# Response to 'Ending the Scandal: Labour's new deal for leaseholders'

The following response is submitted by the National CLT Network, a charity and membership body that represents over 300 Community Land Trusts (CLTs)[1] across England and Wales.

## Introductory remarks

- We support the Labour Party's goal of addressing the unfair and unreasonable abuses of leasehold by developers and private investors, and support measures that would see commonhold become the default tenure in many cases.

- However, we are concerned about the impact of those proposals on Community led housing and in particular CLTs. The Labour Party has indicated its support for our sector, for example in committing to continue the Community Housing Fund in its last Housing Green Paper. We also note the strong endorsement of the value of community led housing in the Land for the Many report commissioned by the party. In our responses below we identify measures required to ensure CLTs are not negatively impacted on the proposals for leasehold reform.

## Response to questions:

1. **Q1 - Should there be any exemptions to the prohibition on new private leasehold properties, and if so what should they be?**

   Community led housing and, in particular, CLTs, should be exempt, a position the current Government has now accepted.

   CLTs are a form of community-led housing, set up and run by ordinary people to build and manage homes for the benefit of their local communities. They act as long-term stewards for housing, ensuring that it remains genuinely affordable in perpetuity to benefit not just one generation, but every future occupier. CLTs are defined in Section 79 of the 2008 Housing and Regeneration Act, which requires CLTs to ensure that assets are not 'sold or developed except in a manner which the trust's members think benefits the local community'.

   In order to preserve the affordability of the homes, many CLTs retain the freehold of the homes and sell homes or flats under leasehold. They do that through either shared ownership or resale price covenant disposal models. One-third of all CLT housing completed to date has been sold under leasehold.

[1] CLTs are set up and run by ordinary people to develop and manage homes as well as other assets important to that community, like community enterprises, food growing or workspaces. CLTs act as long-term stewards of housing, ensuring that it remains genuinely affordable, based on what people actually earn in their area, not just for now but for every future occupier. As of September 2019 there are 309 CLTs, of which 263 are legally incorporated.

For more information please contact Catherine Harrington, Co-chief Executive of the National CLT Network, on Catherine@communitylandtrusts.org.uk or 020 3096 7791.

CLTs have had no involvement in the exploitation of leasehold and any blanket ban that restricts their capacity to deliver new affordable housing would harm – not benefit – citizens.

2. **Q2 - What changes need to be made to commonhold to ensure it can become the default tenure for new flats?**

   Commonhold is not currently compatible with CLTs. We would welcome reforms to rectify this.

   Unlike commonhold associations, Right to Manage companies and most housing co-operatives, CLT membership is open to the unit holders and any other person or organisation based in the wider local community. This is set out in the statutory definition of a CLT, in Section 79 of the Housing and Regeneration Act 2008. In the governance of the CLT all members' voices and votes carry equal weight, and CLTs must use their assets for the benefit of the whole community, not just the unit holders. By contrast, commonhold associations must be controlled solely by the unit holders.

   This relates to the inability of a CLT to protect the affordability of homes in a commonhold association. For example it is not currently possible for housing associations to provide and protect Shared Ownership properties within a commonhold association.

   We set out the issues and suggested reforms in a detailed response to the Law Commission, which can be obtained here: http://www.communitylandtrusts.org.uk/_filecache/33e/e58/750-final-ncltn-response-to-commonhold-consultation.pdf

3. **Q3 - Do you agree with our proposals to restrict ground rents to zero, or a peppercorn, for new build properties?**

   **Q4 - Do you agree with our proposal to set the maximum ground rent chargeable at 0 .1% of property value, with a cap of £250 a year?**

   Community led housing groups should be exempt from these proposals, a position that the current Government has accepted.

   CLTs may charge ground rents, whether directly to individual occupying leaseholders or to a partner housing association, to cover its work as a long-term steward of the land. The statutory purpose of CLTs is to act for the wellbeing of their wider community, and this work takes the form of wider community engagement, governance and the development of future initiatives. Modest ground rents enable CLTs to raise this money through charging for the use of their land. These activities are separate to the services they provide to the residents, and so it would be inappropriate to capture them through a service charge. As the main

objective of many CLTs is to provide affordable housing, they ensure that the sum of all relevant housing costs (ground rent, service charge, mortgage, rent) remains affordable for those in housing need.

A significant proportion of CLTs work in partnership with housing associations where the CLT grants the Registered Provider a lease over the CLT's land. In these partnership schemes, leasehold ground rents, set at a very modest level, provide CLTs with their only source of revenue to cover both community engagement and ongoing governance costs of the organisation, which are themselves very modest. In the example of a planned partnership scheme in Dorchester, the CLT will receive a ground rent of £208 per home per year. This is circa 0.002% of the discounted property value.

Restricting ground rents to 'peppercorn' rates would threaten the viability of this form of partnership, with the loss of this very modest resource impeding CLTs' capacity to deliver new affordable housing.

A further benefit of ground rents is that they are chargeable against the title, and in the event that they aren't paid as they fall due, the CLT can at least recover them, efficiently and cheaply, from the equity value when the home is sold. Unpaid service charges are personal debts and have to be recovered through the courts, making recovery both more costly and uncertain. Ground rents, therefore, provide greater security to the CLT, and reinforce the concept that the rent relates to the value of the land and home (which is what ground rents were originally and fairly designed to be), rather than to services provided. It also enables future ground rents to be capitalised during development to support viability of difficult schemes. Our legal advice has been that estate charges are not an appropriate or reliable mechanism for recovering the enhanced value.

4. **Q5 - Do you agree with our proposed formula to allow leaseholders to buy the freehold to their home, or convert to commonhold?**

While we support the proposals to improve the rights and ability of leaseholders to do this in general, we urge the Labour Party to commit to exempting CLTs from these provisions. Furthermore, we would like to see CLTs be exempted from leasehold enfranchisement altogether, as recommended by the Law Commission.

The primary purpose of a CLT is to ensure the permanent affordability of the homes. Leasehold enfranchisement threatens this and, in turn, deters private landowners from providing lower-cost land for future CLT housing. It also undermines existing requirements for permanent affordability in Section 106 agreements.

The 2011 Localism Act makes provision for the exemption from leasehold enfranchisement for organisations using the Community Right to Build Order process. This was in response to our request for a full exemption for CLTs: the Order referendum was thought to be

necessary to give the exemption local democratic legitimacy. Very few communities have opted for that route so far, given the significant complexities and cost of putting in place an Order. In contrast, there are now over 300 CLTs, and it is our view that the statutory definition in Section 79 of the Housing and Regeneration Act 2008 already gives CLTs sufficient democratic legitimacy by virtue of:

- Their social, economic and environmental wellbeing purposes, thus clearly aligning them with the purposes of planning and the powers of public authorities, and;
- Their open membership and local democratic controls.

As the Government subsequently adopted the definition of a CLT as the key criterion for a community body to qualify for the making of a Community Right to Build Order, it now seems anomalous that CLTs themselves cannot take a locally accountable decision to exempt properties from leasehold enfranchisement.

We have set out how this could work in more detail in our response to the Law Commission's consultation on leasehold enfranchisement. That can be accessed here: http://www.communitylandtrusts.org.uk/_filecache/360/2c6/714-final-ncltn-and-ukcn-response-to-le-consultation.pdf.

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