

Law Commission's Report on Option to Reduce the Price Payable on Enfranchisement

Having initially been delayed due to the dissolution of Parliament in November, the Law Commission have today published a report setting out their options for reform of the current enfranchisement legislation to reduce the price payable by tenants in any enfranchisement claim. The report is lengthy and follows an extended consultation period in which the Commission received a significant number of responses from consultees in all disciplines. A further report, currently expected in February 2020, will focus on the qualification criteria and the procedure and process of making an enfranchisement claim.

The Law Commission were tasked with examining "*the options to reduce the premium (price) payable by...leaseholders to enfranchise whilst ensuring sufficient compensation is paid to landlords...*". The paper sets out three alternative options, referred to as 'schemes' as well as a number of further sub-options for reform for the Government to consider.

The price payable by a tenant comprises three elements:

1. the '**Term**' being the value of the landlord's right to receive a ground rent for the duration of the lease,
2. the '**Reversion**' being the value of the right to have the property back when the lease expires, and
3. a proportion of '**Marriage Value**' which is the difference in value between the leaseholder's interest and the landlord's interest as separate interests, and their value once combined. In other words, it is the additional value by which an interest in land increases when the leaseholder's and landlords' interests are 'married' together into single ownership.

The statutory valuation process involves a number of assumptions about the leaseholder and the market in which that the leaseholder's claim is being made. The three schemes differ in their assumptions, resulting in the premium being made up of a different combination of the premium elements.

Scheme 1 – It is assumed that the leaseholder is not in the market i.e. the leaseholder is not the purchaser of the property interest. The result is that no Marriage Value or 'Hope Value' (being the value attributed to the hope that the landlord's interest might be sold to the leaseholder at a later date) is payable by the leaseholder

and the premium would be calculated by only considering the Term and the Reversion. This would result in a reduction in the premium payable by all leaseholders as compared to the current valuation basis, in particular those with sub-80 year leases.

Scheme 2 – It is assumed that the leaseholder is not in the market at the time of the transaction, but may be in the future. Therefore, Hope Value is payable by the leaseholder (but no Marriage Value). The premium would therefore be calculated by considering the Term, Reversion and Hope Value. This would result in reduction in the price payable by leaseholders (as Hope Value is never higher than Marriage Value).

Scheme 3 – It is assumed that the leaseholder is in the market and therefore Marriage Value is payable by the leaseholder. The price is calculated by considering the Term, Reversion and Marriage Value. This scheme reflects the current law but could, if adopted with any of the sub-options, result in lower premiums being paid.

As well as the main schemes, the report sets out a number of additional options for reform which could be implemented if any of the schemes were adopted, including

- prescribing the various rates used in calculating the Term, Reversion and Marriage Value,
- capping the treatment of ground rent to 0.1% of the freehold value of the property,
- giving leaseholders the option to accept a restriction on future development rather than pay development value,
- and entitling owner-occupiers (rather than corporate tenants) to reduced premiums.

The Law Commission do conclude that the enfranchisement process would be made more certain and predictable, simpler, more consistent and cheaper if rates for calculating the Term, Reversion and Marriage Value were prescribed, although at what level the rates are set will be for the Government to determine. If there was support for prescribing the various rates, the report also sets out the option for introducing an online calculator.

The report also considers the possibility of replacing the current statutory formula, which is based on the market value of the property asset, with a simple formula involving a ground-rent multiplier. However, given the arguments that it would not satisfy the requirement for landlords to be properly compensated, the report does not include a ground-rent multiplier as a global option for reform, albeit there could be a place for it in limited circumstances.

While the report goes into great detail of each of the possible schemes, and the potential pros and cons, the Law Commission make clear they are not making proposals or recommendations as to how premiums should be calculated as it is not simply a question of law, but rather involves consideration of valuation principles,

social policy and political judgement. Instead, the report sets out some possible options for reform for the Government to consider and it will be for them to decide which, if any, of the options to adopt. We will no doubt see a period of intense lobbying from parties from all sides as some of the options are far reaching and, if adopted, could have significant impact on tenants and the leasehold market generally.

The full report and a summary can be found [here](#).