranchisement valuation.

We do not consider there is a serious risk of holding over in any but the very shortest of leases and we do not think the market reflects this either. We therefore consider that such a risk should be disregarded except in cases of very short lease (sub five years), and where there is a realistic possibly of an Assured Tenancy at reversion.

Q.115. We invite the views of consultees as to whether a discount for leaseholder's improvements on an enfranchisement valuation should be retained.

We consider that such a discount should be retained. Inevitably the quantum of discount is a matter of negotiation and this may complicate negotiations, but it has been an established principle of leasehold reform law and practice that the freehold and leasehold values under discussion should reflect values net of improvements, which is both equitable and serves to reduce the price payable.

Q.116.We invite the views of consultees as to whether it should be possible for leaseholders to elect to accept a restriction on development to prevent development value from being payable as part of an enfranchisement valuation.

We agree with this proposal, which will simplify the valuation process in cases where there can be arguments about development potential, it would reduce enfranchisement premiums in such cases, and also reduce the scope for litigation. However, in any such scheme there must be a proper mechanism for (i) reserving the development value to the landlord and (ii) ensuring that the landlord is properly compensated if and when the reservation is released.

Q.117.We invite the views of consultees as to which, if any, of the valuation options we have discussed (set out at Options 2A to C in Chapter 15) are preferable and, so far as any preferred option contains a range of possible reforms, which of those reforms should be adopted.

We consider that the current valuation basis should be retained with, if necessary, some prescription of rates but which should reflect current practice and case law. Thus Option 2 C most closely represents our position.
We do not seek to increase premiums payable and with some of the proposals, such as enforced leasebacks, this should reduce them. Such proposals should certainly make the process cheaper, as with such prescription of rates, the scope for argument and negotiation will be limited.
We do not consider it appropriate to use any such prescription of rates as an opportunity to materially reduce premiums and we hope that in such a case the ECHR A1P1 concerns will be kept fully in mind.

Q.118. We invite the views of consultees as to the desirability of an online calculator for enfranchisement valuations and the types of claim for which it could be appropriate.

We agree that an online calculator would be desirable and could very well be employed in cases of very long leases. We do not think it would work with collective claims or where there were a number of contentious issues.

Q.119. How and to what extent has the current methodology for calculating premiums payable on enfranchisement slowed down, prevented or made more costly, the exercise of enfranchisement rights?

We consider that although the current methodology could be improved, the cases of *Sportelli* and *Mundy* have given guidance to valuers on deferment rates and relativity and have to a considerable degree narrowed the areas of serious dispute in negotiations. In high value areas, particularly PCL and when dealing with short unexpired terms there is a great deal of money at stake in some claims and even quite small variations of inputs can make a material difference to the price. In collective claims in such areas this is likely to be even more complicated and time consuming.
In cases of very long leases with modest rents and a clearly discernible review pattern the current methodology has undoubtedly overcomplicated matters and, as discussed elsewhere in this response, some form of online calculator is a more appropriate way of dealing with such claims.
Where the freehold reversion is substantial, but likely to be the subject of contention, such a methodology is unlikely to produce a fair and acceptable result.

Q.120. We have set out the following options for the reform of valuation:
(1) the adoption of a simple formula; and
(2) options based on current valuation methodology, involving different combinations of current valuation components and/or the prescription of certain rates
To what extent would each of these options reduce the duration and cost of the enfranchisement process, and the number of disputes arising?

We do not consider option (1) to be appropriate or likely to provide sufficient compensation within ECHR A1P1.

As we comment elsewhere in this response, we consider that options based on current valuation methodology, with an element of prescription, but with suitable longer-term oversight from a Council of Experts, is a sensible way forward, and is likely to reduce the duration and cost of the enfranchisement process (if not necessarily premiums payable), and the number of disputes arising.

Q.121. We welcome evidence as to the likely impact of the possible valuation methodologies set out in Chapter 15 on different sectors of the economy – in particular, the institutional investment sector, the charitable sector and the leasehold market (for both owner-occupiers and buy-to-let leaseholders).

Any substantive variations from the current premium basis will impact the market. If the basis of premium calculation is radically reduced, then there will be windfall gains for leaseholders and in effect one category of property owner will be favoured against another (the landlord). If differential pricing is introduced this will distort the open market and inevitably landlords will try and protect their interests to prevent cases of reduced premiums where possible.

Q.122. We welcome evidence as to:
(1) the proportion of existing leases which are currently eligible for section 9(1) valuations; and
(2) the likely impact on landlords and leaseholders of (a) retaining the section 9(1) valuation methodology for a limited period, or (b) replacing it with a simplified valuation methodology.

We do not have quantitative evidence, but we are aware of the prevalence of 9(1) cases outside London. The consultation makes it clear that it is not their remit to make enfranchisement more expensive, and it is therefore necessary to replace the existing 9(1) valuation methodology with a reasonably comparable basis which produces a similar result. As we comment elsewhere, we think a valuation to site value in reversion would work in this context.

Q.123. We welcome evidence as to the likely impact on the leasehold market (and wider housing market) of differentiating between classes of enfranchising leaseholder (for example, those who occupy the property as a residence and those who do not) in respect of the premium payable.

We reiterate our answer to Q.121. Any such differential pricing will cause both landlords and leaseholders to try and secure their positions and this will distort the market.

Q.124. We welcome evidence as to the costs, benefits and practicalities of constituting and maintaining a body whose function is to prescribe certain rates for a reformed valuation methodology.

As we have suggested elsewhere in this response, we consider it crucial that there is an independent Council of Experts who can monitor valuation inputs which are likely to change over time. We have no absolute preference as to how this body is set up and funded, but if there is a serious attempt to make the whole process simpler cheaper and more cost effective and the conclusion is that 'sufficient compensation', requires a proxy from market data and rates, then there needs to be a transparent and independent body to maintain this data and to be seen to dealing with this fairly and independently. This being the case, valuations both of short lease reversions involving deferment rates and relativity and of long reversion ground rent holdings involving capitalisation rates can be dealt with expeditiously and quickly with a degree of transparency which should satisfy all parties in the transaction.

Q.125. We welcome evidence as to the costs, benefits and practicalities of setting up and maintaining an online valuation calculator.

Given input from leasehold enfranchisement practitioners who have already set up such calculators, it should not prove difficult or costly to set up such a calculator which will have some form of statutory credentials. The inputs will, we assume follow whatever is decided on the matter of valuation inputs discussed elsewhere in this response and we further assume that the Council of Experts will monitor such inputs going forward to ensure the outputs reflect the correct basis of premium.

Q.126. We propose creating a statutory duty on the landlord who has conduct of an enfranchisement claim to act with reasonable care and skill, and to act in good faith, in respect of the interests of other landlords. Do consultees agree?

We agree. This mirrors the current regime.

Q. 127. We invite the views of consultees as to whether an intermediate lease created as part of a collective freehold acquisition claim should be acquired by a nominee purchaser on any subsequent collective freehold acquisition of the premises.

On balance, we support this proposal. As is pointed out in the consultation, it is possible for intermediate leaseholders to protect their financial position in such circumstances.

Q.128. We propose that, where the leaseholder of a flat also holds an intermediate lease in respect of that flat, the intermediate lease of that flat should not be acquired on any collective freehold acquisition of the premises. Do consultees agree?

We agree.

Q.129. We propose that, in a collective freehold acquisition claim, where there is an intermediate lease of the whole building, but not all the flats within the building are let on long sub-leases (so the intermediate leaseholder would be treated as the qualifying tenant of some of the flats), either:
(1) the whole of the intermediate lease should not be acquired; or
(2) the whole of the intermediate lease should be acquired, but there should be a leaseback to the intermediate leaseholder of flats of which he or she would be the qualifying tenant?
Do consultees agree with either of these alternative proposals? If so, which approach is preferred and why?

We consider option (2) preferable which would mirror the position as if the intermediate leaseholder had held a separate underlease of some of the flats.

Q.130. We propose that, as part of any collective freehold acquisition claim:
(1) leases containing common parts together with other property should continue to be capable of being acquired by the nominee purchaser where it is reasonably necessary for the proper management or maintenance of those
common parts; and
(2) the Tribunal should have power to sever a lease containing common parts together with other property, or to introduce new or varied easements to ensure proper management or maintenance of those common parts, as an alternative to ordering that the whole of the lease be acquired by the nominee purchaser. Do consultees agree?

We agree.

Q.131. We propose that a lease of common parts granted for development purposes should not be acquired by a nominee purchaser on a collective freehold acquisition claim unless:
(1) the severance of any part of that lease; and/or
(2) the introduction of new, or the variation of existing, easements;
would both permit the proper management of any common parts, and substantially preserve the intended development.
Do consultees agree?

We agree.

Q.132. We propose that leaseholders holding sub-leases granted out of leases that had previously been extended under the existing or any future statutory enfranchisement regime should be entitled to bring, or participate in, an enfranchisement claim. Do consultees agree?

We agree.

Q.133. We provisionally propose that the separate designations of "Minor Superior Tenancy" and "Minor Intermediate Leasehold Interest" and the formulae relating to them should be removed. Those interests which currently fall within the existing definitions would then be valued on the same basis as all other intermediate leases. Do consultees agree?
If not, do consultees agree that the thresholds in the formulae that apply to a Minor Superior Tenancy and/or a Minor Intermediate Leasehold Interest ought to be increased?

We agree.

***Q.134. We propose that, on any individual lease extension claim, the rent payable by an intermediate landlord should be commuted on a pro rata basis. Primarily this approach would avoid creating negative value in an intermediate lease, which the leaseholders could use to their advantage in the way that was done in the case* Alice Ellen Cooper-Dean Charitable Foundation Trustees v Greensleeves Owners Ltd.**

We support this proposal without reservation. The valuation of negative interests has been one of the most anomalous aspects of the existing regime since the decision in *Nailrile* and the requirement to commute the rent in future cases will remedy this valuation anomaly, which rewards the wrong party and, in many cases, adds additional financial burden on to the enfranchising leaseholder.

Q.135. We welcome evidence as to the likely impact (financial and otherwise) on landlords of a new statutory duty requiring them to act with reasonable care and skill, and in good faith, in respect of interests of other landlords.

In our experience, the exercise of a duty of care in respect of other landlords by the competent landlord has worked reasonably well under the existing enfranchisement regime, and to this extent a new statutory duty should not impact greatly. It is fair to point out however, the anomalous position of a competent landlord, or their advisors, taking on additional professional tasks and additional liability, if it is also the case that there is no cost implication on the other landlords.