



Llywodraeth Cymru
Welsh Government

RESEARCH

Research into the sale and use of leaseholds in Wales: summary

Research investigating how leasehold operates in Wales, including distribution and characteristics of leasehold properties and views and experiences of stakeholders.

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Introduction and study aims

This research responds to a need for Wales-specific research on the prevalence of leaseholds, leaseholder knowledge and attitudes towards lease agreements. This research intends to provide an understanding of the use of leasehold tenure in Wales to support the consideration of any wider reforms. The Welsh Government asked the research team to answer the following questions.

- What do we know about leasehold ownership in Wales?
- What are leaseholders' views on and experiences of purchasing and living in

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leasehold properties?

- What are the advantages/disadvantages of owning a leasehold property?
- What are stakeholders' views on leasehold?

Methods

This research was commissioned by the Welsh Government and conducted by legal academics at the Universities of Kent, Bangor and York.

The research comprises of:

- a review of policy, legal and academic literature
- an analysis of Land Registry data
- an analysis of a sample of leases
- a focus group with stakeholders involved in the leasehold sector
- an online survey of leaseholders

The survey and interviews asked questions about:

- leasehold houses
- advice and support
- the purchasing process
- onerous terms
- service charges and permission fees
- professional relationships
- legal reforms
- dispute resolution

The data collection was carried out between the end of 2019 and late spring 2020. The literature review was completed July 2020. It therefore does not include the Law Commission reports published subsequent to that date.

The response rate for both the survey and interviews fell below what was anticipated. There are several explanations for this. There has been a number of consultation exercises with leaseholders and as such there may be consultation fatigue. It may also be that leaseholders in Wales are not as engaged as

leaseholders more generally. Previous studies, including the National Leasehold Survey 2016, have received proportionally fewer responses from Welsh leaseholders. This may point to a need for efforts to support leaseholder engagement and networking.

Further stakeholder and consultation events were not held due to the COVID-19 pandemic.

What do we know about leasehold ownership in Wales?

This section outlines the main findings from an analysis of Land Registry datasets. The time period covered by the data analysed is from 2006 to 2020.

Leasehold accounts for around 16% of all properties in Wales. This equates to, very approximately, 235,000 properties. Land Registry Price Paid Data indicates that leaseholds account for 12% of all property transactions in Wales, with the majority of these transactions (64.3%) involving flats.

There are more leasehold properties in densely populated conurbations, with Cardiff and Swansea as 'hotspots' for leasehold transactions. These findings chime with the literature on leaseholds, which concludes that multi-titled property has become a standard response to increased urbanisation and urban densification (Easthope et al. 2014).

Leasehold houses comprise a larger proportion of the leasehold market in districts with a mining legacy.

Leasehold homes are generally cheaper than freehold homes, but there is a weak link between the prevalence of leasehold and indices of deprivation.

There are some limitations with the data used, the findings are based on data not specifically collected to quantify the number of leasehold properties in Wales. The data is therefore crude. For instance, it does not necessarily reflect enfranchisements, nor accurately describe property as leasehold where a freehold owner has converted a property into leasehold flats.

What are leaseholders' experiences of purchasing and living in leasehold properties?

This section will outline the main findings from the literature review and empirical analysis according to key themes that emerged from the research.

Leasehold houses

Interviews with house leaseholders suggested that they were unhappy with the tenure. The majority of those we interviewed were looking at options to purchase the freehold of their property.

The policy literature (TFG 2019, DCLG 2017b) demonstrates a strong consensus that houses should no longer be sold as leasehold properties. There has been a recent decline in the sale of leasehold houses demonstrating the effectiveness of Welsh Government interventions. Overall, when considering experiences of purchasing and living in leasehold properties house leaseholders were more dissatisfied than those occupying flats (para 5.57 of the report).

Advice and support

Leaseholders told us that they sought advice on leasehold issues. Some sought support from the Leasehold Advisory Service. There was also evidence of a growing reliance on informal support, including social media channels run by campaigning bodies such as the Leasehold Knowledge Partnership and the National Leasehold Campaign.

The purchasing process

The empirical research conducted for this report suggests that, in general, leaseholders in Wales are dissatisfied with the purchasing process.

UK-wide consumer surveys of leaseholders (data presented in Figures 4.04 and 4.05 of the report) indicate that conveyancers provide insufficient advice to

leaseholders at the point of purchase. There is a general consensus amongst policy makers (House of Commons Library 2019, DCLG 2017b) as well as amongst those we surveyed about the need to improve the quality of information available for leasehold purchasers, as well as the professionalism of those involved in leasehold transactions and those involved in managing leasehold properties.

The surveys and interviews also indicate that, although most leaseholders understood the basic legal distinction between freehold and leasehold, there remained a significant lack of a qualitative appreciation of what being a leaseholder entails and the reality of residing in and owning a leasehold property.

The interviews showed that it is often difficult for leaseholders to understand the management structures in many leasehold arrangements. The research team's analysis of terms contained in participants' leases confirmed that management arrangements are often complex and lacking in transparency. Management arrangements might be better explained diagrammatically. Overall, lease terms are difficult to understand and written in complex language.

Onerous terms

Concerns were raised by the survey and interview participants about the level of ground rents, and many participating stakeholders favoured nominal or 'peppercorn' ground rents.

There was no obvious reason for the difference in the ground rents in the leases analysed by the research team.

Service charges and permission fees

Our data and the literature show considerable dissatisfaction with service charges (para 5.13 of the report, Brady Solicitors 2016). Lessees complained of increasing charges with no evidence of additional value or the necessity for such increases. There is also considerable frustration with what leaseholders see as

unnecessary permission fees.

There is a strong consensus in the literature on the need to prevent onerous ground rents and other onerous lease terms (TFG 2019, House of Commons Library 2019, DCLG, 2017b).

Professional relationships

Existing consumer surveys demonstrate extensive dissatisfaction with leasehold. The interview data collected for this report suggests that the evident lack of trust and confidence may relate to broader relational issues between freeholders, leaseholders and managing agents. The research team consider that all the professionals – lawyers, estate agents, managing agents, developers etc. – involved in leasehold, and earning an income from it, need to take a greater role in increasing confidence and trust in the tenure.

One problem identified by this research, is the relationship between leaseholders and managing agents. Managing agents are generally chosen by freeholders but are paid for by leaseholders. The leaseholders interviewed and surveyed would like a greater say in the appointment of managing agents.

The interview data suggests that transferring management or control to residents can address mistrust of professionals. It supports moves to make the right to manage and collective enfranchisement simpler and cheaper. These enable leaseholders to exercise a greater level of control over the property.

However, the literature suggests that collective arrangements are not a panacea. They are reliant on a significant time commitment amongst lessees and the availability of certain professional and 'soft' skills to ensure proper functioning.

The literature confirms that demands placed upon leaseholder managers are a significant problem and suggests a need for policy interventions to support these leaseholders. Even if there is a move to commonhold, this problem will remain. Managing multi-owned buildings, whatever the legal form, is hard work.

Legal reforms

Participating leaseholders call for greater control over their property and want legislative reform which will address the imbalance of rights between leaseholder and freeholder and eliminate abusive practices. Such reforms would go beyond the current recommendations made by the Law Commission.

Although no specific questions were asked about commonhold, participants raised it as something they were interested in and positive about as an alternative to leasehold.

Participants recognised that the implementation of commonhold requires commitment and expertise from residents. They also recognised that, even in commonhold properties, there will still be a need for consumer protection, education and training.

Dispute resolution

The data from this project suggests that there is limited knowledge of or confidence in the Leasehold Valuation Tribunal (LVT) and other dispute resolution provision such as complaints procedures, ombudsmen etc. There may be a risk that this precludes effective dispute resolution, which is a prerequisite for confidence in the tenure.

It should be noted that leaseholder participants in the research had very limited experience of the LVT. Recommendations to improve the effectiveness of dispute resolution for leaseholders, and other owners within multi-owned property, would require further research focusing on the experiences of those stakeholders using the LVT.

What are the advantages/disadvantages of owning a leasehold property?

The project confirms that there is no typical leaseholder. There is also no

evidence that leaseholders made active choices to purchase leasehold property per se. Participants had purchased leaseholds for a variety of reasons:

- location
- security (including responsibility for external repairs)
- type of housing (flat)
- setup (retirement or supported living)

Advantages

The advantage of leasehold ownership of flats is that it enables ownership within multi-occupied property. The leaseholders of flats we interviewed want and expect to be property owners. There did not appear to be any advantages in owning a leasehold house over freehold.

Disadvantages

The Law Commission (Law Commission 2018) identifies the two key disadvantages of leasehold.

1. The lease is a wasting asset.
2. Leaseholders do not experience the freedoms and controls that they associate with property ownership.

These reflect the experience of respondents. Many suggested that they had not understood that leases are a depreciating or wasting asset. They complained about their lack of control.

The overall lack of trust and confidence in the tenure in Wales can, to some extent, be attributed to a disparity between the expectations and reality of the lease as an asset. This is having a significant impact on the value of leasehold properties and the ability of lessees to sell.

The Law Commission's work on enfranchisement and reforming the right to manage will go some way towards responding to these disadvantages. However, this research suggests there may be a need for more radical policy

moves to deal with the continued power imbalance and lack of flexibility within the tenure.

Stakeholder views

Empirical work with industry stakeholders suggested that this group felt that issues with the leasehold tenure centred around information asymmetries, abusive practices and connected reputational issues.

Stakeholders accepted that the reputation of the sector has been damaged but felt that this was largely due to abusive practices. They emphasised that lawyers should do more to protect consumers, but also felt that the core problem with the tenure was that leaseholders did not appreciate the basic legal situation on purchase.

Industry stakeholders expressed concern about nil value ground rents, arguing institutional freeholder investors needed protection. It is important to note that the Competition and Markets Authority interim report expresses reservations about index linked rises in ground rent, although the industry stakeholders in our empirical work were satisfied that these were acceptable.

The research team noted the disjuncture between stakeholder views and the views of those living in leasehold properties. It also noted that the policy literature, particularly the reports of the Regulation of Property Agents Working Party (Best, 2019) and the Competition and Markets Authority (2020), were more critical of practices within the sector.

Broader issues

The research questions focused on gathering evidence on the experience of those buying, living in and professionally concerned with the sale and use of leasehold properties.

The extensive literature review alerted the research team to broader issues that the report considers.

Commonhold

The research team are concerned about the implications of having two forms of tenure for multi-owned buildings if commonhold becomes more common. There is a need for economic modelling of the consequences for the value of property in such circumstances. The Welsh Government may wish to draw on experiences in New Zealand where leasehold and unit title ownership (New Zealand's equivalent of commonhold) exist side by side.

Ownership in multi owned properties

The extent of control that freeholders experience is not available in leasehold properties. Whilst lessees effectively own their homes, they share control with the freeholder and, as a result of historical and structural inequalities, shared control is unlikely to be on an equal footing.

Even if law reform addresses the imbalance of power between freeholder and leaseholder, or lessees enfranchise or convert to commonhold, no individual owner of a home in a multi-owned property can have complete control. There will inevitably be shared responsibilities for the maintenance of the property and restrictions on use to ensure the maximum collective enjoyment of the property.

The research team suggest that policy interventions will have to take account of the need to balance increased individual leaseholder autonomy with the need to ensure that the collective interests of all those with a stake in the building or development are protected.

This suggests a more holistic approach to the management and governance of leasehold properties is required.

This would require policy innovation. The research team suggest that this would be worthwhile. It would end the reactive policy cycle within which leasehold reform seems to be caught, and it would prepare Wales for the future. As the data indicates, flats within multi-owned buildings in Wales are likely to be of increasing significance within Welsh urban environments.

Recommendations

This report endorses the findings of the Task and Finish Group (TFG 2019).

It also endorses the interim report and recommendations of the CMA (CMA 2020) and suggests that the Welsh Government engages with its continued work.

The detailed recommendations contained in the regulation of property agents working party (Best, 2019) aimed at improving service charge processes and the professionalism of agents are also endorsed. The research team agrees that there is value in a mandatory standard form for service charges which would include extensive information and standard cost codes, mandatory sinking funds and constraints on permission fees.

The research team make the following additional recommendations.

Recommendation 1

The Welsh Government should consider a mechanism that quantifies and records the distribution of leasehold homes in Wales accurately. This would enable better identification of new trends in leasehold and may prevent future problems emerging.

Recommendation 2

The Welsh Government should consider how to build a network of leaseholders. This could be achieved through existing organisations, and it could help to improve knowledge of leaseholder rights and responsibilities in Wales.

Recommendation 3

The Welsh Government should consider some additional law reforms identified by this research which have not been specifically identified in the current work of

the Law Commission which would also enhance the rights of leaseholders. Such a project might include:

- simplifying and modernising lease terms and improving the legal mechanisms to remove out-of-date restrictions. This would improve the accessibility of leasehold documents and enable more modern terms to be inserted into leases.
- mandating template leases for new developments which could for instance include diagrammatic representations of management structures
- developing a mandatory leasehold property report along the lines of strata title reports in Australia
- strengthening consultation requirements on major works, giving lessees a greater say in what work should be carried out by whom and at what cost
- implementing the earlier Law Commission's proposals to reform the law on forfeiture

Recommendation 4

The Welsh Government should consider the need for further research to understand the effectiveness of the current system of dispute resolution, including the LVT, the (dis)benefits of resident management and how the current dispute resolution procedures respond to these problems. There remains significant research gaps in knowledge around dispute resolution, including, for example, where leaseholders collectively own or manage property. The research should also consider proportionate dispute resolution so that those in conflict can avoid the negative impact that prolonged disputes have on the value of their assets.

Recommendation 5

Longer term, the Welsh Government should consider exploring more radical reforms to leasehold, adopting a more holistic and sustainable approach. This approach moves beyond the binary relationship of leaseholder and freeholder and understands the economic and social role played by leaseholds in multi-owned properties, particularly in urban environments and areas of high housing

demand. This should involve:

- a recognition that ownership of a home in a multi-owned building is always going to be a different experience from ownership of a home that is a house and that expectations of homeowners need to be adjusted accordingly
- a recognition of the need to balance the different interests of different stakeholders in multi-owned property. This might mean giving greater weight to collective best interests and the need for effective stewardship of property whilst remaining mindful of the possibility of unfair consequences for particular individuals
- responding to the different regulatory needs that arise at different stages of the life cycle of a building
- leasehold regulation taking into account the social, economic and environmental concerns of those living in and around multi-owned buildings and that these will change during the lifetime of a building
- the alignment of the private law regulation of a building with public law regulation, so for instance leasehold regulation should consider planning and health and safety requirements

Recommendation 6

There is a need for economic modelling of the consequences for the value and use of leasehold properties within a system where leasehold exists alongside another form of tenure (for example, commonhold). The research team are concerned about the implications of having widespread use two forms of tenure for multi-owned buildings if commonhold becomes more common. The Welsh Government may wish to draw on experiences in New Zealand where leasehold and unit title ownership (New Zealand's equivalent of commonhold) exist side by side.

Contact details

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Views expressed in this report are those of the researchers and not necessarily those of the Welsh Government

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