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Consultation – summary of response

Estate charges on housing developments –
summary of responses

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Mae'r ddogfen yma hefyd ar gael yn Gymraeg.
This document is also available in Welsh.

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1. Introduction

On 6 February 2020, the Minister for Housing and Local Government launched a Call for Evidence into the practice of estate charges. This was prompted by the suggestion that there has been an increase in the incidence of new housing developments that have private arrangements for the maintenance of open spaces and facilities, which are paid for by homeowners and residents.

The aim of the Call for Evidence was to better understand how widespread this practice may be, the services that are being provided for via such arrangements, the reasons why the practice might have become more common, the costs involved, and the experience of residents in relation to estate charges.

The Call for Evidence exercise ran from 6 February to 30 April 2020. It was publicised by notifying interested parties and groups, including industry representative bodies, members of the Task & Finish Group on Leasehold Reform as well as via social media channels.

Who responded?

The Call for Evidence received 604 responses. Respondents are identified (based on the section questions they completed) as follows:

- 566 Homeowners and residents
- 8 Developers (including 1 Registered Social Landlord)
- 5 Managing agents and management companies (including 1 Registered Social Landlord)
- 6 Local Authorities (including 1 councillor's views)
- 2 Registered Social Landlords
- 6 Property lawyers
- 11 Others

Next steps

It is clear from the evidence provided that the practice of estate charges does not work effectively for everyone under the current arrangements. The Minister will therefore use the evidence that has been gathered to consider the areas where change is needed and the potential options which may be available to make those changes.

This is just the start of a change process and any changes proposed or considered will be developed in conjunction with the industry and would be subject to further formal consultation and stakeholder engagement affording a further opportunity for feedback.

2. Brief summary of findings

Homeowners and residents

The sample of resident respondents cannot be taken to be representative of all residents subject to charges, since the call for evidence was a voluntary exercise and it is likely that those residents motivated by dissatisfaction responded in greater numbers than others. The call for evidence was circulated via pressure and representative groups which work on behalf of those who have had difficulties in relation to these charges, or face similar issues with for example leasehold.

However, based on the large number of residents responding, this does demonstrate that significant issues are being experienced in relation to the charges, and adds greatly to our evidence base about the operation and impact of such charges.

Findings include:

- Charges were reported between £50 and £500 per year, with 46% of respondents reporting charges between £100 and £149.99.
- The age of developments where charges are made suggests a significant increase in their use in recent years. 72% of respondents indicated their properties were built between 2010 and 2020. Only 1 respondent's property was built before 2000.
- 69% of respondents reported that their charge had changed over time, with the majority indicating that it had increased.
- 91% of respondents reported that they are not consulted or otherwise involved in decisions about the activity delivered by the charge.
- 75% of respondents indicated they were either very unsatisfied (50%) or quite unsatisfied (25%) with the level of information they received before their purchase about the charge, with similar proportions (being very unsatisfied (50%) or quite unsatisfied (24%) about information provision during the purchase.
- Nearly a quarter (24%) of respondents indicated the charge has had an effect on buying, selling or getting a mortgage.
- Almost all (94%) of respondents indicated the existence of an estate charge would affect their future decision making when purchasing a property.
- Over half (59%) of respondents had been requested to pay administration charges in relation to their estate charge.
- 38% of respondents had challenged their charge, but the majority reported being dissatisfied with the nature of the response they received.
- Just over a third of respondents (35%) had had action threatened or taken for non-payment, including additional fees and penalties, legal action, bailiffs, damage to credit rating, reporting to lenders and having charges added to mortgages, and reports of threats that residents' properties could be taken.

Key concerns and views of responding residents included:

- Almost all individual respondents want estate rentcharges held against their freehold title abolished.

- There is a strong preference for estates to be adopted, and managed by Local Authorities (LAs) rather than developers, or management companies.
- A significant number of respondents questioned why they have to pay an estate management charge as well as council tax.
- Uncapped and unregulated estate charges are a significant point of concern especially for those on fixed, or limited incomes.
- A significant number stated that there is a lack of proper engagement, collaboration, and transparency by the management company around works planning, delivery, and costs. There are similar concerns about the type, costs, and value for money of management fees being charged and about the conduct, and performance of their management company.
- Many respondents state they feel trapped in properties subject to estate charges.
- There is a very strong response that developers and management companies have disproportionate powers over residents.
- There is a noticeable level of concern over the inconsistent quality of advice provided by conveyancers regarding the impact of the Deeds of Covenant, rentcharges, and the nature of the estate charges.
- Poor availability and prominence of information about the charges during the purchase process.
- Perception that sales agents misrepresented the charge, or underplayed the significance of the costs involved and potential ramifications of non-payment.
- A desire for councils to take over ownership/ management of estates, or for there to be a discount to residents' council tax on account of having to pay for a service which other residents receive for free.
- A feeling that it is unfair that residents are paying privately for the maintenance of public open spaces that are for the use of the general public.
- Calls for estate management companies to be abolished or to be regulated.
- Calls for estate charges to be abolished, or for the charges to be regulated to improve transparency, remove perceived profiteering, to be capped, and subject to residents' scrutiny.
- The negative impact of charges on ability to attract buyers and sell property, or to get mortgage finance.

Developers

Developers were invited to respond to the call for evidence via their representative bodies, as well as being alerted to the exercise at the Minister for Housing and Local Government's House Builders Engagement meeting.

- Developers expressed a preference for their estates to be adopted, where possible.
- Developers are concerned about the ability of some LAs to undertake effective, and timely, engagement at various stages of estate development.

- Failure to adopt was commonly attributed to the refusal of the LA to consider adoption, or developers' inability to meet the high levels of commuted sums required by the LA.
- Developers indicated that in their experience it has become more difficult to agree adoption in the last 5-10 years.
- Developers have different methods to transfer ownership of public spaces and assets ranging from (preferred) adoption by LA, establishing a residents' management company, to appointing, or tendering for a management company.
- Most developers currently do not require management companies to have professional qualifications, or belong to industry accredited professional bodies, but some are now looking at making this a requirement.

Management Agents and Companies

- Collectively, the 4 management companies who responded manage a total of 164 housing estates in Wales incorporating more than 11,000 properties.
- One management company indicated plans for the future management of 24 new estates incorporating 4,000 properties
- All those that responded indicated they had a complaints procedure.
- The most common type of complaint reported were associated with:
 - The fundamental existence of the charge
 - Works not being undertaken
 - The quality of works completed
 - Boundary and parking disputes.
- Some respondents indicated that the increasing complexity of modern developments requires professional management.
- Some respondents indicated that sometimes the condition that the estates are transferred to them in require additional remedial works for which they then have to pass the cost on to residents, to their dissatisfaction.

Local Authorities (LAs)

Five LAs and one individual councillor responded to this section. Key points raised included:

- The main issues considered by LAs in relation to decisions to adopt are the standard of construction, and whether sufficient commuted sums are provided to cover the ongoing maintenance of assets.
- Increasingly LAs are not given the option to adopt as developers choose to make alternative management arrangements.
- No specific records are kept of unadopted spaces, as LAs only look to capture land and facilities which they have responsibility for.
- LAs are often drawn into issues with land where estate charges are used, as the public use LAs as a point of contact regardless of the ownership, or where there are issues of the managing agent going out of business, or facilities such as play

parks not meeting acceptable minimum safety standards, meaning the LA has to step in in default.

- Concerns were raised about the attitudes of estate charge payers to 'their' land, where private maintenance is used, which can have an impact on social cohesion.
- Concerns about whether estate charges being imposed on affordable housing is sustainable or fair, since owners may struggle to cope with uncapped and unpredictable outgoings.
- Suggestions for improvements included:
 - The introduction of service level agreements for managing agents and companies, to ensure that minimum standards are met, and to reduce the likelihood that LAs would need to step in to deal with poor standards.
 - The land should not be regarded as a saleable asset. Mandatory involvement of residents in ownership and management of any unadopted areas
 - Viability appraisals used to calculate accurate commuted sums, and ensure estate management plans are viable.
 - Clearer communication of the charges and responsibilities between management company and LA during sales process.

Registered Social Landlords (RSLs)

A limited number of responses was received so it is not possible to draw conclusions representative of all RSLs here. Insights gained include:

- One responded that they tried to either avoid the need for charges by maximising adoption or not offering properties for market sale where fees were required.
- Another would attempt to ensure that fees were fair by assuming the management responsibilities themselves, where features of an estate were not adopted.
- Respondents indicated they believed LA reluctance to adopt was leading to the increase in use of charges.

Property Lawyers

Responses were received from individual property lawyers, as well as from their representative body, the Conveyancing Association:

- Only 2 out of 6 respondents indicated their clients were aware of estate charges before they committed to purchase.
- Less than 8% of buyers were aware of the charges prior to making an offer, according to research undertaken by the Conveyancing Association.
- All respondents indicated that buyers did not fully understand the ramifications of estate charges.

- They reported being alerted to the existence of a charge at the stage of receiving draft contract papers and reviewing title documents (often several weeks into the conveyancing process).
- Most indicated an increase in the use of such charges in recent years.
- Most had encountered sales which had fallen through because of the existence of the charges, due to sellers being unwilling to adjust the paperwork to meet mortgage companies' requirements, buyers pulling out due to size of fees, the reputation of the charges or on discovering the type of remedies for non-payment which may be used.

Others

A range of other organisations and individuals responded, including Natural Resources Wales, the Royal Town Planning Institute and a local representative Member of the Senedd. Points raised included:

- Potential for dispute between residents and other members of the public, if residents who pay for upkeep of privately maintained land want to keep those areas under exclusive use and restrict the wider public from using them.
- Uncapped nature of fees, and residents' impression of double charging where they still pay full council tax.
- The potential burden on residents, since dealing with these issues, either because of the need to expend a lot of effort attempting to engage the management company to deal with disputes, or where any resident management models may be used.
- Problems in the sales process involving developers, leading to buyers being unaware until very late in the process of the charges.
- Potential impact of changing the estate charge regime on biodiversity and species protection, which some local estate charges currently provide for.

Methodology

Where company or individuals' names have been provided in written comments these have been redacted. Where names have been provided in answer to questions over what organisations are involved in residents' estates (e.g. question 5 and 8 of the resident questionnaire) these have been reported. In cases where names have been redacted this is indicated by the use of square brackets in quotes, indicating what sort of body is indicated in the text, for example [managing agent].

Note on impact of Covid 19

The global pandemic was declared during the period this call for evidence was open, and may have impacted on the ability of organisations and individuals who would otherwise have responded to engage with this exercise. However, regardless of this, a lot of useful information has been gathered. Should the Minister consider making changes to practices around estate charges via legislation, further consultation will

take place, and any individuals or organisations who have not had the opportunity to input so far will be able to contribute at that stage.

3. Welsh language impact / other comments

These questions are included as standard in all consultation documents, in order to capture potential impacts on the Welsh language of the issues under consideration, and to ensure that respondents had the opportunity to make all the points they wished to.

1. We would like to know your views on the effects that estate charges would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

Out of 240 responses, with two in Welsh, there were a wide variety of answers to the question. In summary:

- 41% of the respondents didn't know, or couldn't see, any impact from estate charges.
- 18% noted that communications with the estate management companies are only offered in English and there is no use of Welsh, on the estates, nor likely to be supported without additional costs to the residents.
- 11% are openly supportive of the Welsh language and bi-lingual engagement.
- 5% believe it would have a negative effect for a variety of reasons associated with the practices of estate management companies.
- 5% also see lateral impacts of estate charges by making such places less desirable to live and establish a community (as one example).

2. Please also explain how you believe the use of estate charges could be changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

There were 180 responses with five respondents indicating they, or their family members, speak Welsh. In summary:

- 32% of the respondents didn't know, or couldn't see, any impact from estate charges.
- 21% saw the opportunity to reinforce the Welsh language through bi-lingual signs and communication options.
- 12% saw the removal of estate charges as being a step towards improving communities and freeing up financial resources which, could in turn, allow the Welsh language & culture to develop.
- 2% saw a negative impact on Welsh language.
- 2% were against the use of Welsh language options as a waste of time and money.

Potential actions suggested include:

- Abolish estate charges as they take money away from the community which could otherwise be put towards social cohesion which would encourage Welsh language & culture.
- A range of penalties and incentives could be applied to address any problems with getting English based companies to engage with, and support, Welsh language initiatives,
- Improve the attractiveness of living in Wales by abolishing estate charges.
- Use bi-lingual signage on the estates.
- Provide bi-lingual communications.
- Provide community facilities where Welsh language can be taught and supported.

3. We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them:

There were 77 responses to this question. As this is an open question there were a wide variety of responses. These have been summarised as follows:

- Many of those responding called on the Welsh Government and LAs to do something to change the current situation.
- Concerns were expressed by a number of respondents about the impact of uncapped estate charges on those people with a fixed, or limited income.
- There are a number of responses concerned about unregulated profiteering by both developers and estate management companies with concerns over the lack of transparency and threatening behaviour by the companies when questioned over charges.
- A strong issue is the feeling of being trapped and the negative impact the estate charges have on resident's mental health and wellbeing as well as the impact this has on social cohesion. This is linked to resident's feelings of powerlessness to act against the companies.

Quotes:

“As the government you need to take a more holistic, integrated and interventionist approach to the whole process from start to finish of housebuilding, including estate charges, in order to raise standards if you want to stand any chance of making significant improvements. Place making, which will necessarily involve more ongoing estate management, is the key issue. Citizens will expect more, not less, from government particularly as regards the creation of good quality new housing, following the current pandemic”.

“Help to Buy has also been abused by housing developers and this needs to be addressed. The prices for a new build home are reaching ridiculous levels and every time I've enquired on why new houses cost as much as they do, a sales

rep has immediately put forward the answer 'but you could afford it with Help to Buy!'. This isn't a valid reason and gives me the impression that house builders are abusing the scheme to allow them to sell higher numbers of homes, at much higher prices, to people who wouldn't normally be able to afford them."

"I think the government should ban the use of property management firms in Wales. It's an unnecessary cost to Welsh residents and local councils should be the ones maintaining services. I would prefer to pay a slightly increased council tax to ensure local services and jobs, rather than pay a remote property management company for what I don't know?"

"The law requires changing as Developers are side stepping any responsibility for producing a safe, beautiful place to live. They appoint a management company who are not local to the area and they then charge whatever random figures they happen upon and dictate to home owners how they live within the estate. None of this is open, transparent or openly advertised when selling new build homes".

"there should not be any estate charges, the local council should be responsible as they are the ones that have given the developers planning permission in their boroughs to make even more money out of their development. to the detriment of local people. we already pay £2200 per year council tax. and then estate management fees."

"This is a big issue. I live in Blaenau Gwent one of the poorest areas in the UK. I pay almost £1700 per year in Council Tax, together with £410 service charge, and £500 water rates. Despite this, I am financially responsible for upkeep of roads on site, together with storm and sewers that are nowhere near my property. This system is so unfair it hurts. It causes stress and upset and no one listens or cares (to be fair out AM has been great). This issue ruins people lives".

4. Homeowners and residents

Overview. A total of 566 respondents completed questions in this section of the Call for Evidence, which is aimed at gaining an understanding from property owners, tenants, and other residents. There are 50 questions in total with 15 of the questions (34-48) specifically for tenants. Some questions have also asked for respondents' additional comments to provide further understanding of the respondent's experience. The questions and responses are summarised below.

1. Are you a:

- Freeholder: 479 (84%)
- Leaseholder: 84 (15%)
- Tenant: 5 (1%)

Total responses 568.

2. Date of purchase:

- 2016 - 2020: 275 (50%)
- 2011 – 2015: 200 (36%)
- 2006 – 2010: 72 (13%)
- 2000 - 2005: 8 (1%)
- Prior to 2000: 1 (0%)

This question had 556 responses. The majority of properties were purchased in the decade between 2011 and 2020.

3. Approximate date of construction:

- 2016 - 2020: 183 (33%)
- 2011 – 2015: 219 (39%)
- 2006 – 2010: 137 (24%)
- 2000 - 2005: 20 (4%)
- Prior to 2000: 1 (0%)

The question had 560 responses. 72% of respondents indicated their properties were built between 2011 and 2020.

4. Did you buy direct from the developer?

- Yes: 429 (77%)
- No: 130 (23%)

The question had 559 responses. The vast majority (77%) of respondents bought their property direct from the developer.

5. Who was the developer responsible for the site?

Developers identified by more than 10 respondents:

Redrow	209
Persimmon	99
Taylor Wimpey	61
Annwyl	35
Barratts	29
Bellway	26
Charles Church	12
Lewis Homes	11
Yes	11
David Wilson	10
Others (including unspecified)	54

Other developers identified:

Beech Development
Bloor
Firth and Son
BDW trading ltd
Bovis
Figurehead Homes
Kier
Lovell
Elan Homes
George Wimpey
Miller Homes
Wimpey
Crest Nicholson

Cuddy
David Mclean
Eatonfield
Hawkesbury properties
Linden
Loosemores
Macbryde
Remus
SG estates
Strata
Tedrow
Wates

There were 557 responses to this question. 35 separate developers were identified. The majority (25) of the identified developers were responsible for between 1 and 10 of the respondent's properties. Developers listed in relation to over 10 properties are represented in the table, with the other developers mentioned by less than 10 respondents listed below.

6. Did you buy using Help to Buy?

- Yes: 150 (27%)
- No: 408 (73%)

There were 558 responses to the question. 150 (27%) purchased with the aid of Help to Buy-Wales, but the majority (408, or 73%) did not use the scheme.

7. Do you pay an estate charge?

- Yes: 561 (99%)
- No: 5 (1%)

There were 566 responses to the question with all, except 5, indicating that they pay an estate charge.

8. Who manages your estate (i.e. who do you pay your estate charge to)?

Companies identified by more than 10 respondents:

Meadfleet	180
Remus	98
Greenbelt	74
Firstport	35
Western Permanent property (WPP)	29
Premier estates	24
Hazelvine	16
Mainstay	15
Others (including unknown/unspecified)	88

Other companies identified:

Anwyl	LDS
Apex estate agents	Leasemanco
Applevine	LPS
Atlantis	Millstone view management
Block property management	Paramount estate management
Chamonix estates	Persimmon
Coed Darcy Estate Management	Redrow
CP Bigwood	Rogerstone Community council
Dyffryn management	Scanlans property management
E&J Eststed	SDL Property Management
Freehold Management Plc	St Modwen
Gateway property management ltd	Trehaven Leisure
Glan Llyn Management Ltd	Trinity Estates
Glyn Coedig	United Welsh
Green finger	Warwick Estates
Greenfields	Ynys Ystrad Cyf Ltd
Ground solutions	
HML	
Homeground	
Jubilee Park Management Company	
Kingston Property Management	

There were 559 responses to the question. 45 different management companies were identified. Additionally, in two cases an unidentified resident management company was in place, in one case the resident owner/landlord was responsible for management. Four respondents did not know what company was responsible. Those companies identified by 10 or more respondents are represented in the table, with other companies identified by less than 10 respondents listed below.

9. Has there been any change in the organisations which manage your estate during the period you have been resident? For example, a change in either the company responsible for the estate, or in the agent who fulfils the management functions on their behalf.

- Yes: 121 (22%)
- No: 333 (61%)
- Don't Know: 95 (17%)

There were 549 responses to the question. 22% of respondents indicated that there had been a change in the management of their estate. 118 comments were also provided, detailing the reasons why a change had occurred. The most common reasons for change have been identified below:

- The developer transferring the estate to a management company.
- A change of estate management company or managing agent.
- The estate management company rebranded (but management continued to be provided by the same company).
- Estate management companies changing subcontractors.
- 10% of those providing written responses indicated there was a change of estate management company due to residents' dissatisfaction & subsequent action.
- Management companies going bankrupt.

Other issues identified were:

- Developers selling freehold land rights to an investment company who then appointed an estate management company.
- In several instances residents had a poor understanding as to who owns, or is responsible for the estate. This was attributed to a lack of communication by the various companies involved.

Quotes:

“Residents Association challenged the developer as the quality of service and cost was not acceptable. We now have agreed for the maintenance to be handed over to the residents association.”

“After we moved in, the property developer issued a notice telling us they intend to sell the freehold to another company. Most residents did not fully understand what that meant and before we knew it, we had a new landlord. The residents formed an association and we have been continually battling for transparency on charges and poor

management. This year our charge has gone up and we had to pay a lump-sum charge to make up for a deficit from previous years.”

“Poor hand over between developer and [management company] has meant items have been transferred before they should. Residents paying for items not complete. Poor guidance on who manages what. Amount set to increase from current 160 but unknown as to how much as not completely handed over to [management company].”

“[Developer] handed the management over to an organisation it had an interest in. Throughout the period of residency the Management Company has changed at least twice. On each occasion it would appear to be the same organisation but re-branded.”

“[Management company] was changed to [alternative management company] on the 1st Jan 2020 due to costs and none performance from them. There harassments and failure to provide any evidence of costs meant as an estate we all collectively changed them to [alternative management company], so far so good but not convince any provider are honest or home owners are getting what there paying for.”

“There has been a lot of confusion regarding who’s responsible for what between the council, [developer] and [management company].”

10. What is the current charge?

11. How often is the charge payable?

These questions were analysed together to give an indication of the charges paid by each respondent per year.

There were 564 replies to either or both questions. Of these 25 responses were excluded as they did not give an indication of the charge, 13 were excluded where the annual charge was not able to be calculated with certainty, and a further 22 were excluded where either the level of the charge or other elements of the response indicated that the amount they quoted included leasehold service charges. This left a sample of 504 responses.

The average (mean) charge was £169 per year. The most common (mode) charge was £120 per year. 46% of charges (234) were between £100 and £149.99. The range of answers was from a minimum of £50 per year, to a maximum of £500. The charges have been broken down into the following price bands:

Charge per year (£)	Number of respondents	
0-49.99	0	
50-99.99	54	(11%)
100-149.99	234	(46%)
150-199.99	79	(16%)
200-249.99	53	(11%)
250-299.99	37	(7%)
300-349.99	21	(4%)
350-399.99	20	(4%)
400-449.99	5	(1%)

450-499.99	0	
500-549.99	1	(0%)

12. Has the charge changed over time?

- Yes: 389 (69%)
- No: 76 (14%)
- Don't Know: 95 (17%)

There were 560 responses to this question, with 69% reporting that a change in the charge had occurred. There were a further 393 written comments, explaining what the change had been. Of these the majority indicated an increase in the charge over time. Some were smaller increases that could be attributed to annual cost adjustments or an inflationary increase such as the Retail Price Index (RPI) while others appeared to be significantly larger. In a number of cases the respondents were unable to get information as to the reason for the increases.

The areas of concern identified included:

- Unplanned and uncapped costs.
- Poor value for money service delivery.
- A high proportion of the charge being management and administration fees.
- A lack of information/ understanding about the reasons for charges.
- Aggressive billing and debt recovery by the estate management companies.

In a few cases respondents explained that the annual costs had reduced as a result of changing to a new estate management company.

13. Are there provisions which determine the increases to the charge each year (or other period)?

- Yes: 86 (15%)
- No: 143 (26%)
- Don't know: 325 (59%)

Of the 554 responses 59% indicated respondents didn't know whether there were provisions which determined increases to the charge. This may indicate a gap in the provision of information to residents, or a failure to communicate the information in a way which residents could easily understand.

Of the 106 written responses:

- 26 responses indicated the increases were in line with the RPI.
- 24 responses indicated they were billed for costs based on actual works.
- 14 responses indicated the bills were based on a budget but this was often then modified by actual works.

Other points raised were:

- Lack of transparency over the actual works undertaken and billing process.

- Concern over unplanned works and un-forecast billing/cost recovery.
- The high levels of management fees and administration charges compared to the actual works costs. (In some cases significantly in excess of these charges)
- The risk of uncapped increases to charges. Especially for those on fixed incomes
- Concern over the quality of service delivery vs costs.

Quotes:

“It doesn’t follow a set increase from one bill to the next. We are never informed that things will be happening in time to warrant the increases we are just charged them and have to assume the things stated on the bill have been done”

“Gone up by 13% in one year. Change with more houses being built and green areas opening. We were told the price would go down the more houses were built”

“Yes but we had to fight it as a residents association, as they exceeded the inflation amount which was against the contract, and didn’t let anybody know. They done it illegally. When we fought it, they did refund us the amount.”

“[Management company] have always stated that the original charge was an estimate only, and the final charge was determined by the actual expenses raised as a result of the maintenance costs, less their fees. Consequently we found the charges increasing in the event of increased maintenance. Also any shortfall was levied against the residents, despite it being down to bad management. They supported this by citing a clause in the lease. However there is no such clause in our lease. Though it does appear in later versions of the documents held by newer residents.”

14. Are you issued with a breakdown of how the charge has been calculated?

- Yes: 407 (73%)
- No: 109 (19%)
- Don't Know: 45 (8%)

There were 561 responses to the question. 73% indicated they have been provided with a breakdown of the charges and 19% indicated they had not.

15. Please list the services/facilities that your estate charge pays for (These might include: roads, lighting, open space, play equipment, landscaping, car parking, insurance, or other items).

The majority of the 514 written responses provided information on the variety of services/fees residents have been charged for. There are significant variations in the level of detail in the charge breakdown provided with some going into details of stationery used while others simply identified works and fees. Some respondents provided copies of the bills which highlighted there is no standard approach to informing residents on the breakdown of charges.

The vast majority of responses identified charges related to a variety of grounds keeping activities, (grass cutting the most common), for parks and other open spaces, with the next

most common fees charged for maintenance of hard utilities such as roads, lighting, and provision of utilities, primarily electricity. Maintenance of play areas and drainage systems are also notable inclusions.

A significant proportion of fees related to insurance, management fees, overheads, and reserves.

Areas of concern identified included:

- A lack of information about what areas the estate covers, what the works plan covers, and what work has actually been undertaken.
- High levels of management and administrative fees. In one case the management charges made up over 90% of the bill.
- Apparent failure to undertake the works billed for, or poor quality service delivery.
- Instances of works for areas outside the estate being billed to residents.
- Insurance being charged against extremely low probability risks such as terrorism, or fire, when the area covered is largely parkland.

Quotes:

“Gardening/Landscaping, Public Liability Insurance, Electricity, Ecological Management, General Repairs & Maintenance, Tree works, Surface Water Drain Maintenance, Play Equipment Maintenance, Road Cleaning, Risk Assessment, Management Company Expenses, Bank Charges, Audit & Accountancy, Management Fees, Transfer to Play Equipment Reserve, Transfer to Road Reserve”

“roads, lighting, open space, play equipment, landscaping, car parking, insurance, or other items. however it has never ever been maintained, I have never seen anyone look after our estate. The lights haven't worked in years, pot holes, pavements are cracked. We keep paying [management company] but they never ever do any work”.

“Audit fees, Bank administrative fees, Directors & Officers Insurance, General risk assessment, Grounds maintenance, Interest, Management fee, Public liability, Renewals, Service charge preparation fees. The issue has always been we don't know what we are paying for. The charges all appear to be loaded towards [management company] as a business and not any work on the estate. To give you an idea of this the total cost between 1st February 2018 and 31st January 2019 was £4,281.34p. The only direct labour on site was for Grounds maintenance at a cost of £350.22 meaning [management company] charged £3,931.12p extra for all of the other fees shown above. How can this be right?”

“the breakdown of charges is very basic though, it is not detailed enough”

“At no time has a Plan been issued/produced that clearly identifies LA Adopted Areas and Estate Management Areas or a full Scope of Works for any Maintenance Contractor.”

16. If you are a leaseholder, the same management company or agent may manage the communal leasehold amenities as well as the services or facilities covered by the estate charge. Alternatively these different services may be provided by different

companies. In your case does one company deliver all the services you are charged for? If no, please explain who provides what services?

- Yes: 125 (37%)
- No: 72 (21%)
- Don't Know: 142 (42%)

There were 339 responses to the question, however it appears that a large number of freeholders answered the question making it difficult to analyse the leaseholder specific information.

There were 82 written responses to the question. From these it was identified that:

- 35% of respondents deal with one company for ground rent and services.
- 20% of respondents deal with more than one company.

Quotes:

“[Management company] manage the leasehold. We were offered terrible advice re the leasehold in the first place and actively encouraged not to buy it by [developer] and the solicitors (provided by [developer]).”

“(in part). One company provides the service, sub contracting the gardening & accountancy. The trouble is, the account manager frequently changes, so lack of accountability because they never quite get a grip of all the issues.”

“In the beginning all money, service charge and ground rent was paid to [management company]. Now the service charge is paid to [same management company] but the lease is paid to [alternative freeholder company]”

17. Do you know who owns the land which the estate charges are made in relation to? If yes, please state who.

- Yes: 151 (28%)
- No: 384 (72%)
- Don't Know: 2 (0%)

There were 537 responses to the question, indicating that 72% of respondents were not aware who owned the land which the estate charges are made in relation to. There were also 163 written responses expanding on who respondents understood owned the land.

Bodies that residents reported as owning the land included developers, property management companies, residents management companies, rent collection companies, and LAs, as well as one individual property landlord.

Analysis also identified:

- A significant majority of residents have no knowledge of who owns the communal land and assets for which they are paying for property management. The responses also indicate that some residents attribute communal land ownership to LAs, which may be true in part, but possibly not for all the estate if they are paying fees.

- Corporate ownership, in full or part, is the dominant form of estate ownership.
- Some joint ownership has been identified where a corporate entity and local council each have involvement.
- There appear to be instances where the land ownership has been sold to a corporate fee collection company rather than an estate management company.
- There are a variety of stages and rates of change which land ownership goes through as well as types of owners which can lead to confusion over who owns what, and why.

18. Does the development where your property is located have a resident management company? If yes, are you involved in it, and what are your views on its performance?

- Yes: 174 (33%)
- No: 349 (67%)
- Don't Know: 2 (0%)

There were 525 responses to the question. Only 33% of respondents were aware of a resident management company on their site, suggesting that the remaining two thirds of respondents do not have an opportunity for formal involvement in the management of their estate.

There were also 158 written responses, 58 of which expanded on their experiences of resident management companies. (The other comments provided did not specifically relate to resident management companies, but related to more general concerns about estate charges. These have not been summarised again here as they have been captured and reflected in more relevant areas of the paper.) A range of resident management systems were reported, including:

- Estates where there is no management company or committee. Generally these are still under construction, where residents may be able to be part of a management company (formal) or association (informal), but are not yet able to as the developer has yet to transfer assets and control. In some cases this situation can continue for years due to disputes between the developer and other parties.
- Unspecified arrangements where some form of residents involvement exists. The uncertainties over these indicate poor communication or provision of information.
- Formal management companies where residents have membership, (compulsory, or voluntary), and can also become directors.
- Corporate management companies staffing the estate management directorship with their own staff.

The level of effectiveness of resident involvement is reported to vary from very good to poor. There is not always a clear distinction between a resident's social network, a residents association, and residents being part of a formal management company (with associated legal responsibilities). Some respondents reported that corporate management companies appear to block engagement by residents' associations.

Quotes:

“I am a member. The residents association is playing an important and vital role in making sure we get value for money and are not fleeced off. But this is us battling on our own without any support from the local council or government”

“Someone is trying to set one up and I have put my name forward to help out. I've read horror stories about site management companies and want to make sure we're in the best position possible to deal with it”.

“Advised end of last year that if someone from the community did not join the board the Company would close down the service and leave in the hands of residents”.

“[Management company] are running the charges and have so far failed to set up a residents management company, despite numerous public meetings in the last 12 years”.

“No we are not involved in the RMC. Directors of RMC has been managed by employees and director from [developer]. No AGM held with residents to nominate resident as director”.

19. Are you consulted or otherwise involved in decisions about activity delivered by the estate charge? If yes, please describe how, and your view on whether this is effective?

- Yes: 46 (8%)
- No: 504 (91%)
- Don't Know: 2 (0%)

There are 552 responses to this question. A large majority (91%) of the responses indicated there is no consultation.

71 offered further comments, of which 39% indicated there was some form of consultation. This ranged from:

- full consultation between the management company and residents
- involvement with residents, as directors, in the estate management company
- Annual, or occasional, meetings which respondents indicated were more briefing sessions than consultation exercises.

42% of comments indicated there was no consultation by the management company with information on works provided after the fact or from the invoices. Examples cited are:

- Relationship breakdown between residents and the management company.
- Company undertaking works and billing without consultations.
- Occasional, but ineffective attempts at communication by the management company.

14 of the responses indicated there was a form of resident's association, or group, operating within the estate. Some were recognised and engaged with the management company. Others were ad hoc and only operated among the residents to pass on information and attempt to engage with the management company. Residents groups used Facebook pages, occasional group meetings, and door to door engagement to connect residents.

Respondents reported that the effectiveness of the consultation process depended on the willingness and effort the management company put in to the process, and that poor engagement indicated that the management company only paid lip service to the process.

One example stated that meetings were held by the management company during the working day when the majority or residents are unavailable to attend.

Quotes:

“Through residents’ association meetings. Board members take views back to the management company”

“Management company ask for feedback on proposals”

“Occasionally we are invited to meetings - these are rare though in my experience. We attended a few in the early years of living here but [Management Company] are unmoving on any queries and we therefore didn’t see the point in attending any further ones.”

“The estate formed a Community Association in 2017 which over time liaised with [Management Company]. Regular walks around the estate were carried out to assess where work was required. The standard of work was greatly improved throughout this process. Recently however the relationship between the Community Association and [Management Company] has broken down. [Management Company] now refuse to acknowledge the Association.”

“meetings held but not often and at times when most residents would not be able to attend i.e. 2pm on a Wednesday afternoon (residents are then charged in the annual fees for the rental of the rooms for which these meetings are held again unfair if majority unable to attend.)”

20. In your opinion, has the level of service changed during the period that you have been paying the charge? If yes, please describe in what way

There were 402 written responses to this question.

Approximately 75% indicated a negative experience with the level of service provided. Only 4% provided a positive response with the causes being attributed to a change in company as a result of pressure being applied by the residents.

A large number of respondents did not directly answer the question, instead expressing dissatisfaction with a range of aspects of works, costs, or communications, and with the developers or management company.

Approximately half of the responses indicated there was no change to the level of service over time. This was qualified by the majority stating that the level of service was poor to begin with, or otherwise unsatisfactory, for a variety of reasons.

Of those that identified a change approximately 70% indicated the level of service had got worse. Of those who indicated improvement, almost all put the change down to:

- Replacement of the managing company,
- Pressure applied by the residents, or their association,
- Actions by the company directly before a meeting.

Quotes:

“It has improved but only due to the action of our community association trying to build communication lines between [developer], Council, [management company] and residents.”

“It has been poor, increases to service charge are not properly communicated, and it has been difficult to challenge any increases. For example - residents found that we were paying the double amount of building insurance because of admin error but it took over 2.5 years for the management company to acknowledge their mistake but we still had to pay the increases.”

“Yes, the fee remains static but the service has gone downhill.”

“Its changed since we installed directors. As the three of us have strong and differing skill sets, its enabled us to take a proactive and pragmatic approach to handling the management company. The extra stress and hassle of doing so though, is something that shouldn't be needed. We shouldn't need to have volunteers policing each and every new build estate against a scrupulous industry that has set up camp across the UK's new build home development network.”

21. To what extent are you satisfied with the current arrangements for the management?)

- Very Satisfied: 4 (1%)
- Quite Satisfied: 8 (1%)
- Neither Satisfied nor Unsatisfied: 55 (10%)
- Quite Unsatisfied: 91 (16%)
- Very Unsatisfied: 387 (70%)
- Don't Know: 10 (2%)

There were 555 responses to the question with the significant majority (88%) indicating a level of dissatisfaction with the current arrangements (70% stating they were very unsatisfied). 10% were neutral, and 2% indicated a level of satisfaction.

Of the 468 further written comments the vast majority expressed dissatisfaction with a range of aspects of estate charges as well as the developers and estate management companies. Points raised included:

- Incomplete construction works on estates with residents having to deal with contractors' mess.
- Poor communication and perceptions of misinformation given by developers over estate charges and service delivery.
- Poor communications and engagement by estate management companies.
- Poor value for money & poor service delivery, including allegations of overcharging.

- Threatening behaviour by developers/ estate management companies.
- High charges, and high management fees as a proportion of the bill.
- A lack of transparency over the services delivered and costs billed.
- Concern over having to pay estate charges in addition to council tax.
- Questioning why LAs could not take over the estates.

Quotes:

“Awful quality of workmanship, inconsistent on site visits, they always visit the day before the invoice arrived and then have the nerve to threaten if you question anything. A dreadful business that has no positive reviews anywhere, poor customer service, absolutely no regard for any delivery of work and frankly rude and unhelpful staff”.

“There has never been a satisfactory level of service that reflects the money myself and my neighbours have paid [management company] to maintain the site. That is something myself and all my neighbours agree on. We are collectively paying thousands for green spaces and playgrounds that don't exist. The only time I see anyone cutting the grass along the main roads is on a bank holiday which I'm sure means it's very likely that person is being paid at least time and a half for working on a public holiday. There's a long list of issues with our site, and it seems a long list of items on our annual invoices that we're begrudgingly having to pay for. For two years now myself and my neighbours have had to grit our own roads ahead of heavy snow, because [management company] and [local council] seem to argue over who's responsible for that and leave us with no choice but to do it ourselves.

Seemingly [developer] and [management company] have made it very difficult for us as a community to put in place our own resident management company, so we are tied to paying this fee whether we like it or not. I also feel the fee was mis sold to me during the purchasing of my property but trying to address that with [management company] or [developer] is impossible”.

“Service received meets expectations. Good communication from management company. Easily contactable”.

“While I've had no specific problem with the current management company, you feel as if you're held completely at ransom. If they tell me next year that the charge has doubled, I feel that there's absolutely nothing I can do about it. On a previous estate with a management company, they increased their management fee each year with no explanation as to why their percentage would need to increase - the service they offered certainly didn't change”.

“The estate is a mess and very run down, it's embarrassing to live here , I think about paying someone to come out and paint and fix the communal fencing and get rid off all the moss and weeds and grime growing on the pavements and walk ways . The letters they send us residents about paying the bills are very aggressive , not broken down enough to explain what were paying for and extremely unprofessional . There customer service is terrible, any time I call up to query why there hasn't been any work happening on the site I am always met with very loud and mouthy staff that have a very aggressive and Unprofessional manor.”

“We pay for damage caused to parks but anyone can use the facilities”.

22. If you are a freeholder, how is your estate charge secured?

- Estate Rentcharge: 41 (8%)
- Deed of Covenant: 238 (48%)
- Don't Know: 214 (43%)

There were 493 responses to the question.

For those responding who were aware of how the charge was secured, in 85% of cases it was via a deed of covenant. 43% of respondents did not know how their estate charges are secured.

23. At what stage in the purchase did you become aware of the estate charge?

There were 536 responses to the question.

Of the 509 responses that indicated when during the purchase process they were first made aware of the charges:

- 9 (2%) stated they were never made aware
- 110 (22%) stated it was right at the start of the process
- 28 (6%) stated it was when they paid the deposit or reserved the plot
- 90 (18%) stated it was during the conveyancing process
- 125 (25%) stated it was at the signing or exchanging of contracts stage
- 103 (20%) stated it was at completion; and
- 44 (7%) stated it was after completion or after they had moved in.

A very small number stated they were not informed at all about the estate charge, only finding out from conversations with other residents or when the bills arrived.

12% indicated even when they were made aware they were not properly informed of the full details and potential risks or implications of the estate charges or they were misled into thinking they could not increase or would only be charged until the areas were adopted by the LAs.

Approximately a quarter of respondents indicated they were informed at the early stages prior to conveyancing. A number of these indicated that they were not fully informed of the true extent of the estate charges.

Just under a fifth of respondents indicated that they were informed at the conveyancing stage with 45% indicating the period during the exchange of contracts through to completion stage.

A smaller number indicated they were informed after completion of the purchase process.

Issues raised are:

- The cost and duration of the estate charges were under represented.

- A lack of consistency from conveyancing solicitors when informing clients about the implications of the estate charges.
- Developers' sales agents are reported to avoid the issue or misrepresent the estate charge.
- Respondents feel there is too little accurate information, and it is often provided too late in the process to support decision making. i.e. when it was too expensive to leave the process.

Quotes:

"At contract exchange although not clearly explained".

"Once the sale had been agreed and everything was being finalised. The solicitor was asking for extra payments. This should be clearly set out in the sale particulars and also come up when a search is carried out and the information passed on to the buyer."

"Before purchasing the house but we were told we couldn't buy a house on the estate without agreeing to it".

"I was aware of the estate rent charge at purchase but I did not know at the time how unregulated it was".

"Towards the end. Too late to pull out of the sale as we already loved the house".

"Half way through ... when it was too late to back out".

"Told early in the process that an amount of "about £11 per month" would be payable for upkeep of roads, open spaces, pavements, bins, etc as council would not adopt these. I was not told about uncapped, inflated charges, or how restrictive covenants would affect me."

24. If you bought your property from a developer (i.e. as a new build), was the existence of the estate charge made clear in:

Property Advert:

- Yes: 27 (6%)
- No: 361 (80%)
- Don't Know: 62 (14%)

Marketing Materials:

- Yes: 14 (3%)
- No: 370 (81%)
- Don't Know: 72 (16%)

Discussion with Sales Reps:

- Yes: 188 (41%)
- No: 215 (46%)

- Don't Know: 59 (13%)

Any Stage Prior To Offer Stage:

- Yes: 155 (34%)
- No: 224 (49%)
- Don't Know: 75 (17%)

Any Stage Prior to Legal Commitment:

- Yes: 269 (58%)
- No: 125 (27%)
- Don't Know: 67 (15%)

There were 489 responses to the series of questions above, but not every responded answered each part of the question. The responses indicate that information is not provided at the early stages of the purchase process, and that the omission is not consistently rectified even at later stages.

97 respondents made further written comments. These responses indicate almost universal dissatisfaction around the disclosure of estate charges by the developers and their agents for a variety of reasons.

Half the respondents state they believed they were misinformed or misled during the purchase process, and the main group responsible are identified as the developers' sales agents.

Respondents also felt that solicitors for the developers, and in some their own solicitors, also misled them, or failed to provide them with accurate and timely information in a way that was understood.

Fees and charges were the most common issue residents felt was misrepresented, with all respondents stating that the level and duration of charges were higher than stated.

Issues raised included:

- Full and fair disclosure of the fees, and conditions of the estate charges, are seldom provided up front so that prospective buyers can make a decision before committing.
- In many cases disclosure is late in the purchase process and lacks sufficient detail.
- Respondents felt that their solicitors did not reliably provide good guidance in a way they could understand.
- Respondents felt that sales agents frequently misled purchasers about the fees and conditions.
- Purchasers felt pressured to accept the developer's conditions, as a requirement to buy the property, especially when the information was revealed late in the sales process.

Quotes:

"By my solicitor when we were due to exchange, he said that [developer] said we can't have the house unless we pay due to the covenant. We were stuck we had to sign for it as we had no other choice".

“Although disclosed, I was led to believe that it would be a much more reasonable amount of money. This would have significantly altered my decision had I have known just how much money (and for how long) I would have to be paying these 'ghosts'. I vividly remember being told by the salesperson that this would be a temporary measure ""until the council adopted the roads."" There was a committee created around ten years ago to attempt to uncover exactly how our money was being spent; this was unsuccessful”.

“Nothing was ever made clear about the estate charge. We were never told of any charges when we originally agreed to purchase the property from [developer]. Being one of the first houses on the development, nothing was known about any of the charges. We found out of the charges via our solicitor after purchase and then was VERY vaguely told by the sales team after we asked them”.

25. If you bought your property from an estate agent (i.e. as a resale), was the existence of the estate charge made clear in:

Property Advert:

- Yes: 8 (4%)
- No: 131 (71%)
- Don't Know: 46 (25%)

Marketing Materials:

- Yes: 5 (3%)
- No: 130 (72%)
- Don't Know: 44 (25%)

Discussion with Sales Reps:

- Yes: 19 (11%)
- No: 116 (65%)
- Don't Know: 43 (24%)

Any Stage Prior To Offer Stage:

- Yes: 24 (14%)
- No: 113 (65%)
- Don't Know: 37 (21%)

Any Stage Prior to Legal Commitment:

- Yes: 81 (46%)
- No: 55 (31%)
- Don't Know: 42 (23%)

There were 204 responses to the series of questions above, but not every responded answered each part of the question. The responses indicate that information is not provided at the early stages of the purchase process, and that the omission is not consistently rectified even at later stages.

35 further written comments were provided. Just under a quarter of these comments indicated respondents were not made aware until after the sale was completed. The majority indicated issues with the provision of information, specifically late provision of information, with respondents reporting they felt information was misleading or withheld.

Quotes:

“It was at the point of no return, pay it or lose the house essentially”.

“4 months after moving in. The sellers solicitors did not tell us”

“At exchange of contracts”

26. How satisfied were you with the level of information you received before the purchase about the charge?

- Very Satisfied: 10 (2%)
- Quite Satisfied: 26 (5%)
- Neither Satisfied Nor Unsatisfied: 94 (17%)
- Quite Unsatisfied: 137 (25%)
- Very Unsatisfied: 275 (50%)
- Don't Know: 8 (1%)

There were 550 responses to the question. The majority (75%) of respondents indicated dissatisfaction with 50% being very unsatisfied.

There were 367 further comments. The issues identified in response to this question mirror those identified on the next one – many respondents did not differentiate their comments between their experiences of the sales and purchase process, instead expressing general dissatisfaction with the information they received from all quarters. Respondents were almost universally dissatisfied with the level of information they received during and after the purchase process. Most respondents felt that information given was misleading, misrepresented key facts, was dishonest in intent and/or delivery, or delivered too late to allow informed decision making. In many instances this was combined with pressure to buy so that respondents had little option to continue with the purchase.

The following points were raised:

- Perceived dishonest, or misleading, sales agent tactics.
- Concerns over the use of conveyancers and mortgage lenders recommended by developers, who fail to provide independent and honest advice and products.
- Providing last minute information combined with pressure to buy.
- A number of respondents indicated they would not have purchased the property if open and honest information was provided up front.
- A number of concerns over the powers that management companies have over freehold properties which impact on residents' lives.
- Promises of asset adoption by LAs which are do not take place, leading to management companies retaining, and charging for asset management.

- Non-existent, misleading, or factually incorrect information about service charges and fees.
- A range of concerns over the degree of control companies have over freehold properties, especially compared to leaseholders who have a range of protections under the law.
- Poor service delivery compared to what was promised.

Quotes:

“It is not explained to you at all. The only time I found out about it was when I attended the solicitors to sign the final paperwork.”

“We were told there is a £130 fee per year. That was fine. We were not however told it can increase, and that we have to pay the management company for things like remortgaging, selling, extending etc. Totally miss sold and miss informed.”

“If we had known how restrictive they are over the site and how very expensive it is, we would not have purchased our house.”

“It would have been useful to have this information at an early stage eg estate agent so as to make fair comparisons with other sites/areas”.

“this was sprung at last minute when wheels of buying were well in motion and near the end and then asked to sign a contract at pressure point.”.

27. How satisfied were you with the level of information you received during the purchase about the charge?

- Very Satisfied: 9 (2%)
- Quite Satisfied: 31 (5%)
- Neither Satisfied Nor Unsatisfied: 91 (17%)
- Quite Unsatisfied: 135 (24%)
- Very Unsatisfied: 272 (50%)
- Don't Know: 10 (2%)

There were 548 responses to the question. As before, the majority (74%) indicate dissatisfaction with 50% being very unsatisfied.

There were 283 further comments. The issues identified in response to this question mirror those identified in question 26 – many respondents did not differentiate their comments between their experiences of the sales and purchase process, instead expressing general dissatisfaction with the information they received from all quarters. Almost all respondents indicated negative experiences with the level of information, either receiving no information, or feeling that what was provided was misleading in some aspect, or misrepresented by the sales agents, developers’ recommended solicitors, or the estate management company. In some cases respondents reported that their solicitors also failed to provide sufficiently accurate information. A majority of respondents indicated a range of key information about fees and charges were under represented or glossed over.

Another issue of concern was the late stage of the purchase process when information became available. This was reported as leaving residents trapped into the process having invested emotional and financial capital to the extent it would be very difficult for them to withdraw from the process, which several stated they would have done if they had the option.

Other issues cited are:

- Poor communications by companies during the sales process.
- Dissatisfaction with company recommended solicitors.
- Concerns over uncapped and unregulated fees and charges.
- Unfulfilled promises over council adoption of assets (with subsequent reduction of charges which never happened).
- Respondents feeling that their freehold rights were eroded by the imposition of Deeds of Covenant, etc.
- Use of estate assets by the general public.

Quotes:

“At no point was the estate rentcharge explained to us. If the repercussions were explained we wouldn't have bought the house. We were told it was a service charge”.

“The sales rep had a very nonchalant attitude to the maintenance fee. She worded it as being 'like paying a fiver a month' for the maintenance of the estate. I was told that it was for maintaining parks and green spaces only - there was no mention of all these other charges we see on the invoice. When I asked about the price of the maintenance and if it's likely to change, the sales rep made out to me it was a flat fee and very unlikely to fluctuate. The solicitor at point of signing the legal documents did talk us through the fee in slightly more detail, but again there was nothing said to us that the fee could increase in price year by year, or that the fee was covering anything more than just maintenance of green spaces”.

“I was not fully aware of my legal obligations when buying a supposedly freehold property. I thought paying a service charge was a small charge for maintaining the roads and lighting as I was led to believe. I would never had bought this property had I known it wasn't a true freehold and that I can be evicted from my property if I refused to pay my service charge”.

“Very unsatisfied. We bought our house off plan which showed only the roads and house plots. None of the open spaces we would be accountable for were detailed on the plan. We first had knowledge of the deed of covenant at exchange of contract stage when we were presented with a fait accompli “sign the deed of covenant or don't buy the house”. At this stage it was too late to back out, we had sold our house incurred search and conveyancing costs, we were both too financially and emotionally invested to back out. It was too late. Only after purchase were we made aware of the enormous extent of the open spaces and structural landscaping we were to be held accountable for”.

“Never expected any charge until the day of exchanging contracts and outside the house waiting for the key ! when our solicitor said we had to pay a £600 fee and a monthly charge to [management company], couldn't have the key until we paid !!”.

28. Has the charge affected buying, selling or getting a mortgage?

- Yes: 129 (24%)
- No: 398 (76%)

There were 527 Responses to the question, with 24% indicating that the charge has had an effect. Many residents had not required a mortgage, or had not yet looked at selling their properties, so there is potential that the charge will be problematic for more residents, as they reach the stage they need to re-mortgage or sell.

There were also 187 further written comments. Two thirds of those commenting indicated dissatisfaction about the impact of the estate charges. Almost one third were neutral about the situation as they, mainly, were not trying to sell their properties at present.

Nearly half the respondents indicated that they know of, or had experienced buyers being put off properties affected by estate charges for a number of reasons, such as:

- Solicitors warning against properties with estate charges and difficulties in dealing with management companies to get the sale completed in a timely manner.
- Banks and mortgage companies refusing to lend against properties because of the uncapped estate charges and the deeds of covenant held by management companies.
- The risk of unregulated and uncapped estate charges.
- Poor reputation of estate management companies and difficulties dealing with them.
- Concern over the level of control management companies have to over-ride property owners' rights.

Given the perception of lenders' reluctance to provide financial support to new mortgages, or re-mortgaging of properties subject to estate charges, respondents identified several other issues:

- Companies controlling the future sales process through their hold via the deed of covenant and subsequently charging high fees for permissions and changes.
- Companies being excessively slow to respond to buyers', sellers', conveyancers', and banks' requests for information, and, or actions.
- Where there is a dispute over fees owing, or arrears, companies may hold back permissions for sale until those fees are cleared.

Quotes:

"We recently made changes to our mortgage and had to pay the management company administration costs. It's a licence to print money and take advantage of homeowners who work hard to own their home".

"One sale already cancelled second sale delayed and unlikely to go ahead - causing significant trauma".

"However we have not tried to sell so don't know if it would become an issue. As consent for sale is required from the estate management company due to the deed of

covenant, it feels as a freeholder that there is an unreasonable interest in my property being held for a company who maintain the estate, not my property”.

“Attempts to sell the property 3 time and its fallen through each time due to the extortionate monotheism service charge”.

29. Would the existence of an estate charge affect your future decision-making when purchasing a property?

- Yes: 523 (94%)
- No: 36 (6%)

There were 559 responses to the question with almost all (94%) indicating the existence of estate charges would be an issue.

There were 428 further comments reflecting an almost universal level of concern about the negative impact of estate charges. Nearly half stated they would not buy a property subject to estate charges in future. Some indicated they would consider buying but would insist on more accurate information being provided up front, particularly around costs and fees.

Significant concerns raised included:

- The lack of transparency and perceptions of dishonesty during the sales process.
- The negative impact of the covenants on property rights and freedoms. This includes statements about a range of fees being able to be imposed by companies without consent or limit.
- Uncapped and uncontrolled fees and charges are the most significant concern. Respondents indicated poor value for money, excessive management and administration fees, excessive charges for providing permissions such as that required to sell.
- Perceptions that deeds of covenant are one sided and an excessive imposition on freehold property rights with an expensive, and one sided, process to challenge the company on any disputes.
- The lack of professional, legal accountability that can be applied to developers and management companies.

Another significant point of contention is the issue of having to pay both estate charges and council tax with most respondents indicating they believed this is an unnecessary duplication of costs, and calling for a reduction in council tax to compensate. A number also wanted the council to adopt, or otherwise take over the running of the estates.

Quotes

“We would never buy another home linked to estate management fees. The system is outrageously unfair and punitive and threatens our ability to sell on as buyers are being declined mortgages on properties linked to these service contracts that have no cap on fees”.

“We are now aware of how unfair they are. How the company has full control and we have no rights except to pay up or face charges”

“I would want more information up front regarding exactly what the fees included and if there was an agreement that the charges could not indiscriminately increase beyond a certain level.”

“Will definitely not buy another with such since we should not be expected to pay council tax like everyone else and yet have to pay extra for the same services as other council tax payers. Also with the knowledge now of the fact that the charges are subject to increase and those who pay have no say in the amount”.

“We would never ever purchase another property with estate rent charge, The government needs to change legislation to protect Freehold owners from unreasonable, uncapped and unfair fees. Of course, any form of rentcharge on a freehold is quite immoral and needs to be abolished. Developers should be challenged at planning stage to ensure all roads, common areas are adopted by local authorities together with all sewage & apparatus SUDs for rain surface water to be adopted by water authorities. All Freehold houses should be exactly as stated in the full true sense, the stress, worry and years of researching into Estate rent charges, would ensure we would be fully aware of the need to ask many more questions prior to purchasing another property, the experience of the last five years has been a very tough lesson, will need to research fully for oneself, given a greater understanding in experience of legal jargon we could not to fully rely on conveyance solicitors for advice... Next property will need to be a freehold out right in full true sense”.

30. Have you ever been requested to pay an administration charge in relation to your estate charge?

- Yes: 305 (59%)
- No: 213 (41%)

There were 518 responses to the question, with 59% of respondents stating they had been requested to pay an administration charge. There were also 276 further comments. Administration fees were noted, relating to actions such as:

- Changing names on the Deeds of Covenant.
- Obtaining permission for an alteration to their freehold property.
- Provision of a management pack for their freehold house sale.
- Setting up a direct debit – every year.

Charging of late fees were a significant issue as some companies were reported to charge them along with additional administration fees, immediately, or very soon after a payment is not made regardless of the circumstances (such as the bill being disputed, not received by the property owner, etc).

This question was intended to capture administration fees such as those identified above, but respondents also reported administration fees making up a regular significant portion of their charge invoices as part of their regular bill.

Quotes:

“A scandalous charge of over £150 for a sheet of paper to change the name on the deeds of covenant.”

*“Extra £35 due to a late payment, however, we wrote to the company and they let us off.”
“I was asked to pay a total of £140.92, which included a £42 administration charge for not paying within 7 days.”*

“We had to pay nearly £300 to get a management pack to leave our previous estate management company (on the house we sold), and then had to pay several hundred pounds to register with the new company. It makes no sense to me why there should be these charges at all, but to have to pay them both when selling and buying is completely unfair.”

“Requirements following completion within 28 days of transfer:

- 1. Notice of Transfer*
- 2. notice of Mortgage (where applicable)*
- 3. £90.00 plus VAT*
- 4. Deed of Covenant, plus fee for serving Deed £130 plus VAT*

There is an administration charge for share certificates/membership certificates of £74.40 inclusive of VAT

[Management company] fee for providing an indemnity certificate is £46.34 inclusive of VAT

The Certificate of consent to transfer will be issued :

- a) all charges outstanding to the next accounting period have been settled and the account shows ZERO balance. Where the file has been passed for collection you should request your sellers to obtain an up to date statement of account prior to completion. we will not receipt notices or issue Certificate of Consent whilst any such fees remain outstanding*
- b) Notice of Transfer has been received together with appropriate Fee*
- c) administration charge of £80.00 plus VAT is received for the provision of the certificate of consent to the transfer*

Administration Fee £60 for late payment.”

31. Do you know if your management company and/or agent has a complaints procedure? If yes have you ever used it and what happened?

- Yes: 205 (38%)
- No: 326 (61%)
- Don't Know: 2 (1%)

There were 533 responses to the question with just over a third (38%) of respondents stating they were aware of a complaints procedure. There were 214 further written comments. The vast majority of respondents are dissatisfied with the quality of the response and nature of engagement from their management company for a variety of reasons. There was only one positive response received. Some of the issues cited included:

- Difficult to determine if the company has a process.
- The process is automated and the company does not respond to queries on this.
- Responses are generic and fail to address the actual enquiry.
- The company is dismissive of the resident's complaints.

- The company charges a fee for each complaint response.
- There is little that can be done to bring resolution as the company is both the offender and owns the complaints process.

Some respondents indicated that responses from the company were so unsatisfactory that they have engaged their local representatives to try and address the issues, as well as taking the cases to the property ombudsman.

Quotes:

“I have called to complain but they don't seem to have a complaints procedure or one that was transparent”.

“Referred to various departments / people that ignored my complaint and avoided questioning at all costs”.

“Yes, but not a positive experience. The company basically failed to deal adequately with any queries and not at all on most occasions. When a response was received it always took a long time and was unsatisfactory. Things got to the extent that we went down the service charge company's complaints procedure and which failed as they were unable to respond within their own process and timescales. This resulted in a case being presented to The Property Ombudsman”.

“Mediation is provided via a Chartered Surveyor that both parties agree to (residents vs [management company]). However, one of the clauses in the TP1 indicates that any legal fees incurred by [management company] are to be paid by residents”.

“Yes. The system is automated response, in which our complaints have not been followed through. The only way a complaint receives a response is when it had been emailed directly to the estate manager/area estate manager.”

32. Have you ever challenged the charge? If yes, please describe what happened. If you had to pay any legal or other costs, please explain how much and what they were for.

- Yes: 210 (38%)
- No: 343 (62%)

There were 553 responses to the question, indicating that 38% of respondents had challenged the charge. There were also 224 further comments. The vast majority of written responses explained how they challenged the charges, or other aspects of the companies' activities. Almost all indicated dissatisfaction with the nature of the response which included:

- being ignored,
- receiving a poor quality response which did not address the issue,
- being pressured to withdraw the complaint, or pay the fees,
- being threatened with additional charges, penalties, and legal costs by the company, or their agent.

A small number of respondents who commented (6%) indicated they had been able to get satisfactory responses.

Residents felt that some companies use the power they hold over residents to make it difficult for residents to challenge the companies without risking their title, or credit history.

The responses also highlighted the power imbalance for residents felt when trying to address issues when confronted with the choice to work within the company system, or use external mediation or legal process. In the latter situation the costs, effort, and uncertainty usually resulted in residents accepting that they have to abandon their complaint and pay.

Quotes:

“Was threatened with late payment fees and the threat that they would make it difficult for me at the stage of selling my house in the future”.

“We held back a small amount of money due to the services that hadn’t been completed, we then received notification from [management company] if we didn’t pay the full amount they would take us to court”.

“We were told the fees were tied to our deeds and we would lose our property if we didn’t pay. They said they also had the right to enter our home to take possessions totalling the cost of services without permission”.

“Challenged a late payment. It was due to setting up a direct debit. It was their fault as they were so slow in response. Refused to take it off. We then did try to seek advice to which they then charged us double and threatens bailiffs £500+ we had to pay. I was worried sick at the time. They threatened to tell our mortgage company we were in arrears and said they would take our home”.

“We raised a compliant through the property ombudsman, the only way we could challenge it is with a court action, even as a class act with all Freehold property owners together, no guarantee of the outcome. we used our home insurance with legal protection solicitors... it is a term of our policy that your claim must have reasonable prospects of success, i.e. prospects of 51% or more this means we must be more likely than not that we succeed on the legal merits and enforcing any judgement obtained. our solicitor could not agree on the prospects of 51% or more, therefore insurer would not cover our legal fees. we were left no option but to discontinue our claim”.

33. Have you ever had action threatened or taken for non-payment? If yes, please describe what happened.

- Yes: 194 (35%)
- No: 357 (65%)

There were 551 responses to the question, with just over a third (35%) of respondents stating action had been threatened or taken against them. Additionally 209 made further comments. Of these approximately 11% of respondents continued to make payments. Several indicated this was because of fear of the consequences of non-payment and their inability to challenge the company charges.

A significant majority of respondents who had queried or challenged the charges (including for example, withholding payment), or who expressed dissatisfaction with issues such as

work not being done, stated that they were dissatisfied with the response from their management company, especially when the responses involved threats.

Almost half of the respondents indicated that they had received threats, by mail, phone, and/or email, about non-payment. Actions threatened include:

- Adding fees and penalties to the resident's bill.
- Taking legal action/ initiating court proceedings against the resident.
- Sending bailiffs to enter the property without permission & take property.
- Affecting residents' credit ratings.
- Informing the resident's mortgage provider of the debt & add charges to their mortgage.
- Taking the resident's property.
- Making it difficult for the resident to sell the property.
- Forcing freehold residents to pay a charge for permitted alterations to their property.

It was stated by a number of respondents that companies added whatever fees and penalties they wished regardless of the reasons for the delay in payment, or non-payment.

Quotes:

"With letters of charges added to our account we also had threats of bailiffs visiting our property if we didn't pay our bill".

"Was threatened with late payment fees and the threat that they would make it difficult for me at the stage of selling my house in the future".

"We raised some specific challenges re services charged but not provided. They just kept rejecting our claims and threatened legal action if we didn't pay. In the end concerned with the threats they made we had no choice but to give up and pay. We were also advised that other residents had had charges placed on their homes for non payment. This was very worrying".

"We were told the fees were tied to our deeds and we would lose our property if we didn't pay. They said they also had the right to enter our home to take possessions totalling the cost of services without permission".

"A threatening letter was received informing me of pending court action. However, I pointed out that I had not received an invoice (as per the TP1) and in any event, fees and action was not consistent with the clauses in the TP1. I got an apology. No action was taken, no charges were applied".

Questions 34-48, aimed at tenants

Only 5 respondents indicated that they were tenants, and not all of them answered every question in the section. Some other respondents answered these questions, but were actually freeholders or leaseholders – data has been cleansed to remove these answers.

34. Who is your landlord?

There were 5 responses to the question each identifying a different landlord. 3 landlords were Registered Social Landlords (RSLs) and 2 were private landlords.

35. Do you pay an estate charge?

- Yes: 4
- No: 1

There were 5 responses to this question, of which 4 paid a charge. One respondent was expecting to start paying a charge soon but didn't yet know the details of what the charge would be.

36. Who manages your estate (i.e. who do you pay your estate charge to)?

- Redrow
- Apex Estate Agents
- Charter housing association
- United Welsh

There were 4 responses to the question.

37 What is the current charge?

38. How often is the charge payable?

These questions were analysed together to give an indication of the charges paid by each respondent per year. 4 responses were received, stating the following annual charges:

- £168
- £195
- £235
- £416

39. Has the charge changed over time? If yes, please give details of the changes (for example, what the annual charges have been each year, details of increases/decreases etc).

- Yes: 3
- No: 1

There were 4 responses to the question. In each case where the charge has changed over time, it has increased on an annual basis.

40. Are there provisions which determine the increases to the charge each year (or other period)? If yes, please describe these (for example, if the charge increases by a set % per year, or in line with an index such as RPI).

- Yes: 0
- No: 1
- Don't Know: 2

There were 3 responses to the question.

41. This question consists of three parts.

There were 5 responses to each part of the question.

Were you given information about the charge before you took up the property?

- Yes: 3
- No: 2
- Don't Know: 0

Were the terms explained clearly to you?

- Yes: 1
- No: 4
- Don't Know: 0

Were you given help to budget or work out the affordability of the charges?

- Yes: 0
- No: 5
- Don't Know: 0

42. Are you issued with a breakdown of how the charge has been incurred?

- Yes: 1
- No: 4
- Don't Know: 0

43. Please list the services/facilities that your estate charge pays for (These might include: roads, lighting, open space, play equipment, landscaping, car parking, insurance, or other items).

There were 4 responses to the question:

- I believe we will be charged for the maintenance of the apartment block and the park when it is built.
- Window cleaning, grass cutting, hedge trimming, Gas, electric, Water, lighting
- Gas, electric, water, car parking space, Communal Bins (which have now been removed By the company, but we still paying a fee)
- Hedge trimming, grass cutting. Services to cut front lawns for those who have a house on the estate were withdrawn 3years ago and tenants had to take over cutting of front lawns themselves.

44. Do you know who owns the land which the estate charges are made in relation to?

- Yes: 3
- No: 2

There were 5 responses to this question. For those indicating they knew who owned the land, the responses were:

- Tirion
- Country wide
- Charter housing association Newport.

45. Does the development where your property is located have a resident management company?

- Yes: 2
- No: 2

There were 4 responses to the question. Of those indicating that there was a resident management company, neither respondent was involved.

46. Are you consulted or otherwise involved in decisions about activity delivered by the estate charge?

- Yes: 0
- No: 5

There were 5 responses to the question.

47. In your opinion, has the level of service changed during the period that you have been paying the charge?

- Yes: 3
- No: 2

There were 5 responses to the question. Of those indicating there had been a change all respondents commented their perception was that the level of service had diminished, while costs had increased.

48. To what extent are you satisfied with the current arrangements for the management?

- Very Satisfied: 0
- Quite Satisfied: 1
- Neither Satisfied Nor Unsatisfied: 0
- Quite Unsatisfied: 0
- Very Unsatisfied: 3

- Don't Know: 1
- No Answer: 0

There were 5 responses to the question of which 3 made further comments, explaining their dissatisfaction:

- Increasing prices for the same or diminished services.
- Poor maintenance of services which are covered by the charge leading to additional costs.
- Unable to identify what works are being completed in exchange for the charges, particularly during winter.

49. Could anything be changed in relation to estate charges or adoption of spaces and facilities on housing developments to improve the situation for you as a resident?

There were 383 responses to the question.

A range of issues were raised in response to this question. The majority of respondents expressed concerns with a range of practices and behaviours by developers and estate management companies. Significant points raised included:

- A desire for estate management companies to be abolished, or to face significant regulatory & oversight reform.
- A widely expressed desire for the LAs to adopt and manage the public spaces on the estates, with management companies involvement and ownership of community lands being abolished
- Very strong calls for estate charges to be abolished. If this is not possible then the charges to be regulated to improve transparency, remove perceived profiteering, to be capped, and subject to residents' scrutiny.
- A number of respondents stated that estate management companies should not be able to apply covenants to the owner's property (listed as part of a TP1 form).

Quotes:

"Yes, I would like the estate rentcharge removed from my TP1. It is a restrictive, draconian covenant putting my family's home at risk. Whilst I understand my estate is not being adopted by the council even though I think it should as I pay full council tax, I think residents should be able to manage themselves rather than have to use the developers management company. We have no say in expenditure or how things are run. Charges go up every year and we have no choice but to pay or risk costly charges or losing our home".

"Council to adopt spaces and funds to go to cash strapped council services instead of in the pockets of corporate companies making a profit with little to show for. This will also help councils link habitats and biodiversity connectivity. Clear billing and an outlay of charges would be a good start. The company should foot the bill for unexpected charges not residents. Currently they have zero financial risk as this is passed on to residents. It's a licence for them to print money!"

“A transparent process for appointment of management companies. A clear indication into breakdown of costs prior to purchase. More options on how we would like the estate maintained”.

“Make it clear the actual costs and breakdown of them for actual work carried out and become a more economically responsible company without deliberately over inflating costs. Provide a customer service for any complaints or questions”.

“Estate management fees should be banned. Local Councils should not be allowed to refuse adoption. Better provision for enforced payment of commuted sums on the part of the developer should be established at planning stage”

“I believe adoption by the county council would be more beneficial. Residents are unfairly taxed by such fees, yet the areas in question are subject to usage by the general population, not just residents. Why should residents pay for maintenance required due to usage by people not resident? Do we exclude free access to balance?”

“Ceiling put on charges according to size and works to be done on an estate. Plain English documents to be provided before and after purchase of property by developer and management company. Clear lines of communication and clear methods and timelines on how residents can set up own management group for the estate. And clear breakdown on what is being done, when and for how much”.

“Such charges should be made VERY CLEAR at the outset. The legal situation is the charge is binding and the rate of increase to the annual charge should be made VERY CLEAR. The prospective buyer with all the information to hand can then decide if they are prepared/are able to budget for such financial increases. Also the option of resident undertaking their own management should be made easier. Could not solicitors draw up such arrangements as a 'off the shelf' document. As long as everything is clearly explained with the pros and cons listed then at least a cheaper option may arise. It is the injustice of unwarranted and unknown increases in charges that makes this an unfair situation”

“The biggest concern is that management companies are not regulated and there isn't any government guidance for new home owners, LAs, RSLs or developers, regarding the matter, in terms of what to expect, what is reasonable, costs, standards, template Deed clauses etc. As a new home owner, you are relying on the sales person your solicitor. A change is required. It is also concerning that it is secured via a legal covenant on the property. If a payment is lapsed due to no fault of the owner, this could leave someone in a very difficult position i.e. it could effectively make someone homeless. Wouldn't a service level legal agreement be better?”

“In my circumstance, there is a mechanism within the Deed to collaboratively come together (i.e. with the rest of the housing estate who are also paying the service charge to maintain the areas) and remove the company currently maintaining the estate, and to change the maintenance provider, or to set up a management company ourselves. This is in the event that the current maintenance company are not providing a satisfactory service or we decide to “shop around” and look at a cost effective solution. In principle, there is a “get out” clause. However, it goes back to the reality that there isn't any consistency or precedent? Further, this mechanism requires the whole estate to collaborate and agree, which could be up to say 500 dwellings (it is 86 in my case but I

mean generally), to come together to pursue this. The difficulty with this kind of arrangement, is what might be acceptable to one homeowner (in terms of cost and standard), may not be acceptable to another.”

“Public areas should be adopted by the council as they are open for anyone to use not just those that live on the estate. If this cannot be done then a reduction in council tax should be offered to those that are stuck paying estate charges.”

50. Do you have any other observations about estate charges or adoption of spaces and facilities on housing developments that you would like to tell us about?

There were 254 responses to the question.

Almost all respondents expressed dissatisfaction with the current situation. Only two responses indicated a degree of satisfaction. The following issues were highlighted:

- There is a significant call for the estate charges and management companies to be abolished and the LAs to take over ownership and management of the estates. A number of respondents indicated they would pay the current extra costs if the councils would do this.
- A significant number indicated concerns with the whole business of estate development, and subsequent management, likening the business practices to a scam, reporting excessive profiteering and pressure tactics used by the companies against the residents. These issues are linked to calls for regulation and independent oversight to be applied.
- A high level of concern over the level, and nature, of unregulated power that the estate management companies exercise over the residents’ properties and finances. There are concerns over significant perceived abuses being conducted under loopholes in the law with residents facing uphill battles to undertake legal challenges. In some replies there is a call for the 1925 law allowing companies to gain a lease over the properties with arrears to be stopped. Again this is emphasised by calls for regulation and independent oversight to be applied.
- The most reported issue is a concern over the level and types of estate charges. A primary concern is that these are unregulated and uncapped, which is noted as posing a risk to those on a fixed income. There is also significant concern over the lack of transparency between works and other items being charged within the estate management fee.
- There are a lot of concerns about the fact that full Council Tax is charged to residents without rebate for works being covered by the estate charge. Concurrent with this is the issue of the general public using facilities that are paid for by the residents.
- Lack of, or poor quality, service delivery being undertaken on the estates, without any apparent quality control or oversight from the management agent, and a refusal to rectify issues from the estate management companies.
- Developers failing to finish the estate to a suitable standard and leaving the unfinished works in legal limbo for the residents and LA to deal with.
- A lack of fair, accurate, and transparent information available at the initial inquiry and early purchase stages.
- Perceptions of poor performance by some solicitors & lack of accountability by parts of the legal profession for poor advice.

- Calls for clarification over who is responsible for various assets and land, with concern over poor planning practices leading to later problems.
- The impact of the estate charges on properties being able to be easily sold, or purchased for a fair market price, and associated difficulties in attracting buyers.

Quotes:

“Yes, the strips of land on our estate do not need to be managed. The developer could have quite easily designated them to the nearest appropriate property but instead they use us as a cash cow charging us for ‘managing’ it. I feel this is an absolute rip off and I feel upset and angry that I am in this position when I have worked hard to provide my family with a home. I have tried to complain but have got nowhere, it is a constant stress and I feel I may now be stuck with a home I can’t sell”.

“There seems to be no consistency between housing developers on what the estate fees cover and when residents are/are not expected to be paying for maintenance. There should be a cap on the fees if they are going to remain, but I strongly believe that these fees should not be allowed to continue to exist”.

“How are council charges still exactly the same for residents under these schemes when the council refuse the maintenance of anything on the estate normally covered for residents paying council tax anywhere else? Need transparency over who owns / maintains what and assistance to residents who are being financially abused by private companies due to the council's lack of involvement/responsibility on these estates”.

“They are very hidden and secretive. This is outrageous. There is no transparency and clear indication that you are going to pay any fees until you have purchased the property. They have complete free reign to charge extortionate fees and control over your property. I find the whole matter extremely distasteful and distressing”.

“There are roads on our estate which are still unadopted 10 years later and which are unlit and dangerous at night. The council refuse to adopt them owing to the lack of lighting, and also because the deeds of the estate are such that the freeholders own a slice of the road! The management company refuse to assist us with managing the road also, and so we have a road full of pot holes (And no lighting!) which no one is helping us to solve. Recipe for disaster!”

“Yes there are a lot of worries about roads, pavements and green spaces on new developments. The housing Developers move on to new sites without finishing any site to a good safe standard. There should be a law that states they will not be allowed to build any more houses until all snags on previous builds have been put right. (They could have set time such as 2 years after leaving site to do this)”.

“The 1925 land law needs abolishing or updating to remove the right of a charge against mortgages. mainly where unscrupulous service charge providers do not provide transparent fees and rationale for the service and simply use it as a means of generating income. in total where I live the charge is amounts to circa £50k per annum. The sole director of [management company] is evidently using this as supplementary income as no work is being completed on the estate. Accounts should be required to be published in full, to achieve transparency and accountability to the homeowners”.

“Developers have come under a lot of criticism for Estate Management arrangements (some of them quite rightly so) and Local Authorities who have used or ‘blackmailed’ them under the Planning process must share some of this criticism for abrogating their community responsibilities for providing and maintaining public space. Ultimately Residents are currently [paying] twice (through Estate Management Charges and Council Tax) for the upkeep of public spaces within the community. I can understand the principle of capital provision of such amenities under current Planning Legislation (Section 106) but not the on-going maintenance which in my opinion is an abuse of Planning Legislation. The [development] is a considerable benefit to the [town] Community and Residents may rightly feel that they are being unfairly penalised for living on the development”.

“Our public areas such as our parks are accessible to non-residents therefore all public areas and access routes on our estate should be adopted and covered by council tax.”

5. Developers

8 organisations responded to the questions for developers, including the professional industry body Home Builders' Federation (HBF). One of the respondents was a RSL responding in its capacity as a developer.

1. Please explain your general approach to deciding what maintenance arrangements to use on your developments.

Each developer indicated a general preference for adoption of open spaces and roads by a LA where possible (with the exception of specifically designed gated communities). They felt this aligned better with the expectations of prospective property buyers. However, most indicated they were increasingly finding LAs unwilling to adopt open spaces or, if they did agree to adopt, the commuted sums required were significant and over and above what they believed ought to be required.

Sometimes other factors impacted on whether they could get areas adopted. One respondent referred to a site where the spine road to the development is under Welsh Government ownership. They stated that as a consequence of not being able to connect their development to the LAs highway, they cannot get their roads adopted and that the only option is a private road under a management company.

Another respondent identified that under Building Regulations, developers are required to provide fire sprinklers in all homes. Where Welsh Water are unable to guarantee the flow and pressure for sprinklers off a normal main, they (the developer) will provide a separate main to feed the sprinkler system. As this would not be adopted, it would require managing by other means such as a management company.

As a result, 6 indicated they had developed an alternative preferred approach should adoption by the LA not be possible:

- 2 usually set up a Residential Management Company (RMC).
- 2 installed a management company for those parts LAs refused to adopt.
- 1 always used management companies to avoid high commuted sums by LAs.
- 1 (RSL) took on the management of the unadopted spaces itself using its own in-house teams.

HBF stated that generally, their members would always prefer to have a site adopted by the local Council as this is what customers expect, they also don't particularly want the additional work of establishing the management company or having to impose and explain the charges to potential purchasers as it may be something that affects sales.

2. Where charges are created, what are the facilities which they provide for?

7 developers provided examples of facilities that may be covered by a charge, including:

- Public open space
- Play areas
- Incidental open space
- Landscaped or ecological buffer areas

- Visitor parking
- Boundary features/fences to landscape areas
- Private roads/drives
- Tree Preservation Orders
- Highways (where LA can't adopt)
- Grounds maintenance
- Tree / hedgerow / woodland protection and care
- Ecological areas
- Multi use games areas
- Sports pitches
- Village hall
- Street lighting
- Private drains
- Mechanical and electric equipment
- Pumps (for sprinklers)
- Electric and water (for sprinklers)
- Statutory inspections and testing
- H&S
- Insurances
- Administration & management fees
- Audit and accountancy

3. Where private maintenance arrangements are used which require payments from residents, how do you secure the charge to freehold properties? (select all which apply) Please explain why you use that format?

2 respondents stated they used a Deed of Covenant, 1 respondent stated they used an estate Rentcharge and Deed of Covenant, and 1 said they stopped using Rentcharges in 2019 as they felt the associated enforcement measures were disproportionate.

One respondent indicated that sometimes the use of a rentcharge is specified in the s106 agreement and that sometimes it can be a requirement under the land acquisition contract.

4. What happens to the ownership of the land once the development has been completed?

3 respondents set up a Residents management Company and the land transferred to the RMC.

3 passed ownership to the Estate Management Company (1 indicated they used a restrictive covenant on the title to prevent further development).

1 (the RSL) retained ownership itself.

5. Do you ever seek adoption of spaces and facilities (such as open areas, play parks, roads, street lighting, and landscaping)?

7 responses were received. All confirmed they did seek adoption by LAs.

6. Please give an indication of the proportion of your developments in Wales which are adopted, once complete?

5 respondents provided details on how many of their sites were adopted. They all indicated that (over approximately the last 5-10 years) it was increasingly more difficult to get LAs to agree to adopt all open and public spaces on new developments. They indicated LAs would adopt the roads (and in some cases sewers) but most other open spaces on developments were managed by charging residents resulting in a "partial adoption". 2 respondents indicated that all their developments in the last 10 years were partially adopted.

The RSL indicated 80% of its developments either had no open space requiring adoption, or the open space was adopted by the LAs. They indicated they had developments underway where they were looking at managing the maintenance of open space themselves as they felt this approach increasing with the requirement to incorporate sustainable drainage systems (SuDS) into developments.

One respondent indicated that over the last 5 years, 35% of its sites were fully adopted and 65% were managed by a RMC. However, they suggested that the proportion of sites where roads are adopted will increase quickly because the strategy now is for road adoption by LAs on all sites. They suggested LAs will continue to resist adoption of open space and play areas.

7. What, if any, barriers to adoption do you encounter?

8 respondents provided examples of the barriers they encounter, all indicating a reluctance by LAs to adopt, for example:

- Disproportionate level of commuted sums being required by LAs making adoption financially unviable or costs difficult to justify.
- LA departments not allowing adoption during the planning process.
- LAs being slow to react to requests for inspections, dealing with correspondence, issuing technical approvals, maintenance and final adoption certificates.
- Lengthy negotiations with LAs continuing even after developments are complete.

8. If you use them, how do you decide what management agent or company to use?

6 responses were received.

One said they appoint managing agents based upon past performance, service charges, interaction with residents, professionalism.

2 said they use the same company for each development and have had no cause for concern so have continued to use them.

Another said they usually decide based on word of mouth, and if their processes work well they get repeat business.

Two said they use a tender process to appoint a managing agent to carry out the day to day responsibilities of the RMC. One indicated that after two years their residents have the option of changing the managing agent if they are not happy with the service.

9. Do you require any particular qualifications or standards in the management agencies or companies that you use? (eg membership of a professional body)

4 responses were received, 3 indicated that currently no qualifications were necessary. However, one of them indicated that in future, they are considering requiring agents have an ARMA Q accreditation and are members of the Property Ombudsman Scheme. Generally, agents were required to be reputable and experienced.

1 required membership to either ARMA, TPO or PRS and also preferred them to be a member of Safety Schemes in Procurement Limited (SSIP).

10. Please list the estate management agents that you have used on the developments you have built in the last 10 years

6 respondents provided details of the companies they have used, identifying the following organisations:

- Ground Solutions UK
- Chamonix Estates
- Greensquare Estates
- Mainstay
- Meadfleet
- Greenbelt Group
- TrustMgt
- HLM Property Management
- Trinity Estates
- Remus
- First Port
- Western Permanent Property

11. If there is a mix of leasehold and freehold properties on your developments, are they managed by the same company?

7 responses were received, 6 confirming that where there was a mix of property tenures they were managed by the same company.

One suggested that not all estate management companies were geared up to managing leasehold blocks, and sometimes this required a second management company to be appointed.

12. Do you ever use alternatives to commercial property management agents?

5 responses were received. 4 indicated they only used commercial residential property management companies. The fourth indicated that on two small developments the RSL taking the affordable housing had become the managing agent for the entire site.

13. Where there are administration fees on a sale, re-mortgage or let of a property (such as fees for providing information, deed of covenant or notice of transfer and charge) do you set those fees? Do you receive a proportion of the fees or are they paid exclusively to the management agent/company?

3 responses were received to this question. None of the respondents set such fees or received a proportion of them where they were set by a management agent or company. One indicated above average fees were considered and challenged at tender stage.

14. There are instances where residents complain about increasing service charges, or about the value for money of the services provided for by the charge. There are also mortgage companies which will not lend on properties where non-payment of estate charges may allow for the use of remedies which threaten the value of the property.

Have you been made aware of residents who have had issues with their estate charges for these or any other reasons?

If yes, please describe what these issues are, and what, if any, changes you have made to your practice to avoid these occurring in future.

One respondent reported some experience of residents complaining about charges, and in their experience it was usually either because residents did not understand what the charges were for or they had not been made fully aware of the charges by their solicitors when they purchased the property. As a result they had improved the information made available to residents on what the charges were for and had also improved the sales process to ensure purchasers were fully aware. They had not had any issues with restrictions by lenders as they did not use rentcharges on their developments.

15. Could anything be changed in relation to estate charges or adoption of spaces and facilities on housing developments to improve the situation for you as a developer?

One respondent felt that details of commuted sums should be required up front and supported by evidence of competitive tendering. All sums should be set out in s106 agreements.

Another respondent suggested the introduction of SAB will cause more confusion for residents as to what features/ facilities are adopted and maintainable by the SAB and which by the LA or RMC. They felt it important for LA's to re-assess and confirm their position in respect of the adoption of open spaces, play areas, etc. They also envisaged that the introduction of SABs would lead to there likely being 2 or 3 separate bodies now responsible for estate management on one single development. They suggested that one set level of SAB commuted sums across Wales (which was promised originally) and one set of highway/ parks/ leisure commuted sums would assist greatly and enable developers to work on a level playing field across Wales making appropriate allowances in their land bids to accommodate such costs.

16. Do you have any other observations about estate charges or adoption of spaces and facilities on housing developments that you would like to tell us about?

One respondent suggested that as long as residents can challenge unfair costs and raise concerns with the management company, they felt residents had greater control of their environment when a management company is in place, especially in areas where LAs had resourcing issues.

Another response (from the RSL) commented that several LAs in Wales have adopted guidance (SPGs) which eliminates service charges being applied on affordable homes provided via S.106 agreements (Monmouthshire, as an example). They felt that whilst this approach is inconsistent across Authorities, it allows LAs to respond to local affordability issues.

6. Management agents and companies

There were 18 questions in Section 3 for managing agents and management companies to answer. 5 responses were received, although one of those was from a Registered Social Landlord (RSL) in their capacity as a managing agent collecting estate charge fees from private homeowners.

1. How many developments do you manage in Wales?

2. Please outline the number of properties in each development you manage in Wales (eg x number of developments of 1-25 properties, x of 26-50 etc)

3. Do you operate in the rest of the UK? If yes, please list where

The first three questions sought details on the number of developments managed, the size of those developments and the wider UK remit of the management company.

The RSL manages 3 developments across Wales, 1 of 25 properties, 1 of 250, and 1 of 215 which is still under construction. It does not manage any developments in other parts of the UK.

Across the 4 private management companies who responded, collectively they manage a total of 164 developments in Wales incorporating the management of more than 11,000 properties. However these developments, in some instances, include primarily leasehold buildings so it is not clear how many are freehold properties with an obligation to pay an estate charge. In addition, one company identified a further 24 developments underway where will be taking over the management of the open spaces once complete, which will increase the number of properties they manage by a further 4,000.

Respondents categorised the number of properties on sites into different group sizes, making it difficult to compare exactly. But of the 164 sites identified, 31 sites had 25 properties or less. The majority of their developments (102) had between 26 and 100 properties. 22 developments had between 101 and 250 properties. 9 had between 250 and 500. 2 had more than 500. All 4 companies indicated they managed developments in other parts of the UK.

4. Please list the activities which are covered by the charges. If there are particular kinds of charges which relate to only some developments please explain what these are and why they apply in only some cases.

5. Do you provide a breakdown to residents detailing how the estate charge has been calculated?

4 of the respondents provided examples of the types of activities covered by charges. The activities were broadly split into two areas. The first area was the maintenance of the managed areas and facilities. Examples given included:

- Maintaining the roads, pavements and paths.
- Maintenance and replanting costs for landscaped areas.

- Repairs, maintenance and replacement of plant and equipment such as gates, barriers and pumps etc.
- Hedges.
- Play parks.
- Car parking areas.
- Street and bollard lighting.
- Environmental initiatives such as wildflower verges.
- Gardeners' wages and equipment.
- Woodland.
- Watercourses.
- Sustainable drainage systems (SuDS)
- Works of art.
- Historic monuments.
- Structures.
- Boundary structures.
- Sports pitches.
- Allotments.
- Environmental preservation areas and biodigesters.

The second area of charges primarily supported the management company itself covering costs such as:

- administering the company,
- collecting service charges,
- providing accounts,
- insurances,
- consultation and communication costs,
- administering the bank account,
- attending meetings and inspecting the site.

All 5 respondents confirmed they provided a breakdown of the costs. 2 explained they usually based it on estimated anticipated costs at the start of the billing period and issued a statement of actual expenditure at the end of the billing period.

6. Do you have a formal complaints procedure?

7. How many complaints have you received in the last 2 years? If you are able to, please give an indication of the subject of the complaints, and how they were resolved.

All 5 respondents indicated they have a complaints procedure in place. In addition, 3 of the private companies indicated that if they were unable to resolve a complaint, residents could take their complaint to an ombudsman service as a means of independent redress.

3 respondents provided details of the complaints they had received within the last 2 years. One had received 60 complaints, one had received 16 complaints and one had received 6 complaints.

Examples given of the nature of complaints generally received included:

- the need to pay a charge in the first place;
- scheduled work not being undertaken;

- the quality of contractors work or service;
- parking and boundary disputes.

Only 1 respondent provided information on how their complaints had been resolved, indicating 83% were resolved at first contact, and 1 case leading to a formal complaint which was eventually resolved. No complaints had been pursued through the ombudsman scheme.

8. What action do you take or are you entitled to take if the estate charges are late or unpaid?

All 5 respondents provided some details on the action they take to recover late or unpaid fees. The RSL indicated that it would try to resolve the issue by working with the resident to reach agreement, but its final course of action was to issue a county court judgement or similar debt recovery process.

Each of the other 4 respondents had a type of internal debt recovery process in place. 2 provided details of the fees associated with these processes. One system incurred maximum fees of £37.50 & VAT, the other £100.

If the invoice remained outstanding, 2 of the respondents indicated the next step was to commence legal action. 1 indicated this would be through the courts, the other said it would be in line with the lease or transfer covenants but did not give examples of what they might be.

9. Who owns the land maintained via the estate charges? (I.e. is it retained by the developer, passed to the estate charge managing agent, or other party? Is the land ownership always the same on each development?)

10. Could residents choose to change management agent if they wanted? Via what route?

All 5 respondents provided details on who owned the land on the developments and the scope for residents to choose their own management agent.

The RSL only managed its own developments, it did not manage developments on behalf of a third party. As it was also the social landlord for a number of the properties on the sites, there was no scope for residents to appoint their own agents.

Of the other 4 respondents, two took over the ownership of the land once all legal arrangements had been satisfactorily completed. Another said that where the land relates to only freehold properties it is increasingly the case in their experience that the developer looks to pass the ownership of the land to a Resident Management Company following completion of the development. The fourth said ownership of the land was transferred to the residents' management company on all occasions.

In response to question 10, one respondent offered residents the option to take over the ownership of the land itself, and therefore the choice to appoint any managing agent or undertake the management itself. Another respondent shared its concerns about some of the risks of residents choosing to appoint their own managing agent, but did not state whether it offered such an opportunity. Another respondent highlighted that where the

estate charges are paid by freehold house owners, they don't currently have the same legal rights to change agent as leaseholders, but where there is a Resident Management Company in place, the directors (who will be residents) are responsible and can change managing agent. The final respondent indicated that as the land was in the ownership of the residents' management company, they could change their agent if they chose to.

11. Do you carry out any consultation with residents about the services that the charges provide for? (either what activities are carried out, the number of times maintenance is carried out, or what contractors are used to provide the services). If yes, please explain what this consultation entails.

4 respondents answered this question. It was pointed out that details of the services provided were usually set out in the transfer agreement document which the residents signed at the outset. However, they all confirmed that they either consulted or notified residents of any proposals they had, and were happy to meet with residents if requested. All indicated the importance of engaging with residents, providing them with information and encouraging feedback.

12. Under the terms of the estate charges, how are changes calculated, and how frequently can they be made?

All 5 respondents provided some information - each approach varied slightly. 4 made charges on an annual basis, 1 said the charge frequency was stated in the lease.

1 respondent indicated that the charge per property was calculated either by the number of units on the site or by the number of bedrooms. Another indicated that sometimes it also needed to take into consideration new phases of any development becoming occupied during a billing period in determining how to apportion charges to residents.

3 indicated their charges were made in advance and were based on an estimated cost which were then adjusted at the end of the year once actual costs were known. Of those 3, one indicated that any surplus or shortfall was carried forward to the next billing year. 1 respondent collected contributions in arrears, after the work had been completed.

13. What forecasting of potential costs is undertaken? Do you use a reserve or sinking fund? If you have is different arrangements for different sites, please explain why?

3 responses were received to question 13. One forecasted costs by a combination of annual tendering for services, obtaining individual quotations as well as basing estimates on previous costs when appropriate. Life cycle costing (of any plant, lighting or roadways etc.) is also carried out to ensure future costs are anticipated and spread across the relevant periods. They collected reserves from leaseholders (if leases allowed) and freeholders (unless prevented by the Transfer Deed).

One indicated they liaise with management company directors to discuss future expenditure and always recommend a reserve or sinking fund is included in the budget.

One used a specification-based approach so routine work was carried out in accordance with the bills issued to homeowners. Where smaller non-routine works are required, costs are included in annual management charge but are clearly identified. Where those works will exceed £10 per household, they notify homeowners of these additional costs. Where transfers and leases permit, they may collect a capital replacement provision to cover larger costs. In the absence of any such provision, they bill homeowners as and when costs arise. If cost is significant they will carry out works but spread the costs over a number of billing years.

14. Does your organisation, or do you as an individual, belong to any professional bodies?

3 respondents provided details. One was a member of the Safety Management Advisory Service and Construction Line. Members of staff and contractors include members of the British Association of Landscape Industries, Chartered Institute of Forestry, Chartered Management Institute, Royal Institute of Chartered Surveyors and Chartered Institute of Horticulture.

Another was a member of the Association of Residential Managing Agents (ARMA) and the Association of Retirement Housing Managers (ARHM).

The third respondents were members of the Property Ombudsman Scheme and all their Property Managers have either completed or are taking their IRMP Qualifications.

15. Please list your administration fees in connection with an estate charge (eg for collection of arrears, provision of information for sale, consent to alter or let, deed of covenant, notice of transfer etc)

16. Do you keep all of the fee or do you share it with someone else, for example the rentcharge owner?

5 respondents provided information on their fees. The range varied considerably and some reflected a package of work rather than individual costs. However, in general, the ranges of the fees were:

- signatories to documents - £6.00
- collection of arrears – £65.00 - £100.00
- remortgage – no fee - £65.00
- provision of information for sale - £120.00 - £345.00
- consent to alter or let - £60.00 - £300.00
- deed of covenant - £75.00 - £250.00
- notice of transfer - £75.00 - £138.00
- add/remove a named owner - £175.00

All 5 respondents confirmed they kept all of the fee income as it reflected their costs. One respondent explained occasionally additional fees were payable to third parties.

17. Could anything be changed in relation to estate charges or adoption of spaces and facilities on housing developments to improve the situation for you as a manager?

18. Do you have any other observations about estate charges or adoption of spaces and facilities on housing developments that you would like to tell us about?

In terms of what might be changed to improve the management of estate charges, the following suggestions were received:

- Government endorsement for the need for estate management charges
- Ensuring people fully understood about estate charges prior to purchasing the property. They felt many of the issues stemmed from residents not fully understanding the need for estate management charges.
- Better planning at early stages of the areas to be managed to ensure they are designed and constructed correctly and effectively.
- Developers legally required to meet specific design and construction standards and be responsible for putting right any failure in this regard.
- A ban on the use of estate rentcharges.
- Increased use of Resident Management Companies (although there was also opposition to this model/arrangement from others).
- Better regulation of management agents practices to improve the management and the reputation of the industry, examples included:
 - ❖ Payment in arrears after satisfactory completion of work
 - ❖ Consultation on works over £250.00 per household
 - ❖ Requirement to be member of ombudsman scheme
 - ❖ Requirement to provide full breakdown of costs with invoice.

One respondent suggested that open spaces on new developments are becoming increasingly complex, often with features that carry liabilities and which require expert handling. They felt that prospective homeowners should be made fully aware of the responsibilities of acting as directors, including the associated liabilities, and that they should be provided with the option of whether they wish to form their own resident management company in light of these responsibilities.

Another comment reflected that one of the main objections to estate charges is that this should be done by LAs as part of the tasks for which they collect council tax, but the current reality is that LAs are unable or unwilling to take on further substantive liabilities. Therefore, an alternative means of managing estates is needed.

7. Local Authorities (LAs)

Responses were received from five of the 22 Local Authorities (LAs) in Wales. Additionally one response relating to another County Council was submitted by a Councillor who indicated they were expressing personal views rather than the views of the LA.

1. What is the policy of your authority on adoption of spaces and facilities other than roads? (i.e. do you have a specific policy about the adoption of spaces and facilities such as open areas, play parks, landscaping etc, and why?)

Each LA referred to policies on open spaces being contained in its Local Development Plans and Supplementary Planning Guidance. They indicated requirements for open spaces and facilities are addressed in the planning standards. Most were particularly interested in the provision of public open play areas.

Three LAs stated they had arrangements in place to accommodate adopting open spaces subject to their minimum standards being met and commuted sums covering between 20 – 30 years maintenance costs being paid to them. Each were content for developers to retain and manage under S106 agreements or to pass the responsibility on to private management companies.

One LA expressed their preference to adopt open spaces and play areas, but indicated they did have developments where the maintenance was undertaken through a private arrangement with a management company in place.

Each indicated they would only adopt when all their requirements and minimum standards in line with their policies had been met as set out in any planning obligations. If these were not met, the LA would not adopt.

2. Describe the factors which play a part in decisions about adoption.

Various factors were mentioned including:

- Space or facility meeting their adoptable standards and requirements set out in planning stage (this was commonly to avoid risk of financial liability if not up to standard, but also for example to meet minimum (safety) standards for playground equipment). All submissions mentioned this in various aspects.
- Where it has clear public benefit or function in terms of leisure and recreation opportunity.
- Size of the space - one commented that usually small scraps of land are not wanted as they have costs without offering any benefits in return.
- How spaces and facilities fit within the overall council/community plans.
- The legal duties placed on councils to provide facilities, access, or environmental outcomes balanced against reality of cost and resources required to manage spaces/facilities.
- If the developer proposes the space/facilities for adoption. One LA mentioned it is sometimes easier for developers to use management companies than adopt and pay commutable sums to councils. Negotiations (using section 106 agreements) are often the only way to resolve this.

- Cost to council for maintenance in short and long term. 20-30 years is the common period required for commutable sums and ongoing impact of council budgets.
- Reluctance to take on additional financial or physical risk to bring facilities up to standard and/or undertake ongoing maintenance where it is considered difficult to justify.

3. Which departments within the authority are involved in decisions about adopting open space? Does any one department have the lead or final say?

Each authority indicated a multi-disciplinary approach to considering open spaces. Three indicated the team responsible for managing and maintaining the open spaces (such as parks, leisure etc) had the final decision. One indicated the final say lay with their planning department. Two responses indicated a wider team approach is involved in the final decision.

Two also indicated that if the developer was adamant they did not want the spaces adopted, in the end there is little the LA can do if negotiations fail.

4. What, if any, are the barriers to adoption?

The main considerations indicated by all respondents were costs and standards. LAs have regard to the public value and burden that maintaining and managing such spaces place on their authority if they are not accompanied by an appropriate level of resources and delivered to the minimum standard they specify. They cannot compel developers to meet these, and this can result in refusal to adopt.

Specific examples included:

- Not being prepared to adopt incidental spaces associated with infrastructure and engineering assets unless adopting the asset as well.
- Where councils identify costs for maintenance and assign a commuted sum (typically a 20 year figure). Adoption fails when developers disagree with the figure.
- Land having historical liabilities through contamination, etc making it more expensive for LA to adopt.
- Land at risk of natural hazards such as flooding or covered in invasive pest plant species which require remediation.
- Lack of early engagement to ensure appropriate design of assets.
- Lack of community support.
- Volume house construction – developers can sometimes look for cheapest option for themselves, rather than the best option for meeting resident's needs & the best long term solutions.
- Council adoption not being offered.
- Size of land (small areas).

5. If you ask for commuted sums for the adoption of facilities other than roads and SuDS, how are they calculated?

Each authority took a similar approach indicating costs are typically based on calculations relating to the current annual costs of maintaining comparable types of area (e.g. playground, nature conservation area etc) and then multiplied by a specified period for the commutable sum e.g. 20 years and allowing for a level of inflation. Maintenance standards are used to develop the costing with council plans providing detailed figures and standards.

6. Do you have a service level agreement on timescales and average response times for dealing with adoptions?

All 5 LAs indicated they do not have a service level agreement, although two indicated it was a possibility to be considered if a developer asked.

7. Do you maintain records of which areas and facilities are adopted or not once a development has been completed?

All authorities confirmed they held records of their adopted area records. Most are kept centrally while one indicated it was departmental responsibility to hold records that applied. Non adopted areas are not recorded.

8. What issues, if any, have you encountered in ongoing maintenance of unadopted areas on developments?

Each LA provided examples of issues they have encountered, typically these included:

- Councils are still seen as the first point of contact for any areas of concern regardless of who owns the land or has responsibility. This is compounded by poor public understanding of who owns, or what responsibilities are held, for particular areas.
- If private management companies go out of business, this then leaves the Council with little option to step in but without the necessary funding to maintain the site. Ideally it would help if the Council were afforded step in rights along with a roof tax or some method of enabling funding for future maintenance.
- Confusion as to who is responsible for the different aspects. For example if a playground is not maintained to acceptable (or safe) standard.
- Poor management of estates and unadopted land often results in complaints to Councils, sometimes via Councillors or AM's/MP's, to "do something".
- Delays in the adoption process, for a variety of reasons, can create unmanaged areas that attract criticism and develop other problems, such as fly tipping, overgrown vegetation, etc.
- Developers can offload responsibilities for various areas onto councils and walk away leaving the problem with the council.
- Poor management of utilities and assets such as drainage systems, trees, etc can cause significant wider problems for council, or utility operators e.g. clearance of ditches and water courses and tree inspections, which if not carried out can cause major, if not catastrophic issues. Thus forcing councils to step in to rectify situations on areas outside their responsibility.
- Expectation and complaints that paying a management fee does not provide private or exclusive use by residents.

- Additional demand on staffing and financial resources to deal with these issues.

9. Do you ever adopt developments some years after their completion, where the developer did not seek, or achieve, adoption at an earlier stage?

One indicated they did, but that it was done on a case by case basis after careful consideration of costs/benefits and where it was in the public interest to do so. Another indicated that in regards to unadopted roads, they had adopted later subject to mutual agreement.

Four of the respondents indicated they had not done so, but would consider it if:

- They were required by public or political pressure.
- Circumstances, such as collapse of the management company, required it.

Another issue for consideration would be if they met LA standards and potential availability of appropriate resources to bring up to required standard.

10. Could anything be changed in relation to estate charges or adoption of spaces and facilities on housing developments to improve the situation for you as an authority?

There was no strong trend in the individual council's recommendations other than concerns over costs and responsibilities for maintenance or areas/assets and longer term affordability after the specified commuted sum period had been passed.

One authority said they were aware of cases in other areas where open spaces had reverted to ownership of the authority due to political and public pressure. Without the benefit of any commuted sums to cover their longer term maintenance costs, this adds an increased financial burden to LAs already over-stretched resources which would be unsustainable should this become a more regular occurrence.

One authority also expressed concern that there was a changing attitude with the increase in privately managed open spaces, and that residents who paid fees were becoming over protective of "their" open space that they paid for. This could lead to unnecessary conflict and potentially impact adversely on overall social cohesion.

It was suggested that clear guidance or legislation from Welsh Government on the management of open spaces may provide clarity and a more consistent approach for all involved. Suggested changes for inclusion in any guidance or legislation included:

- LAs should be required to adopt all open spaces, with funding provided either with through the appropriate commuted sum or through the equivalent management fee charge currently generated by developers and currently paid to private management companies.
- Option for developers to pay commuted sum over a longer time rather than upfront if necessary to avoid cash flow risks.
- Requirement for commuted sums to cover for longer than 20 years or provision for residents to contribute a fee for the cost as the commuted sum expires.

- Legally require open spaces, including street lighting, to be developed to the minimum of adoptable standard in consultation with the LA.
- If private management companies are to remain an option, there should be an enforceable service level agreement to ensure they undertake their maintenance duties regardless of whether they have received all fees. This would make them more accountable to residents.
- Developers should not be allowed to sell land off to a management company. Alternatively, management companies should be owned and run by residents themselves once a development is completed.
- Requirement for an upfront fee for the planning authority to monitor/enforce the S106 that lasts for the duration of the S106 trigger points. A provision in the Community Infrastructure Levy Regulations in England specifically allows this.
- Viability appraisals should be used for calculating accurate commuted sums and the viability of the estate management plan.
- Require developers to ensure that there is a continuity of management services on estates, as a safeguard against management company failure leaving councils picking up the estate.
- Early planning discussions need to be required between councils, developers, and other parties to identify costs/ estate charge fees, particularly for those in affordable homes.
- Whether estate charges should apply to affordable homes on developments, including, for example, whether/when they should be exempt.

11. Do you have any other observations about estate charges or adoption of spaces and facilities on housing developments that you would like to tell us about?

Various additional issues were raised including:

Sustainable solutions

Whilst adoption by LA will safeguard the land for the public and ensure it is maintained to the necessary standards over the longer term, LAs need to have the financial resources to undertake this, and current solutions are not sustainable. Alternative sustainable models may need to be considered, possibly using Community Councils, Community Asset Transfer or other alternative management arrangements. However, currently these models each bring some risks and challenges that would also need to be addressed in order for them to work effectively.

Play areas

Play areas should be adopted by LAs. However, this would need to be on the basis that they meet a set standard and an appropriate commuted sum for on-going maintenance is received. This would ensure the play areas are all to one standard, that the play areas meet the needs of the community and are maintained going forward.

Managing expectations

Residents object to paying council tax and management fees often lacking understanding of the reasons for both being applied. They are often confused or frustrated by where they should go to complain when things aren't maintained as they should be. There is also an

increasing objection by residents to the areas they are advised they are responsible for maintaining through these fees being available and open to the public.

There needs to be a clearer communication from the outset to homebuyers when they are purchasing a property with estate charges, clearly identifying what the management company/estate charge is responsible for and what the LA is responsible for. Residents should have clear information on where to go to resolve issues or get action taken.

Affordable Housing Supply

Estate charges can have a negative impact on the supply of affordable housing. Careful consideration must be given to the impact charges may have to affordability of the social rent and intermediate sale/rent affordable properties but also the management costs to the LA/RSL of the site, potentially making the property unaffordable to the occupant and the site unviable to the LA/RSL. The addition of estate charges may make an affordable for sale property unviable to the occupier who is in need of an affordable home and therefore will have limited financial capacity. Some estate charges may be exempt from Universal Credit payments, this could have a significant impact on the occupier's household expenditure.

The fairness of charging fees for publicly accessible areas

It would seem unfair and unequitable that residents pay a maintenance / estate charge simply because they are directly connected to the development, even though usually the facility (such as a play area) is open and available for anyone to use.

8. Registered Social Landlords

The majority of questions for Registered Social Landlords (RSLs) were split into 3 different categories depending on their role.

- Questions 2-10 were for RSLs who were Managers to answer
- Questions 11-22 were for RSLs who were Developers; and
- Questions 22-31 were for RSLs who were Estate Charge Payers.

Questions 1, 32 and 33 were for all RSLs to respond to.

2 responses were received from RSLs. Although both indicated they were involved in developing, managing and paying estate charges in various developments, one RSL only provided responses to the question for developers. The limited responses make it difficult to draw any clear conclusions on whether there is a significantly wider involvement of RSLs in estate charges and whether there is a consistency in approach/good practice to estate charges where RSLs are involved. Nevertheless, the information provided offers at least a limited insight to the approach by RSLs.

Responses to the questions for managers (Questions 2-10).

Only 1 RSL responded to these questions. They owned and managed 3 sites which required leaseholders and/or freeholders to pay estate charges. Each site had a mixture of tenures including owner-occupied, social rent, co-operative, intermediate rent and/or shared ownership. They also confirmed they only managed sites that they owned.

They confirmed that they provide a breakdown of the charges to residents, and listed the following activities/maintenance as examples of the type of services included in their estate charge fees:

- Open areas
- Allotments
- Hedges
- Play parks
- Car parking areas
- Street lighting
- Landscaping
- Environmental initiatives such as wildflower verges
- Gardeners wages and equipment
- Welfare facilities/office
- Insurance
- Communication and Consultation
- Litter bin collections

Whilst they had not received any formal complaints they indicated they were aware residents often felt that they are paying twice for the estate maintenance as they also pay council tax to the LA. This reflects the views of many residents who are required to pay estate charges.

Charges were made once a year based on actual costs. In response to the question about the action they could take if estate charges are late or unpaid, they indicated that whilst they

aim to work with residents where possible, non-payment will result in enforcement action in the form of a CCJ.

They developed a management plan for larger estates to ensure any increases to the estate charge were anticipated and prepared for, and hold a reserve fund for larger estates. They indicated that where possible they encourage community engagement in relation to service charges.

Responses to the questions for developers (Questions 11-22)

Both RSLs answered these questions, however their approach to developing sites was different.

Approaches to developing sites

One respondent had a policy of avoiding developing estates where private homeowners would be required to pay an estate charge. To achieve this their policy was to ensure that the roads and water infrastructure are built to the required adoptable standards of the relevant statutory authorities. In their view, it is better that private homeowners only pay one party, the LA, for estate services and maintenance, rather than two - once to the management company and once in their council tax payments. They indicated that on sites that included characteristics or areas that the LA would not adopt or assume liability for, their policy was to not include properties for private homeowners in the development proposals. However, on sites they owned and managed where they had sold properties privately such as under the Right to Acquire, they did charge a fee towards the costs of maintaining the estate.

They also referred to an example on a development where the Welsh Government (as vendor) required them to set up a management company once the final property was sold and to give each resident a share in that company. In that instance, they worked with the Welsh Government to change this requirement so that they would be responsible for maintenance. Maintainable areas applicable to the property purchasers were minimised and the internal roadways and water infrastructure were adopted, meaning that the purchasers are only really responsible for the waterfront charges levied by the Welsh Government itself.

The other RSL indicated their general policy on maintenance arrangements on their developments was to offer up roads, drainage and open space to the LA for adoption, with a commuted sum and legal agreement covering maintenance for a prescribed period. Where they have developed sites with spaces that LAs are less keen to adopt or are likely to require significantly higher commuted sums, e.g larger open green developments, the approach varied. In these cases LAs still adopt the roads, drainage etc but the RSL kept the unadopted areas under their own management as they felt this this approach offered the best solution to maintaining the desired standards whilst keeping the charges reasonable.

They also felt that the introduction of Sustainable Drainage Systems (SuDS) and SAB, would see the level of investment in green infrastructure on sites increase significantly. If adoption by the LA were not favoured due to significantly large commuted sums and no guarantee of the resources to provide a high quality service, they felt that this will result in the requirement for them to manage the open spaces on more developments,

However they also highlighted an increasing issue with delays caused by LAs in issuing technical approval of drawings and also delays with final adoption etc. Whilst their policy

remains that roads should be formally adopted to avoid unnecessary additional costs to the purchaser, they were aware that volume housebuilders are opting more and more often not to get roads adopted, to avoid the associated delays above.

About the charges

Examples of activities included in estate charges were the management and maintenance of open space, including cutting, pruning, weeding, fertilising plants and grass plus re-planting and replacements where necessary, litter picking and maintenance and inspections of play equipment. One RSL also highlighted that with SuDS, there will also be inspections and repairs to drainage systems in accordance with the SAB maintenance guidelines.

One RSL indicated their charges were secured by either a deed of covenant or an estate rentcharge. They also charged administrative fees (one indicated their fees are currently £6 per document) where documents were required to be provided (such as fees for providing information, deed of covenant or notice of transfer and charge) in relation to the sale or remortgage of a property.

One RSL indicated that whilst it only had 3 sites currently where areas were not adopted by LAs and estate charges were made, they see this model increasing with the requirement to incorporate SuDS into developments, as they anticipate the level of investment in green infrastructure on sites will increase significantly. Where adoption by the LA may not be favoured due to significantly large commuted sums and no guarantee of the resources to provide a high quality service, they expect to take on the management of these areas themselves.

Excessive charges and mortgage restrictions.

In response to the question about complaints from residents in relation to excessive charges and inability to get mortgages, one RSL noted that whilst they were not aware of such issues on sites they managed, it may happen where they acquired properties through s106 agreements and sold them on. In these instances, the only interest they would retain in those properties would be the charge in their favour. They would not have anything to do with the on-going management of those properties. They also had acquired rented properties on estates where management companies were to look after the estate post-completion. In these instances, they had been able to secure exemptions from paying the estate service charges for the affordable home occupiers. The only exception is where a shared equity owner might eventually staircase to 100% ownership. In that case, the property would cease to be affordable and the agreements would allow the management company to make estate charges.

Responses to the questions for estate charge payers (Questions 22-31).

Only one RSL responded to these questions. In their experience, the management company usually owned the land the estate was on. They had experienced concerns about the inconsistency in charging as well as the level of service provided by managing agents. In one case they had challenged the estate charge where the management company did not base the charge on the individual estate's maintenance costs, but based them on the overall costs of all their sites.

Responses to General questions for RSLs (Questions 32-33)

Question 32 asked what could be changed to improve the current arrangements. One suggestion was standard regulations and fees. It was felt that sometimes management agents are more focused on providing an income or profit, and that as a result services are often kept to a minimum, rather than improving the areas.

It was also suggested that the increased use of estate charges and management agents was largely driven by a change in stance from many LA, resulting in them being more reluctant to adopt roads and other spaces or seeking high commuted sums to adopt them. Developers will seek the most efficient, cost effective solution, which may not be adoption by LA if too costly or causes delays. This is not necessarily the best outcome for homeowners.

9. Property Lawyers

5 individual property lawyers responded to this set of questions, of whom 3 responded in a personal capacity rather than on behalf of their practise. The professional industry membership body, the Conveyancing Association, also submitted a response.

1. In your opinion, are purchasers usually aware of the existence of any estate charges before they commit to purchase? Please explain whether there are differences between the awareness of estate charges in purchasers of new build homes and those buying via resale?

- Yes: 2
- No: 4

2 respondents indicated that purchasers were usually aware of the charges, 4 indicated they were not. 1 indicated that they ensured their clients were aware, 1 suggested many clients weren't aware at the point that they made the offer but were by the time they signed the contract. There was also a suggestion that purchasers often confuse them with leasehold properties.

The Conveyancing Association indicated that their [survey of home movers](#) had found that less than 2% had any information about the legal title, including estate charges, prior to viewing and less than 8% prior to offer. They suggested buyers of both new build and second hand properties are rarely aware of estate charges. They also highlighted that adverts for property on the portals or estate agent or developer websites rarely reference estate charges.

2. In your opinion, do buyers fully understand the ramifications of estate charges? Please explain your answer

- Yes: 0
- No: 6

All respondents felt that purchasers' understanding of estate charges and the potential consequences of not paying them was poor. This was felt to be partially due to lack of clear information from management companies. One respondent suggested that management companies can sometimes elevate fees from those advertised by the developer. Another highlighted that it is difficult to get people to understand it is an additional charge to council tax.

It was also suggested that by the time information on any estate charge has become apparent, purchasers can often be so focussed on getting the keys to their new homes, it distracts from taking some of the detailed information they receive from their conveyancer.

3. At what stage in the transaction are you usually alerted to the presence of estate charges on a property?

Each of the 5 lawyers responding said that, when acting on behalf of the buyer, it was usually when they received the draft contract papers and reviewed the title documents.

1 respondent advised that when acting for the seller, it would be picked up when drafting contracts and they would then request a sales pack from the managing agent. The managing agent would then make a charge to provide the information which the sellers have to pay as they need the information for the purchase to move forward due to any restriction that has been placed on the register in favour of the management company.

The Conveyancing Association highlighted these stages are often several weeks into the conveyancing process after the parties have completed their on-boarding process and anti-money laundering checks, and often after the buyer is financially and emotionally committed to the transaction.

4. Have you seen a change in the proportion of sales which include estate charges? If yes, please explain what that change has been, and in respect of what type of properties? Do you have any observations about why this has changed?

- Yes: 5
- No: 1

The majority of respondents confirmed they had seen such a change on newly built developments in recent years, primarily focussed on areas that would have been adopted and maintained by LAs previously.

The Conveyancing Association suggested HM Land Registry data indicates that there has been a marked increase in the registration of properties with estate rent charges, which are capable of registration against the title. The sharp increase correlates with the announcement by UK Government to ban leasehold houses. They also indicated that not all estate charges are registerable in this way and therefore the increase in estate charges may be much higher.

5. Are the estate charges which you see compliant with the UK Finance Lender handbook as drafted? If no, please explain in what way, and are developers amenable to making the required changes?

- Yes: 3
- No: 3

Of the three respondents who stated they weren't compliant, one explained that some are drafted as Rentcharges including a risk of possession by the management company. Another stated that even when they engaged with developers' solicitors only some are prepared to amend to reflect what is required, others will not.

The Conveyancing Association indicated that Part 1 of the UK Finance Handbook does not specifically deal with estate charges or rentcharges. The only sections which reference service charges are in relation to leasehold. They also explained that some lenders included instructions on rentcharges within their answers to Part 2 of the handbook and many of these differ, for example in the amount which is acceptable or the administration of the estate charge, setting out their required notice period.

In their view, as the impact of estate charges is still being realised, lender's policies are continuously evolving in response as they become aware of greater risks. This, in turn, makes it difficult for developer's legal teams to identify what would be required to satisfy the lender requirements when drafting and therefore whilst initially some plots might exchange contracts without issue, later plots might require a variation. However, developer legal departments generally try to have the same terms on all plots on a site so often resist later requests for amendment.

The Conveyancing Association therefore consider it would be better if developers excluded any remedies for arrears (outside of the application of interest on arrears and proceedings under the civil procedure rules for a money claim). They also suggest it would be helpful if UK Finance updated their handbook to deal with estate charges and rentcharges to bring uniformity to this area.

6. Have you encountered sales which have fallen through because of the existence of an estate charge? (Eg if the mortgage company refused to lend on the property, or if the purchaser was unhappy with the likely level of the charge) If yes, please explain what the reasons have been, and give an indication of how common this is.

- Yes: 5
- No: 1

Examples given included:

- The developer not being prepared to amend paperwork and as a result the lender refused to give a mortgage.
- The buyer pulling out of sale as fees amounted to over £500 a year.
- Buyers having withdrawn when they have found out about an estate charge having heard of the issues in the press.
- Buyers who decided not to make an offer for a plot having discovered that an estate charge exists and the site office staff had been unable to confirm that it is capped at the cost of maintenance and that the s.121 Law of Property Act 1925 remedies do not apply.

7. What are the average costs of a deed of variation on an existing rentcharge to exclude the remedies in Section 121 of the Land and Property Act 1925, or to amend the terms to those acceptable to the major highstreet lenders?

4 property lawyers responded to this suggesting approximate costs of £250 - £300 plus VAT. The Conveyancing Association suggested costs can vary greatly but approximately £600 plus vat for the legal costs of the seller or buyer and the rentcharge owner together with any premium imposed by the rentcharge owner. They also indicated they had heard of these premiums being as much as £15,000 in England.

8. Are the fees charged for the administration of the estate charge reasonable in your opinion? (For instance in relation to notice of transfer, notice of charge, consent to let or alter, deed of covenant, certificate of compliance) Please explain your answer and give examples

- Yes: 0
- No: 6

None of the respondents felt the fees charged were reasonable. Three respondents compared them to leasehold administration costs but with no good reason for them to be as high as leasehold costs. It was felt that management companies can charge what they like as the prices are not regulated in any way. It was also suggested duplicated fees can be charged for receipt of notice where it is required to be served on the rentcharge owner and the managing agents. One respondent suggested it is simply viewed as a form of income, not an actual processing cost.

**9. Do you see charges being created in breach of the Rent Act 1977?
(For example, with review clauses which bear no relevance to the cost of maintenance, or where there are multiple estate charges on a property)**

- Yes: 3
- No: 2

The Conveyancing Association said they see cases where both nominal rentcharges to enforce positive covenants and variable estate rentcharges are created where it should be one or the other. They have also seen escalation clauses applied where the estate charge increases in line with the RPI every year with a further increase every 6th year of £20. This indicates that it is not linked to the true cost of the maintenance of the amenity areas. They indicated that home owners have to pay them for fear of the s.121 remedies being imposed against them for non-payment.

10. What is the impact on transaction times where there is an estate charge?

Responses suggested between 2 and 6 weeks, with an average typically of 4 weeks. It was suggested that delays tend to be longer for resale properties than new build properties as information on new builds comes directly from the developer rather than the management company. The Conveyancing Association indicated that in some cases it is just a matter of finding out who will complete the forms and the cost and then arranging payment. But in other cases a protracted discussion will be required between the seller, buyer, rentcharge owner, lender and their valuer to agree and deliver a deed of variation. This can result in the chain of transactions falling through if someone else in the chain does not want to wait.

11. Could anything be changed in relation to estate charges or adoption of spaces and facilities on housing developments to improve the situation for your organisation?

The Conveyancing Association suggested a move to a commonhold type arrangement would enable home owners to control their own communities and ensure that abuse can be avoided.

Two other respondents suggested all public spaces should be adopted by the LA. It was also suggested that estate charges should not carry a risk of loss of possession, the management company should be given the option for a charge on the property only. It was felt that more protection must be given to freehold house owners.

10. Others

11 respondents completed this section. 5 provided comments and shared concerns that are already reflected elsewhere in this paper, and have therefore not been replicated in detail here. These included the consequences of poor maintenance, inability to sell properties, cost of public liability insurance, and the lack of accountability of management companies.

6 respondents raised additional issues. These comments and observations have been analysed and presented as groups of themes raised.

Access & Social Cohesion

2 respondents commented on the importance of open spaces and the rights of a wider public to gain access to and use them, including streets and parks.

One view was that open spaces that were not adopted may become “privatised”, with residents who pay for them excluding non-residents who are not directly paying for the space and its upkeep. It was indicated that there are already examples where signs have been erected stating that roads to a new estate are private and only for use by residents and visitors.

The concern was that this could have an impact on open spaces that host cycle routes and paths that serve wide areas, and sometimes form strategic routes, or are intended for promoting health and wellbeing, and patterns of sustainable development and active travel. Sometimes they will form routes to school for example. The implications of such a trend for society could be damaging and adversely impact on social cohesion. Open spaces often perform a wider function as public spaces which should not be overlooked.

The other concern raised was that the importance of open spaces may get overlooked altogether because of the issues around charges and that government should take a more holistic, integrated and interventionist approach to the whole process of housebuilding from start to finish, including estate charges. Provision for community facilities e.g. schools, a community centre, with sufficient green space between them for the use of residents to comfortably enjoy, to meet one another, play, exercise, or relax in the open air should be integral to the design of any large residential development. Respondents felt many residential developments, to their detriment, lacked well designed and managed social open shared space.

They considered such space to be as important as the private internal space of the homes and that the success of future housing developments in Wales lay in getting the layout, design and management of these areas right. They felt the additional initial investment needed will provide increased returns in the long run.

The challenges for residents and their representatives (MS)

One response was received from an elected Member of the Senedd, who is concerned that residents on an estate in their constituency are constantly being passed back and forth between the management company and the estate's developer, and at times, the LA and water supplier have been involved to resolve different matters of dispute. Only since the MS's involvement have residents managed to engage with all relevant stakeholders together on a regular basis, although even this has been fraught with difficulties. However,

the situation has deteriorated in recent months as the management company have now completely ceased any form of constructive engagement with residents.

The MS believes the situation stems from the lack of capacity in local government to adopt public highways and communal spaces in new housing developments. They believe it is an issue which first emerged in the 1990s but accelerated in the 2010s as a result of the UK Government's policy of fiscal austerity. As a result, developers have contracted out the day-to-day maintenance and management of new-build estates to management companies, who are not professionally regulated in any way. As a result, they can charge residents whatever monthly fees that they want.

The MS feels that although residents of such estates are able to set up management companies themselves, this has a number of pitfalls. For example, it places a great deal of legal liability and practical responsibility on residents, many of whom would find themselves having to carry out such duties in their spare time. It would mean residents having to invoice their neighbours for what could be viewed as unfair charges on top of their monthly council tax bills. Furthermore, the charges are inherently unfair as freehold residents currently have no right of recourse to challenge them.

Some basic changes that the MS would like to see, include:

- a statutory right of recourse for freehold residents to query and challenge the charges and decisions of management companies;
- facilitating LAs to adopt and maintain new-build estates (potentially strengthened to more strictly-enforced Section 106 agreements);
- the regulation of management companies, with charges capped or, preferably, banned altogether;
- requiring those selling properties to provide detailed information on such charges very early in the sales process.

Implications for Local Planning Authorities and Planning Systems

The Royal Town Planning Institute (RPTI) explained that currently Local Planning Authorities (LPA) have the ability to control the maintenance of privately owned open spaces, equipped play areas, landscaping etc via a condition or legal agreement i.e. they can require the details of maintenance to be submitted to the LPA for approval. These can then be enforced via a Breach of Condition Notice etc.

RPTI wished to stress the importance of the relationship between any charges/arrangements and the planning permissions/legal agreements (S106), to ensure that common spaces etc. remain in use and to the standard required by the planning permission. Green infrastructure in particular plays an increasingly important part in meeting the Well-being Goals and the placemaking aims of Planning Policy Wales.

As such they indicated any proposed changes to charges/arrangements should be made in full consultation with all LPAs, given the ongoing lack of resources within LAs. They advised there is flexibility in the current system which provides LAs with the discretion dependent upon their resource to decline adoption. They indicated some LAs may prefer to adopt all open spaces, whereas others may struggle with resources to maintain existing open spaces, so would prefer management companies etc.

They also highlighted that in the event that the LA would prefer to adopt all open spaces, landscaping, roads, drainage etc. there isn't the ability to impose this upon a developer, it has to be done via negotiation and carefully worded conditions and S106 clauses, again possibly taking time and resources.

Provision of ecological compensation sites and natural habitats

Natural Resources Wales (NRW) and the Amphibian and Reptile Conservation Trust both advised that currently index linked ground rent services are used for resourcing long term ecological compensation site actions. In addition, NRW that they were used for maintaining compulsory Sustainable Drainage Systems (SuDS). They reported that charges can also effectively be used to manage habitats and to ensure integration, maintenance and management of green infrastructure in housing development in the long term.

Currently housing developments have been implemented in conjunction with mitigation areas for protected species, for example, Great Crested Newt mitigation areas. The land is usually handed over to non-governmental organisations, such as conservation charities, and the provision of service charges ensures monies are available each and every year for the long term. These schemes have proven to be a success in North East Wales and have also won awards.

They supported the current arrangements where section 106 provisions often state that service charges are index linked and in perpetuity for the life-time of the development. This ensures effective long-term delivery of these measures reflecting any increase in cost. It was felt that any changes that might be made to service charges should enable the continued effectiveness of delivering such benefits.

There was concern that if these schemes were lost it would have a detrimental effect on local, regional and national populations of European Protected Species. It would also impact negatively on biodiversity as a whole. These schemes provide habitats for multiple species from invertebrates to birds. These schemes also offer opportunities for colleges, residents and local people to get involved with the management and monitoring of these sites. This has positive results for peoples' health and well-being, and training our future generations. They also provide employment for third sector.

NRW supported changes that would ensure better regulation and ensure charges are fair and transparent, but felt it important that any service charges framework be index linked and in perpetuity in order to safeguard the necessary level of income required whilst ensuring charges are proportionate.

The Amphibian & Reptile Conservation Trust felt the following suggestions would improve the current arrangements further:

- Handover of mitigation sites to be legally completed prior to any building work on site being commenced.
- Funding for mitigation in section 106 agreements should be clearly 'ring fenced' and not permitted for other uses.
- The management company needs to be appointed before the development is complete, ensuring effective communication between residents and organisations who receive monies as some residents claim to unaware of such payments.

Riparian Rights

One respondent raised concerns about the issues of dwellings near to water courses, rivers etc. touching on riparian rights (access rights to a watercourse for owners whose land borders it). They felt these rights should be spelled out clearly from the outset so that all parties concerned are aware who is responsible for what. Ideally, householders should not be responsible for land abutting water courses, streams or rivers. They suggested the consequences of flooding and climate change is too serious to leave to individuals and require action by appropriate authorities, e.g. Natural Resources Wales or LAs etc.