

Submission to Bill Committee for Leasehold Reform (Ground Rent) Bill

Executive Summary

This submission has been jointly produced by Wallace Partnership Group, Consensus Business Group and Long Harbour, all of which are pension fund-backed companies with investments in the residential leasehold sector and who have substantial experience of owning and managing large and complex buildings.

This submission sets out the collective view of the group on the Leasehold Reform (Ground Rent) Bill, including how it can be implemented in a way that preserves the option of independent professional oversight in large and complex buildings; something we strongly believe is fundamental in the context of building safety.

As currently drafted, the Bill will result in future buildings not being owned by a professional freeholder (given they will almost certainly not take on the legal responsibility for a building without any ground rent income). This will have several significant unintended consequences, including the reduction of consumer choice in the housing market by disrupting the existing leasehold system, which offers well-established professional oversight, benefits and standards by institutional building owners.

It will force homeowners to take on all oversight responsibilities for apartment buildings and all the residents living in them, including health and safety obligations and liabilities, meaning managing agents will be instructed by residents rather than professional freeholders.

While removal of professional oversight may be less consequential for smaller apartment buildings, it will have a significant impact for those living in larger buildings where occupancy is more varied and the infrastructure (lifts, heating systems, fire alarms etc) is more complex. This is because these buildings require a more detailed knowledge regarding property management as well as health and safety legislative requirements and associated obligations.

It will also mean that, alongside management responsibilities, homeowners will also take on the insurance responsibilities for buildings, including the handling of claims, but without the market access of professional freeholders who can provide more comprehensive cover at lower costs.

In our experience of dealing with building safety issues, removing responsible professional freeholders will also make it harder for the regulators under the new Building Safety Bill to manage, detect and address building safety issues going forward, as each building will require a separate point of contact, as opposed to the arrangement now whereby multiple buildings are referenced to a single owner.

Furthermore, should residents not want to be appointed to the board of a resident led company with management responsibilities, external directors must be appointed, with payment for these directors being met from service charges. We believe this cost will far exceed current ground rent costs – meaning residents end up paying more.

The consequences of the Leasehold Reform (Ground Rent) Bill contradict the objectives of the Building Safety Bill. The building safety crisis requires a joined-up approach between government and building owners, and a recognition of the safety stewardship role they provide.

Therefore, these and other unintended consequences can be mitigated by doing two things:

1. Maintaining the choice of leasehold for consumers, and the benefits of it, by providing an exemption to the ban on ground rents for large, complex apartment buildings (with 'large, complex apartment buildings' defined in Annex A).
2. Regulating freeholders to ensure they are fulfilling their safety oversight role whilst also outlawing bad practice through our proposed Code of Practice (also found in the appendices at Annex D).

An exemption for large and complex apartment buildings was recognised by the Housing, Communities and Local Government Committee, in its report on leasehold reform: "The Government may, however, need to implement an exemption for mixed-use buildings, until commonhold becomes a realistic alternative in more complex buildings."

A case for amending the Leasehold Reform (Ground Rent) Bill

We fully support the Government's proposals to end the sale of leasehold houses and eliminate poor practices that have undermined the leasehold sector. To this end, we have undertaken measures to ensure leaseholders are afforded enhanced protections, in addition to the comprehensive framework of statutory rights that already exist for leaseholders, as well as signing the Public Pledge for Leaseholders, announced in March 2019.

We have also developed a draft Code of Practice (Annex D), which was agreed in principle by the Government under the terms of the Public Pledge, to ensure any professional freeholders do not fall below expected standards, and there are sanctions for those that do. We have urged the Government to adopt this to increase standards across the sector.

Despite these developments, the Bill, as drafted, makes no exemptions for apartments (particularly in more complicated developments), which are fundamentally different to houses in how they are managed and regulated. As currently drafted, ground rent payments will be abolished for apartments, even in large and complex buildings.

If ground rent is removed, the vast majority of professional freeholders will have no choice but to exit the market. This will leave the responsibility for management of all apartment blocks in the hands of residents via a resident led company with management responsibilities. Evidence suggests that many resident led management companies do not have the expertise, resource or scale to effectively deal with the compliance of building safety issues in line with the latest regulatory requirements, and properly instruct and oversee managing agents with the same effectiveness as professional freeholders.

This means that for any future building safety issues, the legal responsibility for the remediation process and implementation of necessary works will fall exclusively to residents.

We have seen from the current cladding crisis the importance of having experienced professional freeholders in place to support in identifying and implementing complex sets of remediation works for large and complex buildings.

In addition, removing professional freeholders from the complex apartment market will in effect mean that, once new building safety legislation comes into effect, legal responsibilities will fall to homeowners, regardless of whether they have asked for these responsibilities. This will in effect make homeowners criminally liable under new laws for any issues regarding building safety – issues

which they may not have the expertise, time or resource to effectively manage alongside their daily employment, care and other responsibilities.

In the event that homeowners do not want to take on these responsibilities and refuse to become directors of a resident led company with management responsibilities, external directors will need to be appointed, the costs of whom will need to be met from the service charge. We believe such costs will far exceed any ground rent payable now and therefore homeowners' costs will increase. Homeowners' costs will also increase as they lack the purchasing power of professional freeholders, for example in sourcing insurance.

An exemption for large and complex apartment buildings in the Bill is therefore necessary to protect homeowners and residents of such buildings from both present and future building safety issues, and to ensure our vital professional stewardship role remains an option for those who want it. This specific point was recognised by the Housing, Communities and Local Government Committee in its [report](#) on Leasehold Reform in 2019.

This amendment should allow for an exemption where ground rent can be charged on 'large and complex buildings,' to allow freeholders to continue operating sustainably in the leasehold sector and to provide building safety support to leaseholders who wish to use it.

Benefits of this proposed amendment

Professional freeholders have a long-term interest in the buildings we own and manage on behalf of our residents. Overseeing the proper upkeep and safety of our buildings on behalf of residents is a priority and is fundamentally aligned with the interests of our investors. Professional freeholders own and manage hundreds of thousands of leasehold properties, predominately large apartment buildings, in the UK.

With the country facing a national cladding crisis which professional building owners are actively addressing, policymakers should be asking serious questions about whether it is appropriate to remove the option of professional oversight for large apartment buildings and force homeowners to take legal responsibility for the management of large and complex apartment buildings.

The Bill, as currently drafted, presents a missed opportunity to further regulate the leasehold sector, eradicate bad behaviour and codify the positive role played by responsible professional freeholders. This would give leaseholders the opportunity of support from a professional freeholder who can take responsibility for safety and general oversight of the building, contributing to its longevity. Freeholders would also be held to industry and Government-mandated standards around their behaviour, while firmly clamping down on the unfortunate activity of a minority of freeholders.

In a report by Cambridge Centre for Housing & Planning Research, Leasehold and Freehold Charges, it stated that the number of leasehold properties that housebuilders estimate were sold with 10-year doubling ground rents is 10,000. That is 0.2% of the total number of leasehold properties in England which is 4.6m (from 2019-2020). Reducing ground rents across the board to a peppercorn, as is intended by the Bill, will have unintended consequences and is in any case unnecessary given the voluntary measures freehold companies have already committed to through the government-backed Public Pledge for Leaseholders issued in 2019

By amending the legislation to include this exemption, the Bill will deliver several clear benefits:

- i. It will provide the necessary consumer choice for leaseholders on how they wish for their properties to be managed.
- ii. It will allow leaseholders to continue to rely on building owners for support with regards to building safety matters, even in the case where a resident-run management company is present. We have experienced first-hand several cases where we have had to intervene in a remediation project where a resident-run management company is present, usually due to a lack of necessary resources and expertise.
- iii. It will also mean in the future that the Government will be able to call on industry to support them in their bid to deliver swift remediation across the country for the cladding crisis. This in particular will be an issue of major significance, as we are still seeing buildings being constructed with safety defects.

Industry research on the impact of removing professional freeholder

Savanta Report

In 2020, the leading market research group Savanta conducted research to examine how residents would feel about taking on the new building safety obligations proposed in the Government's draft Building Safety Bill (see further reading section for full report).

The Government's latest proposals focus on how buildings are managed to better ensure building safety through the role of an Accountable Person.

Savanta conducted in-depth qualitative interviews and subsequently 1,000 online quantitative interviews with leaseholders of varying demographics throughout England and Wales in January and February 2020. The key findings were as follows:

- a. The proposed building safety reforms will bring forward unprecedented legal, financial and potentially criminal responsibilities for the management of building safety.
- b. Leaseholders are reluctant to accept the Accountable Person role due to concerns around competence, legal exposure and the time commitment required.
- c. Specifically, 75% of leaseholders feel negatively about the changes, whilst 67% are worried about their building not being maintained properly.
- d. Professional freeholders are well placed and willing to take on this role and perform the duties of the Accountable Person.
- e. Alternative proposals that encourage resident-led ownership and management are not popular in large blocks; and
- f. Comprehensive regulation of the leasehold sector will ensure the effective delivery of the new building safety regime.

Lessons from the Scottish model

Issues with a model where freeholders have been driven from the market can be seen in Scotland currently and research undertaken by the Royal Institute of Chartered Surveyors (see Appendices for full report).

A lack of professional oversight and accountability means 80% of apartment buildings in Scotland are rapidly falling into disrepair and occupiers are struggling to raise the £2bn needed for critical works. This clearly outlines the problem with individual homeowners being required, not out of choice but by default, to take on the building safety and administration of large and complex buildings without the necessary experience, expertise and ability to provide professional oversight for the upkeep of the building as a freeholder with a long-term interest and professional team can do.

Appendices

Outlined below are a series of external resources outlining the issues with legislation as currently proposed.

ANNEX A: Definition of 'large and complex buildings' for any proposed exemption

- A large and complex building is one which contains at least 15 dwellings; and satisfies at least one of the following conditions:
 - (a) it contains Significant Communal Facilities; or
 - (b) a connected building contains Significant Communal Facilities; or,
 - (c) any landlord under the lease is the “responsible person” for the purposes of the Regulatory Reform (Fire Safety) Order 2005 for the building and for any connected building.
- Significant Communal Facilities” means any services provided by means of mechanical and electrical installations which benefit (or are intended to benefit) two or more dwellings where:
 - (a) the total floor area allocated to those services exceeds 15 per cent of the internal floor area of any building;
 - (b) the cost of any insurance policy (or policies) procured by or on behalf of the landlord in respect of those facilities exceeded £100,000 per annum; or,
 - (c) a tenant under a long lease of a dwelling in one building is entitled to receive services associated with any Significant Communal Facilities in another building, but has no express right under the terms of the lease to access the other building for the purposes of repairing or maintaining any Significant Communal Facilities.
- For the purpose of determining the internal floor area of a building or of any part of a building, the floor or floors of the building or part shall be taken to extend (without interruption) throughout the whole of the interior of the building or part.
- Buildings are connected buildings if:
 - (a) when the first lease of a dwelling was granted, the buildings formed part of the same freehold or leasehold title as registered at the Land Registry; or,
 - (b) when the first lease of a dwelling was granted the Relevant Services in respect of one building were provided (or were intended to be provided) together with the Relevant Services of another building.

- “Relevant Services” mean any services provided for the benefit of one or more occupiers of a building and includes works of repairs, maintenance, improvements, insurance or management.

ANNEX B: Common Repair Provisions for Multi-Owned Property: A Cause for Concern, RICS and Built Environment Scotland, January 2019 ([link](#))

- i. This report was produced in early 2019 and was commissioned by RICS and Built Environment Forum Scotland. The report takes the form of an investigation into arrangements for ensuring that common repairs are undertaken within flatted property in Scotland.

ANNEX C: Rebalancing the Relationship Between Freeholder and Leaseholder, Savanta, July 2020 ([link](#))

- ii. In 2020, Savanta conducted research to examine how residents would feel about taking on the new building safety obligations proposed in the Government’s draft Building Safety Bill.

ANNEX D: Leasehold and Commonhold – Draft Code of Practice (attached with wider submission)

- iii. A draft Code of Practice developed by key industry stakeholders in order to raise standards and professionalise the sector.

ANNEX E: Response to Government Impact Assessment on the Leasehold Reform (Ground Rent) Bill, October 2021 (attached with wider submission)

- iv. A briefing paper was developed in response to the Government’s publication of an Impact Assessment on the Leasehold Reform (Ground Rent) Bill. Accompanying the Bill, the Government’s own Impact Assessment demonstrates the negative impact the proposed legislation will have on the housing market, including increased house prices and the creation of more barriers to entry for consumers trying to get on the property ladder.

ANNEX F: Understanding the leasehold sector, Property Week, September 2021 ([link](#))

- v. Published in September 2021 using the contributions of the UK’s three largest freeholders, this insight guide on the leasehold sector explores some of the legislation’s unintended consequences on building safety and its impact on pensioners.

ANNEX G: Leasehold Reform, Twelfth Report of Session 2017-19, House of Commons Housing, Communities and Local Government Committee, March 2019 ([link](#))

- vi. A report by the House of Commons Housing, Communities and Local Government Committee on Leasehold Reform