

Leasehold 2023: Has anything changed?

EXECUTIVE SUMMARY

In 2018 Propertymark published a report titled *Leasehold: A Life Sentence?* Based on the findings of that report, Propertymark helped to drive legislative change that has so far culminated in the Leasehold Reform (Ground Rent) Act 2022.

Following this change and being five years on from the previous report Propertymark decided to investigate whether anything had changed in the world of leasehold through a survey of its members. We asked our members whether they have noticed any change since the implementation of the legislation and take a look at the alternatives to leasehold.

On a positive note, consumer awareness around issues in leasehold has improved. Yet, perhaps because of this, our members report that leasehold property is harder to sell.

Members also told us of their concerns regarding the short period of many leases, the high cost of renewing a lease, difficulties obtaining information from management companies, and the need for more clarity on processes and rights for acquiring the freehold.

On further changes that could be made to resolve issues in leasehold, the majority of responding agents believed that further restricting ground rents was a useful way forward. This was closely followed by capping existing rents, revising legislation around covenants and capping freehold purchase prices.



propertymark.co.uk/resource/leasehold-a-life-sentence.html

Despite recent changes brought about through the Building Safety Act 2022, our members reported a continued lack of awareness among both consumers and professionals (estate agents, conveyancers, mortgage brokers) when it comes to cladding issues and obtaining mortgages on affected leasehold property.

The report concludes with a look at the alternative to leasehold in England and Wales – Commonhold. We asked our agents whether leasehold should be abolished, and the response was remarkably split!

In 2017, the Ministry of Housing, Communities and Local Government released a consultation looking at a range of measures to tackle unfair practices in the leasehold market.

The consultation brought attention to fact that the percentage of new build properties registered as leasehold per year had doubled between 1995 and 2016. The consultation also cited poor management in relation to rising costs for leaseholders.

This coincided with a research paper that Propertymark published in 2018, *Leasehold: A Life Sentence?* Within the report, Propertymark uncovered that the majority of respondents believed they had been mis-sold leasehold, with 94 per cent respondents regretting that they bought a leasehold property.

On the back of this research, Propertymark campaigned for the capping of ground rent alongside greater education for consumers and house builders' sales staff to ensure that consumers are not mis-sold leasehold property.

The result of the national momentum to reform leasehold led to the introduction of the Leasehold Reform (Ground Rent) Act 2022, which effectively removed the ability for freeholders to charge ground rents on most new long residential leasehold properties in England and Wales.

This represented a fundamental shift in leasehold legislation, with then Minister for Housing and Planning Lucy Frazer announcing in November 2022 that further leasehold reforms were expected.

THE LEASEHOLD REFORM (GROUND RENT) ACT 2022

AN ACT TO MAKE PROVISION ABOUT THE RENT PAYABLE UNDER LONG LEASES OF DWELLINGS, AND FOR CONNECTED PURPOSES

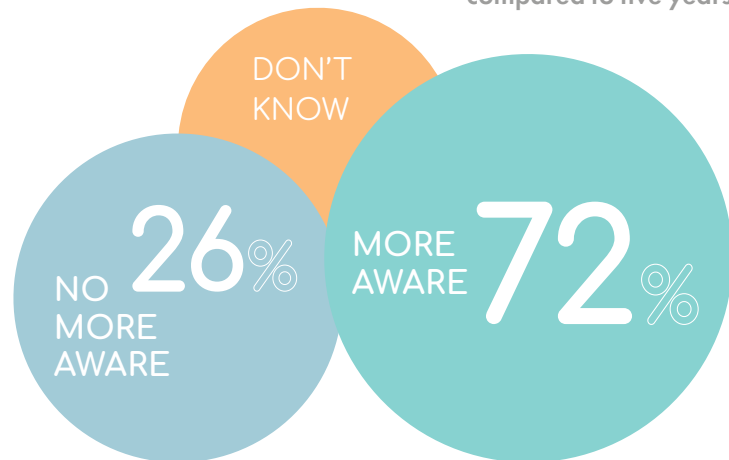


CONSUMER AWARENESS

As mentioned, our previous report highlighted the low levels of understanding among consumers when it comes to the intricacies of purchasing and owning leasehold property, especially before they bought their first leasehold property.

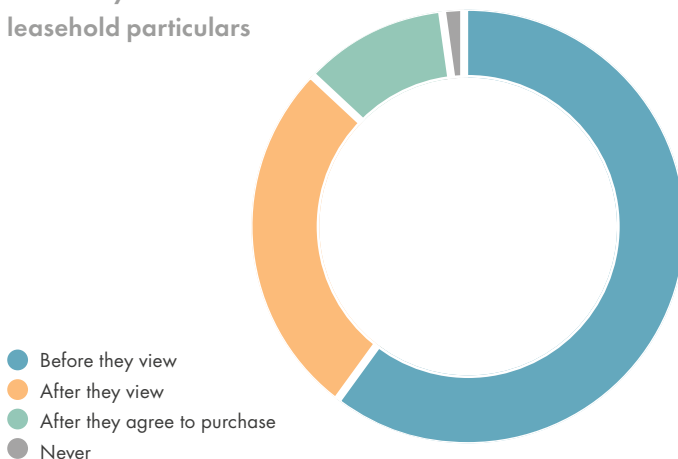
In our latest survey we asked our members whether they believed understanding among the public had increased in the years since our last report.

Consumer awareness compared to five years ago



In positive news, 72 per cent of respondents reported that they believed homebuyers were more aware of the issues surrounding leasehold property than they were five years ago.

When buyers ask for leasehold particulars



Furthermore, 60 per cent of respondents told us that buyers now generally ask for information about the lease before they view a property.

This still leaves 40 per cent who reported that they do not, including 11 per cent who noted that, in their experience, buyers generally only ask after they have agreed to purchase the property and another two per cent who reported that buyers never ask.

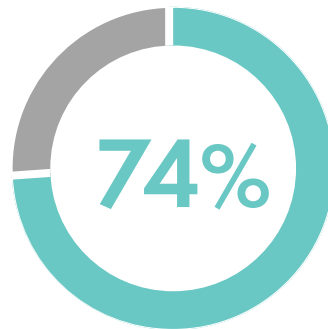
The increasing awareness of issues related to leasehold has encouraged some homebuyers to negotiate harder on leasehold property according to 67 per cent of responding agents. This suggests that issues surrounding leasehold are artificially restricting prices of leasehold property. As a result, any future change in legislation that would ease such issues, should positively impact the nation's wealth through a rise in the value of these properties.

67
per cent

SELLING LEASEHOLD PROPERTIES

Not all estate agents will sell property on behalf of developers, but 54 per cent of those that do, reported in our survey that developers do not always provide the pertinent leasehold information to the agent.

Further investigation revealed that it is generally the small-scale developers who fail to have this information ready in time for marketing of the property. It appears, for these developers, leasehold particulars are placed toward the end of the to-do list. This causes obvious issues with consumer awareness – it is impossible to understand one’s obligations, if they are not provided in writing when necessary.



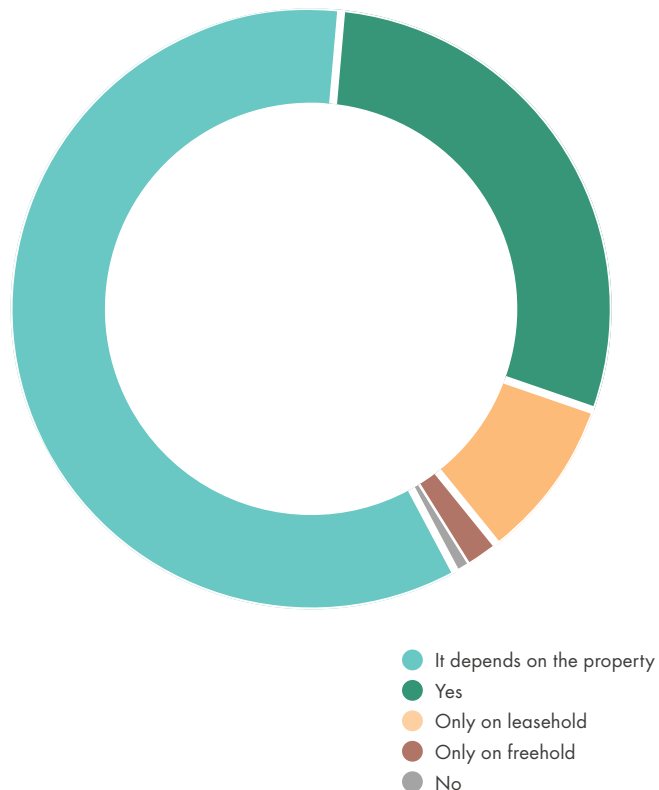
On the positive side, 74 per cent of agents responding to the survey reported that they regularly advertise the leasehold particulars when marketing a property for sale.

COVENANTS

When we asked our members whether properties with restrictive covenants struggle to sell, the majority (60 per cent) reported that it depended on the property, while almost a third (29 per cent) considered that all properties with covenants may experience some difficulties.

This is perhaps unsurprising given that any restrictions on use and control of one’s property is generally regarded negatively by an owner or prospective owner. But as one respondent noted, “restrictive covenants about matters such as external decorations, structural alterations, fitting of hard flooring, keeping pets and short-term letting are a restriction, but conversely [they] restrict the nuisance caused when such actions are perpetrated by one’s neighbours”. Covenants can thus also be seen in light of the benefit they bring to the wider community.

Do properties with restrictive covenants struggle to sell?



ESCALATING RENTS

One of the most high-profile issues associated with leasehold property was a recent practice imposed by some developers to include an escalating ground rent in their leasehold agreements.

This meant that some owners of leasehold property were seeing ground rents double every ten years. The scandal has seriously adversely impacted those who bought property without full awareness of these escalating rents but has also raised awareness of issues surrounding leasehold property and culminated in the 2022 legislation which Propertymark helped to shape.

Still, this legislation focused on new leases and failed to address the issue faced by those who already own property with an escalating ground rent. As a result, 78 per cent of our agents told us in our latest survey that leasehold property with an escalating ground rent will struggle to sell, even if priced correctly. This highlights the importance of further legislation to help these leaseholders.

Since the new legislation came into force last year, buyers remain wary. 22 per cent of respondents to our survey reported that they have the same issues, struggling to sell properties that have signed leases since June 2022.

STRUGGLE TO SELL

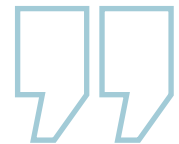
87%

DON'T STRUGGLE

13%

AGENTS' CONCERNS

Further to the questions posed in our survey, our agents were given the opportunity to provide any additional comments on issues surrounding leasehold. Responses from our agents centered around four key issues: the high cost of renewing a lease, the need to extend lease lengths to 999 years, difficulties obtaining information from management companies, and the need for more clarity on processes and rights for acquiring the freehold.



“Short leases should ultimately be able to be extended without unfair cost, and preferably all made into 999-year lengths!”

“The cost of extending a lease is far too expensive. For older leases, I find it very difficult to find out how much it would cost a prospective buyer to extend a lease through block managing agents.”

“The main issue in our area is not cladding or the leasehold element, it is the cost of renewing a lease when the time remaining is below an acceptable level for a mortgage lender... The response time for freeholders and management companies is also a major factor in the higher percentage of fall-throughs on this type of property.”

“Buying a share of the freehold from the freeholder should be made much simpler - sometimes it’s unaffordable if the freeholder does not want to co-operate.”

“I believe that the value formula of a lease extension and freehold sale should be accurately calculable and not exceed a percentage of the value of the property at varying milestones in the lease.”

“The government website is great, and law’s protect leaseholders pretty well. How do we get this put to UK buyers and in particular foreign buyers? I also think a lot of the industry doesn’t understand it, which doesn’t help.”

“There should be more clarity about the rules surrounding acquiring freeholds. I believe that a shared freehold arrangement (amongst residents) should be compulsory with owner occupiers governance and decisions.”

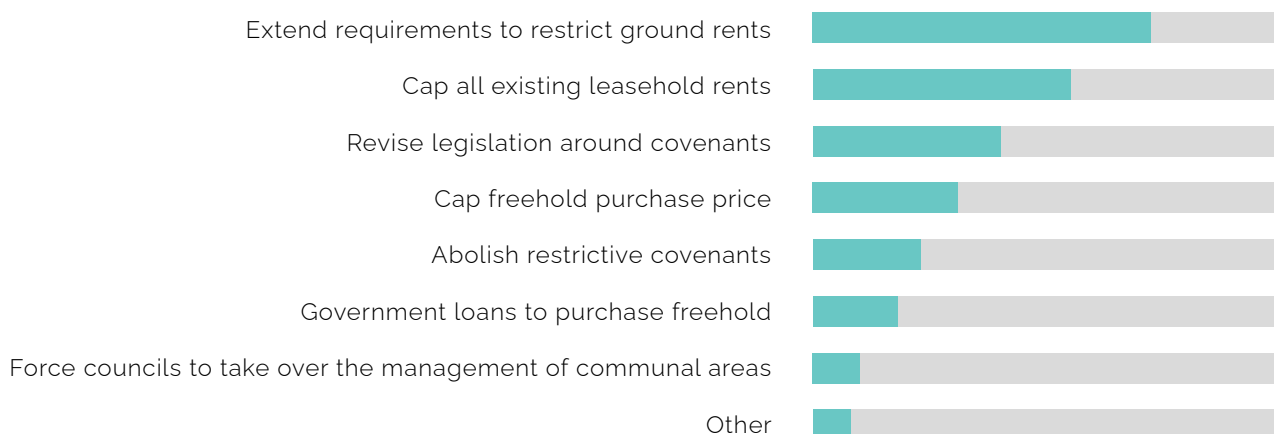
“I would like to see a ‘go to’ website for landlords/freeholders for facts and procedures, the same as the Leasehold Advisory Service, which is available for leaseholders.”

“In the Northwest we have many properties with leases of 999 years. My view is that this should be the standard term.”

SOLUTIONS

We asked our estate agents how leasehold could be made fairer. Of those responding to this question, 72 per cent believed that further restricting ground rents was a useful way forward. This was closely followed by capping existing rents (55 per cent), revising legislation around covenants (40 per cent), and capping freehold purchase prices (31 per cent).

Further comments added by respondents regularly touched on the need to cap existing rents, extend leases to 999 years and cap both lease extension and freehold purchase costs. None of this is covered by current legislation and will require an act of parliament.



MANAGING LEASEHOLD

With 4.86 million leasehold properties in the UK ¹, including the majority of the nation's flats, it is very common for letting agents to manage leasehold property. 92 per cent of letting agents who responded to our survey reported managing leasehold property. Of those who manage leasehold property, 33 per cent have properties in their portfolio where the leaseholders have exercised their right to manage. A small proportion mentioned that this has come with issues of poor management and a lack of interest among residents in managing.

44 per cent of those who managed leasehold property reported that they sometimes struggle in relations with the freeholder's managing agent. Further commentary suggested that this is primarily based around communication delays.

CLADDING

Following the Grenfell Tower fire in 2017, the UK Government ordered a public inquiry into the circumstances leading up to and surrounding the fire so that action could be taken to improve the safety of high-rise buildings. While the Inquiry was underway, an additional independent review of Building Regulations was conducted, led by Dame Hackitt.

Investigations around the Inquiry found that thousands of flats were covered in dangerous cladding, which left many mortgage lenders unwilling to loan or sell property within the affected flats.

Following the recommendations from the Hackitt Review and Phase 1 of the Grenfell Tower Inquiry, the UK Government announced that they would reform building regulations and require current defects in high-rise buildings to be remedied. This culminated in the passing of the Building Safety Act 2022, which established new requirements for building owners and developers to remedy defects that could lead to a building safety risk and set new standards for cladding. Additional guarantees were made to protect leaseholders from covering the cost of remediation.

As a solution to property owners being unable to sell or re-mortgage their flats, External wall system (EWS1) forms were proposed to help assess the risk and support the valuation process of buildings over 11m tall with cladding. EWS1 form is a valuation tool that can be used by valuers during a standard valuation inspection to identify buildings where remediation work is likely to be required and how it may impact the value of the property. These forms helped to standardise valuations and provided greater assurances to financial institutions that the potential risks of cladding within more flats could be accurately assessed.

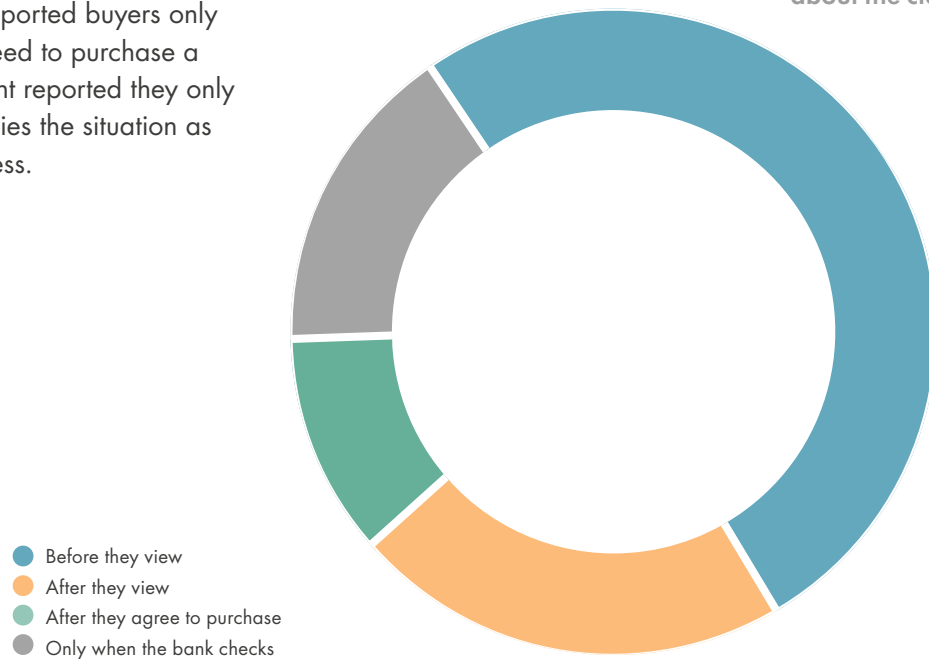
As the forms became more widely used the Building Safety Act 2022 was introduced, and details of leaseholder protections became clear, financial institutions across England regained confidence in the housing market. As such, six mortgage lenders agreed to lend on properties with building safety issues from 9 January 2023.

However, many leaseholders continue to face issues buying and selling leasehold properties within buildings over 11m tall. We therefore decided to look into the potential barriers and solutions to the issues consumers face in obtaining a mortgage on leasehold property affected by the Building Safety regulations.

¹ [House of Commons Library: 'Leasehold tenure has grown'](#)

In our latest survey, our agents reported that most potential buyers ask about cladding before they view a property (51 per cent). However, 11 per cent reported buyers only ask after they have agreed to purchase a property and 16 per cent reported they only ask when the bank queries the situation as part of the buying process.

When buyers ask about the cladding



To understand whether the recent changes have had an impact on the sales market, we asked our agents whether they had seen any shift in the number of flats being bought and sold. 51 per cent reported no change, with a fairly even split among remaining respondents reporting an increase or a decrease in their local areas. 27 per cent reported that sales have continued to fall through because of a lack of or an adverse EWS1 rating since 9 January 2023.

As it is only three months since the changes were made, we suspect awareness and understanding to increase over the coming months and matters to improve in the sale of flats with identified cladding issues. However, it is clear that more must be done now to raise awareness.

COMMONHOLD PROPERTY

According to the Leasehold Knowledge Partnership, there are 15 commonhold properties in England and Wales.² One of the key reasons few new builds have been set up as commonhold is because developers are still able to establish standard leasehold models which come with obvious incentives of income and capital growth for investors. Conversion from leasehold to commonhold has also been poor because of the high cost of conversion (which involves buying the freehold). If there is to be a proliferation of commonhold in England and Wales, there will need to be incentives for developers, lenders, and leaseholders.

In our latest survey, we asked our estate agents if they had any experience selling commonhold property. 18 per cent of respondents reported that they did. Of those who had this experience, 34 per cent reported that this can come with its own issues, and they outlined the issues they have faced:

Not many people are aware of the implication of the commonhold and joint tenancy.

Often the accounts and information on expenditure for service charges is either missing or has been neglected.

No one understands what it is.

Finance can be harder to get.

Depends on the makeup of the directorship of the overriding company.

Buyers rarely understand commonhold or if indeed their mortgage lender will lend on a commonhold property.

The common holders are usually difficult to get hold of to answer questions and deal with enquiries when there is a sale.

Solicitors always want to know the length of the lease!

MANAGING COMMONHOLD

In contrast to leasehold only 11 per cent of responding letting agents manage commonhold property. This is likely to be higher than the average for the country, given the small amount of commonhold property in the country. Very few agents had experienced any issues with commonhold property that they manage and even fewer knew of a landlord who raised an objection to a commonhold application. This is perhaps unsurprising again because of the rare nature of commonhold.

² www.leaseholdknowledge.com/the-15-commonholds

To abolish or not to abolish?

Following a recent commitment from Michael Gove, the Secretary of State for Levelling Up, Housing and Communities in February 2023 to abolish the “outdated, feudal” leasehold system, we asked our agents whether the leasehold tenure should be abolished. Responses were remarkably split with 42 per cent either way and 16 per cent undecided.

Whether agents were for or against abolition, passions were very high. But what is the alternative to the leasehold system in England and Wales?

Alternatives to leasehold exist around the globe, from the USA, Canada, Australia, New Zealand, Germany, Italy, and France to Scotland.

In Australia, flats (lots) are owned in a similar manner to commonhold. Here, a company must be established, and a committee elected at an Annual General Meeting. Apartment owners own anything

in the ‘airspace’ of their lot (internal fixtures and walls, carpets, etc.); everything else is common property. Contributions for common works can be demanded from other lot owners, and applications made to local courts for unpaid contributions.

In a world marching (albeit on a bumpy road) toward democratic ways of resolving many issues, it would seem that changes to hand further power to the people are likely to be popular. Commonhold in England and Wales would come with its own specific issues, such as dispute resolution and chasing contributions from fellow commonholders.

The appointment of a block manager as standard would be a simple solution to potential issues in this type of ownership. In smaller-scale situations, a letting agent or building manager could again be a useful insurance to any potential problems.

ENDS

About this report

This report is based on responses to a survey of Propertymark member agents conducted between 15–26 March 2023. Analysis is based on responses provided by 219 responding agents.

ABOUT PROPERTYMARK



Propertymark is the leading professional body for estate and letting agents, commercial agents, auctioneers, valuers, and inventory providers comprising over 17,500 members. 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.

EDITOR NOTES

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