
Rebalancing the relationship between freeholder and leaseholder

PROTECTING CONSUMERS THROUGH REGULATION

Research commissioned by the UK's largest professional freeholders, a partnership between Consensus Business Group, Long Harbour and Wallace Partnership Group, and conducted by Savanta Group.

Savanta:



Contents

| | |
|--|-----------|
| 1. Foreword | 03 |
| 2. Executive Summary | 04 |
| 3. Research snapshot | 06 |
| 4. Introducing a new building safety regime: ownership and management | 09 |
| 5. What does regulation look like? | 18 |

1. Foreword

By Richard Silva, Executive Director of Long Harbour;
Mick Platt, Director of Wallace Partnership Group Limited and
William Procter, Chief Executive of Consensus Business Group

The Government is introducing a set of unprecedented building and fire safety reforms through its Fire Safety Bill, currently passing through Parliament, and its forthcoming Building Safety Bill, recently published in draft.

These proposals intended to introduce clearer roles and responsibilities for building management are much needed and have been welcomed across the sector. However, the Government has made clear these reforms will only be made possible if those duties are carried out by experienced, regulated professionals. This point, echoed by almost all stakeholders across the market, appears to have been forgotten by the Government, which is also seeking to remove professional landlords from the market.

A raft of proposals from successive Governments in the past four years have sought to “fix the broken housing market”, but these remedies have often consisted of knee-jerk reactions to assuage populist concerns instead of following the evidence.

Now is the time for policymakers to work with industry to ensure this once-in-a-generation opportunity to radically reform the management of building and fire safety is effectively implemented to the benefit of residents.

This report is endorsed by the largest professional freeholders in England and Wales, responsible for the oversight of around 850,000 apartments, all of whom have ushered in radical improvements to the leasehold sector since their entrance into the market. During the last two years they have attempted to engage with the Government and its advisors to explain the role of the professional freeholder and in particular the stewardship they provide. This stewardship is exactly what the Government has now begun to acknowledge through the introduction of a stricter building safety regime.

Informing this report is the largest piece of independent research on the subject to date, which examines the Government’s proposals as a whole: Building and Fire Safety, and Leasehold Reform. Both agendas will have a major impact on people living in apartment buildings, yet they are entirely contradictory.

Where policymakers have sought to devise a radical new “building safety regime” that enhances the role of

freeholders and intensifies the stewardship function they already provide, they have also consciously begun to force them out of the sector by eliminating ground rents without an exemption for apartment buildings as set out by the HCLG Select Committee.

In this report, this incoherent approach is tested. We asked Savanta, a world-leading market research body, to investigate whether leaseholders are willing to take on newly created responsibilities proposed by the Government to oversee the management and legal responsibility for building safety. This role requires considerable resources, of time and expertise to ensure the building adheres to current regulations – a role currently being fulfilled by professional freeholders.

The perspective of leaseholders is crucial because, if the Government’s leasehold reform agenda does not maintain a role for professional freeholders, then they are the ones who will be left with a series of new financial, legal and, in some cases, potentially criminal obligations.

A simpler, more cost effective and logical approach is to regulate the sector alongside the forthcoming building safety legislation. Regulating freeholder practices and setting ground rents at an affordable rate for apartment buildings whilst eliminating ground rent on other homes, will foster innovation in a sector that greatly needs smart policy to drive positive change. This will have the desired dual effect of driving out rogue freeholders and enshrining the much needed new building safety responsibilities in law.



2. Executive Summary

The proposed building safety reforms will bring forward unprecedented legal, financial and potentially criminal responsibilities for the management of building safety

For apartment buildings, the effective oversight of building safety is complex and multifaceted. Whether this is performed by freeholders or residents, the issues remain the same.

The creation of a new dutyholder regime must be analysed through the lens of existing ownership and management structures. Central to this is the Government's introduction of the Accountable Person, which the Government itself has recognised in most cases will be the freeholders. It should concern all stakeholders that whilst the Government has identified freeholders as essential for ensuring building safety, its tandem proposals for leasehold reform include policies that will drive them out of the market. The Government indicated its intention to overturn the leasehold model, including the abolishment of all ground rents, and pursue a drive towards resident-led management, which would mean that building safety responsibilities would fall to leaseholders.

The evidence that emerges from Savanta's research signals that leaseholders are reluctant to accept the Accountable Person role due to concerns around competence, legal exposure and the time commitment required

The evidence presented in this report proves beyond doubt that leaseholders are very concerned about taking on obligations for building and fire safety as required in the Government's introduction of an Accountable Person.

There is widespread support amongst leaseholders for reforms to increase building and fire safety. Although, when they understand and consider what this entails, they have significant concerns about accepting such responsibilities and the adverse impact this could have on their lives, such as poor building maintenance, health and safety and conflict between residents.

Some respondents even went as far to say they would be more likely to sell their property if they were required to assume such responsibilities.

Professional freeholders are well placed and willing to take on this role and perform the duties of the Accountable Person

The obvious conclusion that should be drawn from the evidence is that the role of the Accountable Person is best performed by a well-resourced professional freeholder with a long-term interest in apartment blocks. This appears to be a position the Government supports.¹ Such freeholders already employ legal and commercial professionals leading dedicated teams to deal with complex technical issues relating to building safety.

By examining the alternatives in other jurisdictions, such as commonhold, it becomes clear that other forms of tenure do not have this advantage and, in fact, bring with them a number of other problems including those identified by leaseholders consulted in this research.

Alternative proposals that encourage resident-led ownership and management are not popular in large blocks

In large and often complex apartment buildings, only a professional freeholder has a long-term interest in the life-cycle of the building. On average, leaseholders have up to a five or seven year interest in their home, and therefore, by definition, have a short-term interest in the maintenance of the building and are sometimes reluctant to commit major funds to necessary long-term works when the individual leaseholders will gain no benefit. Fire safety can only be overseen by an independent arbiter with a long-term interest.

In the case of professional freeholders, their interest is intrinsically linked to the life-cycle of the buildings, as the investors who purchase ground rent contracts are deploying capital for the long term, like pension funds.

Comprehensive regulation of the leasehold sector will ensure the effective delivery of the new building safety regime

It is clear from the evidence that the most effective way of managing building and fire safety is through a properly functioning leasehold system, whereby residents benefit from professional building management overseen by mandatorily-regulated professional freeholders.

There are undoubtedly problems within the leasehold system, but this report sets out a clear way forward whereby these challenges can be addressed in the form of robust mandatory regulation and oversight.

The Government is facing a choice:

Regulate freeholders, enforcing building and fire safety oversight in apartment buildings.

OR

Remove freeholders, leaving unwilling leaseholders responsible for managing their own building and fire safety.

RISK



By removing ground rents on apartment buildings, the Government is removing any incentive for the long term stewardship of buildings, as there is no incentive for professional freeholders to invest in buildings. This will inevitably lead to a decline in the quality of these buildings over their lifetime, as we have seen in other countries, and will mean that new building and fire safety obligations are imposed on residents, the majority of whom are unwilling to take them on.

REWARD



By engaging with the sector and regulating freeholders, the Government can deliver two of the most important reforms in the market: leasehold reform and building safety reform. Regulation would remove bad practice from the leasehold market whilst ensuring that leaseholders have the benefit of a long-term steward, overseeing critical building and fire safety issues. It is easier for building safety authorities to deal with one professional freeholder who is the Accountable Person for several developments, rather than several individual resident-led associations.

¹ A reformed building safety regulatory system: Government response to the 'Building a Safer Future' consultation (Ministry of Housing, Communities and Local Government, 2020)

3. Research snapshot

The Government's proposed reforms to the residential housing sector are intended to introduce greater leaseholder protections. This laudable intention should underpin the leasehold reform agenda and proposed new building safety regime. It is therefore important policymakers have an accurate understanding of consumers' - in this case leaseholders' and residents' - attitudes towards its proposals.

Savanta Group was commissioned to conduct an independent, qualitative and quantitative piece of research to establish an evidence base to understand how residents would feel about taking on new safety obligations.

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

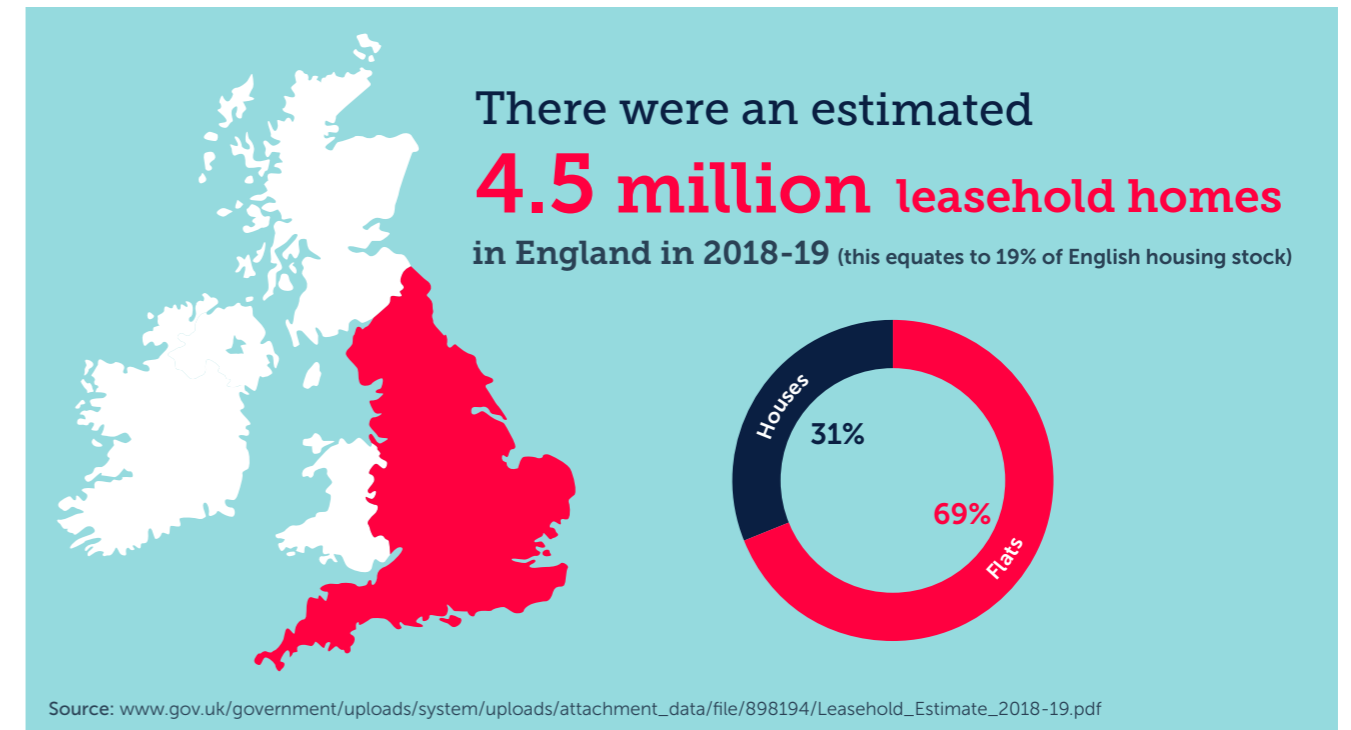
// This total base size is highly robust, and statistically speaking, can be relied upon to extrapolate up to accurately reflect the opinions and preferences of leaseholders across the country. With this base size of 1,000 and an overall population (of UK flat leaseholders) of 2,967,000, the margin of error in this dataset is 3%. Or put another way if a figure in the report is 60%, the 'true' figure among the total population will be between 57%-63%."

– Savanta Group

Attitudes to leasehold

The research looked at leaseholders' perspectives on the existing leasehold tenure structure. Attitudes to the existing model of leasehold ownership were varied, but overall, satisfaction was significantly higher than many reports have suggested. When asked whether they were happy with the level of information, rights and responsibilities they currently have, **3 out of 4 leaseholders responded positively.**

Most leaseholders are happy with the information and level of rights/responsibilities they currently have. Whilst 50% of leaseholders reported issues with the terms of their leases, the significant majority of problems cited related to the day to day issues that arise from the reality of communal living, which would occur under any form of tenure and therefore did not in fact relate to their leases.



Attitudes to building safety reform

The proposed building safety regime will inevitably have a significant impact on building owners, managers and residents. Residents were presented with the basis of the Government's Building Safety proposals and their implications. The research sought to understand residents' existing knowledge of the proposals, their views and appetite for accepting the new responsibilities, and in particular, the role of the **Accountable Person.**

// An Accountable Person will be legally responsible for ensuring that they understand fire and structural risks in their buildings and to take appropriate steps and actions to mitigate and manage these fire and structural risks on an ongoing basis so the building can be safely occupied.

The Accountable Person will therefore in most cases be the freeholder or head lessee, including overall landlord or a management company. A Building Safety Manager, appointed by the Accountable Person and approved under a system established by the Building Safety Regulator, will deliver the day to day functions on behalf of the Accountable Person."²

The responses show that leaseholders' knowledge and comprehension of the proposals were low. When presented with details, the strong and emotional reaction to taking on the role of the Accountable Person and its associated obligations was overwhelmingly negative.

75% of leaseholders feel negatively about the new obligations they would have

67% of leaseholders are worried about their building not being maintained properly, including health and safety issues

63% of leaseholders are worried about the potential for conflict with other residents

This feeling translated to **1 in 3** respondents stating that if faced with these responsibilities, they would be more likely to sell their property than before.

² A reformed building safety regulatory system – Government response to the 'Building a Safer Future' consultation' (Ministry of Housing, Communities & Local Government 2020)


Trudy, 60, Birmingham:

*Owner occupier
and private renter
Experienced leaseholder*

Key concern: "How can one person represent a block of 50 flats? Maybe 12 would be interested in keeping it up to date and the rest will think they're doing it, so we won't bother. I think the Government needs to rethink what they're going to do. 100%. The Government come up with funny things – they don't really think."


Hayley, 48, Manchester:

*Experienced leaseholder
and private renter*

Key concern: "It would involve a lot of extra work and time without any financial benefit – potentially we could be worse off financially. It's not great – everything's working fine at the moment, so I'd be very worried about prospective costs and putting in the time."


Mike, 29, Birmingham:

Owner occupier

Downfall to changes: "There may be a cost benefit to cutting out the middle person, but there could also be a down side – initial cost savings, but a few years later you may see issues that cause bigger costs that you weren't aware of that outstrip the saving you've been making."


Spencer, 49, Bedford:

Owner occupier

Feeling of another leaseholder taking on responsibility: "Initially I wouldn't trust another leaseholder, how could I? I don't know them – maybe in time, but unlikely. I would trust a managing agent or freeholder more to do this. Not much could be done to make me trust another leaseholder with this."


Liz, 37, London:

Owner occupier

Key concern: "Time is a key concern. Easy to transfer responsibility onto the leaseholder, but may not work for every type of person/block. Accountable person and credentials need better skills. Is there going to be any criteria about what would make an Accountable Person? How they would they be appointed, if more than one, would there be an election? What happens if no one wants to do it? What would the consequences and responsibilities be? What if someone wants to do it but they aren't up to the part?"


Sanjay, 28, Birmingham:

*Owner occupier
'Right-to-manage'*

Feeling of another leaseholder taking on responsibility: "I don't want the responsibility lying with other leaseholders, they don't know what they are doing. How can they give any directive on planning that needs to be done for future proofing of the building? How do they know what to do with a building? They don't know what it needs in 20-25 years. Someone needs to make a profit for this to work."

4. Introducing a new building safety regime: ownership and management

Based on the evidence, this report considers the implications of the Government's proposals. It explores the issues that policymakers have tried to address in their consultations and its resulting proposed legislation, and considers how it would work in reality.

Evolution not revolution

There is no doubt that there have been historical issues in the leasehold sector, including, most notably, doubling ground rents and rogue landlords. Whilst these issues have undermined trust in the concept of leasehold, this trust can be restored through transparency and, importantly, mandatory regulation.

Based on direct evidence from leaseholders on their attitudes towards the proposed building and fire safety reforms and a thorough examination of the leasehold reform proposals put forward by the Government, including that of resident-led management structures, it is clear that regulating the leasehold system would benefit leaseholders by retaining effective stewardship of their buildings and increasing consumer protections. A regulated model of leasehold ownership would also support the Government's goal of delivering new fire and building safety regimes and forge stewardship together with ground rent.

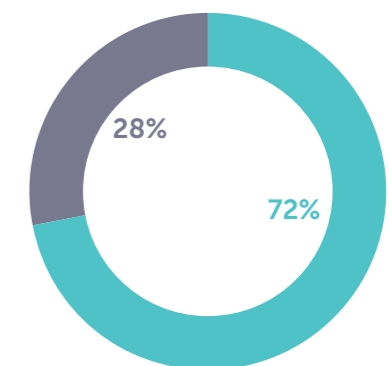
If public policy were to follow the evidence, then it should clearly focus on the three quarters of leaseholders in an apartment building who are satisfied with the status quo, as opposed to undermining this form of tenure completely.

“ I prefer how it is. I haven't had major issues – I've only had positive experiences – that's why I'm being so negative about it.”

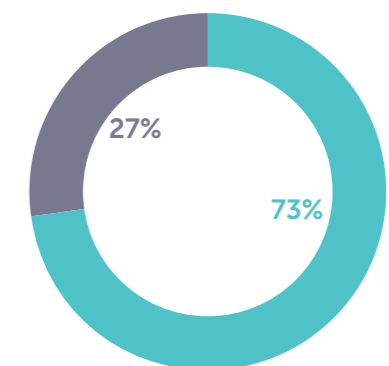
– Hayley, Manchester

The proposed reforms will significantly increase the financial and legal responsibilities of leaseholders. The majority welcome increased building safety, but object to such reforms which leave them responsible, as they believe they do not have the expertise to take these on.

Leaseholder **satisfaction** with their **understanding of the terms** of their leases



Leaseholder **satisfaction** with their **rights, obligations and responsibilities** under their leases



What is involved in building management?

Ownership and management of the built environment in the UK is in the spotlight more than ever before. For apartment buildings, oversight of building management and building safety has always been complex and multifaceted, irrespective of whether it is performed by freeholders or residents.

Typically, a freeholder is responsible for:

- 1 Long-term stewardship of land and property for the benefit of existing and future leaseholders. A long-term steward takes a 60-100-year view on the longevity of a block, whereas a typical leaseholder only lives in an apartment for 3-7 years and therefore has a powerful incentive to minimise the costs of building maintenance (i.e. the service charges they pay) to the detriment of the life cycle of the building and its safety;
- 2 Appointment and oversight of a managing agent to maintain the building fabric and its communal areas;
- 3 Enforcement of lease covenants to ensure quiet enjoyment of property for all leaseholders;
- 4 Independent resolution of resident disputes (e.g. short-term letting, noise, anti-social behaviour);
- 5 Prompt provision of all necessary building information for the benefit of a leaseholder who is selling or mortgaging;
- 6 Governance of the multi-occupied community, protecting varied interests; and
- 7 Oversight of critical safety measures.

Increasing responsibility

Following the tragic events at Grenfell Tower and the subsequent Independent Review of Building Regulations and Fire Safety (the Hackitt Review), building and fire safety rightly has a high profile. The Government has responded by proposing a new building safety regime, promising both a Fire Safety Bill and Building Safety Bill. This legislation will usher in a new regime radically different from the current system. It is a long-awaited and crucial step towards fixing a system that has not served the public well.

A key role in the future regime is the introduction of the Accountable Person.

The Government itself has been clear that the building owner, which in most cases will be the freeholder, would assume these additional responsibilities. As part of their obligations, they will appoint the Building Safety Manager and "will therefore need to ensure that the Building Safety Manager has the necessary skills, knowledge and experience to carry out these functions."³

A new dutyholder regime

The dutyholders are the people who are legally responsible for ensuring the building is designed and built to be safe for its residents. They will be responsible for ensuring that building regulations – the minimum standards a building must meet – are complied with.

The new Accountable Person, will be the dutyholder responsible for making sure that building fire and structural safety risks are reduced as much as reasonably practicable when people are living in the building.

Dutyholders will create a 'safety case' which contains all the important information about a building that shows how the dutyholders are managing any fire or structural risks on an ongoing basis.

The Accountable Person may also employ a 'Building Safety Manager' who has the right skills and expertise to look after the building. Their role would be to help the Accountable Person by doing the day-to-day work involved with keeping a building safe.⁴



3 A reformed building safety regulatory system: Government response to the 'Building a Safer Future' consultation (Ministry of Housing, Communities and Local Government, 2020)

4 Building a safer future: quick-read guide (Ministry of Housing, Communities and Local Government, 2020)

These proposals have the full support of all stakeholders involved in the management and oversight of buildings, including freeholders. However, the challenge for policymakers is making sure the proposals are compatible with the drive towards resident-led ownership and management.

A fundamental question is, if new financial and legal obligations as embodied within the proposals that are introduced, will residents want to take on the management of their block? The evidence from Savanta's research is a resounding 'No'.

Do leaseholders want more responsibility?

The sentiment towards undertaking the role of the Accountable Person, or trusting fellow leaseholders to do so, is overwhelmingly negative. Both the qualitative and quantitative evidence from the research points to leaseholders' serious concerns about having to take on these responsibilities themselves, or trust in another leaseholder to do so.

"It would be an absolute disaster. I've got no expertise in fire safety and management of buildings and I know there are a lot of landlords in my block who don't live there – how on earth do you come to decisions?"

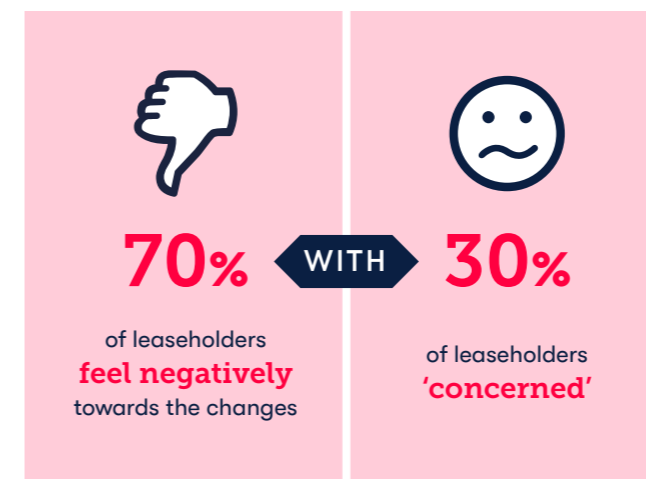
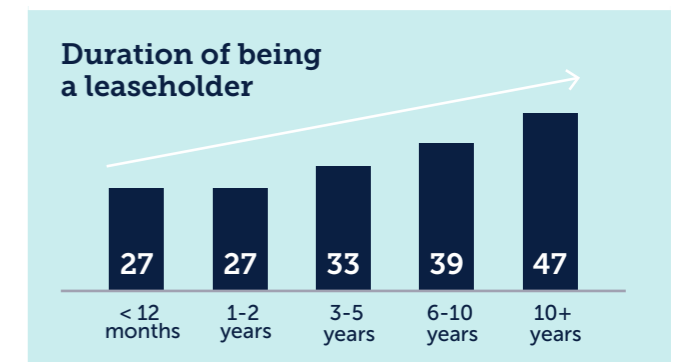
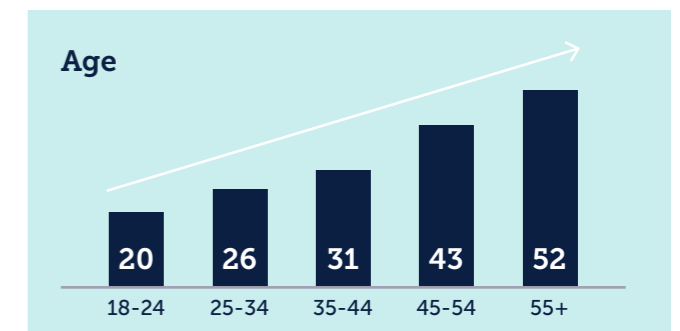
– Hayley, Manchester

The research established that personal relationships and the trust these relationships foster was a key factor in residents being happy for a fellow resident to be the Accountable Person. This trust can be built amongst residents in a short space of time in a smaller block, but this becomes impossible in large complex developments, such as those with mixed commercial and residential units.

"If it worked it would be fantastic, but I just don't see how it would. Our development is too big, perhaps it would work better with smaller groups of flats."

– Spencer, Bedford

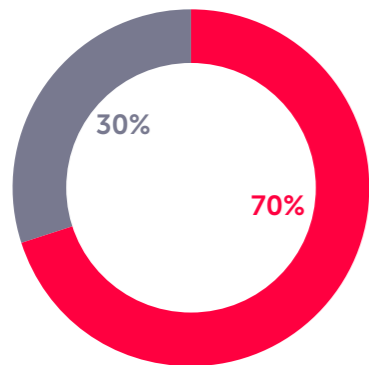
The research also found that more experienced leaseholders and those living in older buildings are less likely to want to take on the responsibility of the Accountable Person.



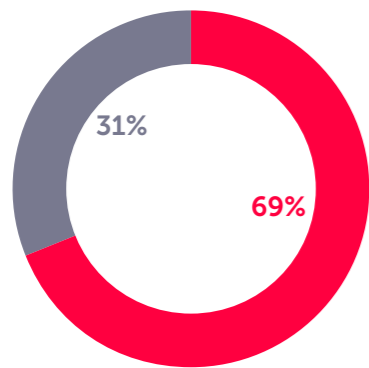
Unwillingness to take on responsibilities

Concerns were expressed when asked whether leaseholders – either themselves or a fellow resident – would take on the role of the Accountable Person. When asked their straight preference, only 1 in 4 would rather be the Accountable Person.

70% cite lack of experience of the Accountable Person as a concern



69% cite general neglect from the Accountable Person as a concern



“ I have huge concerns around the Accountable Person, so many questions. What if the Accountable Person leaves? How do they decide who gets to be the Accountable Person? What credentials do they have? What if no one wants to do it? What if someone wants to do it, but aren't up for the part?”

– Liz, London

Managing agents also share these concerns. Some have experienced difficulties with leaseholder-owned or managed blocks where they appoint the managing agent and residents effectively take on the role of the Accountable Person. Agents can see where residents may be equipped in smaller blocks, or where professional stewardship is clearly required in larger, more complex developments.

A survey was conducted in 2018 by institutional freeholders asking 400,000 managing agents to identify the extent that problems arise with leaseholder-controlled management. Every respondent highlighted at least one concern with resident controlled management companies, and many marked multiple concerns. These included: health and safety (100%) and directors not acting in the long-term interests of the scheme (73%)⁵. The majority of respondents thought there was a need for greater regulation of resident-led management companies and their directors.

If the issues people have with their leases are minimal and there is no widespread opposition to the leasehold tenure, then it is not surprising that leaseholders faced with taking responsibility for building safety expressed reluctance to collectively own a part of a freehold in an apartment block. Not a single benefit was expressed by a majority of the sample, whilst many disadvantages were cited.

What freeholders offer

It is clear from the parameters of these new obligations that a great deal of resource and expertise will be required to oversee building and fire safety properly and effectively. This is no small feat and with the introduction of a new Building Safety Regulator, it will only become more complex.

Unlike individual residents, professional freeholders are well-resourced organisations, equipped with legal and commercial professionals that lead qualified teams through complex operations. This scale enables freeholders to deal with any issues that emerge in a block, quickly and effectively. Nowhere has this been more obvious than in the aftermath of Grenfell and throughout the ongoing cladding crisis.

It is disappointing that the Government has been quick to publicly criticise freeholders for not acting fast enough to remediate unsafe buildings, despite it relying on them to inform the extent of the issue and how best to remediate. Correcting a systemic failure in building safety regulation, which dates back decades, is clearly not going to be straightforward. However, the majority of professional freeholders have been quick to act and protect leaseholders from costs wherever possible – a trend that continues for those leaseholders who fall outside of existing Government funding.

“ I would be worried about the level of responsibility and accountability I would have to take on. If things go wrong, I would be concerned on a financial or legal level that I would be held accountable. I would be worried about having loss somewhere down the line.”

– Liz, London

Clearly, the status quo is not widely celebrated by all consumers – it rarely is – but the evidence does point to a high degree of satisfaction across most of the population. In contrast, when asked about the perceived benefits of more communal management, neither a clear singular benefit, nor a strong positive outcome, could be identified.

“ It would involve a lot of extra work and time without any financial benefit – potentially we could be worse off financially.”

– Hayley, Manchester

The concept of the Accountable Person is central to the Government's agenda and will define roles and responsibilities going forward. However, the evidence from the professionals, as well as the leaseholders themselves, is clear that these obligations should sit with a professional freeholder. If resident-led management is undesirable to residents, then the onus is on policymakers to regulate the existing leasehold model rather than removing freeholders entirely.





CASE STUDY

Professional freeholders have the resources and experience

CROYDON

Following the Government's request for building owners to carry out tests to identify unsafe cladding, a 193-apartment block in South London was submitted for testing, and subsequently was identified as being clad in aluminium composite material (ACM) – the same dangerous type of cladding used on Grenfell Tower.

Responsibility for arranging the cladding replacement work fell to the freeholder. Determined that leaseholders should not have to fund the costs, the freeholder worked with leaseholder representatives for several months to secure NHBC funding for the works, while co-ordinating

the drafting of the building contract and subsequent tendering of the works and providing cashflow to facilitate the initial works. The overall cost of the project is significant – an estimated £5.6m – and is one of the largest payments ever made under a Buildmark policy. The remediation works are now under way.

The freeholder acted in the interests of leaseholders and provided its services as part of its obligations under the lease. Without access to the expertise and resources of their freeholder, the leaseholders would not be in the position they are today.

The cladding crisis poses a number of serious questions for the Government. Acknowledging this has been a regulatory failure and providing funding to protect leaseholders was a welcome step, but there is a longer-term question for policymakers if they continue to push freeholders out of the market. Would resolving the cladding crisis have been easier if building safety officials were dealing with thousands of unqualified residents instead of a single professional organisation with expertise in the area?

Is commonhold the answer?

As we have seen, the question over who is best placed to manage a complex apartment building is inextricably linked to the responsibilities and obligations that such a role carries with it.

As part of the wider leasehold reform agenda, **the Government is looking to introduce more resident-led models of ownership and management, whilst simultaneously driving freeholders out of the market through the complete removal of ground rents.** Without such ground rent as a financial incentive (albeit these should be set an affordable rate), professional freeholders, as stewards of apartment buildings, will be removed from the market. This removal will mean obligations for building and fire safety, including complex legal and financial responsibilities, will be left in the hands of residents who would unlikely have the expertise or willingness to take on such a role.

The latest evidence as presented here, and in the Government's own consultations⁶, point to absolutely no appetite from leaseholders to take on responsibility when it comes to building and fire safety management.



6 Tackling unfair practises in the leasehold market (Department for Communities and Local Government, 2017). Implementing reforms to the leasehold system in England (Ministry of Housing, Communities & Local Government, 2019)

There are countries where communal ownership models have been pushed further. In 2004, legislation was brought in by the Scottish Parliament to abolish the 800-year old traditional leasehold model of ownership⁷ (Feuhold), moving towards a residential-led model of ownership. However, leasehold abolition began much earlier in Scotland, with the Land Tenure Reform (Scotland) Act 1974.⁸

In 2012, the Scottish Government brought in legislation automatically converting remaining long leases into outright ownership. This removed the role of professional freeholders as stewards and residents were given control of managing individual flats, sharing costs and collectively running complex, multi-storey apartment blocks.

Reports dating back to 2002 have found that most of **Scotland's private housing stock is deteriorating and, in many cases, in need of critical repair.** Statistics from the 2002 Scottish House Condition Survey⁹ revealed that in the owner-occupied sector, 40% of tenement flats had at least one element in a state of urgent disrepair, which meant nearly half of these property owners did not carry out urgent repair works.

Over recent years the problem has worsened. Figures from 2009¹⁰ show that 79% of all Scottish housing stock was in disrepair, with 42% of dwellings in need of urgent repair and 72% with disrepair to critical building elements. Analysis by RICS in 2019 concluded that this was the result of a lack of regular, ongoing maintenance, which had previously been overseen by professional freeholders.¹¹

In 2016, the Scottish House Condition Survey¹² found that 82% of housing stock is in need of some form of repair. This is particularly the case in relation to flats. In contrast, a Government report¹³ in 2017 found that only 19% of homes in England and Wales did not meet the Decent Homes Standard.

The scale of the problem is a worrying prospect if England were to follow suit, and more importantly, it is a trend that consumers and the Government are already wary of. When leaseholders were questioned about building standards, the majority of respondents said they were concerned that standards would not be maintained if residents took on the role of the Accountable Person. Specifically, 67% of respondents felt that standards would drop, reflecting the reality of housing dilapidation north of the border.



7 Tenants (Scotland) Act 2004

8 Land Tenure Reform (Scotland) Act 1974

9 Housing and Health in Scotland (Scottish House Condition Survey 2002)

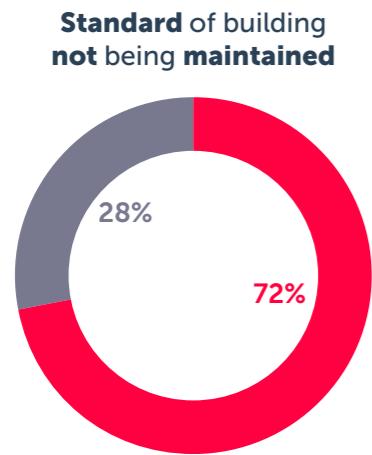
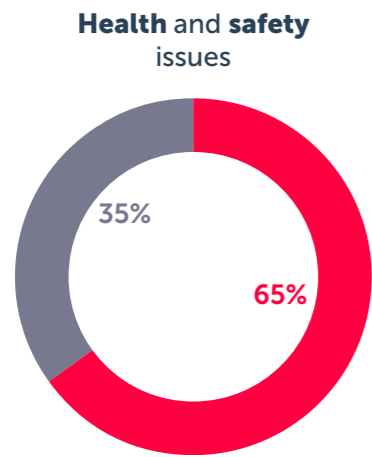
10 Key Findings (Scottish House Condition Survey 2009)

11 Common Repair Provisions for Multi-owned Property: A Cause for Concern (The Provisional Report to the Royal Institution of Chartered Surveyors and Built Environment Forum Scotland, 2019)

12 Key Findings (Scottish House Condition Survey 2016)

13 English Housing Survey, Stock profile and condition, 2017 (Ministry for Housing, Communities and Local Government, 2019)

This was not the only concern that was raised. Health and safety issues were another key area leaseholders said they expect will become more prevalent under the new regime, with 65% of respondents highlighting this as a concern.



Furthermore, research found that individuals who rent out a flat or an apartment were even more concerned about the fall in standards, with 72% of respondents highlighting they were concerned.

// I don't want the responsibility lying with other leaseholders, they don't know what they are doing. How can they give any directive on planning that needs to be done for the future proofing of a building? How do they know what to do with a building? They don't know what it needs in 20-25 years. Someone needs to make a profit for this work."

– Sanjay, Birmingham



Lessons from abroad

In recent years, Australia has experienced significant problems with resident-led models of ownership and management. An estimated three million people live in strata titled homes; a system whereby property owners are in a legally binding relationship with their neighbours for the communal upkeep and maintenance of their property.

What is strata?

Strata title allows individual ownership of part of a property (called a 'lot' and generally an apartment or townhouse), combined with shared ownership in the remainder (called 'Common Property' e.g. foyers, driveways, gardens) through a legal entity called the Owners Corporation – or body corporate, strata company, or community association. The Accountable Person may also employ a 'Building Safety Manager' who has the right skills and expertise to look after the building. Their role would be to help the Accountable Person by doing the day-to-day work involved with keeping a building safe.

The state of New South Wales (NSW) has the largest number of strata titled properties in the country. Since this system was introduced in 1961, a number of issues have come to the fore. The *Governing the Compact City*¹⁴ project provides a comprehensive assessment of how strata is operating with regards to governance and management from the point of view of those who own, live in and manage strata homes.

Satisfaction amongst strata owners with the performance of their executive committees was 'variable', with the most common reason for dissatisfaction being committee members acting in their own interest, rather than in the interests of all owners.

39% of respondents¹⁵ said coming to an agreement regarding the running of their scheme was problematic, which was mainly due to major expenditure, including repairs. Similarly, the length of time taken to decide and take action on particular issues posed difficulties. When leaseholders in the UK were¹⁶ asked if they would be happy to establish and govern an executive committee, it was found that 3 out of 4 respondents were 'concerned' by the prospect.

// I would not be happy because it would bring a lot of extra work to us and me – it would involve a lot of extra work and time without any financial benefit – potentially we could be worse off financially. It's not great – everything's working fine at the moment, so I'd be very worried about prospective costs and putting in the time so what's the benefit?"

– Hayley, Manchester

Neither the Law Commission, nor the Government, have been able to identify how commonhold will stop such disputes, or overcome the very real difficulties they create for effective oversight, which often involves hard decisions being required with significant costs at stake.

¹⁴ *Governing the Compact City: The Role and Effectiveness of Strata Management in Higher Density Residential Developments* (City Futures Research Centre, University of New South Wales, 2012)

¹⁵ See footnote 5

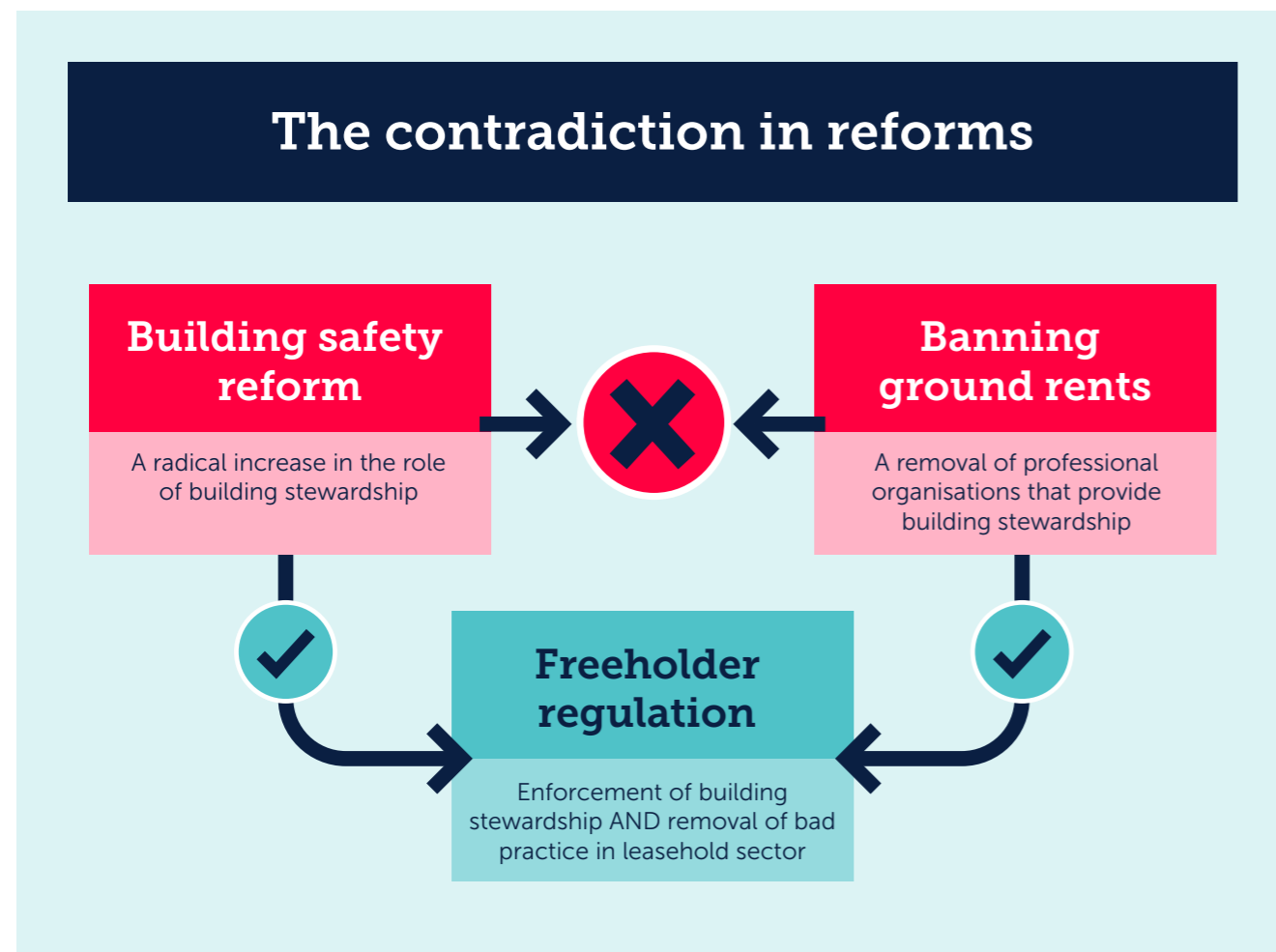
¹⁶ See footnote 5

5. What does regulation look like?

The evidence from this report presents an opportunity for the Government to address its contrasting building safety and leasehold reform agendas. Policymakers and officials must reconcile two legislative proposals, which as they stand, will have conflicting outcomes for the sector.

To maintain oversight of building and fire safety and long-term stewardship provided by professional freeholders, there is a role for mandatory regulation. This should be regulation in the form of a Code of Practice that aligns with the creation of a new Building Safety Regulator and incorporates tough sanctions for those building owners not delivering value for consumers.

If these agendas are not reconciled, then policymakers will force professional freeholders with scalable expertise out of the sector and instead, will impose a set of obligations and financial liabilities on unwilling residents. It is only through effective regulation that the Government can guarantee its various agendas are all delivering equal value for consumers, be it leaseholders or subtenants.



A Code of Practice, and regulatory framework, will:

- 1 Enshrine in law the role of the freeholder as the Accountable Person (where the lease enables it to do so);
- 2 Set ground rents at a reasonable and affordable rate; and
- 3 Establish clear parameters for investment into the residential freehold market.

Investment parameters

Freeholders collecting ground rents and selling ground rent contracts can only enter the sector if their investors are deploying patient capital. Leasehold reform is an opportunity to encourage innovation and stimulate the housing sector with institutional investment from pension funds and annuities.

The Code of Practice will prevent the market from being controlled by short-term interest, like that of private equity whose interests are typically limited at seven years.

Enshrining the role of the Accountable Person

The principal function of regulation in the residential leasehold sector is to define the stewardship provided by freeholders in the context of overseeing the management of building and fire safety. In line with the Government's proposals to introduce a dutyholder regime, professional freeholders will take on the responsibility of the Accountable Person. They will ensure building fire and structural safety risks are reduced as much as reasonably practicable when people are living in the building.

Residents would still have the option to collective enfranchisement and take over the management of their block, but the system would also provide for the existence of regulated freeholders where residents do not want these obligations.

Reasonable and affordable ground rents

In order to invest in the residential freehold sector and collect a ground rent, you will have to register as a regulated building owner. In exchange, certified building owners will have qualified and experienced professionals managing building and fire safety on behalf of leaseholders. Ground rents will be set at a reasonable and affordable rate on large and complex apartment buildings. Instead of scrapping ground rents completely on all homes, the Government should legislate in the mandatory Code of Practice to set ground rents at 0.1% of the sale price of new build flats, or a minimum of £200, increasing in line with RPI.



For more information please contact
enquires@ukfreeholders.co.uk

