A response to the Government's consultation on: Implementing reforms to the leasehold system in England from Ground Rents Income Fund (GRIF)

Executive Summary

Ground Rents Income Fund plc (GRIF) is a Real Estate Investment Trust (REIT) that aims to provide consistent long-term performance through investment in UK properties that offer long-dated ground rents with predefined cash flows. Our shareholders are pension funds, private client fund managers and long-term savings investors.

We are a responsible landlord and investor, and like other engaged landlords and institutional investors, we want to see a sustainable long-term leasehold market. To that end, we welcome Government's efforts to work with industry to improve the leasehold system where reasonable and transparent ground rents are in place. This would benefit homeowners and attract the necessary investment from engaged investors and landlords, including GRIF, and will we believe remove abuses and poor practices faced by some consumers.

We currently manage around 19,000 units nationwide across a range of properties including apartments, houses, student accommodation and commercial units. For residential property alone, we manage nearly 17,000 units.

Our mean annual ground rent charge is £184 for houses and around £250 for apartments (including student properties). 84% of the 19,000 properties have non-onerous ground rents that either review according to RPI/inflation or a predetermined fixed amount (Fixed), or not at all (Flat). The remaining properties (16%) have doubling ground rents, but the vast majority of these are also non-onerous as they have rents that double over prolonged periods meaning that the increase reflects the expected long-term rate of RPI or less. We manage just two residential apartment blocks which have 10-year doubling ground rents, totalling 376 units, which represents 2% of our leaseholders. However, these rents only double three times and then revert to RPI or remain flat for the remaining term of the lease.

In May 2018 we wrote to all leaseholders with doubling ground rents of any review pattern including those which are not considered to be onerous (doubling patterns over 15 years) to offer them a simple deed of variation to the lesser of RPI or the doubling. The "lesser of" element of the offer is important to make sure that consumers are protected and are not taking on inflation risk.

We have seen around an 8% take up so far from this project, rising to 15% for the 2% of our leaseholders with 10-year doubling ground rents. This may suggest that many such leaseholders do not feel that these terms are onerous.

In most cases, the leases we own are exceeding 100 years, a length commonly regarded as a long lease, and the ground rent is linked to RPI increases or less. GRIF mainly acquires pre-existing freehold and long leasehold assets on a secondary basis; by this point, the terms and duration of the lease have already been set by the developers of the site.

We support efforts to make the enfranchisement process simpler and more effective, and are engaged in the Law Commission's consultation on this issue.

We welcome the opportunity to respond to the Government's proposed reforms to the leasehold system. A summary of our position is set out below.

- We agree with the proposal in the consultation calling for the banning of the sale of new leasehold houses in England, where the sale of the freehold is an option.
- We support considered reforms that will reduce costs and strengthen the sustainable management of England's residential developments. We ask the Government to take powers already provided[1] to establish a Code of Conduct – with regulatory backing – for house builders, developers, freehold investors and managing agents to protect all stakeholders in the sector, and making a clear statement that poor practice will be driven out of our industry. A proposal for a Code of Conduct is attached as an annex.
- It is right that the Government is seeking to ensure that reasonable ground rents are being charged. As referred to above, we have written to the small percentage of leaseholders on doubling ground rents to give them the opportunity to convert these to RPI-linked terms.
- However, we believe that an annual £10 ground rent blanket cap is ill-conceived and inconsistent with what would be required to uphold a Code of Conduct**.**
- This is because the level of ground rent is simply too low for large scale professional investors such as pension funds to invest in the sector, as it does not recognise the level of genuine management, oversight and support that a responsible investor will provide to a managing agent, residents' management companies (ManCo) and leaseholders.
- In this consultation, we seek to correct the perception that there is no benefit in leaseholders paying a ground rent on reasonable terms[2].

The role of Responsible Dutyholder risks not being adequately fulfilled, or investors will seek to make returns elsewhere to cover the cost of fulfilling the role

- Ground rents are an attractive asset for pension funds to hold as they are low risk and long-term, with cashflows backing pension payments directly and thus supporting the UK pensions and insurance industry. The introduction of a £10 ground rent risks institutional investors in long-leasehold developments choosing to exit from the market as the level of return would be insufficient given the cost of management of the leaseholds.
- They could be replaced by more speculative unregulated investors seeking to derive value in different ways (e.g. focus on the reversion; apply more charges and increase the service charge), or put in place a more limited oversight structure, with running costs stripped down.
- If freeholds are not bought by investors, we may see an increase in leaseholders being bequeathed the freehold. The Hackitt Review called for a defined 'Responsible Dutyholder' to carry the ultimate responsibility for the maintenance and safety of a building and its residents. Yet this role could be increasingly discharged by residents and ManCos that do not have the interest, expertise, objectivity or long-term commitment to make decisions on the management of the block and long-term value of the units.
- While some ManCos work successfully at the moment, particularly around matters of basic upkeep, it is often not the case for more complex problems. Under these proposals, where this may not be the case in the future, the quality of the long-term management of developments is likely to worsen for buildings that are more complex to maintain, have more associated risks attached from both a financial and a health and safety perspective, and demand a greater level of professional oversight. In essence, there will be no backstop where resident knowledge or interest

[1] The Secretary of State has power, under the Commonhold and Leasehold Reform Act 2002 Act, to enact a code of conduct into law.
[2] We outline the specific duties and tasks of a responsible freeholder in answer to question 13.

is insufficient. This is important given that we as an owner of multiple residential freeholds have seen many ManCo director resignations in the wake of the Grenfell Fire tragedy, as people have become more aware of their responsibilities.

- Indeed, it is important to note that ManCo directors have a personal liability and responsibility commensurate with running a UK company. Their decisions have the ability to impact upon the value of all units across the building, so it is crucial that these responsibilities are upheld or enhanced.
- While residents may appoint a managing agent to organise the practical implementation of the upkeep of the building and surrounding lands, managing agents still need to take instructions from the Dutyholder, who will be the liable party or persons.
- Many residents, quite reasonably, do not have a long-term view of the building they inhabit. The standard tenure of a flat under single ownership is comparatively short. A resident will not think about the effect of their decisions on the mortgageability of a building owing to its condition and value 10 or 20 years down the line. Future mortgageability issues need to be considered.

Our experience and independent research suggest that owner occupiers and buy-to-let landlords do not want more responsibility

- Our experience of having nearly 20,000 properties under active management is that many flat-owners are not interested in the actual daily practicalities of what discharging the role of a Responsible Dutyholder entails, nor do they want the potentially onerous associated personal liabilities. Our experience is that – in the overwhelming majority of cases – many residents or leaseholders do want to take this responsibility on board, with many simply ill-equipped or experienced to perform this vital role, which could have value implications for all stakeholders in the development.
- Over 60% of the properties under our management are buy-to-let landlords who are in our experience happy to be assured that their investment value is being maintained through the active involvement of a responsible institutional landlord.
- YouGov undertook a survey of 2,034 Great British people on their attitudes towards paying ground rent between 22-23 November 2018.
- Those that said they owned their property – 1,124 – were asked how happy or unhappy, if at all, they were with the cost of their annual ground rent charge. 80% said that they did not pay ground rent/were not aware of paying ground rent and this was this not applicable. Of the remaining 20%, 10% said that they were happy or very happy with the ground rent, 8% said that they were unhappy or very unhappy (and the remainder didn't know).
- Only 15% of people said that if they bought a property in a large, purpose-built development of many flats (i.e. more than 20), that they would be interested or very interested if they had the option to pay nothing in ground rent, instead of £200 per year, but in return, the legal responsibility for the whole building was placed on them and their neighbours through ownership of the freehold. 29% were less or a lot less interested, 25% felt about the same, and 31% didn't know.
- The findings show there is little appetitive for the consequence of what the Government is suggesting for bigger developments. This accords with our experience of managing developments totalling thousands of properties.
- In addition, leaseholders benefit through a responsible investor that has scale. For example, we can access attractive buildings insurance, usually on substantially better bespoke terms, and are capable of insuring buildings that might be uninsurable on a standalone basis.

- An analysis of a group of 20 properties managed by GRIF shows the premium provided under our company-wide insurance policy was on average 11% lower than the standalone quote provided by our brokers from three other reputable real estate insurers. GRIF provided premium was lower in all instances, ranging from 7% to 16% lower, with the average saving ranging from £742 for a building with 32 apartments to £45,731 for a high-rise building with 219 apartments and a hotel. Of the 12 residential-only properties, the average saving per apartment was £28 pa – in itself nearly three times the Government's proposed £10 pa ground rent cap. But more importantly, in addition to this cost saving, the level of cover provided by the bespoke wording of our policy is substantially better than those seen in the open market, as we are able to leverage the scale of our operation for the benefit of the underlying consumers. This includes; better alternative accommodation cover, automatic coverage of up to £10,000,000 of alternations, additions and extensions at any one premises, and extended coverage where an RMC arranged policy fails or is insufficient.

Good stewardship is directly linked to the involvement of long-term, institutional investors through a reasonable ground rent

- Under the current structure, where ground rents are set at a level that can attract institutional investors to acquire an economic interest in properties, we think that leaseholders have materially benefited from responsible freeholders taking a long-term interest in developments and driving up standards.
- Institutional freeholders with greater access to both capital and technical/professional expertise are better placed to respond to unexpected circumstances, thus lowering the exposure to risk for homeowners. Under commonhold tenure, when unforeseen problems happen – and they often do – there is much less likelihood that emergency funding can be redeemed, certainly in the short-term.
- For example, for one development, we covered a shortfall of £80,000 for the installation of an upgraded fire alarm system to keep the residents safe and in their homes. This would have otherwise cost leaseholders a combined £7,000 per week.
- As an example of the stewardship which we undertake, we have a large-scale development in our portfolio which currently has some potential issue with its facia. The construction company who built the building went into liquidation whilst it was working on site and developing a permanent fix for the stakeholders, both residential and commercial, with their specialist advisors and sub-contractors. Since this liquidation event, GRIF and its subsidiary have expended hundreds of thousands of pounds in external and internal costs on behalf of the leaseholders in pursuit of a solution for the residential and commercial tenants, without passing any of this cost through the service charge of the development.

In all, we believe that the unintended consequence of installing a maximum £10 ground rent will be to limit and reduce consumer choice, and risks creating a two-tier market

- We suggest for 50p-£1 a day, that many flat owner-occupiers, landlords and particularly mortgage lenders, would be happy for the risk and governance oversight to be vested in a regulated firm that has a long-term interest in the building, with a responsibility to maintain and protect the long-term value of flat-owners' most financially precious asset.

- With the mean loan to value for a home purchase in the UK being 87%[3], the overwhelming economic interest in these homes sit with the mortgage providers. The introduction of a maximum value for ground rents could lead to a two-tier market in which the value of the existing four million leasehold properties – including the majority on non-onerous terms – are affected as a result of being leasehold properties under the old regime.
- The two-tier market could make selling or re-mortgaging properties under the old system more difficult and may lead to leaseholders having costs forced on them at point of sale or when they re-finance. For instance, an existing leaseholder who is paying a non-onerous RPI-linked ground rent of £200 a year may be forced into paying a significant premium to reduce the ground rent to £10 in line with new properties coming onto the market. Such an RPI-linked ground rent of £200 per annum could be worth £6,000 - £8,000 to a freeholder, which is a substantial additional cost for a leaseholder to meet.
- Furthermore, the risk profile of a quasi-commonhold development is very different to that of a site which has a professional investor as the Dutyholder. On that basis, it is quite possible that in the future, we may see the differential pricing of mortgage rates to reflect this variance in risk profiles. For instance, where a leaseholder has to fund a big one-off cost which may be more than their deposit to secure the mortgage on the property, (and no substantial property price uplift has taken place), the leaseholder may take the view that it is simply better to default on the mortgage, than pay the cost of remedial works. This might incur less cost, and within several years, the individual would be able to access a new mortgage.

So where should we focus exemptions to protect consumer choice and the support the long-term management of residential buildings?

- The biggest negative impact from a blanket £10 ground rent charge will be where the inability to fully discharge the role of Responsible Dutyholder could have the greatest financial, and health and safety ramifications; and as a result would most inhibit consumer choice by requiring homeowners to manage and be liable for something they have no wish to.
- The continued operation of a reasonable ground rent is necessary in the oversight and operation of larger, more complex buildings where the importance of good custodianship is clearly greater and consequences of failure more pronounced.
- For large house conversions or smaller blocks, these buildings are arguably more manageable. But for developments with over 20 separate flats, a higher cap on the ground rent should apply.
- We believe the most appropriate step for future leases would be a cap, to be charged at a maximum of 0.1% of the property's capital value at commencement of the lease, and a minimum of £200, with that rent being linked to RPI. Consideration would need to be given as to the correct limit and how this would apply across England and Wales.
- The inclusion of a minimum ground rent is as important as the maximum in our opinion, in order to make sure that housebuilding continues to be viable in lower value areas of the country as the Government works towards delivering on its objective of 300,000 new homes a year. This is particularly worth noting in the context of recent figures showing that new housing stock remains 78,000 short of the Government's target for the mid-2020s.

[3] March 2018 mean LTV ratio on new advances, based on loans to first-time buyers, council/registered social tenants exercising their right to buy and homemovers, and excluding lifetime mortgages and advances with LTV ratio above 130%. Source: FCA Product Sales Data and the Bank of England.

Other important considerations

- We do not agree with the Government on a £10 maximum ground rent charge. But, if the Government presses ahead, the Government's ground rent proposals should not be legislated for alone. For those living in developments where the £10 ground limit would apply, legal requirements must be put in place to ensure that directorial responsibilities regarding health and safety, risk and governance are appropriately discharged in line with a formal Code of Conduct or legislative guidelines.
- Personal obligation for company directors should not be watered down in any way; if anything, they should be enhanced to reflect the seriousness and magnitude of their actions over other people's principal assets.
- Again, should the Government implement the cap, the maximum £10 limit should only apply where a lease-term is extended. If any simple or minor revision would mean the £10 limit kicking in, for example, amending an inaccurate red line drawing at the Land Registry or amending an ambiguous piece of drafting, landlords will never agree to variations that could well be in the interests of the leaseholder.
- Additionally, we believe that the definition of a house needs to be clarified, and we understand that the Law Commission, as part of its 13th Programme of Reform, is looking into this specific point.
- Indeed, we note that this consultation is running concurrently with the Law Commission's enfranchisement consultation. As such, we note the respected Institute and Faculty of Actuaries has reportedly pointed out that the examples used to demonstrate the cost of enfranchisement and how it could be lowered seem to be misleading.
- Notwithstanding the Institute's points here, it is important to note that there are different tracts of work going on across Government on leasehold reform. So any output of the MHCLG's consultation should dovetail into that wider programme of work.

Answers to the consultation questions

Q1: Do you have views on any further means to implement the ban on unjustified new residential long leases being granted on non-exempt houses?

A1: We support the Government's proposal to implement a ban, where a freehold is available as an option. It is important to note that some land may not be offered to developers as freehold, such as where a local authority might wish to keep an interest in a regeneration programme or if the intention is for a large mixed-use development. Clearly, we would not want to stifle development on land where there is good reason for why freehold sale may be precluded.

We believe that houses that have gained planning permission before 22 December 2017 should be allowed to be built out as a leasehold house if development work is started within the period that local authorities' permission will elapse (varies between 3-5 years from the point of the permission grant). Proof would need to be shown that the intention and financial working, prior to planning consent, was based on the houses being sold as leasehold.

Q2: Do you have any views on how to provide appropriate redress for the home owners should (a) a long lease be incorrectly granted upon a house or (b) a long lease be granted at a ground rent in excess of the cap, after the legislation has taken effect? If you do, please explain.

A2: As the consultation notes, anyone buying or selling a property or land, or taking out a mortgage, must apply to HM Land Registry with a requirement of providing information about the lease to be included if the lease is over 7 years[4]; with the consultation noting that it will not be possible to make such registrations for houses. (We assume this will still enable registrations where the developer may have no option but to market the house as leasehold). We note that this check will be demanding for HM Registry; and if it was to charge a fee to administer this, it would of course increase development costs.

Where a lease is incorrectly granted, and this is realised, it should be cancelled. Any income transferred in the form of a ground rent should be returned. In this situation, the conveyancing solicitors must take responsibility and therefore be liable this mistake, and also for any costs of rectification in this regard.

The rights and responsibilities set out in the lease must also be transferred to the homeowner. This should be straightforward. For the small number of cases where there may be a dispute, we believe that the First-Tier Tribunal should be capable of adjudicating or appointing an expert to rule on the matter.

Q3: To ensure there is a workable definition of a 'house', we would welcome your views on the type of arrangements and structures which should or should not be considered to be a 'house' for the purpose of the ban on new leasehold houses.

A3: We note that the Law Commission's enfranchisement consultation is moving to a new 'residential unit' definition that can align the treatment of leasehold houses and flats for lease extensions or enfranchisement claims.

However, we note that for this consultation, focusing on the implementation of leasehold reform, such a distinction needs to be retained. We would advocate a traditional view of how a house might be defined, whereby a house should not have any structures or housing above or below it. If other

[4] According to the Land Registration Act 2002

structures connect to the house above or below it, there may be a genuine need for it to be retained as leasehold.

Q4: With the exception of community-led housing, do you agree that any exemptions provided which allow the continued granting of new long leases on houses should have their ground rents restricted as proposed?

A4: Yes. Any exemptions provided should come with restrictions. Recipients of exemptions have a responsibility to charge a reasonable ground rent. If exempted classes do not adhere to charging reasonable ground rents, then the issues associated with the granting of freehold houses will be seen not to have been dealt with.

Q5: Are there any other conditions that should be applied to exemptions from the leasehold house ban to make them acceptable to consumers?

A5: Exemptions need to be clear from the point of purchase, but again we would advocate a cap and floor in the setting of ground rents to make sure that they are reasonable both at the point of sale and throughout the term of the lease. Information submitted by the freeholder when information is requested from the conveyancer must confirm any exemption status.

Q6: Do you agree that there should be an exemption for shared ownership houses? If you do not agree, please explain why, including what alternatives to leasehold arrangements could be employed to fulfil the requirements of shared ownership houses.

A6: Yes. Shared ownership houses are jointly owned by the homeowner and the housing provider, such as a housing association. The latter will therefore need to have a stake in the property – which a lease is fundamental in providing. A lease between the two parties is needed to set out the limitations, rights and responsibilities of both. (While the lease can be extended at any time, once a shared ownership property has been 'staircased' to 100%, then the homeowner should be able to make an enfranchisement claim).

Q7: Do you agree that there should be an exemption for community-led housing developments such as Community Land Trusts, cohousing and cooperatives? If you do not agree, please explain why, including what alternatives to leasehold arrangements could be employed to fulfil the requirements of community-led housing.

A7: We have limited experience of Community Land Trusts and therefore we cannot specifically comment. We note that additional services should be charged through the service charge.

More widely, we note the argument supporting an exemption for community-led housing – that it as a class should be exempt due to it supporting the delivery of affordable housing for communities whilst delivering the necessary stewardship to protect the long-term value of these assets for the community.

We would reiterate the wider point that a ground rent brings with it an alignment of interest between the freeholder and leaseholders. Critical to this is maintaining the economic value of the property through the oversight of the delivery of services vital to its management for the long-term. The charging of a reasonable, fair and transparent ground rent enables the long-term, professional management of a development of building.

Whilst a managing agent may implement the practical day-to-day upkeep, funded through the service charge, it needs to take its instructions from a suitably qualified, experienced and preferably impartial party such as an institutional freeholder, be that around the provision of a sinking/reserve fund, how

a major building problem such as cladding might be addressed, or the deployment of other communal services and utilities. Responsible investors act as stewards of the building in commissioning expert advice and on occasion taking formal action, against parties such as developers or main contractors under collateral warranties, and making decisions in the best interests of the collective group, including importantly the consumer leaseholders.

Managing agents, who are currently not regulated[5], are also scrutinised by investors to a greater degree because they know what the function requires.

This oversight and scrutiny requires funding. As a responsible investor, we levy a transparent and reasonable ground rent charge to do this. Limiting the ground rent to £10 will mean this cannot be funded.

Other investors may note their ability to act as a freeholder for a peppercorn charge. But the same level of oversight simply cannot be delivered, and/or more speculative investors may focus on the lease extension or enfranchisement premium or levying a higher service charge and applying more exceptional costs.

Q8: We would welcome views on the features or characteristics that should be included within a definition of community-led housing for the purpose of an exemption.

A8: We have no real experience of such housing schemes to offer and so are not best placed to answer this question.

Q9: Do you agree that there should be an exemption for land held inalienably by the National Trust and excepted sites on Crown land? If you do not, please explain why, including what alternatives to leasehold arrangements could be employed to fulfil the requirements of the National Trust and owners of Crown land.

A9: We support an exemption for property situated on land bequeathed to the nation, which may be held by the National Trust or Crown Estate. A ground rent should, however, be charged, albeit limited, for the same stewardship issues identified in our responses to Q7 and Q13.

Q10: Do you agree that the law should be amended to allow the inclusion of newly created freeholds within existing estate management schemes? If you do not agree, please explain why.

A10: Yes. We support the practical delivery of a single estate management scheme. It will be more efficient and less costly for those living on the estate and it reduces the possibility of divisions forming between those living on the estate.

Q11: Are you aware of any other exceptional circumstances why houses cannot be provided on a freehold basis that should be considered for an exemption, in order to protect the public interest or support public policy goals? If yes, please state what further exemptions may be required and why, and if possible provide examples or further evidence. Please include your evidence of how prevalent this issue may be (for example, the number of developments/units likely to be affected) and why alternative arrangements to leasehold cannot be employed, as well as how such a development might be defined for the purposes of an exemption.

A11: We are not aware of any other exceptional circumstances.

[5] And who may not be members of ARMA or RICS.

Q12: Do you agree that there should be no further transitional arrangements after the commencement of the legislation to permit the sale of leasehold houses? If not, please explain why transitional arrangements are needed and what they should be.

A12: Houses that have gained planning permission before 22 December 2017 should be allowed to be built out as a leasehold house. If the building work and property registration for a freehold house extends beyond the commencement of the legislation, but development begins within the time a planning permission issued by the relevant local authority will lapse (usually between three-five years), then the houses should still be allowed to be marketed as a leasehold house[6]. As a planning application was submitted and consented to before the outcome of the consultation and the Government's confirmed position was known, this should be allowed to progress if the intent and financial working was for a leasehold property.

Q13: Are there justifiable reasons why ground rents on newly created leases should not be capped as a general rule at a maximum value of £10 per annum, but instead at a different financial value? If so, please explain (a) what that rate should be and (b) your reasons in support of that value. Please provide any evidence to support your reasons.

A13: Yes. We strongly reject the notion that a homeowner does not get any benefit in return for paying a reasonable annual ground rent level.

Before tackling this point, it is important to note that there are different types of investor in private residential property who will seek to buy the freehold of a property, with varying ways of seeking a return for the potentially onerous responsibility that they are taking on.

Some investors may buy the freehold at the new £10pa level, but in exchange for assuming responsibility of the building for a nominal ground rent, will likely use the service charge to fund more exceptional costs. This arguably worsens transparency and leaves consumers exposed to poor practices, as it will encourage the very people whom we are trying to drive out of the industry. Other investors will seek to buy freeholds, particularly where the lease is running down, and make their profit on the lease extension or enfranchisement premium. We think this option is also less favourable because it seeks to extract value without any consumer benefit.

The other category – which we fall into – is to charge an annual ground rent, which is transparent and, in the vast majority of cases, a reasonable sum of money for the service which is ultimately provided. These are as a rule 100 year plus leases where there is currently no reversionary value. Ground rents are an attractive asset for pension funds to hold as they are low risk and long-term, with cashflows backing pension payments directly and thus supporting the UK pensions and insurance industry.

While this income enables institutional investors to take an interest in developments, there is a very real body of work that it supports to enable the discharging of the role of Responsible Dutyholder. Indeed, the Hackitt Review clearly sets out the need for a Responsible Dutyholder to carry the ultimate responsibility for the maintenance and safety of a building and its residents.

As we have noted, we believe that over the past 10 years, we have seen large and well-regulated institutions come into the sector, which has driven up standards, auditing management practices and removing bad practices.

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[6] Provided demonstration of the intent to market the house as leasehold, prior to planning permission, can be proven; though we note demonstration of this is not a requirement for planning permission.

To this end, we support the establishment of a Code of Conduct – with regulatory backing – for freehold investors and managing agents to protect all stakeholders in the sector, and making a clear statement that poor practice will be driven out of our industry. This can be introduced by the Government using powers already provided via the 2002 Commonhold and Leasehold Reform Act.[7]

Whilst a Code of Conduct with regulatory backing would ensure consumers receive good value for the ground rent charged and a minimum acceptable level of stewardship, if combined with a £10pa cap, it would make investment in the sector unaffordable for the well-regulated institutions that have been at the forefront of driving up standards. In our view, this would risk leading to a race to the bottom where consumers are exposed to poor practice.

This is because such a cap is simply too low for large scale professional investors such as pension funds to invest in the sector, as it does not recognise the level of genuine management, oversight and support that a responsible investor will provide to a managing agent, residents' management companies (ManCo) and leaseholders.

What leaseholders get in return for paying a ground rent

On a day to day basis, a responsible freeholder plays a valuable role in protecting consumers by ensuring properties are maintained in the long-term interest of its leaseholders, as well as the tenants renting their home, in the following ways:

- An **expert in residential asset management** who is able to make decisions and instruct, and/or advise, the managing agent as to the practical delivery of the building's management and maintenance.
- A **management team that can respond to concerns immediately** and be on hand to work with the managing agent or appointed specialist, which is especially important where the freeholder's input is needed to sanction emergency payments or work.
- **An ability to secure more comprehensive buildings insurance at a comparably lower cost**, given that an institutional investor may have several billion pounds worth of property under insurance. One of the main benefits of us insuring a significant portfolio is the economies of scale and diversification of risk across sites for the insurer. The current Total Sum Insured for the GRIF portfolio by Lockton, our real estate insurance broker, is over £1.4 billion. There are some properties within the GRIF portfolio that we know the insurance market would simply not provide cover for on a standalone basis due to claims history, but are covered as part of the collective GRIF portfolio policy.
- **Cheaper building insurance and far more comprehensive coverage.** An analysis of a group of 20 properties managed by GRIF shows the premium provided under our company-wide insurance policy was on average 11% lower than the standalone quote provided by our brokers from three other reputable real estate insurers. The GRIF provided premium was lower in all instances, ranging from 7% to 16% lower, with the average saving ranging from £742 for a building with 32 apartments to £45,731 for a high-rise building with 219 apartments and a hotel. Of the 12 residential-only properties, the average saving per apartment was £28 pa – in itself nearly three times the Government's proposed £10 pa ground rent cap. In addition, the level of cover provided by the bespoke wording of our policy was substantially better than those seen in the open market, as we are able to leverage the scale of our operation for the benefit of the underlying consumers. This includes; better alternative accommodation cover, automatic coverage of up to £10,000,000

[7] The Secretary of State has power, under the Commonhold and Leasehold Reform Act 2002 Act, to enact a code of conduct into law.

of alternations, additions and extensions at any one premises, and extended coverage where an RMC arranged policy fails or is insufficient.

- **Wider access to experts** from across the property spectrum (lawyers, valuers, damp and mould inspectors, materials specialists, energy and utility management experts, advisers around cladding, fire safety consultants) that the investor consults before issuing instructions.
- **The resources and professional relationships to enforce collateral warranties** against developers, contractors and insurance policy terms to recoup any costs of remedial work. In the wake of the Grenfell Tower fire, we are one of a number of investors that are working with developers to fix cladding across multiple developments, which not only includes this expert input and oversight, but in many instances, the loaning of capital sums to development to complete necessary works.
- As an example, we have a large-scale development in our portfolio which currently has some potential issues with its facia. The construction company who built the building went into liquidation whilst it was working on site and developing a permanent fix for the stakeholders, both residential and commercial, with their specialist advisors and sub-contractors. Since this liquidation event, **GRIF and its subsidiary have expended hundreds of thousands of pounds in external and internal costs on behalf of the leaseholders** in pursuit of a solution for the residential and commercial tenants, without passing any of this cost through the service charge of the development.
- Act as **independent arbitrators** to assist in resolving conflicts either between leaseholders, managing agents, developer or contractors, as well as **fund legal and consultancy fees** when disputes arise.
- Provision of **financial and practical support when emergencies arise**, mitigating additional costs and preventing evacuation. Institutional freeholders with greater access to both capital and technical/professional expertise are better placed to respond to unexpected circumstances, thus lowering the exposure to risk for homeowners. On an industry-wide level, we note that the Association of Residential Managing Agents identified 24 buildings which are clad in the aluminium composite material that failed the BRE test. These buildings house 5,700 leaseholders, who will be faced with a total cladding cost of £53m (excluding VAT) plus any waking watch and potential legal costs in disputing liability, at an average of nearly £12,000 per leaseholder. This may be a one-off, but emergency costs do occur in housing developments.
- We **provide interest free loans**; and one recent occasion in the last 18 months, covered a shortfall of £80,000 for the installation of an upgraded fire alarm system to keep the residents safe and in their homes. This would have otherwise cost leaseholders a combined £7,000 per week.
- An **objective, independent, impartial decision-maker** who looks beyond the narrow interests of current homeowners to decide what is in the best long-term interests of the development (including those who will inhabit flats in years to come). This is most obvious in advising on the suitable long-term planning for a sinking fund, but also in planning for other liabilities.
- **Scrutiny of the managing agent's work** (noting that an investor will be able to better understand what good looks like), which has been a key element of the increasing management standards which we have seen over the past decade. Managing agents are currently not regulated; we have advocated that this needs to change very quickly to protect consumers.
- **Maintain risk-based databases** ensuring that all necessary statutory and insurance-based requirements are up to date, ensuring independent reporting of the management of the building and follow up.
- **Stepping in** where a ManCo is dissolved. We had a number of ManCos which have failed and have been dissolved in the last 12 months. We have had to assume the position of Responsible Dutyholder, or work to reinstate the ManCos for the benefit of wider leaseholders.

We believe that this level of oversight and support provides genuine benefits to the consumer. Taking on responsibility for this costs time and money. We believe that it is clear that it costs more than the revenue provided by a £10 per flat per annum resident charge (equating to around £1,000 in total for responsibility of a 100-flat development).

What could the impact be?

So, the question is, when responsible investors can no longer deliver this service for a residential block of 100 apartments for £1,000 in total, who takes over and becomes the responsible party?

It could be sub institutional private investors who would then inevitably enter the market, who will seek a return in other ways, as we have highlighted previously.

Or quite possibly, more freeholds will be bequeathed to the residents. At first sight, this might seem positive, a way of empowering consumers and in ultimately achieving quasi-commonhold. And some residents, and groups committed to the idea of commonhold, may welcome the prospect, at least in the short-term.

But in our experience of overseeing nearly 20,000 properties across England, the evidence is that residents – with a very small number of exceptions– have no interest in involving themselves with their neighbours in this unpaid and potentially personally onerous work on an ongoing basis.

As noted, over 60% of the properties under our management are buy-to-let investors; other investors report a similar figure. Many such owners live remotely from the building and do not have the time to become involved in management. A professional landlord can provide such investors (and their tenants) with the comfort that the building (and their investment) is being managed properly. But neither is this lack of real and ongoing interest confined to buy-to-let landlords; busy owner occupiers often feel the same. Feedback from an independent public poll that we commissioned backs this up (see page 15).

In the event of a development's lease being bequeathed to leaseholders, a ManCo will need to be established. Many ManCos are already in existence. Some do a good job, particularly on matters relating to basic upkeep which are more digestible. Many do not. Currently, the performance of these ManCos can be shielded by the backstop of a responsible investor.

It is important to note that ManCo directors have a personal liability and responsibility commensurate with running a UK company. Their decisions have the ability to impact upon the value of all units across the building, so it is crucial that these responsibilities are upheld or enhanced.

Under the proposals, even if a good managing agent is in place or appointed, leaseholders will be required to make objective decisions that have legal and criminal ramifications on issues they may well have no knowledge, experience or even understanding. Residents and residents' groups may seek expert advice, which will be an extra cost, or they may not do so in discharging their decision-making responsibilities, which could have significant value implication for all stakeholders. In addition, because there may be a lack of understanding within the ManCo, accountability of the managing agent may be difficult to question.

An inherent conflict of interest which could diminish future value and in extremis, mortgageability

There is a conflict of interest which, unresolved, will likely have serious long-term ramifications for the consumers bound by this conflicted decision-making. For example, many residents will have a disincentive to establish a sinking fund (which is defined as good estate management by the RICS under the Residential Management Code), for the long-term good management of the property,

particularly if many do not plan on living in the property for a long time. (In this context it is worth noting that the average length of flat tenure is comparatively short).

This conflict will also affect mortgage lenders, who are lending against the value of the asset. Residents, due to the relatively short average tenure, are unlikely to be concerned about making decisions to safeguard to future of the building 10 or 20 years down the line, yet these decisions could set in train a path which could limit the mortgageability of developments of some properties.

<u>A two-tier market</u>

With the mean loan to value for a home purchase in the UK being 87%[8], the overwhelming economic interest in these homes sit with the mortgage providers. The introduction of a maximum value for ground rents could lead to a two-tier market in which the value of the existing four million leasehold properties – including the majority on non-onerous terms – are affected as a result of being leasehold properties under the old regime.

The two-tier market could make selling or re-mortgaging properties under the old system more difficult and may lead to leaseholders having costs forced on them at point of sale or when they re-finance. For instance, an existing leaseholder who is paying a non-onerous RPI-linked ground rent of £200 a year may be forced into paying a significant premium to reduce the ground rent to £10 in line with new properties coming onto the market. Such an RPI-linked ground rent of £200 per annum could be worth £6,000 - £8,000 to a freeholder, which is a substantial additional cost for a leaseholder to meet.

Furthermore, the risk profile of a ManCo/Commonhold development which his leaseholder managed is very different to that of a site which has a professional investor as the Dutyholder. On that basis, it is very likely that in the future, there may be differential pricing of mortgage rates to reflect this variance in risk profiles. For instance, where a leaseholder has to fund a big one-off cost which may be more than their deposit to secure the mortgage on the property, (and no substantial property price uplift has taken place), the leaseholder may take the view that it is simply better to default on the mortgage, than pay the cost of remedial works. This might incur less cost, and within several years, the individual would be able to access a new mortgage.

<u>The perspective of managing agents</u>

In 2018, members of the Leasehold Reform Group undertook a survey of managing agents with whom they work on leasehold developments. The 15 respondents answered the questions on working with leaseholder-owned or ManCos. The 15 respondents manage approximately 400,000 units across the country.

- 80% of respondents said that health and safety issues were a common cause for concern with leaseholder-owned companies.
- Failure of directors to pay for the annual Fire Risk Assessment or to address health and safety concerns (following routine audit or to rectify critical fire risks) was cited by a third of respondents as a reason for directors having resigned from boards of leaseholder-owned companies.
- 100% of respondents said that absence of volunteers for director was a common cause for concern, while 79% had noted an increase in director resignations from leaseholder-owned companies in the last 12 months. (In the wake of the Grenfell Fire tragedy, GRIF has seen an

[8] March 2018 mean LTV ratio on new advances, based on loans to first-time buyers, council/registered social tenants exercising their right to buy and homemovers, and excluding lifetime mortgages and advances with LTV ratio above 130%. Source: FCA Product Sales Data and the Bank of England.

increase in the number of director resignations from ManCos as people have become more aware of their responsibilities).

- 73% of respondents said that directors not acting in the long-term best interest of the development was a common cause for concern. One respondent said that the main issue was directors of leaseholder-owned companies "limiting reserve fund contributions".
- 73% of respondents considered that there is a need for greater regulation of leaseholder-owned companies and their directors in relation to financial control and health and safety.
- 60% of respondents said that they had experienced challenges relating to insolvency or lack of funds in relation to a leaseholder-owned company.

We believe the feedback – from those working with leaseholders, day-in, day-out – shows that it should not be taken as read that leaseholders will relish the opportunity to take greater responsibility of the development in which they have bought a flat, especially where there is no fall-back in the form of a responsible investor in place.

Independent research about what the consumer wants echoes that people do not want to take more responsibility

YouGov undertook a survey of 2,034 Great British people on their attitudes towards paying ground rent between 22-23 November 2018.

- Those that said they owned their property – 1,124 – were asked how happy or unhappy, if at all, they were with the cost of their annual ground rent charge. 80% said that they did not pay ground rent/were not aware of paying ground rent and this was this not applicable. Of the remaining 20%, 10% said that they were happy or very happy with the ground rent, 8% said that they were unhappy or very unhappy (and the remainder didn't know).
- Only 15% of people said that if they bought a property in a large, purpose-built development of many flats (i.e. more than 20), that they would be interested or very interested if they had the option to pay nothing in ground rent, instead of £200 per year, but in return, the legal responsibility for the whole building was placed on them and their neighbours through ownership of the freehold. 29% were less or a lot less interested, 25% felt about the same, and 31% didn't know.
- The findings show there is little appetitive for the consequence of what the Government is suggesting for bigger developments. This accords with our experience of managing developments totalling thousands of properties.

What would a reasonable price cap be and in what circumstances?

So recognising that it appears the Government's firm intention to apply to a £10 per annum limit, our call for an exemption is focused on where this would add the greatest level of risk to inadequate building oversight, and because of this, the greatest detriment to consumer choice in asking something of them to perform a task for which they may not be interested or qualified.

For large house conversions or smaller blocks, these buildings are arguably more manageable. As such, for developments with over 20 separate flats, a higher cap on the ground rent restriction should apply. This is in keeping with the public polling that we commissioned, above, which explicitly asked about such developments. These buildings are more complex and require the oversight and active management of an experienced institutional investor who can draw on its expertise.

We suggest a sum in the region of 0.1% of the property value, with a minimum of £200 per annum as an annual ground rent charge limit. On a 100-property development, with a mix of flats worth an average of £200,000, this would equate to a total ground rent of £20,000 for a development with a value of £20 million.

The annual ground rent fee would allow the previously bulleted consumer benefits to be discharged by the investor holding the freehold, while keeping the charge down to between 50p and £1 a day for leaseholders.

This benchmark does not allow for geographical property value variations, and it supports a higher rent in some parts of the country compared to others. However, it may be a suitable benchmark to work from, noting that it has been adopted by mortgage lenders.

Additional safeguards should an annual £10 ground rent charge be implemented

We are clear that if the Government is to limit ground rents to £10 – but not for larger developments as we have set out – it will be necessary to upgrade legislation or perhaps utilise the same piece of legislation to which the £10 limit is attached to make sure that prospective leaseholders are told about their responsibilities and that post-property purchase, participate in making a plan for discharging them. They would include:

- Requiring conveyancers to set out that prospective flat-owners will be legally responsible for the ongoing upkeep and management of their block at the outset of the purchase (which also notes what this responsibility will cover). Indeed, a bond or insurance policy could be looked at as a way of ensuring that leaseholders understand their financial liabilities from any costs incurred.
- Requiring residents to set out, regularly review and implement a building or block management plan and PPM schedule[9], covering health and safety, long-term cyclical maintenance costs, the maintenance of mechanical and electrical fittings and equipment, and utilities and a formal sinking fund. This may contain certain tactical requirements, such as a review of the building by an independent fire safety expert to take place at appropriate intervals. (It might be that a managing agent sets this out for residents' review and sign-off, but the duty will be the residents, who will be liable).
- Ensure that the directors of the ManCos are properly trained and made aware of their responsibilities both as director and personally.
- The implementation of a Code of Conduct should also be considered, setting out the requirements of all resident managed companies. The rules attached together with the penalties for breach should be clearly explained. (We have attached a draft Code in the annex).

In addition to this, the regulation of managing agents around their role, obligations, governance and interaction with residents is also something that must be taken forward; as there will be more properties exposed to less scrutiny by responsible, experienced investors.

Connected to the role of managing agents, there is an insufficient emphasis on appropriate levels of qualifications. In part, this is connected to the lack of pay and arguably recognition of working as a residential property manager. Greater regulatory focus will help in this regard, which is good, because the job is important.

[9] Preventative Planned Maintenance: The scheduling of tasks in a schedule to prevent failure of component, system or asset degradation. This is part of the RICS guidelines around good estate management.

Q14: Are you aware of a separate ground rent being charged in addition to a rent on the retained equity in shared ownership leases? If so, do you know how much ground rent is charged? Can you say how widespread this practice is? If known, what is the justification for such a practice?

A14: We are not aware.

Q15: Do you represent a community-led housing provider which does not rely on ground rent income? If so, what alternative methods of funding have proved successful and could be replicated elsewhere?

A15: We do not represent a community-led housing provider.

More widely in response, other charges can be applied to leaseholders (and freeholders if the estate features a mix of owner types) for where shared services and facilities are provided and all benefit from their maintenance, but the lease is the only mechanism for guaranteeing the ultimate landlord receives payment. The reality is that the service charge could be increased, or ground rent could be branded by another name, but monies are harder to recover should a leaseholder want to withhold it.

Q16: Do you agree there is a case for making specialist arrangements permitting the charging of ground rents above £10 per annum for properties in new build retirement developments?

A16: We note the proposal of offering choice to the first buyer of a retirement property between either paying a higher purchase price with a low notional ground rent or a lower price adjusted to make allowance of a higher ground rent charge. We understand that the proposal is to allow for the additional costs required to develop facilities that cannot be capitalised by the developer. We support this exemption, though note that the argument does extend to the 'mainstream' housing sector.

The cohort to whom retirement housing is being marketed may be considered more vulnerable or have more limited income. The Government should be careful to ensure that a limit should be set to ensure affordability can be maintained. Careful procedures around the process of selling should also be managed and policed.

Q17: What positive or negative impacts does paying ground rents have on older people buying a home in the retirement sector? Please give your reasons and if you think the impacts are negative explain what measures might mitigate them.

A17: Income from the sale of the freehold enables developers to capitalise and sell the ground rent income stream to investors whilst retaining estate management responsibilities. We understand that this will enable developers to build additional facilities within the development (for example amenity space) that residents can use and enjoy. The running costs will be charged through the service charge.

Q18: Do you agree with our approach to the treatment of mixed-use leases?

A18: Yes, but we seek clarity on how and to what it would be applied.

Mixed use leases will require the freeholder to consider and weigh a variety of interests. The example provided in the consultation was a shop below a self-contained flat. We wondered whether larger mixed-use examples, such as purpose-built mixed-use developments featuring housing, retail and leisure activities would also be considered for such an exemption. We think there is good reason to.

Commercial leaseholders may not like the lack of investment and oversight into the development, and it may affect footfall and consequently, business. An inability to levy a higher ground rent charge than

£10 per annum on residential leaseholders could hamper good, long-term, objective decision-making that benefits the whole development.

Q19: Are there any other circumstances in which mixed use (a) should be within scope of the policy or (b) excluded from the scope of the policy? Please explain your reasons.

A19: The example in the consultation notes that when a long-lease for residential purposes is agreed for the self-contained flat, the £10 maximum charge should apply. In such an example where it is only one dwelling, that is probably fine. We note above, however, the complexities of managing mixed use developments on a larger scale. We do think purpose built larger, mixed use developments should be subject to an exemption and we seek confirmation on whether this is the case.

We envisage that there will be more conversions from commercial to residential use over the years ahead. Indeed, MHCLG is consulting upon this. Any ground rent limit therefore needs to be capable of taking into account a change in circumstances at the point a sub-lease or lease stipulating a different use is created.

Q20: Do you agree with the circumstances set out in paragraphs 3.34 to 3.37 in which a capped ground rent will apply in replacement leases? Are there any other circumstances in which it should or should not apply? Please explain why.

A20: We do not agree with the proposed policy that the £10 cap should come into effect where any new lease is created following a surrender of an existing lease, even where the parties are the same.

This will create the unintended consequence of limiting voluntary changes to the lease, which in the majority of cases is at the behest of the leaseholder. In many cases, if uncontentious, these would be agreed to by the freeholder and managed at a minimal cost. Clearly, requests for revisions will not be welcomed by the freeholder if it means a loss of revenue and investment value. A simple change may ultimately only be voluntarily agreed if the freeholder receives sufficient compensation for the loss of its investment. We would question the benefit to either the leaseholder or freeholder.

Q21: Do you agree there should be no further transitional period after commencement of the legislation permitting ground rents above £10 per annum? If not, please explain why

A21: In the consultation, the Government is suggesting that the £10 per annum ground rent limit would effectively apply from late 2020, early 2021. Once again, we would argue that for developments with planning before 21 December 2017, the developer is able to start building, and subsequently market the property with a non-capped ground rent charge, within the time local authority permission will lapse (usually 3-5 years).

Within the space of the law taking effect, some developments will have been built and sold, but not all may have. These should be allowed to continue to be built out and for a ground rent to be levied, as per their understanding at the time planning permission was consented. Clearly, developers in this position would have to make clear to residents the ground rent charge when marketing the properties. If building has started on these properties, the alternative is for the developer to either subsume the loss or quite possibly, charge more for the sale of the individual properties.

It would be perverse if the Government's commitment to capping ground rents at £10 per annum further limited the supply of housing or made housing more expensive. Regional and national developers, as well as specialist property advisers, have reported to us that outside London and the South-East especially, the sum paid by freehold investors to developers to acquire the freehold of a housing development has a material effect on whether projects are viable. While the market could

recalibrate over time, working back to lower land values, withdrawing ground rents would impact on the 2-3 year forward plans of developers where land has been earmarked, valued, bought or building work is ready to commence.

For these reasons, some flexibility around implementation seems sensible.

Q22: Should we provide freeholders with a right to change the management of the services covered by an estate rent charge or contained within a deed of covenant arrangement? If so, what should this look like?

Yes. We support the suggested approach whereby estate management charges can be challenged by freeholders, including through making an application to the First-Tier Tribunal.

We in particular support the payment of an estate rent charge or freehold service charge being a requirement of the deed of transfer on a property, as is mentioned in the consultation document.

One of the wider issues with such mixed freeholder and leaseholder estates that we are concerned about – and it comes up in the Law Commission's enfranchisement consultation around leasebacks – is that without a lease, it can be difficult for the landlord of the leased back properties to enforce the scheme on freeholders in order to get them to pay their fair share, alongside leaseholders (and to fairly spread the upkeep of any shared liabilities). Clearly freeholders need to have the ability to challenge an estate management scheme if it is performing poorly, but we also need estate management scheme provisions which bind in both leaseholders and freeholders where shared services and liabilities apply. If we don't, one group of homeowners effectively risks subsidising the other.

Q23: What will be the impact of these proposals (paragraphs 4.8 to 4.10) on companies or bodies that provide the long-term management of communal areas and facilities?

We fully support freeholders' (and leaseholders') right to challenge the body (any body) delivering shared services. Currently, the delivery of these services is not regulated. This proposal won't solve this, but we welcome moves that support greater quality and scrutiny of the long-term management of communal services and facilities.

The management of such services should also be incorporated into a Code of Conduct to which all stakeholders in freehold and commonhold management adheres to.

Q24: What would constitute a reasonable deadline for managing agents and freeholders to provide leasehold information?

In the majority of cases, leasehold information is provided within 5 working days. This is most common where the managing agent or freeholder has all the information. However, exceptions will always need to be made because different properties will have different issues and can be highly complex in nature. Indeed, queries related to deeds of variation or enfranchisement, where solicitors' input may be needed, are more complex and the pursuit of information will take time, perhaps up to 15 working days.

So in the vast majority of cases, a limit of up to 15 working days will for fine. But we need to guard against the possibility of exceptional cases, when an agent or freeholder will be nudging against this time limit. This is the biggest purchase that homeowners will make; the unintended consequence is that by pushing agents and freeholders to provide information within a certain time, it may produce a negative consequence for a party, which may be liable at a later date.

One of the issues that has sparked this focus on leasehold reform is that homeowners either did not know, digest or were not properly informed of their responsibilities at the point of their property purchase. It's important that we do not make changes which serve to worsen this.

We note that if a deadline for responding is set, it is vital that a clear definition of when that time period starts is established. This should be when the payment to the managing agent or freeholder is received or is confirmed by the solicitor. In addition, if counter-queries are submitted by the leaseholder, the clock should be reset to allow enough time for a response accurately and in full.

Q25: What would constitute a reasonable maximum fee for managing agents and freeholders to provide leasehold information?

More than £150. We do not believe a cap is appropriate. If one is produced at the levels mentioned in the consultation document, it will produce two outputs.

First, establishing any limitation could inhibit the quality and standing of information provided to the potential purchaser. This is fundamental in the buying process, and limiting landlords' time and costs in this regard is dangerous and counter intuitive to protecting consumers. Indeed, if a managing agent is providing information, including about enfranchisement and deed of variation, for a £3m property, failure to get it right will include a significant liability.

If a cap was to be brought in, the persons providing the leasehold information could reasonably suggest that they shouldn't be held liable for it. Yet, this wouldn't help the buyer, who needs to know where they stand. It is also important for mortgage lenders that the provision of important information is not rushed, since in most home purchases, they are in fact the majority owner.

The second output, if a cap did go ahead, would be that the cost would have to be spread across other residents through the service charge; to support a proper job being done. This seems less equitable than asking the prospective buyer to pay.

Q26: What would constitute a reasonable fee for managing agents and freeholders to update leasehold information within 6 months of it first being provided?

In many cases, the cost of updating a pack will be negligible, if no change has occurred or if relatively simple changes have taken place, like the provision of a new insurance certificate. However, in some cases, there might be a level of change which requires money to provide, such as noting to the leaseholder the details behind the issuing of a section 20 notice.

So, for no or small updates, the cost is negligible; but there should be room to charge for more fundamental changes which need to be got right and communicated to the leaseholder. Here, a small fee is appropriate. The question will be differentiating what is chargeable and what isn't.

ENDS

Annex

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Code of Practice

LEASEHOLD AND COMMONHOLD

CODE OF PRACTICE

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Schedule 1 – RELEVANT REGULATORS, PROFESSIONAL BODIES AND REDRESS SCHEMES

GLOSSARY OF TERMS

Administration Charges: A payment made by a Leaseholder to the Landlord or third party manager in respect of permissions required under the terms of the Lease, information or other documentation requested by the Leaseholder, failures by the Leaseholder to make payments as required by the lease or arising out of a breach of the Lease by the Leaseholder (as more particularly defined in Schedule 11 of the Commonhold and Leasehold Reform Act 2002).

ARMA: the Association of Residential Managing Agents.

This Code: this Code of Practice in relation to Leasehold and Commonhold.

Commonhold: commonhold land as defined in section 1 of the Commonhold and Leasehold Reform Act 2002.

Community Land Trust: A body corporate which owns land in England, and which satisfies the two conditions set out in section 79(4) and (5) of the Housing and Regeneration Act 2008.

Consumer: a Leaseholder or owner of a Commonhold unit in England and Wales (other than in the course of conducting a property rental business) but not including: (i) a Leaseholder of a Property or Home owned by a Registered Provider; or (ii) a Stakeholder.

Consumer Code for Home Builders: A voluntary code of practice developed by the home-building industry and adopted by some home builders. The Consumer Code Independent Resolution Scheme provides ADR for Consumer Code members.

Conveyancer: a lawyer who specialises in property law and in some cases other areas of law and regulated by the Council for Licensed Conveyancers and/or the Solicitors Regulation Authority.

Council for Licensed Conveyancers: the regulator of specialist conveyancing and probate lawyers established under the Administration of Justice Act 1985.

Dishonesty: any offence (whether in the UK or elsewhere in the world) involving fraud, theft, false accounting, offences against the administration of public justice (such as perjury, perverting the course of justice and intimidation of witnesses or jurors), taxation or accounting offences, money laundering, bribery or breach of public contracts and procurement regulations.

Estate Agent: A person who carries out estate agency work as defined in section 1(1) of the Estate Agents Act 1979.

FAITH Principles: the principles set out in paragraph 3.2 and further detailed in paragraph 3.3.

Freehold: The freehold interest in land is a title in property that can be held in England and Wales. In practice, a residential freehold interest applies to the outright ownership of land or property for an unlimited period and applies to the majority of houses.

Flat: Any dwelling unit separate from others horizontally, or from commercial premises, including a maisonette or duplex on more than one floor, whether in purpose-built blocks, conversions, mixed-use buildings or estates. [EXPLANATORY NOTE: This definition is dependent on the government proposed definition of a “residential unit”.]

Freeholder: A person or organisation who owns the Freehold of or a superior leasehold interest in respect of a property and who has the right to require payment of the Ground Rent but excluding any agent acting on behalf of the Freeholder.

Ground Rent: A rent payable by a Leaseholder to a Landlord on a specified date as required under the terms of the Lease which is neither a Service Charge nor an Administration Charge or a premium.

Home: A Flat or a House owned or lived in by a natural person.

Homeowner Company: includes Leaseholder-Owned Companies, Commonhold Association or similar.

House: A building for human habitation, especially one that consists of a ground floor and one or more upper stories that is not a Flat and includes a bungalow. [EXPLANATORY NOTE: This definition is dependent on the government proposed definition of a "residential unit".]

Immediate Lease: The Lease between a Landlord and Leaseholder containing the terms of the Reversionary Interest.

Inflation Index: Those official measures of house price inflation in England and Wales appropriate to Home ownership including the Retail Price Index, the Consumer Price Index, Public Sector Wage Inflation or the House Price Index or other recognised inflation index.

Landlord: The owner of the freehold (or superior leasehold interest), who may also be called the lessor or Freeholder in relation to a Lease. This excludes PRS owners.

Landlord Service Company: A person or organisation who manages the Landlord's interest on behalf of a Landlord on the terms of a Management or Agency Contract who is not a Property Agent but includes 'asset managers' or other agents appointed to undertake/oversee the Landlord's duties.

Lease: A long lease of a Home of at least 21 years duration other than: (i) a Shared Ownership Lease; (ii) a Community Land Trust; or (iii) specialist retirement Homes.

Leasehold: A form of property ownership normally used for Flats that is a long tenancy, providing the right to occupation and use for a long period being capable of being bought and sold during this period.

Leaseholder: A natural person who buys a Leasehold on a Lease.

Leaseholder-Owned Companies: Any RTM Company, RTA, RMC or similar.

Lender: A lender or mortgage provider in the Leasehold or Commonhold markets.

Letting Agent: A person or company who is engaged by a Landlord or Home Owner Company to let Houses or Flats on their behalf. A letting agent may also perform management duties on behalf of a Landlord.

Managing Agent: A person or company appointed by a Landlord or Homeowner Company (or someone operating on their behalf) to manage a Property, and their role may include, for instance repairs and maintenance.

Management or Agency Contract: The management or agency agreement between the Landlord and the Landlord Service Company.

Ombudsman Association: A professional association for ombudsmen and complaint handlers but is not a complaint-handling body. Its members have to fulfill certain criteria for membership. The association has no role in the internal working of member schemes nor any influence or jurisdiction over them.

Ombudsman Schemes: Independent third parties who provide alternative dispute resolution, usually a statutory complaints organisation or a non-statutory body certified as a provider of alternative dispute resolution and holding ombudsman-level membership of the Ombudsman Association.

Property: Any land, whether Leasehold or Freehold, including Homes together with any communal areas where applicable.

Property Agent: A Letting Agent or a Managing Agent.

Property Consultancy Businesses: businesses providing brokerage services and advice in relation to the residential and commercial ground rent market.

Recognised Tenants Association (RTA): A group of tenants (normally Leaseholders) who hold Houses or Flats on tenancies from the same Landlord on similar terms who have formed an association to represent their common interests and can act on the tenants' behalf which has been recognised for the purposes of section 29 of the Landlord and Tenant Act 1985.

Redress Schemes: Independent third parties who provide alternative dispute resolution to remedy a complaint.

Registered Provider: A local housing authority, county council or other Landlord registered as a provider of social housing under section 116 of the Housing and Regeneration Act 2008 and each of their respective subsidiary undertakings.

Relevant Code of Practice: The code of practice applicable to different Stakeholders, whether operated by a Relevant Regulator or Relevant Professional Body.

Relevant Professional Body: Those professional bodies relevant to different Stakeholders, as set out further in Schedule 1 or any other professional bodies applicable to those Stakeholders listed in Schedule 1.

Relevant Redress Scheme: A Redress Scheme operated by a Relevant Regulator or Relevant Professional Body.

Relevant Regulator: Those professional bodies relevant to different Stakeholders, as set out further in Schedule 1.

Reversionary Interest: An interest giving the right to the Landlord to receive the Ground Rent during the term of the Lease and the right of the Landlord to recover possession of the Home on the expiry of the Lease.

Residents' Management Company or RMC: An organisation which may be referred to in the Lease, which is responsible for the provision of services and manages and arranges for maintenance of the property to be carried out, but which does not necessarily have any legal interest in the Property. An RMC may instruct a managing agent to carry out these duties on its behalf.

RICS: The Royal Institution of Chartered Surveyors.

RICS Code of Practice: Service Charge Residential Management Code of Practice and additional guidance notes (3rd edition) published by RICS as may be amended, updated or varied from time to time.

Right to Manage: The right of qualifying tenants of Leasehold Flats to force the transfer of the management functions of their building to a special company set up by them, known as an RTM Company (RTM Company), pursuant to the Commonhold and Leasehold Reform Act 2002.

Service Charge: A variable payment made by a Leaseholder to the Landlord or third party manager which relates to the costs of services, repairs, maintenance, improvements or insurance or the Landlord's costs of management (as more particularly defined in s.18, Landlord and Tenant Act 1985).

Shared Ownership Lease: a shared ownership lease that satisfies the conditions provided in section 70(4) of the Housing and Regeneration Act 2008.

Solicitors Regulation Authority: the regulator in the United Kingdom of solicitors, law firms and their employees and registered foreign lawyers and registered European lawyers.

Stakeholder: includes stakeholders in the Leasehold or Commonhold market which are:

1. Conveyancers;

2. Developers and housebuilders;

3. Property Agents;

4. Property Consultancy Businesses;

5. Freeholders;

6. Landlords;

7. Landlord Service Company

8. Lenders

9. Homeowner Companies, and

10. Estate Agents,

and where a Stakeholder acts in more than one capacity (for example a Landlord often also acts as a Managing Agent), this Code shall apply to that Stakeholder acting in that capacity.

Standard Commonhold Sale Terms: those standard terms in Immediate Leases as set out in more detail at Part 11.

Standard Lease Terms: those standard terms in Immediate Leases as set out in more detail at Parts 5 and 6.

Unfair Leases: those Leases containing terms which: (i) are manifestly unreasonable or unworkable; or (ii) provide for the Ground Rent to double (other than as a consequence of an increase in an Inflation Index) in a review period that is less than 20 years.

1. STATUS AND APPLICABILITY

1.1 The purpose of this Code of Practice (this Code) is to establish clear minimum standards at a high-level setting out how Stakeholders should behave and conduct their business and also at an operational level, describing the correct way to approach the various elements of operating in the housing market.

1.2 This Code is for the benefit of Consumers in the Leasehold and Commonhold market in England and Wales only.

1.3 Parts within this Code apply to different Stakeholders as indicated in the relevant Part. Where this Code confers an obligation on more than one Stakeholder, they should agree between themselves that one of them carries out that obligation.

1.4 To sign up to this Code, Stakeholders must apply to or register with (whichever is appropriate) the Relevant Regulator or the Relevant Professional Body who may, considering the requirements of this Code, certify that the Stakeholder is compliant with this Code. In order to remain compliant with this Code the certification must be renewed annually from the date the Stakeholder is first certified.

1.5 In the event, as is intended, a Relevant Regulator or a Relevant Professional Body is formed or approved to oversee the application for all Stakeholders and to enforce this Code Stakeholders must apply to or register with (whichever is appropriate) such Relevant Regulator or Relevant Professional Body for the purposes of the enforcement of this Code in lieu of the requirements of paragraph 1.4.

1.6 Subject to paragraph 1.7, this Code is a voluntary code which does not have the force of law but has been signed up to by Stakeholders across the Leasehold and Commonhold market. In order to ensure that the standards contained within this Code are widely applied; signatories to it agree to use their best endeavours not to enter into contracts with those other Stakeholders who have not agreed to it. See Part 12 (Enforcement of this Code).

1.7 It is the Stakeholders' intention that this Code will be approved by the Secretary of State under section 87 of the Leasehold Reform, Housing and Urban Development Act 1993 (Approval). If a Stakeholder is not compliant with any applicable provision of this Code as approved or modified by the Secretary of State, such non-compliance shall be admissible in evidence and will be relevant to any question arising in proceedings before any court or tribunal in England and Wales. The Housing Ombudsman will also be permitted to take into account any applicable non-compliance with this Code in the course of any complaint, early resolution procedure, determination or order of the Housing Ombudsman.

1.8 This Code will be approved by the Chartered Trading Standards Institute's Consumer Codes Approval Scheme and provides a benchmark to help ensure a consistent service for Consumers.

1.9 Before Approval, Consumers should check whether the organisation they are dealing with has signed up to this Code and review their contractual documents to see if this Code is referred to in them. If it is not, the Consumer may still have a right of redress under this Code pursuant to Part 13.

1.10 Unless stated otherwise, in this Code the word ‘must’ is used to indicate an obligation to apply this Code. The word ‘should’ indicates best practice.

1.11 Nothing in this document shall apply to a Registered Provider or any agent acting on behalf of such a body.

1.12 This Code only applies in relation to Service Charges or Administration Charges or component thereof to the extent that such charges are not subject to separate codes of practice.

2. THE OUTCOMES

2.1 This Part 2 applies to all Stakeholders.

2.2 This Code is an outcomes-based framework requiring Stakeholders to be competent, to think for themselves rather than blindly following guidance and to understand their responsibilities to Consumers.

2.3 Stakeholders must use reasonable endeavours at reasonable cost to achieve the outcomes (the Outcomes) set out in this paragraph. While the Outcomes apply to all Stakeholders, what is reasonable will depend on the Stakeholder and the particular circumstances. The Outcomes are:

Outcome 1: Properties must be well managed in accordance with this Code, the Relevant Redress Scheme and RICS Code of Practice.

Outcome 2: Properties must be maintained to the highest standards of safety in accordance with the Relevant Redress Scheme and RICS Code of Practice.

Outcome 3: Stakeholders which grant new initial Leases after signing up to this Code must not grant Unfair Leases, particularly in relation to any Ground Rents, Lease term, extension and enfranchisement.

Outcome 4: The process for Consumers to acquire the Freehold of their Home, or extend the terms of the leasehold must be uncomplicated, transparent and in accordance with the law of England and Wales.

Outcome 5: Subject to compliance with the law of England and Wales, Stakeholders must not frustrate or hinder Consumers who wish to take over the collective management of their Homes and any communal areas unless reasonable to do so.

Outcome 6: There must be transparent complaint processes whereby complaints will be heard and dealt with and redress given in a timely manner.

Outcome 7: There must be transparent processes and guidance on rights for Consumers to buy and sell their Homes.

3. CONDUCT OF BUSINESS

3.1 This Part 3 applies to all Stakeholders.

3.2 In achieving the Outcomes, Stakeholders must act in accordance with the following FAITH Principles in their dealings with Consumers:

1. Fairness

2. Accountability

3. Integrity

4. Transparency

5. Helpfulness

3.3 To demonstrate that they act in accordance with the FAITH Principles, Stakeholders must:

Fairness

1. Comply with current and future legal obligations

2. Not purposefully seek or conduct business using dishonest means or seek to abuse leasehold legislation for their own financial or other benefit

3. Avoid conflicts of interest and avoid any actions or situations that are inconsistent with their professional obligations or otherwise disclose potential conflicts of interest to Consumers

4. Comply at all times with legislation regarding Consumers' personal data and not disclose any personal, confidential or proprietary information. In particular Stakeholders will comply with the General Data Protection Regulation (GDPR) (EU) 2016/679, the Data Protection Act 2018 and the Tenants' Associations (Provisions Relating to Recognition and Provision of Information) (England) Regulations 2018

Accountability

5. As indicated in Schedule 1, be members of a Relevant Professional Body, be regulated by the Relevant Regulator or the Housing Ombudsman and join a Relevant Redress Scheme where available

6. Comply at all times with any rules or any Relevant Professional Body or Relevant Regulator

7. Be registered with any appropriate authority as required by the Relevant Professional Body, Relevant Regulator or the law of England and Wales

8. Observe the legal requirements applicable to their discipline in England and Wales, together with any applicable international laws

9. Make Consumers aware of their right to complain through the Relevant Redress Scheme in the event of a dispute with the Stakeholder which cannot otherwise be resolved

10. Operate a complaints-handling procedure and maintain a log of such complaints

11. Maintain professional indemnity insurance cover to a level in accordance with normal commercial practice for similar Stakeholders

Integrity

12. Act with honesty

13. Carry out its professional work with due skill, care and diligence and with proper regard for the technical standards expected of them

14. Carry out its work with expedition and with proper regard for standards of service and customer care expected of them

15. Be truthful, transparent and trustworthy in all their financial dealings with Consumers

Transparency

16. Promote its professional services only in a truthful and responsible manner

17. Not mislead or attempt to mislead and make any and all necessary disclosures in a timely manner

18. Present relevant documentary, business literature or other material in a plain and intelligible language

19. Cooperate with the Relevant Regulator or Relevant Professional Body and submit in a timely manner such information about its activities, and in such form, as the Relevant Regulator or Relevant Professional Body may reasonably require

20. Provide clear information to Consumers in relation to the Stakeholder's obligations under this Code

Helpfulness

21. Only provide services for which they are qualified and competent

22. Ensure that any employees or contractors providing services are qualified and competent

23. Provide leadership for their employees and contractors

24. Assist and co-operate with Consumers in disputes and disciplinary investigations so far as the Consumer is not already receiving professional advice from another professional body

25. Provide guidance notes to Consumers in relation to transaction procedures such as selling a Home or enfranchisement

3.4 Ongoing duty to evaluate and improve

3.5 Stakeholders must regularly review their processes and procedures and the quality of service appropriate to ensure compliance with this Code, including commissioning external experts to assess compliance where appropriate.

3.6 Stakeholders must continue to develop procedures and technologies that are efficient and effective for all parties.

4. LANDLORDS

4.1 This Part 4 applies to Stakeholders who are Landlords.

4.2 After signing up to this Code, any Stakeholder which agrees an extension to an Unfair Lease, should without imposing excessive premiums or fees, and if requested by a Leaseholder, agree to vary such Unfair Lease so that the review mechanism is in line with the Standard Lease Terms set out in paragraph 5.4.2 and/or such other variations as are fair to all parties to the Lease.

4.3 Stakeholders should ensure that any Landlord Service Company (or other agent acting on their behalf) complies with the requirements of this Code and it shall be a standard term of any Management or Agency Contract that such compliance is required.

4.4 If a Stakeholder or its Landlord Service Company appoints a Property Agent it should ensure that such appointed Property Agent:

1. is a member of a Relevant Professional Body, regulated by the Relevant Regulator or subject to the jurisdiction of the Housing Ombudsman;

2. has a recognised accreditation from such Relevant Professional Body or the Relevant Regulator; and

3. is required to provide details of its professional indemnity insurance to the Landlord Service Company on an annual basis.

Investment Parameters

4.5 From the date they sign up to this Code, Stakeholders should not, subject to any pre-existing agreement before such date, acquire or allow any of their subsidiary undertakings to acquire, or otherwise directly invest in, any Reversionary Interests where the Immediate Lease first granted after the date of this Code does not conform with this Code.

4.6 Subject to paragraph 4.2, such Immediate Leases should include the Standard Lease Terms setting out clear and fair obligations and rights for both Leaseholder and the Landlord.

4.7 Stakeholders should not acquire any Reversionary Interests where the Immediate Lease was first granted after the date the Stakeholder signed up to this Code and is in relation to a House, unless such House is within the categories set out in paragraph 7.3 or is required to be sold as Leasehold by any appropriate authority or the law of England and Wales.

Forfeiture

4.8 A Stakeholder should only forfeit a Lease when in the reasonable opinion of the Stakeholder there is no other reasonable recourse available.

4.9 Stakeholders must ensure that notice is given to the Lender before forfeiting a Lease on the grounds of arrears of Ground Rents.

4.10 Before forfeiting a Lease a Stakeholder should try to identify and, where permitted, notify and/or consult with any appropriate third persons it considers fit (such as Lenders, family members, health, welfare or social workers) before commencing any proceedings in a court or tribunal to forfeit such person's Lease.

4.11 Stakeholders should ensure that any surplus after forfeiture is paid back to the former Leaseholder or their representative and pending such repayment is held on trust for such Leaseholder or their representative.

5. GROUND RENTS

5.1 This Part 5 applies to Stakeholders who are Developers, Lenders, Property Consultancy Businesses and Landlord Service Companies.

5.2 Stakeholders must work with other Stakeholders and Consumers to assist those Consumers who have been affected by historic bad practice in the Leasehold market with regard to Unfair Leases.

5.3 Stakeholders must ensure that Immediate Leases granted after the date such Stakeholder signs up to this Code include the Standard Lease Terms in relation to Ground Rents in relation to all:

1. new Homes;

2. Home conversions not currently subject to a Lease; and

3. pre-existing Homes not currently subject to a Lease.

5.4 After signing up to this Code, any Stakeholder which grants a new Lease (other than an extension of a Lease or Lease that is granted pursuant to the terms of a prior agreement) shall ensure that the Standard Lease Terms in relation to Ground Rents are:

1. subject to any applicable law of England and Wales, have a recommended starting rent of an amount that is no more than 0.1% of the completion sale price (rounded up to the nearest £) subject to a recommended minimum of £200 per annum;

2. are only charged in accordance with the terms of the Lease; and either

a) rise periodically in line with an Inflation Index or a defined capital value;

b) on the basis of a fixed term review with not less than 20 years between reviews with no greater increase than 100% of the previous rent.

5.5 Stakeholders must ensure no demand for payment of a Ground Rent is made which does not comply with section 166 of the Commonhold and Leasehold Reform Act 2002.

6. LEASE TERM, EXTENSIONS AND ENFRANCHISEMENT

[EXPLANATORY NOTE: This Part will need to be updated to reflect the outcome of any applicable law adopted review following the completion of the enfranchisement process consultation by the Law Commission.]

6.1 This Part 6 applies to Stakeholders who are Developers, Landlords and Landlord Service Companies.

6.2 Stakeholders must ensure that Immediate Leases granted after the date such Stakeholder signed up to this Code include the Standard Lease Terms in relation to lease term and enfranchisement.

6.3 The Standard Lease Terms in relation to lease term and enfranchisement are that Immediate Leases:

1. include a minimum lease term of at least 125 years;

2. remove technical barriers and complexities in the rules governing eligibility for enfranchisement rights where these prevent some Leaseholders from exercising enfranchisement rights without reasonable justification and provided that the law of England and Wales is complied with;

3. provide the Leaseholder with a right to purchase unlimited longer lease extensions for an extension period of 125 years; and

4. where practicable, enhance enfranchisement rights for Leaseholders on estates with shared services, through proper provision for the continuation of such services and the additional ability for the estate to be enfranchised as a whole.

6.4 Stakeholders must work to ensure that Leaseholders, who want to enfranchise their Freeholds, or extend their Lease, can access an informal process of doing so while also ensuring fair compensation to the Landlord.

7. LEASEHOLD SALES

7.1 This Part 7 applies to Stakeholders who are Developers, Landlords and Landlord Service Companies.

7.2 Stakeholders agree that if a new-build House can be sold on a Freehold basis then it must be.

7.3 Where it does not otherwise contradict the law of England and Wales, the following new Houses may be sold on a Leasehold basis:

1. those Houses built on land where the Developer does not own the Freehold;

2. Shared Ownership Homes;

3. Community Land Trust Homes;

4. Homes in retirement villages;

5. Homes of special architectural or historic interest;

6. Where Local Authorities refuse to adopt the common parts of developments on which the Homes will be situated; and

7. Residential developments where community services are provided or available on the Estate.

7.4 In relation to Leases granted after the date the Stakeholder has signed up to this Code, Landlord consent to works in relation to the interior or exterior of the Leaseholder's House may only be denied where such works would contravene obligations under the Lease, other statutory obligations or infringe on the statutory or contractual rights of other Leaseholders and if consent is granted then no premium would be charged by the Stakeholder provided that an administration fee would be chargeable together with any third party fee.

7.5 To the extent that pre-existing Leases include terms requiring Landlord consent to works in relation to the interior or exterior of the Leaseholder's House, Stakeholders must not enforce it unless:

1. such works would contravene obligations under the Lease, other statutory obligations or infringe on the statutory or contractual rights of other Leaseholders;

2. a Leaseholder requests that the Stakeholder provide consent under the terms of an existing Lease, in which case the Stakeholder may charge a reasonable administration fee; or

3. a neighbouring Leaseholder who acting reasonably objects to works requested under the terms of the Lease and the Stakeholder refuses consent, in which case the Stakeholder may charge a reasonable administration fee in relation to such refusal.

7.6 Where a House or Flat is to be sold as a Leasehold, Developers, Estate Agents and Conveyancers must ensure that the Consumer is made aware that:

1. the House or Flat is being sold as a Leasehold;

2. the Lease includes obligations in relation to communal spaces;

3. a Ground Rent is payable and may increase pursuant to the terms of the Lease; and

4. the cost of acquiring the Freehold of the House or Flat could rise in the future;

5. provide an Indicative valuation of the premium to buy the Freehold or extend the Lease.

6. 3 years historic service charge for the House or Flat concerned or where it is a new build Property provide the service charge estimate as provided by the Developer

8. LANDLORD SERVICE COMPANY MANAGEMENT STANDARDS

8.1 This Part 8 applies to Stakeholders who are Landlord Service Companies and Landlords.

8.2 Stakeholders must provide information to Leaseholders including details of what management standards they are entitled to expect from their dealings with the Landlord Service Company. This information must:

1. be in plain English with as minimal jargon as possible;

2. contain a list of applicable fees and information as to what the fees relate to;

3. explain how fees are regularly reviewed, both as to their amount and to ensure that descriptions are accurate and provide adequate information to Leaseholders;

4. contain details of the Relevant Regulator and any Relevant Professional Body or Relevant Redress Scheme of which the Landlord Service Company is a member;

5. include details of estimated costs applicable to any proposed transaction, so as to enable a Leaseholder to know the likely maximum costs at an early stage;

6. set service standards for the responses to correspondence, emails and telephone calls.

7. include the policy of the Landlord with respect to: (1) the recognition of a Residents Association; (2) the enforcement of negative covenants (including the charging of fees) and retrospective fees; and (3) enfranchisement rights of Leaseholders under the Leasehold Reform Act 1967 or the Leasehold Reform, Housing and Urban Development Act 1993, together with an easy to understand guide to the process.

8.3 Stakeholders must work with each other and Consumers to ensure (so far as is possible and where within the Stakeholder’s control) that transactions are free from unnecessary delay. Stakeholders must:

1. individually determine their fixed timeframes for responding to Consumer requests in relation to selling their Leasehold Home;

2. require any Property Agents they appoint to comply with these timeframes and fees;

3. make this information available electronically to Consumers to enable instant access;

4. publish on their website their performance against these timeframes every six months.

8.4 Stakeholders must be registered with the Information Commissioner's Office (ICO) where they are required to be so registered pursuant to the laws of England and Wales.

8.5 Where the Lease and/or Management or Agency Contract so provide, the Landlord Service Company must arrange proper and appropriate insurance in accordance with the terms of the Lease. Leaseholders must be advised of the terms of cover and provide facilities to inspect the insurance certificate.

8.6 If a Stakeholder, by way of a business, is providing any advice to a third party in connection with a Lease it must have at least £5 million in professional indemnity cover.

8.7 The Stakeholder must have adequate data protection and backup systems.

9. LEASEHOLDER-OWNED COMPANIES

9.1 This Part 9 applies to Stakeholders who are Leaseholder-Owned Companies and Landlord Service Companies.

9.2 Subject to the Leaseholder-Owned Company providing to the Landlord or Landlord Service Company the following supporting documentation:

1. Insurance documentation including the scope of the policy and the reinstatement valuation;

2. Records of training received by directors in relation to their duties to the Leaseholder-Owned Company, Leaseholders and third parties; and

3. other relevant supporting documentation,

They must provide reasonable support to Leaseholder-Owned Companies where requested in connection with management of the Property, particularly in connection with health and safety and fire risk assessments. A Stakeholder may only charge a Leaseholder-Owned Company reasonable costs and expenses in relation to the support provided.

9.3 Stakeholders must provide reasonable support to enable Leaseholders to decide if they wish to take over the management of their development and provide reasonable support to enable a Leaseholder-Owned Company to appoint new Managing Agents where their existing Managing Agent is not performing in accordance with their contract. A Stakeholder may only charge a Leaseholder reasonable costs and expenses in relation to the support provided.

9.4 Stakeholders must support Right to Manage claims where:

1. the qualification conditions and statutory processes are met;

2. the RTM Company is genuinely a vehicle for Leaseholder empowerment;

3. the Stakeholders are satisfied that there is sufficient expertise to manage the development;

4. the Stakeholders are satisfied that the RTM Company will manage common areas and shared services in a reasonable manner at reasonable cost;

5. the RTM Company has joined a Relevant Redress Scheme where available; and

6. only Leaseholders are directors or officers of the RTM Company.

9.5 Stakeholders will encourage Leaseholder-Owned Companies to join the Relevant Redress Scheme.

9.6 Where the Leaseholder Owned Company is a party to the Lease, the Standard Lease Terms must include in relation to property management:

1. a requirement for the Leaseholder-Owned Company to agree with the individual leaseholders and the Landlord to abide by the terms of the Lease and the laws of England and Wales;

2. an obligation on the Landlord at the Leaseholders' cost, to step in and take control of management in the event of serious default by the Leaseholder-Owned Company in the best interests of Leaseholders, including in relation to any concerns as to fire safety;

3. a Leaseholder guarantee to pay the Landlord's reasonable costs in complying with paragraph 9.6(2).

4. a power for the Landlord to injunct the Leaseholder-Owned Company for failure to enforce any material terms of the Lease;

5. a binding obligation on the Leaseholder-Owned Company to accrue appropriate reserve funds;

6. a requirement that all directors must be suitably qualified Leaseholders within the Property managed by that Leaseholder-Owned Company; and

7. an obligation on the Leaseholder-Owned Company to secure adequate Personal Indemnity cover; and

8. a disclosure obligation on the Leaseholder-Owned Company to report not more than annually to Leaseholders and the Landlord in relation to:

a) Accounts;

b) Sinking Funds;

c) Insurance (including professional indemnity and buildings, scope of physical site and reinstatement value);

d) Fire risk assessment (audit and action if required);

e) Conflicts of interest; and

f) Health & safety (properly electronically stored).

9. a covenant on the Leaseholder Owned Company to notify the Landlord immediately on becoming aware of a critical health & safety issue or other matter materially affecting the integrity or safety of the Property.

10. a requirement on the Leaseholder Owned Company to maintain directors' and officers' liability insurance to a level in accordance with normal commercial practice for similar Leaseholder Owned Companies in relation to similar Developments.

10. APPOINTMENT OF PROPERTY AGENTS

10.1 This Part 10 applies to Stakeholders who are Landlord Service Companies and Homeowner Companies.

10.2 Stakeholders must only engage with Property Agents who: [EXPLANATORY NOTE: this list will need to be kept under review in light of the work of the new Regulation of Property Agents: working group]

1. are ethical;

2. engage and communicate appropriately with Leaseholders;

3. ensure that all their staff whose regular job involves Property Agent work obtain a recognised qualification from an accredited industry body that teaches them relevant law, financial management, customer service and ethical conduct;

4. provide an effective means for Consumers to challenge administration charges prior to making an application to the First-tier Tribunal (Property Chamber);

5. are members of a Relevant Professional Body, be regulated by the Relevant Regulator or subject to the jurisdiction of the Housing Ombudsman and have joined a Relevant Redress Scheme where available;

6. comply at all times with any rules or codes of practice of any Relevant Professional Body or Relevant Regulator (including but not limited to the RICS Code of Practice);

7. are registered with any appropriate authority as required by the Relevant Professional Body, Relevant Regulator or the law of England and Wales;

8. maintain accurate and complete records relating to the development, including owners' manuals; and

9. have signed up to this Code.

10.3 On receipt of a notice signed by a simple majority of the Leaseholders calling for a contract with a Property Agent to be terminated, the Stakeholder must reasonably consider terminating such contract in accordance with its terms and if termination is not permitted by the terms of the contract, must reasonably consider not renewing the contract at annual expiry.

10.4 Management or Agency Contracts entered into after the Stakeholder has signed up to this Code must comply with the following conditions:

1. the term will be for no longer than 364 days at a time;

2. the Property Agent will be independent of any RMC or Landlord which appoints them;

3. the Stakeholder may terminate on reasonable notice for material or persistent breach of contract by the Property Agent; and

4. the term shall be renewable on a regular basis and, where reasonable to do so, renewed in response to Leaseholder requests.

10.5 Stakeholders must ensure that roles and responsibilities are clear as between the Landlord Service Company and Homeowner Companies and any Property Agent in relation to health and safety (in particular in relation to fire safety) and that comprehensive and accurate records are kept as to decisions that have been made in relation to fire safety.

11. COMMONHOLD

11.1 This Part 11 applies to Stakeholders who are Developers.

11.2 Stakeholders must ensure that Commonhold Homes are sold on the Standard Commonhold Sale Terms.

11.3 The Standard Commonhold Sale Terms are:

1. [awaiting government consultation and proposals]

12. ENFORCEMENT OF THIS CODE

12.1 This Part 12 applies to all Stakeholders.

12.2 Stakeholders should ensure that, from the date they sign up to this Code, any Leases they enter into do not conflict with this Code, particularly in relation to this Part 12 (Enforcement of this Code).

12.3 If a Stakeholder is not compliant with any applicable provision of this Code, such non-compliance shall be admissible in evidence and will be relevant to any question arising in proceedings before any court or tribunal in England and Wales. The Housing Ombudsman will also be permitted to take into account any applicable non-compliance with this Code in the course of any complaint, early resolution procedure, determination or order of the Housing Ombudsman.

12.4 Where Stakeholders who have signed up to this Code are required to incorporate Standard Lease Terms into contractual terms such as a Lease or engagement letter, they may decide how these terms are incorporated provided that the Outcomes envisaged by this Code are achieved.

12.5 Where a Stakeholder (the Offending Stakeholder):

1. has been found by the Relevant Regulator to have not complied with the Relevant Code of Practice; and/or

2. following Approval, has been found by a court or tribunal in England and Wales or the Housing Ombudsman to have not complied with this Code (whether or not the Offending Stakeholder is a signatory to it),

each other Stakeholder will, on becoming aware of it, consider the seriousness of such non-compliance and whether there are reasonable circumstances which justify such non-compliance and, if no justification is found (as determined by such other Stakeholder) or no agreement is reached to remediate the non-compliance, other Stakeholders must, unless otherwise required by law or by reason of any binding agreement between them, cease to work with such Offending Stakeholder.

12.6 Where a Stakeholder (the Offending Stakeholder):

1. has been prohibited by the Relevant Regulator from acting in the relevant profession; and/or

2. has been convicted of an act of Dishonesty which has not been spent ,

each other Stakeholder must, on becoming aware of the prohibition or unspent conviction, unless otherwise required by law or by reason of any binding agreement between them, immediately cease to work with such Offending Stakeholder.

12.7 Where an individual working for a Stakeholder, whether as an employee, contractor or otherwise (the Offending Individual):

1. has been prohibited by the Relevant Regulator or court in England and Wales from acting in the relevant profession; and/or

2. has been convicted of an act of Dishonesty which has not been spent;

the Stakeholder who so contracts with the Offending Individual must, on becoming aware of the prohibition or unspent conviction, immediately terminate that relationship, subject to the terms of any agreement between them.

12.8 Subject to law, stakeholders must ensure that new or renewed contracts with other Stakeholders or individuals (as the case may be) include the right to terminate immediately in accordance with paragraphs 12.5, 12.6, and 12.7 where a Stakeholder becomes an Offending Stakeholder or Offending Individual.

13. REDRESS

13.1 This Part 13 applies to all Stakeholders other than Landlords.

13.2 Stakeholders who have signed up to this Code agree that:

1. any Ombudsman Scheme;

2. the Relevant Regulator;

3. the Relevant Professional Body; and/or

4. the Relevant Redress Scheme,

may take into account this Code and breaches of it when determining appropriate sanction or redress.
13.3 This version of this Code applies from [DATE]. Any amendments to this Code will be agreed by each Relevant Professional Body and Stakeholders who sign up to this Code agree that this Code shall apply to them as amended from time to time.

14. LAW REFORM

14.1 This Part 14 applies to all Stakeholders.

14.2 Stakeholders will work with the Law Commission and Government to assist with law reform proposals to simplify the law concerning Leasehold and Commonhold, together with the better regulation of the housing sector so as to better achieve the Outcomes.

Schedule 1

RELEVANT REGULATORS, PROFESSIONAL BODIES AND REDRESS SCHEMES Stakeholder Relevant Professional Bodies Relevant Regulator Relevant Redress Scheme

Conveyancers

Council for Licensed Conveyancers

Law Society

Council for Licensed Conveyancers

Solicitors Regulation Authority

Legal Ombudsman

Developers

NHBC

Premier Guarantee

LABC Warranty

No current Relevant Regulator

CCHBAS (Consumer Code for Home Builders' Adjudication Scheme)

Property Agents and Estate Agents

The Association of Residential Managing Agents (ARMA)

RICS

In respect to Estate Agents: the National Trading Standards Estate Agency Team (NTSEAT)

RICS

Property Redress Scheme

The Property Ombudsman (TPO)

Property Consultancy Businesses

No current Relevant Professional Body

No current Relevant Regulator

No current Relevant Redress Scheme

Landlords

No current Relevant Professional Body

No current Relevant Regulator

The Property Ombudsman (TPO)

Landlord Service Companies

No current Relevant Professional Body

No current Relevant Regulator

The Property Ombudsman (TPO)

Lenders

UK Finance

Financial Conduct Authority

Financial Ombudsman Service

Homeowner Companies

No current Relevant Professional Body

No current Relevant Regulator

No current Relevant Redress Scheme