

Modern leasehold: restricting ground rent for existing leases – UK Government consultation

Response from Propertymark

January 2024

Background

1. Propertymark is the UK's leading professional body of property agents, with 18,000 members representing over 12,500 branches.¹ We are member-led with a Board which is made up of practicing agents and we work closely with our members to set professional standards through regulation, accredited and recognised qualifications, an industry-leading training programme and mandatory Continuing Professional Development.

Consultation – overview

2. In recent years, the UK Government has been taking action against what is seen as unfair system, where many people believe they were miss-sold into paying what they see as excessive ground rents. On 30 June 2022, the Leasehold Reform (Ground Rent) Act 2022 made most ground rents for new long residential leasehold properties in England and Wales illegal.² This consultation looks at proposals to regulate ground rent for existing leases, which will be inform future legislation such as the Leasehold and Freehold Reform Bill.

Propertymark response – summary

3. Propertymark welcomes to opportunity to respond to the Department for Levelling Up, Housing and Communities' (DLUHC) consultation on restricting ground rent for existing leases. Propertymark has long campaigned for leasehold reform, through our 2018 research report *Leasehold: A Life Sentence*³. While there are other issues related to leasehold that Propertymark will continue to campaign on, which we have discussed with officials from DLUHC including through a roundtable with Propertymark member agents on 6 December 2023, addressing ground rents for existing leaseholders is a key step towards a fairer leasehold system. Ultimately, Propertymark believes that a setting ground rent at a peppercorn value is the best way to resolve existing issues related to leasehold for the following reasons:

¹ <https://www.propertymark.co.uk/>

² <https://www.legislation.gov.uk/ukpga/2022/1/contents/enacted>

³ <https://www.propertymark.co.uk/resource/leasehold-a-life-sentence.html>

- **It provides the most effective solution to the issues faced by leaseholders**, ensuring that they are not stuck paying ground rents on a property that they regret buying.
- **It tackles one of the larger barriers to selling leasehold properties**, reigniting the property sector to increase the number of homes sold.
- **It encourages the movement away from the existing leasehold system**, which many consumers believe they were miss-sold into.
- **It brings existing leaseholders on par with new leaseholders**, bringing much needed parity for those who already pay what they believe to be excessive ground rent.

Questions

Question 1: Think about how leaseholders experience ground rent. What do you see as the key problems that ground rents are causing for leaseholders? (select all which apply)

- **No problem**
 - **That the full terms related to ground rent payments are not initially made clear when buying the property**
 - **That leaseholders have to pay a ground rent payment for no clear service given in return**
 - **That ground rent payments are unaffordable**
 - **That ground rent payments get more expensive over time**
 - **That leaseholders do not know or understand when their ground rent will increase**
 - **That leaseholders do not know or understand how much their ground rent will increase**
 - **That the property cannot be bought or sold because mortgage providers do not like the ground rent terms**
 - **Other problem**
4. Propertymark agrees that all of the problems listed are often experienced by leaseholders and property agents they engage with when buying, selling and renting a leasehold property.

Question 2: Do you have any evidence about the scale of any problems that ground rents cause to leaseholders?

5. Yes, our research conducted in 2018 on the impact of leasehold on home buyers and follow up research in 2023 confirms the scale of the issue for us. The issues regarding a lack of understanding around ground rent increases is partially due to poor and inconsistent knowledge from consumers

when buying a leasehold property. Many are unaware of the difference between leasehold and freehold and are unaware of the intricacies of ground rent and when it increases. This can be offset when independent professionals such as solicitors and property agents chosen by the buyer can read through contracts with them. However, in the majority of cases, at least through Propertymark research in 2018, 78% of leasehold house owners bought their home directly from a developer, with 65% using a solicitor their house builder recommended⁴. Furthermore, 15% of leaseholders were not even informed that they were buying a leasehold property, which indicates a level of conflict of interest between providing the full range of information that a buyer needs to make an informed choice. As a result, 62% of leaseholders felt they were mis-sold leasehold and entered into a contract that is unclear and does not provide clear service.

6. Since 2018, Propertymark members have reported there has been an increase in consumer awareness. Propertymark's 2023 report, *Leasehold 2023: Has anything changed?* highlighted that 60% of buyers ask for information about the lease before they view a property and 72% of agents believe that homebuyers are more aware of the issues surrounding leasehold property⁵. However, issues remain as 54% of agents who sell property on behalf of developers report that they do not always provide the pertinent leasehold information. While improvements have been made, it is also important to stress that this does little to support leaseholders who have already regretted buying a leasehold property and are stuck paying ground rents.
7. Selling property is one of the key issues for leaseholders who are often unable to sell their property despite no longer wishing to live in it. Our 2018 research indicated that 70% of leaseholders were worried that they will not be able to sell their homes because they are leasehold. This continues to be the case, if not worse due to growing awareness of leasehold practices, as our 2023 research showed that 78% of Propertymark agents reported that leasehold properties with escalating ground rent will struggle to sell, even if priced correctly. Ground rents have a particularly high impact on vulnerable home buyers. In particular, rental properties bought as a leasehold by older people can lead to leaseholders who are retired paying a significant portion of their pension in ground rent, without being in a position to increase their income.

Question 3: If government were to legislate to rectify problems with ground rents in existing leases, which of the proposed options could achieve this? (Tick all which apply)

- **Option 1 - Capping ground rents at a peppercorn**

⁴ <https://www.propertymark.co.uk/resource/leasehold-a-life-sentence.html>

⁵ <https://www.propertymark.co.uk/resource/leasehold-2023-has-anything-changed.html>

- **Option 2 - Capping ground rent at an absolute value**
- **Option 3 - Capping ground rent at a percentage of the property value**
- **Option 4 - Capping ground rent at the original amount it was when the lease was granted**
- **Option 5 - Freezing ground rent at current levels**
- **None of the above**

8. We think that each option would help in some way to rectify the problems with ground rents in existing leases. However, we urge the UK Government to consider our rank of options as outlined in our response to Question 4 as the effectiveness of each option differs considerably.

Question 4: Considering all options to cap ground rent, please rank the following in order of preference (1 being your most preferred option and 5 your least) and/or provide an alternative option.

- **Option 1 - Capping ground rents at a peppercorn**
- **Option 2 - Capping ground rent at an absolute value**
- **Option 3 - Capping ground rent at a percentage of the property value**
- **Option 4 - Capping ground rent at the original amount it was when the lease was granted**
- **Option 5 - Freezing ground rent at current levels**
- **A different option to those listed**

9. Our order of preference, from most to least preferable, is as follows:

Option 1 - Capping ground rents at a peppercorn

Option 5 - Freezing ground rent at current levels

Option 4 - Capping ground rent at the original amount it was when the lease was granted

Option 3 - Capping ground rent at a percentage of the property value

Option 2 - Capping ground rent at an absolute value

10. Capping ground rents at a peppercorn would have the greatest benefit for both leaseholders and for the property sector as a whole. It would help to reduce costs for existing leaseholders to the largest extent of all options available and increase demand for leasehold properties. This would help encourage more people to buy leasehold properties, moving the market forward after a significant stagnant period for the sale of leasehold properties.

Question 5A: Please consider Option 1 of capping ground rent at a peppercorn. Would capping ground rents at peppercorn have a positive, neutral or negative impact on the following groups:

- leaseholders,
- freeholders/intermediate landlords,
- investors (including local authorities, pension funds and others),
- mortgage lenders
- The wider property market (developers, conveyancers, estate agents etc).

11. Capping a ground rent at a peppercorn would have a positive impact on leaseholders, mortgage lenders and the wider property market. Capping ground rents at a peppercorn would have a negative impact on investors and freeholders.

Question 5B: What are the advantages of a peppercorn cap for leaseholders? Please explain your answer with reference to the scale of the advantageous impacts. What are the disadvantages of a peppercorn cap for leaseholders? Please explain your answer with reference to the scale of the disadvantageous impacts.

12. We think there are four advantages of a peppercorn cap for leaseholders. Firstly, existing leaseholders will not have to pay an annual fee for no guaranteed service. Secondly, it will be easier for leaseholders to sell their property. Thirdly, it will reduce the cost of living in a leasehold property as often ground rents are changed alongside annual service charges, estate charges or additional administration charges. Fourthly, the reforms to ground rent sit alongside other proposed measures from the UK Government such as proposals to increase the standard lease extension term for leaseholds to 990 years from 90 years which is likely to mean that leaseholders could be thousands of pounds better off, and the value of their property could increase. The disadvantages of a peppercorn cap for leaseholders, is that some freeholders may pass any loss of income on ground rent on to the service charge instead and in the short term there could be a readjustment in the investment in leasehold buildings from developers, leading to a decline in leasehold properties brought to the market which are often cheaper than freehold properties and allow first time buyers to get on the housing ladder. This would potentially make buying a home more expensive. However, in the long-term we believe that a peppercorn cap could actually encourage the development of more commonhold buildings which would avoid additional costs such as ground rent and service charges as well as avoid the problem of leases expiring.

Question 5C: What are the advantages of a peppercorn cap for freeholders/intermediate landlords? Please explain your answer with reference to the scale of the advantageous impacts. What are the

disadvantages of a peppercorn cap for freeholders/intermediate landlords? Please explain your answer with reference to the scale of the disadvantageous impacts.

There are two main advantages of a peppercorn cap for freeholders/intermediate landlords. Firstly, they would continue to hold a valuable long-term interest in the leasehold property. Secondly, reduced administration should they be receiving ground rent where no service is being provided depending on the lease agreement. The disadvantages of a peppercorn cap for freeholders/immediate landlords, is that should a service be provided, and a cap be lower than what is being provided then this could result in a lower standard of service to leaseholders. Where a service is provided, freeholders/immediate landlords may remove or reduce service levels of management companies with more leaseholders needing to manage blocks of flats.

Question 5D: What are the advantages of a peppercorn cap for investors? Please explain your answer with reference to the scale of the advantageous impacts. What are the disadvantages of a peppercorn cap for investors? Please explain your answer with reference to the scale of the disadvantageous impacts.

13. The advantages of a peppercorn cap for investors are that they would continue to hold a valuable long-term interest in the leasehold property. The disadvantage for investors is that it may impact the value of the freehold which if applicable could impact leaseholder's ability to obtain a mortgage or sell the property as we are aware that pension funds own billions of pounds in freehold investments.

Question 5E: What are the advantages of a peppercorn cap for mortgage lenders? Please explain your answer with reference to the scale of the advantageous impacts. What are the disadvantages of a peppercorn cap for mortgage lenders? Please explain your answer with reference to the scale of the disadvantageous impacts.

14. The advantage of a peppercorn cap for mortgage lenders is a reduction in complexities when lending to properties with ground rent. For instance, some existing leases contain clauses obliging leaseholders to pay a rent which doubled after a set period of time. For instance, if the ground rent started at £250, and doubled every 10 years, this could become £2,000 after 30 years. These are referred to as doubling ground rent clauses. According to our member agents, these clauses are very unpopular with lenders, and can make a property difficult to sell to anyone other than a cash buyer, unless the freeholder agrees to amend the clause. Consequently, lenders will benefit

from additional demand for their services. The disadvantage of a peppercorn cap for mortgage lenders may be if a cap on ground rents has a direct impact on the value of a freehold which changes lending and re-mortgage criteria.

Question 5F: What are the advantages of a peppercorn cap for the wider property market (developers, conveyancers, estate agents etc.)? Please explain your answer with reference to the scale of the advantageous impacts. What are the disadvantages of a peppercorn cap for the wider property market (developers, conveyancers, estate agents etc.)? Please explain your answer with reference to the scale of the disadvantageous impacts.

15. We think that there are three main advantages of a peppercorn cap for the wider property market:

- Greater transparency and it would remove the current two-tier arrangements brought in under the Leasehold Reform (Ground Rent) Act 2022 where all leases granted on or after 30 June 2022 (1 April 2023 for leases of retirement homes) must have a yearly ground rent of a peppercorn. That legislation does not though extend to existing leases, under which ground rents continue to be payable. We do not see any disadvantages of a peppercorn cap for the wider the property market other than what we have previously stated.
- Enforcing a peppercorn ground rent will help encourage a move towards commonhold without legally mandating it and introduce freehold home ownership for flats or other properties that share communal areas or services. Under commonhold ownership, unit holders can have a greater say in how their building is managed, including costs and responsibilities.
- The UK Government should be taking advantage of these reforms and the proposed legislation to do two things. Firstly, promote professional management of properties to support leaseholders. Managing a block of flats requires a professional approach and the time to do it. Following the introduction of recent legislation including the Building Safety Act, managing agents need to have a good knowledge of landlord and tenant law, building construction, health and safety regulations, basic accounting and a range of other skills. Secondly, the UK Government must implement the recommendations outline in the Regulation of Property Agents (RoPA) report to complement these reforms.⁶ Currently,

⁶ <https://www.gov.uk/government/publications/regulation-of-property-agents-working-group-report>

there are no statutory requirements for sales, lettings and managing agents to be registered, qualified, pass a fit and proper person test and work to a statutory code of practice. This does nothing to enhance consumer protection for those living in leasehold property and the wider property market.

Question 5G: Imagine government chooses a peppercorn cap. Consider whether there should be a period of delay between the legislation passing and a peppercorn cap coming into force. Which of the following statements do you agree with the most? Please explain why you have given this response.

- I would prefer for there to be immediate implementation of the peppercorn cap (once the necessary legislation had passed)
- I would prefer for there to be a period of delay before a peppercorn cap was introduced.
- I do not support a peppercorn cap on ground rents, regardless of any period of delay.

16. Yes, we would support a period of delay before a peppercorn cap was introduced. This would give the sector time to adjust to the changes in legislation and identify any potential loopholes or shortcomings within the legislation when brought into practice.

Question 5H: If you selected “I would prefer for there to be a period of delay before a peppercorn cap was introduced”, imagine that a peppercorn cap was introduced. What do you think would be the best time period between the law being passed and implementing the cap? Please explain why you have given this response

- 6 months
- 1 year
- 3 years
- 5 years
- More than 5 years
- Not applicable

17. Given that the sector has already been able to respond to the cap on ground rents for new leases, one year should be sufficient time for the sector to prepare for the cap on ground rents.

Question 5I: Imagine that a peppercorn cap was introduced with a period of delay before implementation. Which of the following statements do you agree with the most?

- The value of ground rents should be frozen during the period of delay

- **Ground rents should continue as they are, including the potential to increase, until the new cap is implemented**

18. We would support that ground rents should be frozen during the period of delay. This would prevent ground rents from being increased substantially by freeholders looking to increase returns in the last year that they can charge ground rent.

Question 5J: Imagine that the peppercorn cap was introduced. Are there any circumstances or types of property which should be subject to different transitional arrangements?

19. No, we do not think there to be any properties where different transitional arrangements are appropriate.

Question 6A: Please consider Option 2 of capping ground rent at an absolute value. Please think about the impacts that this cap would have on. Please consider whether this cap would have a positive, neutral or negative impact on the following groups:

- leaseholders,
- freeholders/intermediate landlords,
- investors (including local authorities, pension funds and others),
- mortgage lenders
- the wider property market (developers, conveyancers, estate agents etc).

20. Option 2 would have a positive impact on leaseholders, but to a lesser extent than option 1. Option 2 would have a negative impact on freeholders / intermediate landlords and investors but to a lesser extent than option 1. Option 2 would have a neutral impact, mortgage lenders and the wider property market.

Question 6B: Considering those impacts, what are the advantages of a cap at an absolute value? Please explain your answer with reference to the key groups listed above and the scale of the advantageous impacts.

21. The advantages of a cap at an absolute value would mean it would have a more limited negative impact on investment. If capped, ground rents would still be charged and therefore investment and revenue for the freeholder will not be as negatively affected, even if some investors leave due to a potential reduction in their returns. This only applies however if the cap is lower than most

ground rents. If the cap is higher than most ground rents, this will have little change on the current leasehold system and may in fact lead to an increase in ground rent in some instances as some investors look to charge the maximum ground rent.

Question 6C: Considering those impacts, what are the disadvantages of a cap at an absolute value? Please explain your answer with reference to the key groups listed above and the scale of the disadvantageous impacts.

22. When compared to Option 1, the disadvantage of this option is that the market would remain stagnant, with leaseholders still unable to sell their property as many potential buyers would still prefer to purchase a freehold property. Some of the complexities around the ground rent charged would be decreased, however option 2 will not free up the market to the same extent as option 1.

Question 6D: What should the absolute value figure be (£)?

- £1-100
- £101-200
- £201-300
- £301-400
- £401-500
- Over £500

If you selected "Over £500" please enter a £ value. Please explain why you have opted for this figure.

23. If this option was to be taken forward, we believe the cap should be as small as possible. Therefore, we would choose £1 as the absolute value that ground rent can be capped. This would effectively make option 2 no different from option 1.

Question 6E: What do you think would be the best time period between the law being passed and implementing the cap?

- I would prefer to see an immediate implementation this option (once the necessary legislation had passed)
- 6 months
- 1 year
- 3 years
- 5 years
- More than 5 years

Please explain why you have opted for that time period

24. As with option 1, one year should provide the sector sufficient time to adjust to the new cap on ground rents.

Question 6F: Imagine that the absolute value cap was introduced. Are there any circumstances or types of property which should be subject to different transitional arrangements?

25. No, we do not believe there to be any properties where different transitional arrangements are appropriate.

Question 7A: Please consider Option 3 of capping ground rents at a percentage of the property value. Please consider whether this cap would have a positive, neutral or negative impact on the following groups:

- leaseholders,
- freeholders/intermediate landlords,
- investors (including local authorities, pension funds and others),
- mortgage lenders
- the wider property market (developers, conveyancers, estate agents etc).

26. Option three would have a positive impact on investors and freeholders. Option three would have a negative impact on leaseholders, mortgage lenders and the wider property market.

Question 7B: Considering those impacts, what are the advantages of capping ground rents at a percentage of the property's value? Please explain your answer with reference to the key groups listed above and the scale of the advantageous impacts.

27. There are two advantages of capping ground rents at a percentage. Firstly, it provides clarity as to the amount of ground rent charged. This will make it clearer to potential leaseholders of the ground rent that they will be charged, making it more difficult to be mis-sold rising ground rents. However, since ground rents are unpopular, we do not envision that this will improve market activity. Secondly, it ensures investment in leasehold properties does not decrease, depending on the percentage charged. As stated earlier, in the long-term Propertymark does not see this as an advantage.

Question 7C: Considering those impacts, what are the disadvantages of capping ground rents at a percentage of the property's value? Please explain your answer with reference to the key groups listed above and the scale of the disadvantageous impacts.

28. The main disadvantage from doing this is that leaseholders will continue to be charged ground rents for no guaranteed service. As a result of this, demand for these properties from consumers will remain low and mortgage lenders will continue to be reluctant to lend on these properties.

Question 7D: If the government did pursue this option, what percentage of the property value should this be and why?

- <0.1
- 0.1
- 0.2
- 0.3
- >0.3

If you chose “>0.3%” please specify your preferred percentage. Why have you chosen this percentage?

29. We would encourage as low a percentage as possible, therefore we would urge the government to set ground rents at below 0.1% of the property value.

Question 7E: Who should be responsible for undertaking such valuations?

- The freeholder
- The leaseholder
- Other

If you selected “Other” please specify. Please feel free to explain your response.

30. Other. Valuations should be undertaken by independent sufficiently qualified property valuers. This would allow for a more accurate, independent, professional valuation and prevent the valuation from being undertaken by a party with a vested interest in the value of the property. In order to verify if the property valuer is suitably qualified, we would recommend following the precedent established by the Charities Act 2022. This Act expanded upon the professionals that are suitably qualified to provide valuation reports to charities looking to sell, transfer or lease land in England and Wales to include Propertymark Fellows, who are professionals who have completed their Level 4 qualification. Considering the public interest in ensuring the valuations of land owned by charities is conducted professionally, we would expect that Propertymark Fellows to meet the standards required to conduct these property valuations.

Question 7F: What do you think would be the best time period between the law being passed and implementing the cap?

- I would prefer to see an immediate implementation this option (once the necessary legislation had passed)
- 6 months
- 1 year
- 3 years
- 5 years
- More than 5 years

Please explain why you have opted for that time period

31. As with option 1, one year should provide the sector sufficient time to adjust to the new cap on ground rents.

Question 7G: Imagine that the cap limiting ground rent to a percentage of the property's value was introduced. Are there any circumstances or types of property which should be subject to different transitional arrangements?

32. No, we do not believe there to be any properties where different transitional arrangements are appropriate.

Question 8A: Please Consider Option 4 of limiting ground rents in existing leases to the original amount in the lease. Please consider whether this cap would have a positive, neutral or negative impact on the following groups:

- leaseholders,
- freeholders/intermediate landlords,
- investors (including local authorities, pension funds and others),
- mortgage lenders
- the wider property market (developers, conveyancers, estate agents etc.)

33. Option 4 would have a limited positive impact on leaseholders, freeholders and investors. Option 4 would have a negative impact on mortgage lenders and the wider property market.

Question 8B: Considering those impacts, what are the advantages of capping ground rents at their original value? Please explain your answer with reference to the key groups listed above and the scale of the advantageous impacts.

34. The main advantage of this option is that it would reduce ground rents for leaseholders who have seen their ground rents increase since the original lease. For investors, while this option may reduce returns on investment, this would still enable them to charge ground rents which is a comparable advantage when compared with some of the other options. This also resolves the issue where ground rents were agreed upon and considered acceptable when the original lease was signed but have since increased to unsustainable levels.

Question 8C: Considering those impacts, what are the disadvantages of at their original value? Please explain your answer with reference to the key groups listed above and the scale of the disadvantageous impacts.

35. This option would fail to resolve the issue of ground rents for those who have not increased but are still unsustainable. Additionally, if ground rents continue to be charged, the option will have a limited impact on opening up the sales market. A consequence of this is that it will not make it easier for those who believe to have been miss-sold leasehold to sell their property.

Question 8D: Will ascertaining the original ground rent value in leases (i.e., the ground rent charged in the first year of the lease) create a significant problem for implementing this option across existing leases?

36. Yes, we do think ascertaining the original ground rent value in leases (i.e., the ground rent charged in the first year of the lease) will create a significant problem for implementing this option across existing leases. We think this for two reasons. Firstly, PropertyMark members have often reported that it is difficult to get into contact with the freeholder to arrange of any changes to be made to the original contract. Secondly, legal professionals are weary of getting involved in leasehold due to existing stigma surrounding it. This leaves property agents spending significant time and resources to chasing the freeholder who often is not interested in engaging with the lease, as well as resources to understand the complexities with the lease contract, despite not being legal professionals. Both of these issues will create a significant problem for implementing Option 4. By comparison, making option 1 legally binding will be easier to enforce as leaseholders charged ground rent can take legal action against the freeholder.

Question 8E: If the original ground rent amount (i.e., the ground rent charge in the first year of the lease) cannot be ascertained, how should the value of the cap be determined?

37. We would recommend that a rent cap of a peppercorn be charged if the original ground rent amount cannot be ascertained. This would encourage freeholders to work with leaseholders and agents in order to identify the original ground rent.

Question F: What do you think would be the best time period between the law being passed and implementing the cap? Please explain why you have opted for that time period

- **I would prefer to see an immediate implementation this option (once the necessary legislation had passed)**
- **6 months**
- **1 year**
- **3 years**
- **5 years**
- **More than 5 years**

38. If option 4 is considered, we would consider 1 year to be the optimal option. This would allow for sufficient time to determine the original ground rent without prolonging existing charges that are unsustainable for many leaseholders.

Question 8G: Imagine that the cap limiting ground rents in existing leases to the original amount was introduced. Are there any circumstances or types of property which should be subject to different transitional arrangements?

39. No, we do not consider that any types of property should be subject to different transitional arrangements.

Question 9A: Please consider Option 5 of freezing ground rents at their current value. Please consider whether this cap would have a positive, neutral or negative impact on the following groups:

- **leaseholders,**
- **freeholders/intermediate landlords,**
- **investors (including local authorities, pension funds and others),**
- **mortgage lenders**
- **the wider property market (developers, conveyancers, estate agents etc).**

40. Option 5 will have a positive impact on investors and freeholders. Option 5 will have a negative impact on leaseholders, mortgage lenders and the wider property market.

Question 9B: Considering those impacts, what are the advantages of freezing ground rent at their current value? Please explain your answer with reference to the key groups listed above and the scale of the advantageous impacts.

41. The advantages of freezing ground rent at their current value would be that freeholders and investors continue to receive income from ground rents. Freezing rents would also prevent ground rents from becoming more unsustainable. However, as stated earlier in our response, this comes at the cost of a stagnant property sector where consumers knowledgeable about leasehold would be unlikely to consider it over a freehold property.

Question 9C: Considering those impacts, what are the disadvantages freezing ground rent at their current value? Please explain your answer with reference to the key groups listed above and the scale of the disadvantageous impacts.

42. The disadvantages of option 5 is that it makes no change to the situation that existing leaseholders are experiencing. While it does prevent the disadvantages of option 1 and prevents a further unsustainable rise in ground rents, the current situation that leaseholders are facing will not change. We think this is unacceptable, not only has our research shown that most existing leaseholders regret buying leasehold properties, but agents also struggle to sell leasehold properties due to the unpopularity of ground rents. Ultimately, freezing ground rents will fail to have any positive effect on leaseholders and the property market.

Question 9D: What do you think would be the best time period between the law being passed and implementing the cap? Please explain why you have opted for that time period

- I would prefer to see an immediate implementation this option (once the necessary legislation had passed)
- 6 months
- 1 year
- 3 years
- 5 years
- More than 5 years

43. If option 5 was chosen, it should be implemented immediately to prevent any ground rents from being raised further once the legislation had been passed. Out of all the other options, it is also relatively easy to implement.

Question 9E: Imagine that the cap freezing ground rents at their current level was introduced. Are there any circumstances or types of property which should be subject to different transitional arrangements?

44. No, we do not believe any specific types of property should be subject to different transitional arrangements.

Question 10: Imagine that a ground rent cap comes into force. Which of the following mechanisms for increasing ground rent do you most agree with?

- **Ground rents should not be able to increase again after a cap is introduced. (If there was a maximum value cap in place, it should be able to rise to that fixed maximum value but never beyond it)**
- **Ground rents should increase by a pre-determined index link, such as the retail price index (RPI)**
- **Ground rents should increase by a fixed increments (e.g., a doubling term at a given interval)**
- **Ground rents should increase by an open market review (e.g., in line with the increase in capital value of the property)**
- **Ground rents should increase by a different mechanism**

45. Ground rents should not be able to increase again after a cap is introduced. This would have the largest benefit for leaseholders and the property sector.

Question 11: Are there any specific freeholder management functions which cannot be charged through the service charge?

46. No. Even if it is common practice to charge specific freeholder management functions through the ground rent, this should be abolished. All future charges should be made clear with a direct benefit for leaseholders.

Question 12: Our aim of making sure that freeholder management functions can be funded through the service is to improve the transparency and accountability of costs. Can you foresee any unintended consequences of bringing all freeholder management functions into the service charge regime?

47. No, we consider transparency of charges and services to leaseholders to be vitally important to ensure that home buyers are provided with all the necessary information they need to make an informed choice. While this may lead to an increase in the service charge for some, making the charge and the level of expected service clear would prevent leaseholders from being miss-sold leasehold.

Question 13: Do you believe there are any specific considerations we need to give to blocks that have exercised the Right to Manage?

48. No, we do not believe there are any specific considerations are required for blocks that have exercised Right to Manage.

Question 14: In instances where leaseholders have exercised the Right to Manage, does the freeholder or intermediate landlord continue to provide any specific freeholder management functions which contribute to the ongoing maintenance or smooth running of the building?

49. We do not have sufficient insight into the experience of leaseholders in this specific example to provide a conclusive response to this question.

Question 15: Imagine that a ground rent cap was introduced. Do you think that compensation should be paid to freeholders or intermediate landlords for any loss of ground rent revenue?

50. Yes, we think some form of compensation may be necessary to minimise any negative consequences to capping ground rents to a peppercorn.

Question 16: Imagine that a ground rent cap is introduced. Do you think that leaseholders should be reimbursed for past payments of ground rent where they were above the newly introduced cap?

51. No, we do not think that this is necessary. The ability for leaseholders to sell their property once ground rents have been reduced to a peppercorn rate should be compensation enough for those who regret buying their property but are currently unable to sell.

Question 17: Imagine that a ground rent cap is introduced. Do you think that leaseholders should pay any related administrative or legal costs?

52. No, we do not think that leaseholders should pay any related administrative or legal costs. This would be counter intuitive to the purpose of any legislation that seeks to resolve the issues with existing leaseholds. Leaseholders could be taken advantage of by freeholders looking to recoup lost income from ground rents.

Question 18: For each option to cap ground rents, please indicate whether you agree or disagree that the enforcement provisions could mirror those set out in the Leasehold Reform (Ground Rent) Act 2022, including the financial penalties if freeholders and intermediate landlords impose a ground rent on leaseholders which falls outside of the reformed ground rents regime?

- A cap at a peppercorn
- A maximum financial value
- A cap at a percentage of the property value
- A cap to the original amount in the lease
- A cap freezing ground rents at the existing value

53. We believe that it would be possible to mirror enforcement provisions set out in the Leasehold Reform (Ground Rent) Act 2022. However, considering that the Act capped ground rents for most new leases at a peppercorn, capping existing ground rents at a peppercorn would ensure a direct mirroring of enforcement provisions when introducing peppercorn rents for existing leaseholders.

Question 19: Please select any type of leases which you agree should be given an exemption to a cap on existing ground rent?

- Where a lease has been granted for fewer than 21 years in length
- A long residential lease where the current freeholder or intermediate landlord can prove they have negotiated an agreement resulting in the current leaseholder not having to pay a premium

- **Where leases are for community-led housing: where it is a community housing lease (where the landlord is a community land trust) or it is in a building controlled or managed by a co-operative society**
- **Leases that are for home reversion plans or ‘rent to buy’ arrangements that rely upon rent to operate as a route to purchase a home**
- **Business leases as defined by the Leasehold Reform (Ground Rent) Act 2022.**
- **Other**

54. We would consider that exemptions should be given where leases are for community-led housing, business leases and for leases that are for home reversion plans or ‘rent to buy’ arrangements that rely upon rent to operate as a route to purchase a home. The purpose of a cap is to prevent unsustainable ground rents that were not agreed upon, where leaseholders are unable to sell their homes. In the cases specified, the purpose of ground rent is clear and does not lead to difficulties selling the property.

55. We do have concerns, however, where exemptions for negotiated agreements could be abused by the freeholder. As stated earlier, many consumers believe they were miss-sold leasehold despite receiving the lease beforehand. It is possible that uninformed leaseholders could be coerced into unfavourable agreements in order to be exempt from the cap.

Question 20: Do you think that Shared Ownership leases should be subject to the ground rent cap, for the share owned by the leaseholder?

56. Yes, we believe that the ground rent cap should apply to the share owned by the leaseholder.

Question 21: Are you aware of any costs – other than lost ground rent revenue – that introducing a cap on ground rents would generate?

57. Yes, as stated earlier there is a cost for potential home buyers. Leaseholds do tend to be cheaper than freeholds as a way of attracting potential buyers to pay the ground rent. As a result of the cap, there will be less investment in leasehold properties and fewer brought onto the market. This may lead to an increase in average house prices. However, despite this rise, we believe the benefits for existing leaseholders outweigh this cost.

Question 22: Are you aware of any practical barriers to introducing a cap on existing ground rents, which you have not addressed in your previous answers?

58. Yes, when discussing issues with the current leasehold system with our members, PropertyMark agents have stated that they find it difficult to contact the freeholder of many properties. This is especially difficult if the freeholder is an investment firm, an owner of multiple freeholds, lives abroad or the freehold has been sold on. Foreign investors in particular may not be aware of any legislative changes and continue to request for ground rent payments and take legal action against leaseholders who refuse to pay. This will need to be considered when introducing any legislation.

Question 23: We want to hear about additional measures that could minimise the impacts of a cap on different stakeholder groups (leaseholders, freeholders and intermediate landlords, investors, mortgage lenders, the wider property market). What other measures, if any, should be considered to minimise any negative impact that a cap may have.

59. We have no further suggestions to make at this time.