



Setting Standards for  
Retirement Communities



# Leasehold Plus

**The next step for home ownership in IRCs:**  
Improving consumer protection and customer choice



## About ARCO

Associated Retirement Community Operators (ARCO) is the main body representing the Integrated Retirement Community sector in the UK. ARCO was founded in September 2012, and its members include both private and not-for-profit operators, comprising around half of the Integrated Retirement Community sector.

As well as our Members, there are over 100 organisations who are part of ARCO including Affiliates, Partners, Strategic Partners and members of the ARCO Accelerator Programme.

ARCO strives to:

- Promote confidence in the sector, ensuring that all members are providing a high-quality service to their residents. We achieve this through ARCO's Standards and Compliance Framework.
- Raise awareness of the Integrated Retirement Community model amongst older people and stakeholders alike – ensuring that all older people are aware of the variety of housing options available to them; and that policy makers fully understand the ways in which this type of housing provision can meet the lifestyle, health and social care needs of our ageing population.
- Increase the volume and quality of expertise within the sector and share this with members, continually investing in research to better understand and promote the socio-economic value of the Integrated Retirement Community model.

## About Trowers & Hamblins

Trowers & Hamblins is an international law firm committed to helping businesses and governments build stronger, more sustainable and economically successful communities. We are fascinated by the future of towns and cities and our work covers all forms of real estate across the private and public sectors and from residential to commercial and mixed-use schemes. We see real estate as the stage on which economies and communities develop and thrive. Our advice includes helping organisations across the sector to grow and thrive including advising on mergers, joint ventures, partnerships corporate and debt finance through to day-to-day employment and intellectual property rights, risk management, compliance and dispute resolution matters. With over 900 staff we operate from offices in Abu Dhabi, Bahrain, Birmingham, Dubai, Exeter, Kuala Lumpur, London, Manchester and Oman providing a full-service integrated legal offering. Our membership of the Elite Global network Interlaw supports our ability to help our clients obtain advice wherever they need it across the globe.



## Acknowledgments

In considering proposals for a new, modified form of property ownership for the IRC sector, we are grateful to the ARCO members and other organisations in the ARCO network who have given us their time and expertise in considering these proposals. We also thank the ARCO Board and Steering Group for their feedback.

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# Foreword

Integrated Retirement Communities (IRCs) – offering age-appropriate housing for sale, rent or shared ownership along with lifestyle facilities and care and support on site for those who need it – are an increasingly important part of the housing and social care landscape for older people in the UK. Popular and well-established in other countries including the USA, Canada, Israel, Australia and New Zealand, IRCs offer an essential alternative to the UK's growing older population to staying in unsuitable or isolated homes or moving into residential care.

Moving into an IRC allows older people to maintain their independence and autonomy in older age and part of this is buying or renting their own property, with properties available at all levels of affordability. While there is growing interest in rental, home ownership remains popular with older people, most of whom own their home outright.

Current forms of property ownership in England and Wales – freehold and leasehold – were not designed for the IRC model, which is characterised by the IRC operator taking on risk and responsibility, while providing facilities

and services to the consumer. Leasehold is currently used – and has been adapted by operators to be more suitable – but its structure makes it difficult for IRC operators to give consumers the choice they want, and the protections it offers consumers do not always fit well with, or apply to, IRC models.

ARCO and its members are focused on building consumer trust and confidence in the sector, allowing operators to give customers the choices they are looking for and building investor certainty to allow the sector to grow in line with its international profile, here in the UK. For this reason, we have developed a modified form of leasehold tenure specific to IRCs, which we have called Leasehold Plus.

We are grateful to our Strategic Partners Trowers & Hamblins LLP for their careful exploration – based on expert knowledge of and work with the IRC sector – of the legal framework of Leasehold Plus, and the changes in law necessary to bring it into effect. We present that legal analysis in summary here and consider options for government in bringing Leasehold Plus into effect.



**Sally Ireland LLM**  
Director of Legal and Compliance, ARCO



The housing market for older people is one of the fastest growing sub-sectors of healthcare real estate, but remains a tiny proportion of overall housing provision. There is a generational opportunity to change the make-up of the market over the next decade to better meet the needs of a population which is living longer and has changing wellbeing needs and lifestyle expectations, while also reducing demand on already strained health and care services. We see the IRC sector as the lynchpin in this coming to fruition. As lawyers with a genuine enthusiasm for this sector and the difference it can make, we are delighted to have been involved with our longstanding strategic partners ARCO in its work on leasehold plus.

ARCO has argued for some time now that sector specific regulation is essential to stimulating the significant increase in IRC provision required in the UK market, an increase which other international jurisdictions show us is entirely achievable. We agree. It is important that as the sector grows it does so using models for real estate and service delivery which provide positive outcomes for older people and strike a balance between them and operators of and investors in IRCs. The regulatory bar must be high, but directed to properly protecting customers in a way that will not stifle growth and innovation. Leasehold plus is an important potential step towards this sector specific and balanced approach.



**Kyle Holling**  
Partner, Trowers & Hamblins



# Executive Summary

**Integrated Retirement Communities (IRCs) combine high quality housing options for older people with tailored support services. Residents who own their home in an IRC do so on a leasehold basis.**

**While traditional, “legacy leasehold” is the only current, viable tenure option for IRCs, it still does not represent an ideal tenure model for the sector.**



This is because although IRC operators have adapted the leasehold model to better suit their customers, the restrictions of leasehold make it more difficult to offer customers what they want: low, fixed ongoing costs; a choice of structures of fees and charges depending on their personal circumstances; and, better legal protection and regulation to ensure transparency on fees and charges and a remedy (other than the courts) for poor service.

ARCO has concluded that a new form of leasehold – which we call “Leasehold Plus” – represents the best option for the sector to meet these consumer preferences.

Leasehold Plus would be relatively simple to implement, would maintain aspects of property ownership familiar to customers and the sector, but still address the objectives of giving customers and operators certainty, protection and flexibility, as well enabling further growth of the IRC sector.

In Leasehold Plus, properties would continue to be sold on a long lease. However, instead of the first owner selling the lease on to a second owner, the IRC operator would buy back the property once a new buyer had been found, and then immediately sell it on to that new buyer. In conveyancing terms this would be a three-way transaction and therefore the operator would not be exposed to the risk of delay in finding a new buyer.

Such transactions are currently prevented by Stamp Duty Land Tax (SDLT), as the operator would still have to pay this as part of a three-way transaction. Under Leasehold Plus, either a new SDLT relief could be created (akin to that on part exchange properties) or SDLT could be reclaimed by the operator. There would be no loss of tax revenue to the government as the new buyer would still pay SDLT as now. It is the double SDLT cost (paid by both the operator and the new buyer) that currently prevents such transactions from taking place.

In Leasehold Plus, the issuing of a new lease to each new buyer of a home in an IRC would give consumers much better protection as every transaction would be clearly covered by the Consumer Rights Act 2015. A new lease would also allow new customers to agree their own terms with the IRC operator. Leases could be adapted for each customer in relation to:

- **Level of ongoing fees: models with a low ongoing management fee and an event fee payable on sale are increasingly popular with consumers.**
- **Transferring risks: operators could offer to transfer the risk of future capital expenditure (on major repairs, etc) away from the resident, providing certainty on ongoing fees and future liabilities.**

**Leasehold Plus would also offer an opportunity to regulate event fees and fixed charges through a government-approved Code of Practice.**

**Leasehold Plus does not require immediate primary legislation to implement, and the main elements of the model can be brought into effect with two statutory instruments plus the drafting of a Code of Practice, which can be modelled on the existing ARCO Consumer Code.**

# Introduction

**Integrated Retirement Communities (IRCs) combine high quality housing options for older people with tailored support services. They allow residents to rent or own a property and to maintain their privacy and independence with the reassurance of 24-hour on-site staff, communal facilities, and optional care and support as needed.**

 <b>Retirement Housing</b> Also known as: <ul style="list-style-type: none"> <li>• Sheltered housing</li> <li>• Retirement flats or communities</li> </ul>	 <b>Integrated Retirement Communities</b> Also known as: <ul style="list-style-type: none"> <li>• Extra care</li> <li>• Retirement villages</li> <li>• Housing-with-Care</li> <li>• Assisted living</li> <li>• Independent living</li> </ul>	 <b>Care Homes</b> Also known as: <ul style="list-style-type: none"> <li>• Nursing Homes</li> <li>• Residential Homes</li> <li>• Old People's Home</li> </ul>
 Offers self-contained homes for sale, shared-ownership or rent	 Offers self-contained homes for sale, shared-ownership or rent	 Communal residential living with residents occupying individual rooms, often with an en-suite bathroom
 Part-time warden and emergency call systems. Typically no meals provided	 <ul style="list-style-type: none"> <li>• 24-hour onsite staff</li> <li>• Optional care or domiciliary services available</li> <li>• Restaurant / Cafe available for meals</li> </ul>	 24-hour care and support. Meals included
  Typical facilities available: <ul style="list-style-type: none"> <li>• Communal lounge</li> <li>• Laundry facilities</li> <li>• Gardens</li> <li>• Guest room</li> </ul>	 Typical facilities available: <ul style="list-style-type: none"> <li>• Restaurant and Café</li> <li>• Leisure Club including: gym, swimming pool, exercise class programme</li> <li>• Communal lounge and/or Library</li> <li>• Hairdressers</li> <li>• Gardens</li> <li>• Guest room</li> <li>• Activity (Hobby) rooms</li> <li>• Social event programme</li> </ul>	  Typical facilities available: <ul style="list-style-type: none"> <li>• Communal lounge</li> <li>• Laundry facilities</li> <li>• Gardens</li> <li>• Guest room</li> </ul>
 Typically 40 - 60 homes	 Typically 60 - 250 homes	 Sizes vary considerably



## ARCO-registered IRCs

To be an ARCO registered Integrated Retirement Community under the ARCO Consumer Code, as well as being primarily for older people, an Integrated Retirement Community must have the following features:

 <p>Offer self-contained accommodation</p>	 <p>Offer security of tenure</p>	 <p>Have communal facilities and active social programmes</p>	 <p>Offer meals in restaurants or dining area</p>
 <p>Offer personal care if and when needed</p>	 <p>Offer domestic services if and when needed</p>	 <p>Have 24/7 staff onsite</p>	 <p>Aim to offer a home for life to 'age in place'</p>

ARCO's members use long-term business models that go beyond traditional housebuilding, creating operational organisations that provide housing, care, hospitality, and wellbeing services for an ageing population.

## IRCs and tenure

In England and Wales, property can be owned as freehold (as with most houses) or leasehold (the principal tenure for flats/apartments).

Because most IRC properties are apartments, and owing to the need for a contract that governs the provision of a wide range of services delivered to customers,<sup>2</sup> freehold is unsuitable for IRCs and leasehold is the default tenure.

'Commonhold' was created by the government in the early 2000s as an alternative to leasehold to give more power and control to apartment owners. The current government has indicated it is committed to reinvigorating commonhold.<sup>3</sup> However, applying commonhold to the setting of IRCs would require older people to take on the burden and financial risk of operating specialised services and maintaining buildings.

Leasehold is therefore the only current, viable tenure option for IRCs in law. However, traditional, or what we call "legacy leasehold", still does not represent an ideal tenure model for IRCs.

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<sup>2</sup> The use of a rentcharge or chains of deed of covenant within a freehold model is regarded as insufficient for the IRC model because of complexity; the creation of a two-tier approach alongside leases of apartments, and a different balance of risk and control between the operator and the occupier.

<sup>3</sup> More leaseholders to own their own buildings under government proposals - GOV.UK ([www.gov.uk](http://www.gov.uk)) 11 Jan 2022.

## IRCs and legacy leasehold

In legacy leasehold, the first consumer buys a long lease from a developer/freeholder, but when they want to move out, they sell it on unchanged to a new buyer who, when they move out, sells it unchanged to a third buyer, and so on. This process can theoretically continue for several hundred years, depending on the length of the lease – which is usually 125 years or more and can be 999 years.

In mainstream non-IRC leasehold properties (usually apartments) the property management of the building is generally outsourced by the freeholder to a management company. Maintenance and the upkeep of common parts is funded by a variable service charge, charged at cost to residents.

IRCs are very different. The operator – who may also be the developer/freeholder – is present, providing 24-hour staffing and a comprehensive range of facilities and services to residents. The average length of stay for residents is also shorter than in an ordinary leasehold property, at between 7 and 8 years in a private IRC.<sup>4</sup>

Older consumers moving into IRCs are less likely to want to take on the risk and stress of property management – one of the attractions of moving into an IRC is that someone else will take care of maintenance, upkeep and building problems.

The structure of fees and charges in an IRC is also often different from a traditional leasehold property. IRC leases have been adapted to take account of the special characteristics of the facilities and services and the relationship between the IRC operator and resident.

Increasingly popular is a model that transfers risk from the consumer to the operator – the consumer pays an ongoing fixed, indexed or capped regular charge instead of a variable service charge, plus an event fee.<sup>5</sup> In return the operator takes on the risk of cost rises for staffing, facilities management, repairs and major works.

	Payment on entry	Service & management fees	Other fees & charges	Major works
<b>Legacy leasehold</b> 	 Purchase price	 Variable	 Ground rent	Leaseholder pays
<b>New IRC Model</b> 		 Indexed e.g. fixed £ indexed against RPI	 Event fees (normally on exit)	Operator pays

However, fixed regular charges and event fees are currently not specifically regulated (though general consumer protection law remains applicable). In addition, the principal statute protecting consumers from unfair contract terms – the Consumer Rights Act 2015 – is only applicable to trader to consumer contracts, so buyers of resale properties in traditional leasehold are not clearly protected.

As such, while IRC operators have adapted the leasehold model to better suit their customers, the restrictions of leasehold make it more difficult to offer customers what they want – low, fixed ongoing costs; a choice of structures of fees and charges depending on their personal circumstances; and better legal protection and regulation to ensure transparency on fees and charges and a remedy (other than the courts) for poor service.

In light of the limitations of “legacy leasehold”, ARCO considered a number of options for tenure reform – in particular, the licence-based model of IRCs (where the customer purchases a right to occupy the property but not an interest in the property itself) which is popular in other jurisdictions including New Zealand.<sup>6</sup> However, this model would require wholesale legislative reform, and consumer and investor acceptance of a whole new tenure outside the familiar structure of home ownership.

ARCO has therefore concluded that a new form of leasehold – which we call “Leasehold Plus” - represents the best route to addressing the issues highlighted above.

<sup>4</sup> Seniors Housing Annual Review - 2022/23 | Knight Frank Research

<sup>5</sup> A fee charged in a lease on certain events – typically sale or change of occupancy. See Event Fees in Retirement Properties - Law Commission (LC 373)

<sup>6</sup> Occupation Right Agreement | Companies Office (www.companiesoffice.govt.nz)

# What is Leasehold Plus?

Leasehold Plus comprises a set of changes to “legacy leasehold” that would significantly enhance consumer rights and protection.

Leasehold Plus would be relatively simple to implement, would maintain aspects of property ownership familiar to customers and the sector, but still address the objectives of giving customers and operators certainty, protection and flexibility and thus stimulate further growth of the IRC model.

## Leasehold Plus can be set out as follows:

- Properties would continue to be sold on a long lease. However, instead of the first owner selling the lease on to a second owner, the IRC operator would buy back the property once a new buyer had been found, and then immediately sell it on to that new buyer.
- Legally, this would take the form of the surrender of the lease by the current owner to the operator and the granting of a new lease by the operator to the new buyer.
- In conveyancing terms this would be a three-way transaction and therefore the operator would not be exposed to the risk of delay in finding a new buyer or falling sale prices. Each lease could stipulate that the operator was not required to buy back if the new purchaser (who could be tied in with a deposit) did not proceed.
- Operators would retain the option to buy back outside this process, as now – if for example they wished to refurbish the property and then attract a new buyer.
- Any disputes as to value (where relevant) could be resolved by recourse to an agreed expert independent valuation process.

## Leasehold Plus - a proposed solution for tenure reform



  
Current  
leasehold  
system



- Terms of contract are inflexible and stay the same
- Not fully protected by UK consumer law
- Customer to customer transaction after the first sale

  
Leasehold  
Plus



- New lease can be tailored to new customer needs
- Fully protected by UK consumer law
- Always a business to customer transaction

Stamp Duty Land Tax (SDLT) is currently a disincentive for private sector (non-charitable) operators to buy back properties. Under Leasehold Plus, either a new SDLT relief could be created (akin to that on part exchange properties) or SDLT could be reclaimed when the property was resold. There would be no loss of tax revenue to the government as the new buyer would still pay SDLT as now. It is the double SDLT cost (paid by both the operator and the new buyer) that currently prevents such transactions from taking place.

Leasehold Plus would give **consumers much better protection, as every transaction would be clearly covered by the Consumer Rights Act 2015**. In this way, Leasehold Plus would overcome one of the potential limitations of a Code of Practice regulating event fee models under current law, which was identified by the Law Commission's 2017 findings.<sup>7</sup>

Leasehold Plus would also allow new customers to agree their own terms with the IRC operator. A new lease – adapted to the needs of each occupier – could be granted each time the dwelling is sold. Leases could be tailored in relation to:

- **Level of ongoing fees:** arrangements which offer a low fixed or indexed regular charge and an event fee are increasingly popular with consumers (especially given price inflation experienced in recent years and pressure on pension incomes). A change to a lease would allow the incoming leaseholder to, for example, opt to pay a lower monthly charge to suit their financial circumstances.

<sup>7</sup>Event Fees in Retirement Properties - Law Commission (LC 373)

- **Transferring risks:** in most traditional leases, leaseholders are liable for variations in the costs of service charges, capital expenditure and repairs. These arrangements run for the duration of the lease (125+ years). If buying back and reissuing a new lease, the operator could offer to transfer the risk away from the resident, providing certainty on ongoing fees and future liabilities. This arrangement is currently offered by many IRC operators in relation to new developments.

Leasehold Plus would mean that all sales would be trader to consumer. Instead of the outgoing resident potentially selling the property through an external estate agent with no IRC expertise, the operator would have control of the process – allowing them to ensure that all material information is provided appropriately to the new customer (including information about the property, the service offer and the fees and charges) and that a new Code of Practice is complied with throughout the sales process.

Leasehold Plus would also offer an opportunity to regulate event fees and fixed/indexed regular charges through a Code of Practice modelled on the ARCO Consumer Code and approved by the government or the Chartered Trading Standards Institute.

In the Leasehold Plus model, operators will use a fixed or indexed regular charge, rather than a variable service charge. As fixed/indexed regular charges are currently unregulated, there is no recourse for residents to go to the First-Tier Tribunal if services are not performed (or are performed poorly). The remedy in these circumstances would be a civil contractual claim. As part of the model, event fees and fixed/indexed regular charges could be regulated through the Code of Practice, and an enhanced system of alternative dispute resolution (ADR) set up to allow disputes about service provision to be resolved without litigation.

## Leasehold Plus and Dispute Resolution: Options

Customers with a complaint under the Code of Practice could use the IRC operator's internal complaints process followed by recourse to an **existing or new Ombudsman scheme or ADR service** if the matter cannot be resolved. Existing Ombudsmen schemes/ADR providers include the Property Ombudsman; Property Redress scheme; and the new Ombudsman scheme set to be created by the government for private renters. This would have the advantage of using existing (or analogous) structures of complaints procedures already in place and would give a measure of independent external supervision to the process. The Ombudsman would be empowered to offer redress including financial compensation. Using an existing Ombudsman scheme, rather than creating a bespoke dispute resolution service, would be more proportionate in terms of expense and bureaucratic burden. All ARCO members are already required to sign up to an Ombudsman scheme – the Housing Ombudsman, Property Ombudsman, or Property Redress Scheme.

The use of an Ombudsman/ADR service has the benefit of being accessible to customers and residents without legal assistance or cost and would allow use of the existing complaints and dispute resolution architecture available in the sector.

Alternatives to the use of an Ombudsman/ADR scheme include a local mediation scheme to encourage quick resolution of the issue to the satisfaction of all parties,

with recourse to court as a last resort if no agreement could be reached. Existing neighbourhood and tenancy mediation services already available could be adapted for these purposes. However, if no agreement was reached the resident would retain their right to issue court proceedings if necessary. Other possible solutions such as arbitration and a localised dispute resolution panel have been considered. Arbitration is likely to be an expensive solution for service disputes. A local panel system would require considerable infrastructure to ensure due process. Mediation or an Ombudsman/ADR system are therefore preferred. ADR would not be compulsory for residents, but residents could choose to use it before resorting to court proceedings.

In relation to disputes about valuation arising from any change in the package of fees and charges attached to the new lease, or indeed the length of the lease or other terms that might affect value, the parties could agree to be bound by an independent external valuation process. For example, if the new lease were offered with a higher event fee than that which was paid by the outgoing resident. If expert valuation agreed that the new lease should be valued differently to the old (and at a lower value), then the operator could agree to pay the difference to the outgoing resident. However, we anticipate that the parameters of change could be set out in the lease and/or the Code of Practice, and that most changes would not affect purchase value.

# The Benefits of Leasehold Plus

## Consumers

For consumers, Leasehold Plus would offer certainty on ongoing costs, increase consumer protection, and offer greater choice.

Research suggests that older consumers are concerned about high and/or unexpected ongoing costs in retirement housing. Leasehold Plus offers a fixed/indexed regular charge model to avoid high and/or unexpected ongoing costs. It also allows greater choice for consumers about the package of fees and charges that they pay – as the new lease can be tailored to the needs of the new buyer.

In addition, the regulatory framework accompanying Leasehold Plus provides greater consumer protection and certainty for consumers. In Leasehold Plus, the operator would have greater control over the sale and therefore will be able to ensure that all appropriate information is shared transparently with the customer.

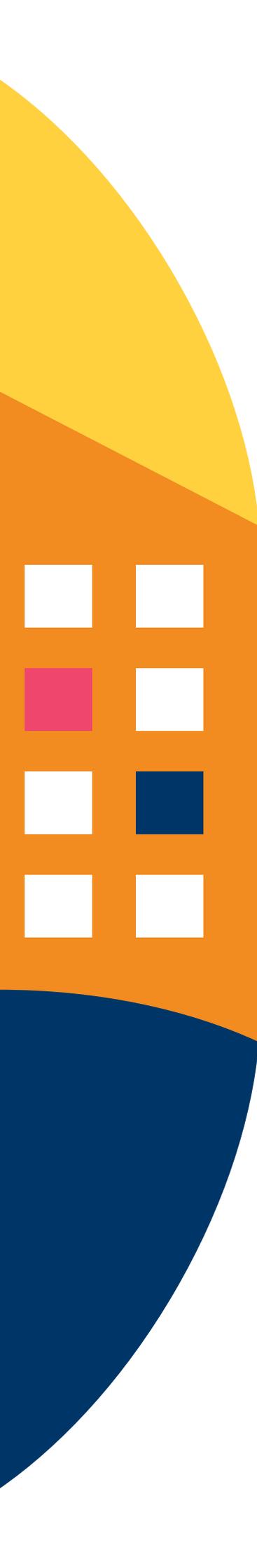
Under legacy leasehold, only the first buyer of a new lease is fully protected by UK consumer law because subsequent sales are consumer to consumer, not trader to consumer. In addition, event fees and fixed/indexed regular charges are not regulated in the way variable service charges are, and so are more difficult to challenge.

Leasehold Plus provides the opportunity for a Code of Practice, approved by government or the Chartered Trading Standards Institute, to provide clarity about transparency and disclosure requirements for event fees and fixed/indexed charges and when these can be lawfully charged. This could include alternative dispute resolution arrangements

for disputes about charges or services, and provision for protection of consumers in the unlikely event of operator redundancy where there are insufficient funds to meet short- or medium-term obligations to residents. In ARCO's view, this is an important element of the model and could be modelled on the ARCO Consumer Code.

The implementation of a Code of Practice would remedy the uncertainty created by government having not yet implemented the Law Commission's recommendations in its report *Event Fees in Retirement Properties (LC 373)* – where the Commission proposed an Approved Code of Practice, compliance with which would be considered by a court determining whether a lease term was unfair. Non-compliant terms would be presumptively unfair and therefore unenforceable. Under Leasehold Plus, a Statutory Instrument under the Consumer Rights Act 2015 could ensure that the Leasehold Plus Code of Practice is taken into account in deciding whether a contractual term is or is not unfair, as was envisaged by the Law Commission.

It would also mean that all IRC residents would be protected by the new legal arrangements. Current self-regulatory arrangements by ARCO under the Consumer Code work well – but are necessarily confined to ARCO members.



## Operators

For IRC operators, Leasehold Plus would allow them to give customers the flexibility that they want, while providing certainty over the legal framework and increasing investment in the sector with lower costs of borrowing/capital. Ultimately, we believe Leasehold Plus would increase both supply of and demand for IRCs.

Leasehold Plus would offer operators more influence over the resales process and would allow them to offer customers a choice of packages of fees and charges. In addition, the increased legal certainty as a result of Leasehold Plus legislation and accompanying regulatory provision would allow operators and investors to have certainty that charges levied in line with this framework could be lawfully collected. The cost of obtaining capital to develop new IRC schemes should therefore be reduced, allowing the sector to achieve greater scale to the benefit of older people and wider society.

Operators would also gain more operational flexibility as they could update leases much more easily and better control the resale process. This would also likely stimulate customer demand because operators could more easily match their offer to consumer preference and because consumer trust and awareness of the model would increase.

## The IRC sector

Leasehold Plus would help the IRC sector to grow by giving investors in the sector clarity on event fees and income security. The event fee model – nowhere defined in UK law at present – would be recognised in legislation.

The risks to the sector of bad practice by non-ARCO members would also be much reduced, since consumer regulation would apply to the sector as a whole. This would, we believe, lead to a more standardised approach and to the further growth of the sector, meaning that data and comparable information would be much more reliable and easier to obtain for investors and the sector would be more familiar.

# What is required to implement Leasehold Plus?

**Leasehold Plus does not require immediate changes to primary legislation, and the main elements of the model can be brought into effect with two statutory instruments plus a Code of Practice, which can be modelled on the existing ARCO Consumer Code.**

## **SDLT**

Under existing law, unless the IRC operator is eligible for charitable relief, an operator will pay SDLT when buying back a property from a resident; and a new buyer subsequently buying the property from the operator will also pay SDLT on that transaction.

Under Leasehold Plus, to avoid this double liability the operator could either benefit from a new SDLT relief, analogous to that on part exchange properties, or would be able to apply for a refund of SDLT paid on the incoming transaction once the property is resold. Where the property is bought and sold on the same day, a refund scheme would in effect mean that no SDLT is payable by the operator. This would be analogous to the refund of the higher rate of stamp duty for second homes available where a homeowner gives away or sells their previous main home within 3 years of buying a new home.

It is likely that the relief/refund would only be available for a certain period, to prevent operators from buying back properties and converting them to rentals in the longer term.

The legal change required for this would be an amendment to Schedule 6A or Schedule 4ZA of the Finance Act 2003. This can be achieved by HM Treasury Regulations under s109 Finance Act 2003 or para 19 of Schedule 4ZA respectively, with confirmatory primary legislation to be passed within 18 months.

## **Code of Practice**

ARCO believes that implementation of Leasehold Plus would offer an important opportunity to regulate both event fees, and fixed/indexed regular service and management charges in the sector.

We envisage that an approved Code of Practice modelled on the ARCO Consumer Code, and approved by government or the Chartered Trading Standards Institute, would contain provisions on transparency and disclosure, the circumstances in which fees could be charged, and dispute resolution.

A statutory instrument under the Consumer Rights Act 2015 could provide that those fees charged otherwise than in accordance with the Code would be on the "grey list" and therefore likely to be unfair contract terms, with the clear implication that compliance avoids the grey list applying and the event fee is compliant and chargeable.

Alternatively, the Code could sit below a Regulation of Property Agents statutory Code which may be brought forward by the Government following the work of Lord Best's working group. This would mandate certain obligations for all property agents and then sector-specific sub-Codes would contain more specific regulation for – for example, managing agents or retirement property.



### Summary of required legal changes:

The following elements of Leasehold Plus would require legal change:

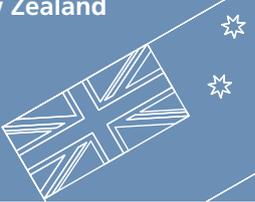
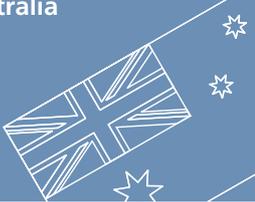
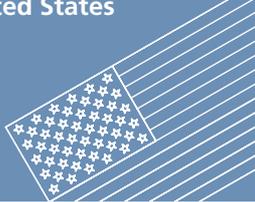
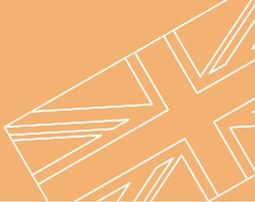
Element	Legal change required	Type of legislation required
SDLT relief, or refund on incoming transaction	Regulations from HM Treasury amending the Finance Act 2003	Secondary legislation with confirmatory primary legislation to be passed within 18 months
Regulation of event fees and fixed/indexed charges	Approved Code of Practice plus statutory instrument amending the grey list in the Consumer Rights Act 2015	Secondary legislation
ADR: Extending remit of existing Ombudsmen to cover Leasehold Plus	E.g. Housing Ombudsman – amendment of Approved Scheme (can be proposed by Secretary of State) and possibly SI under s51 Housing Act 1996 to extend definition of “social landlord”.	Secondary legislation and Approved Scheme
ADR: mediation scheme and expert valuation	Could go in Approved Code of Practice	Secondary legislation
Making Leasehold Plus available for grant-funded Shared Ownership	Amendments to Homes England shared ownership guidance	Guidance

**ARCO believes that the implementation of Leasehold Plus as a specific form of property ownership for the IRC sector in the UK would provide consumers with better protection and result in more consumer trust.**

**In particular, Leasehold Plus would help to address the 'legislative void' that has surrounded the IRC sector in contrast to other countries with much more developed sectors, for which the introduction of sector-specific legislation has been seen as crucial to its growth, for example, the 2003 Retirement Villages Act in New Zealand.**

## Housing-with-care: Filling the policy void

Sector-specific regulation has aided growth in other countries – in the UK, housing-with-care is non-existent in policy terms.

 <p><b>New Zealand</b></p>	 <p><b>Australia</b></p>	 <p><b>United States</b></p>	 <p><b>UK</b></p>
Retirement Villages Act 2003 <i>5.5% of over-65s live in a Retirement Community</i>	State-based (e.g. Retirement Villages Act New South Wales 1999) <i>5% of over-65s live in a Retirement Community</i>	State-based (e.g. Continuing Care Retirement Communities Act in North Carolina) <i>6% of over-65s live in a Retirement Community</i>	No sector-specific regulation in the UK <i>0.6% of over-65s live in a Retirement Community</i>

**Leasehold Plus** would allow IRC operators to align their offer with what older consumers are looking for, with a low-cost dispute resolution scheme available if something does go wrong. It would provide a great opportunity to fulfil the potential of the sector to improve housing and care options for older people in the UK.

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