

**WRITTEN EVIDENCE SUBMITTED BY MARK HAWTHORN, OWNER AND CEO  
OF LANDMARK GROUP**

Executive Summary

- Ground rent ban is encouraged but should be limited to newbuild leasehold houses. New apartment leases for buildings and more specifically leases for complex buildings (together “**Complex Leases**”) should be excluded from the proposed elimination of ground rent.
- Ground rent is for a service. There are a myriad of liabilities and responsibilities willingly inherited by a professional freeholder when acquiring these assets. A freeholder’s responsibilities extend in multiple directions covering insurance, facilities management, mechanical and engineering components, health and safety, fire risk, structural/maintenance items, block managers and the cordial compliance of individual residents.
- Eliminating ground rent for Complex Leases would significantly increase the existing risk to life, assets and communities nationwide. The true impact of this would not be immediately felt as problems would manifest as the system decays and sows the seeds of irreversible damage.
- The elimination of ground rent and the proposed Building Safety Bill on Complex Leases will increase market uncertainty and lead to paralysis. This will impact house builders, mortgage lenders, solicitors and ultimately flat owners as buildings containing Complex Leases will be regarded with less certainty.
- Responsible professional freehold management is the cornerstone of our current system as is evidenced by a functional market. This has been overlooked and should be promoted rather than discouraged.
- Regulating who can purchase buildings with Complex Leases would resolve many of the identified issues associated with leasehold reform. Flat owners would have the comfort that their freeholder is properly regulated and accountable.
- Alternatives to leasehold arrangements around the world (including commonhold) are not free from their own defects and generally not fit for purpose. These suffer from significant issues that have not been fully reported/ considered.

## Introduction

1. I am the CEO of Landmark Group (“**Landmark**”), a private group of companies that own and manage in excess of 25,000 residential leaseholds nationwide. I founded Landmark in 2000 and have been involved in the property industry since I was 16 years old. I am also a residential leaseholder living in the Northwest of England and have been in every home I have ever owned. We also own a healthy number of investment properties, the majority of which are leasehold and all well functioning
2. Landmark is actively engaged in stimulating the residential newbuild market by offering unit sales guarantees to developers through its LDS Sales Guarantees initiative (“**LDS Initiative**”) which has so far this year issued over £1,700,000,000 of proposals
3. Landmark is a founding member of the Government’s “Public Pledge for Leaseholders” which can be found at [Public pledge for leaseholders - GOV.UK \(www.gov.uk\)](http://www.gov.uk). This pledge focuses on making the leasehold system as fair and as transparent as possible.
4. Landmark would not be adversely impacted by the Government eliminating ground rent for new residential leases as we would not participate in the new regime. At present we would not extend our LDS Initiative to new apartment leases that are subject to the full scope of the Government’s proposed reform or are sold on a commonhold basis. The simple reason is that these assets would present very poor long term security
5. I am concerned that to date most participants have demonstrated little to no expertise on the subject matter and have argued for reform due to (1) anecdotal personal or constituent experiences; or (2) special interest in gaining financial advantage at the expense of others. This has caused a significant amount of misinformation to be circulated and has often been reported as factual basis.

## What is ground rent for?

6. The ability to oversee, manage and monitor the liabilities associated with Complex Leases requires substantial investment and ongoing cost. The financial counterbalance for the acceptance of these liabilities by a professional freeholder is the ground rent income. With ground rent the professional freeholder is well incentivised to ensure the building

performs, residents are safe and their property values protected as freeholder interests are well aligned with those of a flat owner.

7. Professional ground rent freeholders are financially committed to a building for a period of time that far exceeds the ownership period of any flat owner or the interest of the Government. Our financial modelling is ultra long term and it is commercial backward to keep a building in poor repair thus reducing the value of flats in a building where we have an investment. In reality we are well incentivised to ensure the buildings perform as optimally as possible
8. An accurate analogy for the service provided by a professional freeholder would be a comparison with an insurer. Ultimately both insurers and professional freeholders provide a wide-ranging indemnity to the flat owner, their mortgage lenders and the local environment. Taking on these risks requires compensation for the insurer or freeholder, both of whom are putting their balance sheets on the line.
9. As with insurance perversely people complain when paying for something and don't call upon it, but if they do claim it is money well spent. In the case of professional freeholders (who unlike insurers need to take proactive approach to preventing issues) this service is often met with calls for the removal of the very party that provides the security required for flat owners. The reality is that the role of a professional freeholder is a thankless one. Our true value is only ever evidenced when there are issues, at individual or building level, to be resolved. Ironically we proactively spend most of our time and money trying to avoid the need for flatowners to call upon us by averting any and every issues we can contemplate

### Complex Leases

10. Complex Leases are the backbone of the modern flat ownership structure. Buildings that house large amounts of residential units are becoming more complex as developers seek to bring forward much needed new homes on difficult sites all while satisfying important environmental and building safety regulations.
11. Managing agents are contracted to perform the management functions of a freeholder under the terms of the lease, but the decision making required of a freeholder under the lease remains with the freehold owner. The managing agent is a professional services

provider that requires instruction and is similar to a surveyor-client or solicitor-client relationship.

12. Ultimate responsibility for a managing agent's actions falls on the party that contracted them to provide the management functions, which is usually the freeholder or the holder of a head-lease. Acting as freeholder or landlord that owns a building with Complex Leases is therefore time consuming, costly and requires significant expertise.
13. Failure to correctly manage buildings containing Complex Leases results in management paralysis, general building decay and unhappy flat owners (as their properties and surroundings ultimately suffer). A freeholder can be held accountable through the Courts or First Tier Tribunal if they do not comply with their landlord covenants or seek to levy charges that are unreasonable or not provided for in their leases with the flat owners. Where freeholders are found to be acting unreasonably in computing the service charge or found in breach of their landlord covenants, they are usually required to cover errors out of their own pocket.
14. Freeholder expertise has been raised multiple times as part of the debate surrounding general ground rent reform but little attention has been given to it. A general response, including within Parliament, has been that this works without the involvement of professionals in other countries and I direct you to my comments at paragraph 31 below in respect of this notion. In reality, this is a complete myth for Complex Leases and this is evidenced by the day to day activity of Landmark's asset management teams, general counsel, appointed solicitors and contracted managing agents who are required to work in unison in a high pressured environment to deliver preventative and proactive solutions for flat owners.
15. A recent example of this professional team excelling in Landmark's role as professional freeholder involved a building where flat owners of a building had taken up their right to manage the building (known as an "RTM"). Unfortunately building safety issues were identified by the local authority several years into the RTM's management and the RTM and their appointed managing agent's management functions were put to the test.
16. The managing agent appointed by the RTM resigned shortly after notification of the building safety issues by the local authority. The flat owner directors of the RTM, while

able to appoint another managing agent, were paralysed in their decision making (mostly due to scale of the building and lack of engagement by the flat owners/ willingness to pay immediate costs) which left them unable to resolve the complex issues facing the building and resulted in the local authority issuing a prohibition notice rendering the building uninhabitable and their buildings insurance void.

17. To compound the above the RTM failed to file basic corporate paperwork which resulted in the dissolution of the RTM company at Companies House and caused the immediate return of the management of the freehold to Landmark.
18. As Landmark employ monitoring systems for RTM freeholds (including freeholds where Landmark do not have a direct responsibility for the flat owners of the building) we were alerted to the developing scenario early enough to mobilise our professional teams and remove the immediate monetary constraints associated with re-insuring the building in its re-classified state. The process of unpicking the issues overlooked by the RTM is now ongoing and will ultimately result in the building being made safe, brought back into use and the homes and investments of flat owners restored. Landmark stand to lose tens of thousands of pounds in irrecoverable costs as a result of this, but as a responsible professional freeholder this is accepted as part of our role in minimising a real threat to life.
19. The above is clearly a worst-case scenario for flat owners collectively managing buildings that involve Complex Leases (but is not an isolated example) and illustrates the point that a responsible professional freeholder's role is similar to an insurance policy for flat owners. A well written lease will provide for the freeholder to maintain services should the management structure of a building fail and **this support function is not available in alternate proposals**. The reform, as proposed, will lessen the protection available to flat owners of a building and will decrease the net present social value for flat owners. The Government impact assessments and briefing notes give no value to this valuable provision as well as being riddled with other misinformation and inaccuracies
20. The sizeable costs associated with running a management function capable of delivering preventative and proactive solutions for buildings containing Complex Leases requires significant annual investment and is not capable of being funded by a small entity on a sporadic basis. It can be very difficult to recover such costs through a building's service

charge without challenge by flat owners of a building (even if the costs are for their benefit) and by eliminating ground rent you are removing the financial incentive for a responsible professional freeholder to acquire and properly run a building.

21. By financially restricting freeholders in this way, you will see little to no future acquisitions of buildings that have nil ground rent Complex Leases by responsible professional freeholders as they are unable spread the costs of providing the level of support required to protect flat owners across the rent provisions of a portfolio. This would remove the freeholder safety net mentioned at paragraph 19 above and leave flat owners at the risk of opportunistic unprofessional freeholders or resort to self-governance, which can result in unintended consequences as mentioned at paragraph 17 above. In situations that require significant capital investment to resolve (such as described in paragraph 16 above or cladding) opportunistic unprofessional freeholders or ineffective self-governance will have catastrophic implications.
22. By facilitating and encouraging the demise of professionalism in freehold ownership and the management of buildings containing Complex Leases the Government would be increasing the risk of neglect of buildings and management responsibilities which will ultimately have a significant impact on communities nationwide. The extent of this impact will not be fully evident until buildings subject to nil ground rents have aged and the full maintenance programmes are in place. While difficult to predict, we can draw comparisons with the current residential led model of flat ownership in Scotland introduced in 2012 which has already encountered significant difficulties with maintaining buildings and recovering service charges. This has unfortunately resulted in the creation of so called “Zombie buildings”.

#### Institutional Paralysis

23. The intended introduction of the Buildings Safety Bill (“the **Bill**”) will impose tougher penalties for those who break the rules concerning building safety. Its introduction will place increased obligations on building owners to manage safety risks during occupation of high-rise buildings which are by their very nature Complex Leases. Building owners will need to demonstrate that they have effective and proportionate measures in place to manage safety risks. Those who don’t meet their obligations may face criminal charges.

24. Under the Bill flat owning directors of companies that own the freehold of a building will have these liabilities foisted upon them and due to their lack of professionalism will be at an increased risk of falling foul of the Bill. This will encourage a lack of participation of flat owners applying to positions of responsibility (and liability) for their buildings and in a worst-case scenario would lock individual flat owners into positions of responsibility (and liability) without any means of exit. This risk of limited flat owner participation is contrary to the intent of the proposed reforms and while expensive professional indemnity solutions could be explored for individual flat owners the risk of criminal liability will be the deterrent to most.
25. A common response to the above risks is that appointing a managing agent will cure all. As mentioned, a managing agent is appointed to undertake certain functions of a freeholder, not be the freeholder. In my experience managing agents employed by flat owner directors are fair weathered friends that are happy to take their fees when life is easy and quick to resign as soon as it gets difficult (as evidenced in my example at paragraph 16 above). Once you eliminate a professional freeholder, who is financially aligned with the flat owners in the long-term success of a building and usually contracts the managing agent on multiple sites, the financial incentive for a managing agent to stay committed to a building is drastically reduced. Passing any criminal or financial obligations onto managing agents would see a significant number of these companies exit the market.
26. Should the Government proceed with eliminating ground rents for Complex Leases and responsible professional freeholders cease acquiring freehold interests then there will be a dangerous gap. A lack of professional involvement in buildings that contain Complex Leases already creates uncertainty with banks, solicitors, surveyors and flat owners and this would be amplified in the above scenario. Complex Leases with no professional freeholder involvement that are subject to management/ building safety issues will lose their value as security to banks and as a saleable product to the market. The major UK retail banks should be consulted on this point (and the proposed legislation as a whole) prior to passing any legislation so as not to destabilise the market.
27. Naturally any fall in value/ security / lending availability would have repercussions on the newbuild sector as this would encourage developers and development lenders to exit the

Complex Lease market. Given the current housing crisis we should be encouraging residential development rather than stifling.

### Proposed Solution

28. An alternative to removing the ground rent for Complex Leases would be to introduce a formal regulator for freehold companies that own buildings that contain Complex Leases. Steps have already been taken by the government towards making the leasehold system fair and transparent and these should continue but not at the cost of making professional freehold ownership and management unviable.
29. In addition to introducing a regulator there should also be a limit on who can purchase buildings containing Complex Leases with an accreditation process introduced for companies that are purchasing these on a commercial basis. Proper accreditation and regulation would resolve many of the identified issues associated with leasehold reform.
30. I am happy to discuss my proposed solution in more detail if required but have limited comment on this for the sake of my wordcount.

### Alternative Systems

31. Alternative ownership structures work better is a common statement made by reformists with little to no supporting evidence. While there are differing legal systems around the world that deal with co-habitation; none are perfect and are only as good as the operator and systems in place. An honest review would demonstrate that ground rent paying leasehold has far more integrity than most. There seems to be an assumption with reform commentators that because we don't hear about issues in other countries, all must be well. This is a naïve, myopic and dangerous assumption. An independent study should be commissioned prior to any reform being passed and in my opinion the conclusion would be that the grass is not greener due to buildings often not even being maintained at all as alternative tenures are prone to disintegration.

### Misinformation

32. I have detailed below a few well publicised facts, often repeated by MPs, the media and the public at large which are incorrect and at times misleading.
33. “Millions are trapped in this situation”. Truly onerous leases account for a fraction of a percentage of the market. In reality the housing market is functioning very well and professional freeholders are largely committed to remedying whatever truly onerous leases they have in their portfolio as this is now a reputational issue.
34. “Leaseholds are unsaleable/unmortgageable” – this is clearly not true on any level. It is not in the market’s interest for this to be the case and where issues arise with leases they are often resolved fairly quickly when compared with other markets. The current alternative of commonhold is at present largely unsaleable and un-mortgageable as in practice the tenure is prone to unresolvable structural problems.
35. “Freeholders are all nameless, faceless, off-shore entities”. The majority of freehold owners are UK registered tax paying entities (Landmark Group is entirely UK based and pays substantial taxes). As with all industries, especially those linked to pension funds, there will be some off-shore entities in the market but this is the exception rather than the norm.

7 December 2021