

Consultation Response to 'Reinvigorating commonhold: the alternative to leasehold ownership'

The following response is submitted by the National CLT Network, a membership body representing over 300 Community Land Trusts (CLTs) across England and Wales.

Introductory remarks

- The National CLT Network would welcome reforms to commonhold that would make it more suitable for our members.
- NCLTN is a member of the Community Led Homes partnership alongside the Confederation of Co-operative Housing, the UK Cohousing Network and Locality. We support their respective submissions on this consultation, and would be pleased to collectively provide further advice to the Law Commission and the Government on the effective operation of reforms that provide more community control of housing, such as through commonhold.

Compatibility of CLTs and commonhold

- 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. We do not see, therefore, that commonhold will be an obvious choice for CLTs that would normally retain the freehold of their land and use leasehold with owner occupiers and, in some cases, other Registered Providers that manage their homes.
- There are therefore two ways in which commonhold might be made compatible with CLTs. The more simple approach is for the commonhold association to be a separate legal entity, and the CLT - to protect and further its objects - would need a controlling interest and/or to maintain its role as Provider of any affordable homes in perpetuity. The other is that sufficient flexibility is given to create a commonhold association that met the definition of a CLT, i.e. with a wider membership than just the unit owners, and the ability to enshrine binding restrictions on the disposal of commonholds to provide the asset lock required by the statutory definition of a CLT.
- With the latter this would require - viz question 37 - sufficient flexibility to add a set of rules to the CCS to reflect, for example, restrictions on resales and the eligibility criteria for affordable homes (usually agreed with the local planning authority and reflected in the section 106 agreement). Our model rules for CLTs that incorporate as Community Benefit Societies provide an example of the kind of rules that would need to be permissible within a commonhold association, were it to meet the

definition of a CLT¹.

- CLTs can incorporate in a variety of legal forms, and most have registered as Community Benefit Societies since the Co-operative and Community Benefit Societies 2014 Act. Other forms of community led housing also use the CBS or co-operative society models. If these were to be compatible with commonhold then it would be desirable, contrary to the conclusion reached in paragraph 7.24 of your consultation, to provide for the incorporation of commonhold associations under the 2014 Act.
- CLTs and cohousing communities are part of a wider community led housing movement. There is considerable innovation in forms of ownership and governance, and groups often wrestle with the same issues as the Law Commission has in its consultation paper. Several alternative arrangements for common ownership have been developed or explored, such as mutual home ownership, and innovative forms of affordability have been expressed in leasehold. While your proposals would allow CLTs to use leasehold for shared ownership properties, many CLTs use leasehold for other forms of affordable housing. We believe consideration ought to be given to the use of leases longer than seven years within commonhold for these purposes.

Shared ownership

- Many CLTs have built, or are planning to build, shared ownership properties. We therefore welcome the proposal in question 65 to exempt shared ownership from the ban on residential leases over seven years within commonhold. This would enable more CLTs to make use of, or be compatible with, commonhold.
- It would be possible, under your proposals, for a CLT to act as the Provider and use commonhold as proposed. We agree that the shared owner leasehold should be required to comply with all the terms of the CCS; that the decision to terminate should be exercised jointly with the Provider; and that the shared ownership leaseholders' right to challenge costs and be consulted should be as you propose.
- As noted, the commonhold association would probably need to be a separate legal entity to the CLT because its membership should be restricted to the unit owners of the development, whereas the CLT's membership must be open to every person who lives or works in its local area, that area typically being larger than the development itself.
- For CLTs with more than one development, the commonhold arrangements might provide a welcome devolution of building management to the unit owners and tenants. However, for some, and especially for CLTs with a single development, it

¹ <http://www.communitylandtrusts.org.uk/funding-and-resources/resources/national-clt-network-model-rules-sponsorship-service>

might instead create a time-consuming duplication of bureaucracy. In a CLT, shared owners can already join the CLT and participate in its governance and management, so many of the benefits of a commonhold association are already available without the need for a second legal entity. We assume that in these cases CLTs might prefer to use leasehold, unless a straightforward arrangement to resolve the interests of the commonhold association and the CLT can be devised.

- The ability of shared owners to staircase to 100% ownership presents a problem for CLTs. To fulfil their statutory obligation to ensure that the unit is only used for the benefit of the local community in perpetuity – usually by remaining an affordable unit, which is their primary object in their articles or rules – we believe that they should be able to restrict staircasing to 80%. In our response to the Law Commission’s proposals on leasehold enfranchisement we have made the case that the exemptions available in nationally designated protected areas ought to be available to all CLTs, regardless of location, and that CLTs should be exempt from leasehold enfranchisement. Applying this to commonhold, no shared owner should be able to purchase 100% of the unit and so have the commonhold title transferred to them. Any reforms of commonhold should likewise ensure that they do not undermine the ability of the CLT, as Provider, to maintain the affordability of shared ownership properties and restrict eligibility to those that meet the CLT’s allocation criteria, usually related to local connection or contribution.

Community Land Trusts and the use of leasehold

- While your proposals do not concern the use of leasehold per se, we would like to note a few points on leasehold in community led housing.
- We set out the general purposes and approaches to using leasehold in our response to the Government’s consultations on leasehold reform². These were recognised in the Law Commission’s separate consultation on leasehold enfranchisement³.
- As we have noted in our responses to the Government’s consultations on reforms to leasehold, there is no evidence of any abuse of leasehold by CLTs. Your consultation paper sets out several advantages of commonhold, but some of the inferred disadvantages don’t apply to CLTs:
 - ◆ CLTs are legally required to be not-for-profit and would not use leasehold as an investment opportunity, to generate income (beyond ground rents to cover reasonable costs), or to obtain insurance commissions;
 - ◆ Unit owners can participate in the governance of the CLT, reducing the “them and us” mentality. Indeed, because every person who lives and works in the

² http://www.communitylandtrusts.org.uk/_filecache/79d/b06/446-final-response-consultation-response-leasehold-reform-ncltn-ukcn-and-locality.pdf

³ <https://www.lawcom.gov.uk/project/leasehold-enfranchisement/>

area can participate in the democratic governance of the CLT, they can facilitate better relations and less of a “them and us” mentality between the unit owners and their neighbours and local community. We encourage CLTs to designate a proportion (usually 1/3rd) of their board places for residents of their homes, to ensure their voice is represented in decision making.

- ◆ Where CLTs use shared ownership, they tend to use the Homes England lease, so there is standardisation in our sector.
- Your consultation paper states, in footnote 54, that CLTs grant leases that are for no more than 20 years in duration, to avoid problems with leasehold enfranchisement. This is incorrect. In every case we are aware of, leases are granted by CLTs for the usual lengths of 99 or 125 years. The CLTs are exposed to the risk of enfranchisement, and so we have lobbied the Government to exempt CLTs and responded positively to the Law Commission’s proposal (in your leasehold enfranchisement consultation paper) that this exemption is introduced. Our experience is that leases of 20 years or less would not be mortgageable for residents and so are not used by CLTs. Indeed, mortgage lending for affordable housing in general is constrained, particularly where local allocations criteria and staircasing restrictions are imposed to protect the community benefits that the CLT aims to provide. Any further complications created by commonhold could threaten the viability of low cost home ownership products.
- We would like to see CLTs able to offer leases of more than seven years within commonhold for forms of affordable housing other than shared ownership. For example, Cornwall CLT uses leasehold for discount market sale homes, where the discount is enshrined in the lease and applied to future resales, maintaining the affordability in perpetuity. London CLT has developed a lease that restricts the initial and resale price of its properties to a formula based upon median household incomes in the local authority area. This ensures they remain permanently affordable in local markets where shared ownership properties – their values being tied to the housing market – have not remained affordable. Other CLTs have used leasehold for other forms of shared or limited equity. There is growing interest from community led housing groups, and mainstream providers of social housing, in new forms of affordable home ownership like this.
- The Government has accepted the principle that this innovation should be supported. The £163m Community Housing Fund provides revenue and capital grants for any form of affordable housing, provided the CLT can demonstrate how it meets a local need and how it will be retained in perpetuity. The Secretary of State has also called for innovation in shared ownership and in low cost home ownership products more generally.
- The Government could facilitate this innovation through leasehold and commonhold reforms by developing exemption arrangements for these forms of affordable home



ownership, similar to those proposed for Shared Ownership. Alternatively CLTs, cohousing communities and housing co-operatives could be given a general power to use leases longer than seven years within commonhold for the purposes of providing permanently affordable housing. This would enable innovation without being impeded by the speed at which the Government can update the schedule in which tenure-specific exemptions are set out. We note that this would require cohousing communities to be furnished with a statutory definition, and support the UK Cohousing Network's proposed definition set out overleaf in Annex A. Alternatively, it would require a new statutory definition for Community Led Housing, an umbrella covering CLTs, housing co-operatives, cohousing communities, development trusts and other approaches.

For further information, please contact the Director of the National CLT Network, Tom Chance on tom@communitylandtrusts.org.uk or 020 3096 7791.

Annex A – proposed definition of a ‘cohousing community’

1. A cohousing community will comprise residential units⁴, together with communal and ancillary facilities, collectively created by members⁵ of that community, and with an objective of fostering the social and environmental wellbeing of all its members, as well as contributing to the wellbeing of the wider area in which the cohousing community is located.
2. The management of a cohousing community is shared by all its members, who shall also be members of the body corporate owning the freehold or head leasehold interest in the relevant land⁶. All member households⁷ occupy their individual residential units on terms that ensure that the cohousing community’s objectives are achieved.
3. The terms of membership and the role of members in decision-making will be determined as appropriate by each cohousing community to ensure accountability to all the members. Members may also include, say, a housing association as the immediate landlord of any social/affordable rented homes.

4 ‘Residential units’ is the Law Commission’s proposed term to mean both flats and houses to get round the legal problems of defining a ‘house’ or ‘home’.

5 ‘Members of the community’ for the time being i.e. at any time in the history of the project the numbers of members may only be a proportion of the final number of members capable of being housed.

6 ‘Relevant land’ will normally be the whole site on which both homes and any communal facilities are built.

7 ‘Households’ could also include a number of non-related individual adults sharing by agreement. Each cohousing community may determine how each household and its occupants are represented in the governance of the community.