

Law Commission's proposals for leasehold reform – dispute resolution and costs



Kerry Glanville explains the recommendations that have been made for the determination of disputes and the recovery of costs in the context of reforms to leasehold. This article considers whether recommendations meet the Government's stated aim that the process for the exercise of those rights should be simpler, quicker and cheaper for leaseholders.

One tribunal to handle all disputes

This key proposal aims to remove the confusion caused by the current system that gives jurisdiction to both the First Tier Tribunal and the County Court.

It is envisaged that, with one exception, all enfranchisement issues and disputes shall be dealt with by the First-tier Tribunal under an extended range of powers, including:

- powers to deal with the proposed new categories of applications, e.g. for lease extensions on non-statutory terms or by landlords to prevent leaseholders from serving further enfranchisement claims, and
- powers currently only exercised by the County Court, to allow execution of a lease extension or transfer by a Tribunal judge in place of a party; giving it access to the Court Funds Office so that it can receive the premium or price payable; and enabling it to order the discharge of any contract between the parties where the contract price has not been paid by a specified date.

The exception that remains with the County Court is the power to enforce the terms of a contract for a transfer or lease extension by making an order for specific performance.



‘Alternative track’ for valuation disputes

The second proposal is to have a simpler ‘alternative track’ to which the Tribunal can refer pure valuation disputes for determination by a single valuer without a hearing.

Before referring a dispute to the alternative track, the Tribunal will consider the value of the claim, the difference between the parties’ positions and the proportionality of conducting a full hearing.

If a claim appears suitable for the alternative track but a party can show that it has a broader significance, e.g. to claims involving other flats in a block, the Tribunal may order a full hearing but the party seeking the hearing must pay the other party’s additional costs.

Having a single forum for dealing with enfranchisement disputes and issues will simplify the process, and reduce the confusion, delay and additional costs that can arise under the current system.

Undoubtedly, the Tribunal has the necessary expertise to deal with applications, and offers good and efficient case management.

Under the proposed new regime, it will have a bigger role in determining claims and there are likely to be more of them. If the reforms are to succeed, the Tribunal will need to be properly resourced to enable it to carry the benefits it currently offers into its increased role.

Costs

Whilst gaining much substantive power from the County Court, the Tribunal will not have the same powers when it comes to determining which party should pay the costs.

The Commission has made alternative proposals about the right to recover costs. Which of these will apply is contingent upon the valuation methodology the Government decides to adopt.

If the valuation method adopted means leaseholders have to pay a market value based price for a lease extension or freehold, they will not normally have to pay anything towards their landlord’s non-litigation costs.

The Commission’s rationale is that this approach is comparable to what happens in an open market transaction where the buyer is not expected to meet any of the seller’s costs and this is reflected in the higher price that is paid; to impose a liability to pay costs in addition to the market price would over-compensate the seller/landlord.

The Commission did not accept the consultee landlords’ argument that making a claim is a unilateral and voluntary act, akin to compulsory purchase, given that the lease is a wasting asset and that there are various drivers (for example the ability to obtain a mortgage) that increase the pressure on leaseholder to make claims.

There are two exceptions to this proposal:

- low value claims – it is suggested that the Government should fix a contribution threshold, the “prescribed sum” (£1,000 is used in the examples in the report). If the premium payable to the landlord is below the prescribed sum but his costs are higher than the premium, the leaseholder will pay an amount equal to the lower of the landlord’s costs or the prescribed sum.
- where a leaseholder makes an election which has the effect of reducing the price payable but causes the landlord to incur additional costs (such as an election requiring the landlord to take leasebacks of some parts of the premises), the landlord will be entitled to recover a fixed contribution to those costs.

If the valuation methodology does not reflect the open market value of the property, leaseholders will have to



pay the landlord's non-litigation costs according to a fixed costs regime which will apply to all types of enfranchisement claim.

The landlord would recover a prescribed "base sum" plus, in the case of a collective freehold acquisition claim, prescribed sums in respect of any further costs incurred for dealing with each prescribed additional element of the claim (such as an election requiring leasebacks). Either the additional sums, or the total sum to be paid, should be capped.

The Law Commission's considers that it would be inappropriate for the Tribunal to have the same wide powers to order one party to pay the other's litigation costs, as the County Court does now, save in exceptional circumstances arising from the parties' behavior.

Accordingly, the Tribunal's existing power to order one side to pay the other's costs on account of unreasonable behaviour is preserved.

There is a list of further specific exceptions to the general rule arising in some of the proposed new types of application. Notably, any costs payable to the landlord will be fixed, but where the landlord may be liable for the leaseholder's costs, they will not be fixed or capped.

Summary

The Commission certainly appears to have fulfilled the Government's brief to make the enfranchisement process cheaper for leaseholders.

In most cases landlords will be unable to recover any of their costs, whether or not the process has involved litigation, and even in the limited circumstances where leaseholders have to contribute to those costs, this is likely to fall far short of the landlords' actual costs.

The proposals also give leaseholders a greater degree of certainty about the overall expense of making a claim, which is likely to be broadly welcomed.

How we can help

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Written by