Ground Rents Income Fund plc (GRIF)

Response to the Government's consultation on proposals for reform of the building safety regulatory system – 31st July 2019

About Ground Rents Income Fund plc (GRIF)

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 predictable cash flows. Our shareholders are pension funds, private client fund managers and long-term savings investors.

We are a responsible landlord, and, like other engaged landlords and institutional investors, we want to see a sustainable and fair long-term leasehold market. To that end, we welcome the 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 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. Of our portfolio, around 28 properties are at least 18m tall and would therefore fall within the proposed scope of the Government proposals.

Our mean annual ground rent charge is £184 for houses and £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.

As signatories to the MHCLG's Public Pledge to Leaseholders, 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.

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.

Executive summary

- We support the proposals in this consultation to strengthen the regulatory system for designing, planning, constructing and managing buildings of 18 metres or over.
- We are concerned that the building regulatory system that the Government wants to establish for residential buildings of height is at risk of being inhibited in practice by the Government's leasehold reform plans.

- It is important that we are realistic about the level of work that will need to be undertaken and paid for across the entire supply chain; and the weight of responsibility and personal liability that will fall on the accountable person when a building is occupied. Indeed, with the new model of risk ownership, the accountable person could face a prison sentence or fine on a par with health and safety breaches[1].
- On the basis that the proposed framework requires the accountable person to deliver the proposed regulatory framework on existing assets that are currently occupied, we believe that the framework is heavily reliant on responsible institutional freehold investors, because as a group we have the scale, long-term outlook, experience, expertise and approach to risk.
- However, the Government's confirmation that it intends to reduce ground rents to zero for future leases[2], as well as potentially lower the level of compensation a freeholder receives when extending or selling a lease[3] (enfranchisement), will lead to far fewer, if any, institutional investors assuming the role of the accountable person (responsible dutyholder) as there is no economic interest in doing so.
- As such, this consultation's proposals must be considered in-step with what the Government is considering around leasehold reform.

The level of responsibility and liability requires an economic interest for investors to participate:

- Responsible institutional freehold investors seek to charge a ground rent – our average ground rent is £250 - which enables firms like GRIF to assume the responsibility and liability for a building in order to play the role as an engaged freeholder and custodian. (We note in the annex the specific benefits that this provides to leaseholders, of which one is the ability to access more comprehensive insurance policy coverage at attractive pricing.)
- Other (private) investors who may not seek a return from the ground rent will inevitably do so in other ways, for example by artificially inflating other charges. This would be an unintended consequence of the Government's reform, that would potentially negatively impact consumers and the transparency of this sector.
- The ground rent is separate from the service charge – which covers day to day building management, the undertaking of maintenance work and on occasions buildings insurance – private freehold investors will require an economic incentive to take on this responsibility and manage their liability for the long-term benefit of all stakeholders at the site.
- Therefore, we strongly believe that the removal of a consistent ground rent income, allied to potentially far-reaching proposals that would reduce the level of enfranchisement compensation, will make freehold ownership an un-investable asset for institutional investors.
- Investors deriving an income through other means may be interested. But if not, we must consider the strong possibility that there will in many cases be no-one willing to take on the potentially onerous role of the accountable person for new buildings (developers will not want the job and managing agents are rightly excluded from this position).
- For existing buildings, it's also possible we may see some freeholders seeking to relinquish their roles to limit the risk to themselves in a personal capacity.
- Therefore, we feel that there could be a situation where no-one is prepared to undertake the role, and in theory at least, an in-scope building could be incapable of beneficial occupation.

Commonhold will not realistically work on a sustainable basis for most in-scope buildings:

- While policymakers and influencers may see actual or de facto commonhold[4] as the answer, our view, formed from establishing and supporting residents' management companies up and

[1] It is proposed criminal offences are included for: the accountable person failing to register a building; the accountable person or building safety manager failing to comply with building safety conditions; and dutyholders carrying out work without the necessary gateway permission.
[2] MHCLG consultation response entitled: *Implementing reforms to the leasehold system in England: Summary of consultation responses and Government response* (June 2019).
[3] Law Commission consultation entitled: *Leasehold home ownership: buying your freehold or extending your lease* (September 2018).
[4] Where no investor may want to buy or continue to own the freehold, leaving the leaseholders to inherit the freehold.

down the country, is that relying on leaseholders – many of whom are not residents[5] – will not work for large and complex residential buildings.

- How many leaseholders will want to take legal responsibility, with the potential for criminal sanctions for failure and/or negligence, for something that they will likely have neither the time nor understanding or expertise to perform?
- Additionally, we believe that leaseholders do not have the expertise to be responsible for large and complex buildings.
- Our estimates suggest that the insurance cover for the accountable leaseholders would increase all leaseholders' service charges, with smaller developments being disproportionately affected by this, given the standing nature of many elements of the overall cost.
- An independent public survey that we commissioned[6] suggests that this view, unsurprisingly, holds when the public are asked to weigh up whether they would prefer to transfer the liability to a professional freeholder, for a cost, or take on the responsibility themselves for the safe-running of a large residential building.
- Only 15% of respondents said that they would be interested in paying nothing in ground rent in exchange for taking on legal responsibility for the whole building. And it is more than likely that those people do not fully appreciate the magnitude, and potentially criminal nature, of the responsibility they would be taking on.
- Indeed, when the standard tenure of a flat is between 3-7 years, it is understandable that many tenants are not focused on the longer-term lifetime of the building. This disincentive is seen to affect decisions such as paying into a sinking fund to smooth the cost of long-term capital expenditure projects.
- The counter argument to this is that many large-scale institutional landlords are part of very long-established financial institutions, financed through permanent capital, whose investment horizons match if not exceed the expected lifetime of these developments.
- These findings should not be ignored. We would suggest more public attitude testing before commonhold is unquestioningly presumed the answer.

This consultation must be objectively considered in step with leasehold reform proposals:

- The aforementioned ground rent prohibition and enfranchisement ambitions risk foreclosing the investment market to responsible institutional freehold investors.
- We need a considered and honest debate about how we can therefore practically achieve the kind of regime that this consultation is really asking for.
- We are responsible institutional freehold investors that want to be part of the solution to what this *Building a safer future* consultation is seeking to create. We believe that we have the scale, access to expertise and approach to risk to be a trusted implementation partner to collaboratively implement the Government's plan.
- We accept that some in our industry, mainly private individuals or historic market participants, have not served consumer and therefore our proposition well; and that this has produced cases of onerous ground rents, complex and expensive enfranchisement claims, and charges that lack transparency.
- We are committed to continuing to work with other like-minded organisations, whom now dominate this sector, to embed these safety reforms, and a more equitable freeholder-leaseholder balance, throughout our sector.
- As signatories to the MHCLG's Public Pledge to Leaseholders; or in our proposals to dramatically bring down enfranchisement costs for those leaseholders (who have not voluntarily converted to RPI terms) with sub-20 (year) doubling ground rents[7], we want to, and have, set out proposals to rectify this.
- Further to this, rather than strip out the economic incentive to provide an engaged custodianship for large residential buildings, we would seek to work with other industry players (and

[5] In the developments for which we are freeholder, around 60% are buy-to-let landlords.
[6] YouGov undertook a survey of 2,034 Great British people on their attitudes towards paying ground rent between 22-23 November 2018.
[7] The details were set out in our response to the Law Commission's enfranchisement consultation (January 2019).

Government and campaign groups) to push up standards (in the form of a code of conduct with clear regulatory backing and sanctions for non-compliance) in what is required of freeholders in exchange for a reasonable ground rent.

- A Government sponsored Code of Conduct with formal, mandatory regulation of Residential Managing agents will ensure value for money for all leaseholders, while driving standards across the industry and retaining an investible proposition in the form of predictable ground rent (which an expanded service charge, as the Government has suggested, would fail to do.)
- Ultimately, the reality is that to offer a comprehensive supervisory service – particularly in relation to the buildings within scope for this consultation – we and other investors need a reasonable (and if needs be, regulated) economic interest to take on the weight of responsibility that these proposals rightly place on the accountable person.
- We would very much welcome the opportunity to enter into open dialogue about how the Department's (and Law Commission's) interlinked proposals on grounds rents and enfranchisement impact on the plans for a new regulatory framework.
- We note from the HCLG Select Committee evidence session on 22nd July that MPs were unsure of how the accountable person structure would work under commonhold, with Kit Malthouse MP agreeing to consider the matter. We would certainly welcome the opportunity to engage in a dialogue with the Minister before a response to the Committee is provided.

Consultation questions

1.1 Do you agree that the new regime should go beyond Dame Judith's recommendation and initially apply to multi-occupied residential buildings of 18 metres or more (approximately 6 storeys)? Please support your view.

Ultimately, yes. But we support a realistic staggered approach to achieving this.

The tragedy at Grenfell Tower revealed deficiencies in how some residential buildings, particularly those of height, have been regulated; as well as who is ultimately responsible and how maintenance and upgrade work fits holistically with the rest of the building. Ultimately, we believe that such a framework should be applied to all buildings, including all asset classes and construction heights, taking into account the unique properties and risks of different building types.

However, in achieving this, we need to be realistic about the level of work that needs to be undertaken. We therefore support a phased approach in order to prioritise the most high-risk buildings in the first instance. We would start with residential buildings of 30m or over, before moving to residential buildings between 30m and 18m, and then broadening out the framework in a sensible, stepped way.

Q 1.2 How can we provide clarity in the regulatory framework to ensure fire safety risks are managed holistically in multi-occupied residential buildings?

As we note in the executive summary, we support many of the proposals in the consultation document around the management and mitigation of health and safety risks in buildings. We in particular support the following proposals:

- A digitally based 'golden thread' of information that exists from the design phase to management under occupation;
- A gateway assessment process providing assurance from one phase of the building's life to the next;
- A building safety certificate to be produced upon the regulator's scrutiny prior to occupation;
- The accountable person to be registered with the new regulator on a publicly available database;

- An accountable person to be responsible and liable for complying with the proposed regulatory regime, when the building is in occupation;
- A qualified building safety manager, as well as the use of competent individuals and firms to carry out work and provide advice;
- The development and scrutiny of a building safety case in occupation once every five years, within a context of continuous oversight, monitoring and enhancement;
- The ability of the building safety regulator to step in and install a building safety manager where this may be needed to keep residents and building safe, using the full extent of any financial resources or the terms of the lease and or legislation to raise capital if required to complete essential works;
- The accountable person to engage residents and leaseholders more fully, as well as requirements on residents and leaseholders to support the accountable person's ability to mitigate against foreseeable risks and provide for the safety of the site; and
- Clearer enforcement where standards aren't met, and risk is not adequately managed by the accountable person.

Stepping back from the specific proposals, it will be important to assign which dutyholder along the supply chain is responsible for what. There must be absolute clarity and no ambiguity in this regard for this framework to work as intended. The consultation's gateway process; the way in which maintenance work is treated; the need for one dutyholder to provide assurance to the next; and the golden thread of information, recognises the way buildings are developed, built and maintained. Importantly, the proposed framework focuses on the lifetime of the building, which we believe is a holistic approach. These changes need to be viewed in the context of a wider housing policy.

As we note in the executive summary, we have a big concern that this consultation's proposals have not been viewed holistically within the MHCLG's wider housing remit. Government policy seems to be pulling in different directions to achieve the desired goals and objectives.

The requirements rightly present a positive step change in how the industry actively manage in-scope buildings. As is necessary, the accountability for failure or negligence rests with an identified dutyholder, with clear consequences. We have to be honest and transparent with policy makers that investors will need an economic incentive to assume this level of risk and liability as the accountable person; similar to how an insurer might. Without this there will be no further professional investment into this sector.

The proposal to limit all future ground rent to zero denies a predictable way to encourage responsible institutional freehold investors into the market. While in some circumstances some smaller private freehold investors may only charge a peppercorn ground rent, it is naïve to think that they have forgone their economic interest. It will be manifest in other ways such as commissions through service charge provision and opaque levels of event and consent fees.

The Government's proposal to shift ground rent charges to the service charge simply will not work.

In simple terms this is because service charges are contestable and therefore not investable. While we understand this as a reason behind the Government's abolition of ground rents, we argue that for larger buildings, it would be better to formally regulate around what a reasonable ground rent charge should provide for. In the past we have suggested that this should be capped at 0.1% of the first grant of the lease.

The Government's plans to effectively end ground rents also comes at a time when the Law Commission is considering how to reduce the amount payable by a leaseholder to freeholder for extending or buying the lease. This potentially also impacts the economic interest of freeholders.

As such, the pool of those willing to assume the accountable person role will inevitably shrink. As we note in the executive summary, it is not realistic to think that commonhold will produce a cadre of leaseholders ready to take on this level of burden.

Our YouGov polling, which we will be happy to share, suggests this. Only 15% of respondents 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.

We want to be part of the solution to practically deliver what this consultation sets out. We are committed to doing this and working objectively with Government, industry partners and campaign groups to provide a fair leasehold system which safeguards residents' lives and the assets of leaseholders. We would welcome the opportunity to discuss this consultation and how it links into the Department's wider housing policy agenda.

1.4 What are the key factors that should inform whether some or all non-residential buildings which have higher fire rates should be subject to the new regulatory arrangements during the design and construction phase? Please support your view.

As stated in response to Q1.1, we believe that in time, a single overarching framework should be applied to all buildings across all asset types in occupation. If this is to be achieved, then all assets must also fall under the new regulatory approach from design, planning and construction onwards to allow for continuity in approach and the appropriate access to records to inform the 'golden thread' referenced in this consultation.

However, we recognise the need to be realistic and for a phased approach in order to prioritise the most high-risk buildings in the first instance. Regarding non-residential buildings, we suggest that priority should be given to buildings where a) people are sleeping, such as hotels, hospitals and student accommodation in particular, or b) that are either mixed use with residential, or in close proximity to residential buildings.

1.8 Where there are two or more persons responsible for different parts of the building under separate legislation, how should we ensure fire safety of a whole building in mixed use?

While having a single dutyholder or accountable person for each building may be beneficial in ensuring a holistic view of building safety, in practice the expertise required to perform such a role may well vary significantly between commercial and residential parts of a building.

There are different regulations governing work and safety in commercial or residential sectors, for example. It is therefore essential to allow for multiple dutyholders to take responsibility for different parts of a building with a primary and secondary dutyholder in place once the development is in occupation.

However, the framework must make clear that it is the responsibility of dutyholders to co-operate and take joint responsibility for how different uses interact to create risks, with a clear sequential responsibility framework in place. Safety information must be shared. In such instances, we note that while each accountable person may not be expert in the issues facing another use, they must possess a fundamental understanding of the issues affecting the entire building. Each dutyholder must understand how the risks inherent to the entire site are being managed.

This complexity is a case in point about the need for responsible institutional freehold investor involvement, who would have the knowledge and expertise to cover all aspects of even the most complex developments.

We reaffirm that the consultation must take seriously the question of who in practice will have the necessary skills and incentives to take on this role. We believe that while institutional investors are uniquely qualified and incentivised as long-term stewards to act as the accountable person, our (and likely other pension fund investors') participation in the market is entirely reliant on a sustainable ground rent to preserve an economic interest in the market.

2.1 Do you agree that the duties set out above are the right ones?

Yes.

We agree that the duties set out to the relevant parties will ensure that a prioritisation on safety and the management of risk are maintained throughout the building process, as well as ensuring information is available to all relevant parties.

2.2 Are there any additional duties which we should place on dutyholders? Please list.

It should be the responsibility of dutyholders to ensure all records are maintained accurately and in an accessible format (particularly applying to new builds as information is in a less comprehensive state for existing premises).

It should also be the responsibility of the principal designer and principal contractor at design and construction stage to provide a building safety certificate in good time upon completion of the works.

A centralised, online database of these documents would be a sensible long-term aim of this process.

2.3 Do you consider that a named individual, where the dutyholder is a legal entity, should be identifiable as responsible for building safety? Please support your view

Yes.

We agree that there should be a named individual who is identifiable and ultimately responsible for the safety of an in-scope building and its residents.

The reality is that the named individual will need to take expert advice on a range of different issues in discharging their responsibilities. Advice and any building or maintenance works that are commissioned should be contracted from qualified and competent individuals and firms.

2.26 Do you agree that a final declaration should be produced by the Principal Contractor with the Principal Designer to confirm that the building complies with building regulations? Please support your view.

Yes.

This declaration should be prepared and provided in good time upon completion of the building. It should also be written, as far as is possible, in layman's terms and be legally enforceable as proof that the works carried out meet the Building Regulations.

The declaration should be scrutinised by the regulator to ensure the regulator agrees that the works have been carried out to the declared standard (this should also apply to refurbishment work). Once signed off by the regulator, this declaration must be legally enforceable. If major problems / safety concerns are subsequently discovered, the accountable person must have the ability to seek redress against the guarantee of the declaration.

2.29 Do you agree that the accountable person must apply to register and meet additional requirements (if necessary) before occupation of the building can commence? Please support your view.

Yes.

In order to take responsibility for the building, the accountable person must be in place before occupation begins. The entity seeking to discharge the role should be able to make an application before construction is necessarily completed, so as to limit any delay around occupation, which residents and leaseholders would no doubt find frustrating.

Again, to limit any unnecessary delay, there should be a trusted timeline as to when new accountable person applicants should apply for registration and how long this may take to be assessed by the new regulator.

2.30 Should it be an offence for the accountable person to allow a building to be occupied before they have been granted a registration for that building? Please support your view.

It should not be possible for anyone to occupy a building without the accountable person to have been granted registration.

3.1 Do you agree that a safety case should be subject to scrutiny by the building safety regulator before a building safety certificate is issued? Please support your view.

Yes.

To ensure that the public safety aims of the new framework are met, as opposed to simply appointing liability after an event, it is essential that safety cases are subject to scrutiny from the building safety regulator before a building safety certificate is issued. The gateway review assessments would feed into the assessment of the safety case, leading to the issuing of the certificate.

To build public confidence in the new regime and the changes made since the Grenfell fire tragedy, a copy of the certificate should be present in a common area within in-scope buildings.

3.2 Do you agree with our proposed content for safety cases? If not, what other information should be included in the safety case?

Yes.

We believe that the proposed content of the safety case provides a good baseline of information which can be analysed to determine the safety of a building and the safety management plans in place.

3.3 Do you agree that this is a reasonable approach for assessing the risks on an ongoing basis? If not, please support your view or suggest a better approach

Yes.

We believe that review every five years of the building safety case presents a suitable period to ensure an appropriate formal review process.

Overall, having a five-yearly review period increases the likelihood that the accountable person takes a long-term and impartial approach to building safety. It also reduces the possibility that problems and liabilities are deferred on the basis that raising extra funds to address long-term issues can be unpopular with leaseholders, who may naturally have a more short-termism view, depending on intended tenancy length.

We note, however, that it must be a requirement of the accountable person, as detailed in the suggested safety case content, to provide evidence of continuous improvement over time, so that building safety is actively considered on an ongoing basis, and not only turned to once every five years.

3.4 Which options should we explore, and why, to mitigate the costs to residents of crucial safety works?

It will be important to avoid spikes in costly demands placed on leaseholders every five years following the latest safety case review and the feedback of the regulator. If not, this could place a disproportionate burden on some leaseholders who may happen to own their flat at the time. The timing of infrequent but expensive works, such as cladding replacement, sprinkler systems and other major internal maintenance and refurbishment, can also produce this outcome.

However, it is also important to be clear that the accountable person registration, safety case assessment, improvements in processes, record keeping, and staff costs (where a building manager is appointed) of the proposed regulatory requirements will also create substantial additional costs. By default, these costs are likely to be passed onto leaseholders in the form of a service charge.

To minimise the financial burdens put on leaseholders, it is important that the accountable person is encouraged to adopt a long-term approach, using measures such as sinking (and reserve) funds to smooth the cost of necessary safety works across multiple years, and even multiple tenancies.

We note that where leaseholders ultimately become the accountable person(s), they are likely to face a conflict of interest between the long-term safety of the building and their natural short-term interest owing to their intended period of tenancy (leading to a compromise of expenditure).

In contrast, institutional investors are uniquely well-positioned to provide long-term impartial stewardship of a building. Such investors are incentivised to ensure that all necessary building safety measures are carried out and the cost smoothed across a number of years where possible.

In extra-ordinary cases, institutional investors also possess the financial backing to loan funds to bring forward major works (quickly and without complicated arrangements) where this is needed.

We have included a case study in Annex 2, which details an occasion where GRIF provided a loan to cover costs associated with repair works following an arson attack on a development in Manchester. This demonstrates the clear tangible benefits of professional institutional landlords under the leasehold structure, as GRIF was able to carry out works in a timely fashion without having to levy a large surcharge on residents.

However, we must reaffirm that institutional freehold investors' presence in the market is entirely reliant on a sustainable, reasonable ground rent framework to preserve an economic interest.

3.5 Do you agree with the proposed approach in identifying the accountable person? Please support your view

Yes.

We agree with the premise that the accountable person could be identified by the right to receive funds as they own the freehold and receive a ground rent; or in order to maintain the building, services and common parts within the development to a high and safety compliant standard.

The consultation paper suggests that this could be the freeholder. We would welcome the opportunity to play this role as we believe that we are uniquely placed to provide the experience, understanding, access to wider expertise and scale that the role of the accountable person ideally requires. However, to take on the enhanced responsibility for in-scope buildings and to manage the liability, freehold investors require an economic interest.

While some other private freehold investors may seek a return in different ways, we seek a return in the form of a ground rent as this provides a predictable, sustainable return. The MHCLG's confirmation that it will reduce ground rents to zero for future leases will deny institutional freehold investors' an economic interest.

3.6 Are there specific examples of building ownership and management arrangements where it might be difficult to apply the concept of an accountable person? If yes, please provide examples of such arrangements and how these difficulties could be overcome.

Yes.

The described approach would be difficult to apply to a mixed-use development that hosted a mix of tenure between residential and commercial space. Different regulations and risk profiles apply; and as such, we support a shared dutyholder approach. In these circumstances, the dutyholders or accountable persons would need to be in close communication and to develop a shared understanding of the whole site's risks and how they are being mitigated.

The head lessee, where one is in place, may at times be a more appropriate accountable person than the freeholder whom, may be a local authority or other passive organisation.

3.7 Do you agree that the accountable person requirement should be introduced for existing residential buildings as well as for new residential buildings? Please support your view.

Yes.

We agree with the premise that these proposals should also apply to existing buildings, as opposed to new buildings. This will mean the new regulatory framework applying to more buildings, which will strengthen public confidence in the system.

The initial focus, however, should be to embed the new regulatory processes into new buildings; and to allow a longer adjustment period for existing buildings to first try to collect the available building information, and second, to allow those responsible for in-scope existing buildings to put in place safety cases based on the available information. Residents and leaseholders will need to be notified of their legal responsibilities to reasonably assist the accountable person. Additionally, those responsible for the building may also need to inform leaseholders about an imminent increase in costs to fund compliance with the new regulatory regime.

3.8 Do you agree that only the building safety regulator should be able to transfer the building safety certificate from one person/entity to another? Please support your view.

Yes.

We agree that a proposed transfer of the role of the accountable person for an in-scope building should be authorised and approved by the building safety regulator. Where the proposed transfer is to a party not already registered with the building safety regulator, the registration review should be undertaken promptly, so a sale process is not delayed or inhibited (where there is no issue with the proposed new accountable person).

3.9 Do you agree with the proposed duties and functions of the building safety manager? Please support your view.

While the broad proposed functions in the consultation paper make sense, it should be noted that this will demand quite a wide-ranging skillset.

It is true that the building safety manager should be suitably qualified and certified to undertake the role, which is even more paramount as the consultation proposes to define the position in law (and make criminally liable for any material building safety breaches).

We do, however, need to be confident that we have a supply of ready professionals to undertake the position of building safety manager before we demand certain benchmarks to perform the role. The new regulator – working with industry – should set a minimum qualification and competence criteria which

informs stakeholders what good looks like. It should also work with industry on when such benchmarks should take effect.

3.11 Is the proposed relationship between the accountable person and the building safety manager sufficiently clear? Please support your view.

Yes.

We believe that the relationship between the accountable person and building safety manager is clear, and we support the definitions and delineations in the consultation paper.

We note that although the accountable person rightly cannot delegate their liability, there should be a level of responsibility placed on the building safety manager to bring issues to light and to conduct remedial action were instructed to do so by the accountable person. By placing all the liability on the accountable person, those in this role must have course for redress if the building safety manager fails to perform his or her responsibilities as instructed.

Last, it is right that the accountable person cannot delegate their liability to the building safety manager, although the consultation is correct to state that the two roles could reasonably be conducted by one entity and nominated individual. They would need to satisfy both sets of requirements, however.

3.12 Do you agree with the circumstances outlined in which the building safety regulator must appoint a building safety manager for a building? Please support your view.

Yes.

It is important that the regulator has the appropriate powers to step in if they feel the safety of residents and that of the in-scope building is genuinely and severely threatened. There clearly needs to be a defined burden of proof; an assessment that the incumbent cannot address the situation; and a series of steps leading to a replacement being made, which will include raising the matter with the accountable person, issuing warnings and instructing the accountable person to find a replacement, prior to the regulator installing a new building safety manager.

3.16 Under those circumstances, how do you think the costs of the building safety manager should be met? Please support your view.

The costs of the building safety manager, in the specific situation that one is installed by the regulator, should be met via a charge for the new manager's costs on the accountable person. The accountable person is ultimately responsible. This will hopefully ensure that there is an interest in the accountable person rectifying the issue before it gets to the stage of the regulator instituting its own appointed building safety manager.

Ultimately of course, this charge on the accountable person could be passed onto leaseholders in the form of a higher service charge. This will depend on the duration that the replacement individual is in post, the differential in his or her wage to their predecessor and the presence of any sinking fund to draw from.

3.17 Do you agree that this registration scheme involving the issue of a building safety certificate is an effective way to provide this assurance and transparency? If not, please support your view and explain what other approach may be more effective.

Yes.

We agree that all in-scope buildings should be registered and certified by the building safety regulator to ensure compliance with all building safety standards.

As an additional measure of public transparency and assurance, the building safety certificate should also then be provided to all residents and leaseholders of the building to ensure they understand that the building has been registered and is certified. The certificate should be in plain layman's terms and be fully accessible to all. When a sale is being managed by the building manager, the certificate should be sent to the prospective buyer within the leasehold information pack.

3.18 Do you agree with the principles set out in paragraphs 180 and 181 for the process of applying for and obtaining registration?

Yes.

We agree that the regulator should be provided with the authority to review the building, which may include an inspection of the building or parts of it and an analysis of the safety management arrangements. If satisfied, the regulator would then issue a building safety certificate to deem it fit for occupation.

3.19 Do you agree with the suggested approach in paragraph 183, that the building safety certificate should apply to the whole building? Please support your view.

Yes.

The building safety certificate should apply to the entire building to provide confidence to residents, business occupiers and leaseholders. In the case of a mixed-use development, there is an argument that there should be separate certificates for each form of tenure, as well as an overall certificate that the building as a whole is deemed safe.

4.9 Do you agree that the Client, Principal Designer, Principal Contractor, and accountable person during occupation should have a responsibility to establish reporting systems and report occurrences to the building safety regulator? If not, please support your view.

Yes.

We believe that a responsibility on all dutyholders to establish reporting systems and report occurrences to the building safety regulator is vital in ensuring ongoing accountability for building safety, and that a 'golden thread' is maintained between dutyholders to support this.

4.17 Do you agree that the enhanced competence requirements for these key roles should be developed and maintained through a national framework, for example as a new British Standard or PAS? Please support your view.

Yes.

Given the new regulatory framework will take a number of years to fully establish itself, a national framework of enhanced competence requirements would be highly beneficial to ensure consistency and accountability across the market.

We believe that there is likely to be a shortage of individuals in key roles with the necessary skills willing to take on the increased level of responsibility, and so a mandatory standard will be vital to ensure minimum levels of competency are built up.

The reality is that currently some important roles, like the building safety manager, do not always attract a suitable wage given the responsibility on their shoulders. This is done to ultimately keep service charge levels down, but it means that there is limited incentive to acquire formal qualifications. Government should set enhanced qualifications and competency requirements, which would lever up standards and pay across the market.

We note that such standards will need to take into account the different requirements of dutyholders responsible for different buildings types according to size and usage.

4.19 Should dutyholders throughout the building life cycle be under a general duty to promote building safety and the safety of persons in and around the building? Please support your view.

Yes.

A general duty on dutyholders to promote building safety and the safety of persons in and around the building will be an important element to ensure that the public safety aims of the new framework are met, as opposed to simply appointing liability in the aftermath of a major incident. The responsibilities of all dutyholders must therefore include ongoing and proactive supervision of the building and its surroundings.

4.20 Should we apply dutyholder roles and the responsibility for compliance with building regulations to all building work or to some other subset of building work? Please support your view.

Ultimately, we believe that a single regulatory framework should be applied to all buildings, including all asset classes and construction heights, taking into account the unique properties and risks of different building types. We therefore suggest that dutyholder roles be applied to all building work. It is important, however, that the administrative demands are risk-based and remain proportionate to the level of work being undertaken.

Any widening out of the proposed framework should be done in a realistic away, which is best achieved through a phased approach in order to prioritise the most high-risk buildings in the first instance.

5.1 Do you agree that the list of information in paragraph 253 should be proactively provided to residents? If not, should different information be provided, or if you have a view on the best format, please provide examples.

Yes.

In order to improve awareness, transparency and trust in the new regulatory framework, clear and digestible information should be shared with residents and leaseholders (where separate) in relevant buildings. In addition to the suggested list, we suggest that residents and leaseholders should be provided with a copy of the building's safety certificate and encouraged to confirm their receipt and understanding of its contents (where buying or renting a property in the building).

Regarding the format of the information, all reasonable measures should be taken to ensure that the content is accessible to all audiences and therefore should be written in plain language and potentially provided in different languages if needs be.

5.6 Do you think there should be a new requirement on residents of buildings in scope to co-operate with the accountable person (and the building safety manager) to allow them to fulfil their duties in the new regime? Please support your view.

Yes.

In order for the dutyholder to discharge their responsibilities, there must be a legal responsibility on residents and leaseholders to co-operate.

While the majority of short-term measures are likely to be readily accepted, matters of inconvenience (e.g. fire drills or home inspections to search and test for smoke alarms) can attract opposition or apathy. The accountable person should be able to require co-operation to allow these practical measures to be undertaken. In setting out what the requirements are for residents and leaseholders, the accountable person should also clearly spell out the penalty for their non-compliance. Enforcement powers and penalty levels should appear in legislation.

Separately, there may be significant capital expenditure outlined by the accountable person as necessary that a proportion of residents and/or leaseholders may object to. While it is right that both residents and leaseholders should be able to scrutinise the need for such works (for possibly different reasons if they are not the same person), the accountable person may need the ability to enforce the works if no consent is found. Or failing this, the accountable person should be able to whistleblow to the regulator in cases where they feel they have not been able to adequately perform their role due to the position of residents and/or leaseholders. In these situations, it is not right that the accountable person should be held accountable, such as if the safety case review has recommended certain works and they are not able to be undertaken.

This once again raises the question of who is best placed to act as the dutyholder or accountable person.

Responsible institutional freehold investors play an impartial, long-term stewardship role that is likely to establish sinking funds that can smooth one-off capital expenditure, so hopefully these conflicts occur less often. Where major works do need to be funded, and there aren't the funds, institutional freeholders can and do provide loans to enable to necessary works to take place (such as the example outlined in Annex 2).

This is one example of the value that responsible institutional freehold investors provide. However, we must reaffirm that our and the possible presence of others in the market is likely entirely reliant on a sustainable ground rent framework to preserve an economic interest.

6.1 Should the periodic review of the regulatory system be carried out every five years/less frequently? If less frequently, please provide an alternative timeframe and support your view.

Five years is an appropriate timeframe to allow such a complex regulatory framework to have made sufficient progress to be assessed. At this time, an independent review should be commissioned.

At the point of review, careful attention must be paid to who is taking on the responsibility of the accountable person, and whether the accountable persons in place are operating adequately. We should also review if the regulatory approach is creating undue delay to planning consent, construction and occupation. Changes to the leasehold regime should also be reviewed at this time if a reduction in participation from freehold investors is having an impact on the operation of the new building safety regime.

6.3 Do you agree that some or all of the national building safety regulator functions should be delivered ahead of legislation, either by the Joint Regulators Group or by an existing national regulator? Please support your view.

Yes, if capacity allows.

In practice, it is a question for Government as to whether existing regulators are capable of taking on this additional responsibility, and the impact this might have on the effective implementation of the new framework and ongoing work of regulators (HSE, local authority building control teams).

9.1 Do you agree with the principles set out in the three-step process above as an effective method for addressing non-compliance by dutyholders/accountable persons within the new system?

Yes.

We believe that the three-step non-compliance response process is sensible and appropriate. The accountable person must have a clear and expedited whistleblowing process to bring concerns to the regulator, such as where there may be circumstances in which the accountable person wishes to highlight that important rectification measures have not being actioned. This might, for example, be where leaseholders have objected to funding vital safety measures on the grounds of cost and/or disruption.

In these circumstances, we would add that the accountable person should not be held liable during this period for a failure to deliver on the actions, or to keep the building and its residents safe from this breach. Clearly, the accountable person must have a log of demonstrable evidence that they have sought to communicate with leaseholders the need for the changes to happen, and that the accountable person has proposed a reasonable and proportionate way of funding them.

9.2 Do you agree we should introduce criminal offences for:

(i) an accountable person failing to register a building;

(ii) an accountable person or building safety manager failing to comply with building safety conditions; and

(iii) dutyholders carrying out work without the necessary gateway permission?

When it comes to public safety, we agree that the introduction of new criminal sanctions for the listed offences are appropriate to create the necessary incentives to drive compliance. Clearly, for offence (ii), this should only be for a demonstrable failure to comply that is a material breach.

However, we also note that such criminal sanctions will impact people's willingness to take up this role; understandably so if they lack the experience, knowledge and access to expertise to fulfil what is a very demanding position.

As such, we maintain the importance of ensuring that we retain the intent of responsible institutional freehold investors, particularly for new builds where there are no existing freehold arrangements in place.

Submitted on behalf of Ground Rents Income Fund Plc.
1 London Wall Place,
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Annex 1: The benefits of a responsible institutional freehold investor

We have explained that the ground rent provides an economic interest, which allows an institutional freehold investor to take on the responsibility and liability of a building for which they are a freeholder.

However, our presence as an engaged freeholder allows us to provide a better offer to leaseholders in ways that aren't reflected through the service charge. This includes:

- Providing an expert in residential management who can make decisions and advise / instruct the managing agent in their duties managing the building's maintenance and protecting its value.
- Providing a management team that can respond to leaseholder / tenant concerns immediately and work with the managing agent or appointed specialist. This is vital as the landlord's input will be needed to sanction emergency payments or work.
- Providing access to experts from across the property spectrum such as lawyers, valuers, surveyors, damp and mould inspectors, utility experts etc. The investor will consult these experts before issuing instructions.
- Offering financial and practical support when emergencies arise, mitigating additional costs and preventing evacuation. We are working with developers to fix cladding in several buildings we oversee. An institutional landlord can make decisions quickly in the case of health and safety matters. Specialist teams can be activated quickly to solve problems. This is particularly important in large buildings where it can take time to get the opinion of lots of residents or absentee landlords.
- Offering the resources to enforce collateral warranties against developers, contractors and insurers etc… to recoup the costs of remedial work. Our role in this is not limited to offering advice, we also provide significant capital sums to complete the necessary work. We are working with developers to fix cladding across several developments.
- Being an objective and impartial decision maker who can look beyond the interest of homeowners and consider the right long-term option for the development as a whole. This greatly enables planning for a sinking fund, but also helps with other liabilities.
- Providing scrutiny of the managing agent's work. Managing agents are not currently regulated and a responsible investor will be able to better understand the roles and responsibilities of a managing agent. This can be time consuming and, from our experience, few leaseholders or tenants, beyond the cosmetics of a building, want to undertake this responsibility in addition to getting on with their own lives.
- Offering the ability to secure more comprehensive buildings insurance at a lower cost than an individual building management committee could. An institutional investor could have several billion pounds worth of property in its portfolio. We achieve around a typical 15% reduction against a standalone landlord or management committee. The cover is also likely to be more comprehensive and feature a lower excess than an independent management committee could negotiate. This will be important for people living in older or more complicated developments e.g. with elevators. We also find that, due to the more adverse claims history associated with residential portfolios, the commercial element of a portfolio usually subsidises the residential element.
- Provide loans to service charge accounts where required.
- Act as independent arbitrators to resolve conflicts between leaseholders or other interested parties and fund legal and consultancy fees when disputes arise.
- Maintain risk-based databases to ensure that all necessary statutory and insurance-based requirements are up to date, providing independent reporting and management of the building.
- Supporting and advising the residents' management committee when it fails in its duties.

Annex 2: The Cube, Manchester – Case Study

Ground Rents Income Funds plc (GRIF) is a Real Estate Investment Trust (REIT) specialising in the investment of residential ground rents across the UK.

A special purpose vehicle (SPV) was created to hold the asset as part of the GRIF portfolio. The SPV for the property known as The Cube, Manchester is GRIF039 Ltd, a wholly owned subsidiary of GRIF. The leases in place are bi-partite between landlord and tenant.

Current Position

A fire occurred at the building on 28th October 2016 as a result of an arson attack to a car parked in the under-croft car park. The external cladding caught fire, but the fire spread was limited to the full height of one elevation. Greater Manchester Fire & Rescue Service (GMFRS) attended and requested everyone evacuate. There were no injuries but there was smoke damage to common parts of the building and one apartment due to doors being left open during the evacuation.

The day after the fire had been extinguished, GMFRS were keen to determine cause and effect and undertook a thorough examination of the building with particular regard to means of escape, travel distance and general fire safety and prevention measures. This resulted in an enforcement notice being served on GRIF039 Ltd as landlord, stipulating that works were required to further protect escape routes of certain apartments and having a new fire risk assessment carried out. Due to the time taken to carry out the repair works following the fire (which included internal smoke damage repairs and redecoration, replacement of the external cladding on the affected elevation and replacement of the decking area situated above the car park), as well as the additional works required under the enforcement notice, the notice was reissued, and the deadline was further extended.

The notice deadline was again extended soon after the tragic events of Grenfell Tower in June 2017. This prompted the GMFRS to add an additional requirement not detailed in the previous notice, which stated that the external façade must be reviewed as part of the risk assessment. The managing agent of the building attended a meeting on 13th December 2017 and GMFRS expressed concerns regarding the height of the building and specification of the cladding panels.

The fire service issued binding advice on interim mitigation measures that would be required pending remediation of the cladding. This resulted in a 24/7 two/three person Waking Watch service being put into place until such time that the cladding could either be replaced or the fire safety systems enhanced. Multiple meetings were attended both on and off site, with representatives from the managing agent, GRIF039 Ltd, the original contractor and the fire service to agree a way forward.

As a result of these meetings, a specialist fire engineering company, Design Fire Consultants (DFC), was employed and instructed to carry out a comprehensive fire risk assessment in accordance with the requirement of the Regulatory Reform (Fire Safety) Order 2005 and to advise on the most suitable and cost-effective solution. It was agreed that the fire alarm would need to be enhanced and extended into each apartment. Once these fire alarm works are complete (along with the remaining works under the original notice), the waking watch service can be removed.

A summary of costs is detailed below; this includes contractor expenditure, balancing charge and the use of the available sinking fund.

	Gross cost £ **	Amount outstanding
Waking watch from December 2017 - included in YE2017 Service Charge Accounts	20,666.05	
2018 cost	53,148.35	
(breakdown on next page)	73,814.40	49,593.60
DFC Investigation cost	9,000.00	9,000.00
Franco Fire Alarm work	23,712.97	23,712.97
Estimated Decking cost	12,000.00	12,000.00
Total amount of expenditure required	118,527.37	**94,306.57**
To be funded by		
Cube leaseholder reserves		14,000.00
Increase in service charge budget or landlord contribution required		**80,306.57**

** *GRIF039 is not VAT registered*

Following advice received from Brethertons solicitors, there is no mechanism within the lease that allows the recovery of an expense via a levy. Therefore, the action has been taken to re-issue the 2018 service charge budget to include the additional costs detailed above in order to fund the works and satisfy the enforcement notice.

As many leaseholders will pay via direct debit over the year, there is an expected shortfall in funds of circa £80,000.00. Whilst there is a shortfall and costs cannot be paid, the works cannot be carried out to the fire alarm and therefore the waking watch will be required to remain on site, generating further costs of around £7,000.00 per week.

The landlord recognises that it could have collected the additional amounts by way of varying the direct debit, however, this could have significantly affected the disposable income of the leaseholders. In order to mitigate these costs and avoid causing further undue hardship to the leaseholders, the landlord has chosen to instead provide a loan to the service charge. This will ensure the safety of the residents at the development, will provide the funds required so all works can be completed which will in turn remove the requirement of the waking watch and therefore minimize overall costs to the leaseholders, whilst giving the leaseholders a longer period of time to pay the extra amounts required.

Summary

Given the circumstances set out above, with many other properties in similar situations around the UK currently, it would be difficult to see how this problem could be resolved without a professional institutional landlord overseeing this vitally important process. This is a perfect illustration of the tangible value which institutional investors bring to consumers under the leasehold structure.

This property has been subject to two RTM applications, one of which failed and the other currently on going. If the property was Commonhold or even RTM, the costs of the required works would have had to be collected via the service charge throughout the current service charge year, prior to instructing these works mandated by GMFRS, driven by central government policy post Grenfell. This would have resulted in a scenario where the waking watch would be required on site for a longer period of time to satisfy the request of the fire service, by which point the costs of the overall works (which include that of the waking watch) would have been significantly higher and arguably may never have been collected in full from the leaseholders.

In a scenario where funds were never collected in full from all leaseholders there would inevitably come an inflection point where the RTM/Commonhold directors would physically run out of cash and this would

leave the residents potentially at risk in their own homes or ultimately the building would be deemed uninhabitable by the fire service and therefore shut down.

In this situation and with the property being leasehold, the landlord has accepted its responsibility and supplied a loan facility to the residents. This has enabled the works to be carried out without further delay and therefore ultimately reducing the costs to the leaseholders whilst ensuring the building is safe and meets all current fire safety standards.

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