

# **“Modern leasehold: restricting ground rent for existing leases” - response of the Competition and Markets Authority**

## ***Background***

1. The CMA is the UK’s principal competition and consumer authority. It is an independent non-ministerial UK government department and its responsibilities include carrying out investigations into mergers and markets and enforcing competition and consumer law. The CMA helps people, businesses and the UK economy by promoting competitive markets and tackling unfair behaviour.<sup>1</sup>
2. The CMA has a role in providing information and advice to government and public authorities.<sup>2</sup> The CMA’s advice and recommendations are made with a view to ensuring that policy decisions take account of the impacts on competition and consumers. Housing is a priority for the CMA under its Annual Plan and the CMA’s work on [ground rent and leasehold housing](#) sits alongside other projects such as our work on [home energy efficiency](#), on the [private rented sector](#) and our [housebuilding market study](#).
3. This response to the UK government’s [consultation on restricting ground rent for existing leases](#) reflects the CMA’s understanding of ground rent based on

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<sup>1</sup> The CMA’s statutory duty is to promote competition, both within and outside the UK, for the benefit of consumers.

<sup>2</sup> Under Section 7(1) of the Enterprise Act 2002, the CMA has a function of making proposals, or giving information and advice, “on matters relating to any of its functions to any Minister of the Crown or other public authority (including proposals, information or advice as to any aspect of the law or a proposed change in the law).”

our investigation concerning Leasehold Housing: ([Leasehold - GOV.UK](#)  
([www.gov.uk](#))). In this response we will cover the following areas:

- i. Context and overview of the CMA's Leasehold Investigation, including high level points from the [Update Report](#) published in 2020.
  - ii. Ground rent issues and their impact on consumers.
  - iii. Different ground rent cap models from a consumer perspective and the potential effects of delayed implementation and up-rating.
  - iv. Service charges; refunds and compensation for consumers/freeholders; and ground rent cap exemptions.
4. We will also provide a short update on our leasehold work. We will publish this response on our website.

**i. Context and overview of the CMA's Leasehold Investigation, including high level points from the Update Report published in 2020.**

**The CMA's Leasehold Investigation**

5. In June 2019 the CMA launched an investigation to consider whether there had been breaches of consumer protection law in the leasehold housing market. This was against the backdrop of concerns expressed by the Secretary of State for Housing, Communities and Local Government, by MPs, by members of the public and by campaign groups. We investigated problems caused by ground rent and the potential mis-selling of long leasehold houses and subsequently took consumer-law enforcement action against a number of major developers and freeholders. This led to undertakings to address our concerns given by developers and freeholders

such as Countryside Properties, Taylor Wimpey, Persimmon, Aviva, Brigante Properties and Abacus Land and Adriatic Land investment groups. Their undertakings are documented at [Leasehold - GOV.UK \(www.gov.uk\)](https://www.gov.uk). Other major developers contacted by the CMA, including Redrow, Crest Nicholson, Miller Homes and Vistry<sup>3</sup> took action to free consumers from doubling ground rent terms connected with their properties.

6. In summary, in relation to ground rents that doubled more frequently than every 20 years our approach was that freeholders should (i) offer to vary leases to remove the doubling clause so that leaseholders would not pay more than the initial level of ground rent and (ii) agree not to collect doubled ground rent (or in both cases ground rent that increased by RPI where a clause has been converted to RPI from a doubling clause<sup>4</sup>). Developers who had built estates where leases contained ground rents that doubled more frequently than every 20 years made payments to freeholders to enter into such undertakings.
7. We also agreed a suite of undertakings with Persimmon which amongst other things enabled leaseholders to purchase their freehold for £2,000 or less. This reflected concerns expressed to us by many leaseholders about the potential mis-selling of long leasehold houses and the information made available to purchasers at different points in the sale and purchase process.

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<sup>3</sup> Vistry PLC includes Linden Homes and Vistry Partnerships, the former housebuilding businesses of Galliford Try, which were acquired by Bovis Homes in 2020.

<sup>4</sup> On the basis that, when giving effect to a remedy at law in respect of an unfair contract term, a contract term which is deemed to be unfair would be removed from the contract and not replaced by another term – see also paragraph 25.

8. Beyond formal enforcement action we have also worked with DLUHC, Trading Standards and with the New Homes Quality Board (NHQB) to promote transparency in the information provided to homebuyers in the sale and marketing of houses and flats so that homebuyers will know the tenure of a property – whether it is freehold or leasehold – as well as the annual costs of owning a particular house or flat at the earliest opportunity in their property search. This work has been taken forward by [National Trading Standards](#) who on 12 July 2022 announced guidance on the inclusion of material information in property transactions.<sup>5</sup>
9. Early transparency about annual costs is very important. Many homebuyers we heard from felt they had been given a bad deal over a long leasehold property, that they had been let down by the sales process and the conveyancing system, and believed they would have made better decisions had they understood all the costs involved right at the start of their property buying journey. These are two examples of the concerns expressed to us:

Example 1:

*“As this was our first home, we weren’t sure on the protocol on how to buy a house. After we paid our reservation fee to secure our plot, the staff then went through various points and documents that we needed to know in regards to the property we were purchasing. She explained its leasehold but has 999 years from 2015 so is practically freehold so we needn’t worry. She failed to inform us at all about the issues with leasehold and all the hidden fees and permission we need to request if we plan on making changes to our home. I feel this should have been on top of their list to inform us. I feel the whole process has ruined my first experience buying a house and I worry at the end of each year making sure I have enough money to pay for the ground rent and also this year will be the first year to pay our service charge.”*

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<sup>5</sup> [Updated guidance](#) was published by NTS in November 2023.

Example 2:

*“Had we been told by the sales representatives or the developers recommended solicitors that the ground rent would escalate, or advised that this could make the property difficult to sell in the future then we would not have purchased the property.”*

10. The CMA’s work is now in its final stages though we have yet to receive undertakings from some freeholders.

**Our 2020 Update**

11. On 28 February 2020 we published an Update on our work which can be found at: [Leasehold update report \(publishing.service.gov.uk\)](https://publishing.service.gov.uk). In that Update we said that issues identified, including ground rent, had caused and continued to cause significant harm to leasehold homeowners. We also said that action by the CMA could only partially address the problems identified and noted that the CMA strongly supported legislation to improve outcomes for consumers. That remains the case. We strongly support the steps already taken by the UK government to prohibit ground rents in new leases under the Leasehold Reform (Ground Rent) Act 2022 and we support the imposition of further restrictions on ground rent. It is in that context that we will now outline the main elements of our work on ground rents and address related aspects of the UK government’s consultation. We approach the issues from our perspective of safeguarding the consumer interest.

12. We should make it clear that we have not conducted a comprehensive review of the entire ground rent market. Rather, it has been an investigation under our consumer protection law enforcement powers, the focus of which was on

contract terms and commercial practices that might infringe consumer protection law.

13. We had a particular concern with so-called “modern leaseholds” that emerged in the 2000s, where ground rent often doubled periodically or increased by RPI in leases that normally lasted for 125 years or more, notwithstanding that a substantial premium had been paid on purchase. In those leases ground rent was neither legally necessary nor did we see any persuasive evidence that it was commercially necessary. In fact we heard no convincing justification for the payment of any ground rent in modern leaseholds.

14. However ground rent can cause important problems for leaseholders beyond the simple question of its justification because high ground rents that increase significantly over time not only create expensive obligations for consumers but, in the worst cases, lead to difficulties in selling or mortgaging property. The worst cases were those leases under which ground rent doubled more frequently than every 20 years.

15. There were other problems too. For example, the effect of these doubling clauses was to increase substantially the cost of statutory enfranchisement (freehold purchase) for the consumer. Where the doubling ground rent clause causes the rent payable under a lease to exceed £250, or £1000 in Greater London, consumers are at greater risk of facing a mandatory order for possession if they fall into arrears (which itself may be more likely because of the increased amount). The UK government currently plans to resolve these problems through welcome measures contained in the Leasehold and

Freehold Reform Bill<sup>6</sup> and Renters (Reform) Bill<sup>7</sup> which aim to assist many leaseholders already in this position.

16. RPI clauses<sup>8</sup> pose similar problems but have their own difficulties. We said in the Update “(a) homeowners may well not understand how an RPI increase is calculated (and this problem may be compounded by the drafting of the lease clause); (b) the quantum of an RPI based increase is uncertain; (c) it is unclear why in principle RPI is a suitable index by which the lease value of property, if such it is, should increase; (d) at an RPI increase of 3.7% over 20 years an RPI escalating clause produces an increase equivalent to a 20-year doubling clause.”<sup>9</sup>

17. It was apparent from many of the complaints we received throughout our investigation, and from the experiences recounted by many of the homeowners we met, that, while the purchase of a house or flat may be the biggest and most important investment many of us make, some key aspects of homeownership are not well understood. This is perhaps not surprising because for those in a position to buy their own home tenure and its consequences are not simple to understand, and the costs associated with even freehold home ownership are often obscure. Although many of the leases we have seen are written in relatively plain English, often including a summary of their terms at the start,

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<sup>6</sup> [Guide to the Leasehold and Freehold Reform Bill - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/bills-2018-19/freehold-reform-bill)

<sup>7</sup> [Renters \(Reform\) Bill - Parliamentary Bills - UK Parliament](https://www.parliament.uk/bills/2018-19/renters-reform-bill)

<sup>8</sup> The problems caused by RPI clauses (that is ground rent rising in line with the Retail Price Index) or those ground rents that double periodically but less frequently than every 20 years, were not addressed in our enforcement action although the former in particular have come to be recognised as an increasingly pressing problem as RPI has increased with inflationary pressure and cost-of-living increases have bitten hard on many leaseholders.

<sup>9</sup> Paragraph 80 of the [Update Report](#).

the provisions relating to ground rent increases, most obviously those relating to RPI increases, can be obscure.

18. However, not every problem we identified through our work on leasehold can be fixed by the CMA exercising its consumer protection powers. Under the current legal framework, which may soon change<sup>10</sup>, the CMA is not itself able to make a ruling that a term in a contract is unfair (and therefore illegal) or that a trader has misled a consumer (and therefore acted unlawfully): only a court can do those things. Currently the CMA's powers are limited to investigating and either applying to the court for a ruling or securing undertakings from the businesses whose contract or conduct is causing concern. Obtaining undertakings, as an alternative to going to court, can mean issues are addressed more swiftly (as happened in a number of cases in the CMA's leasehold investigation).

19. In our investigation, and in line with our [Prioritisation Principles](#), we chose to focus on those ground rent clauses that doubled more frequently than every 20 years because they posed the most significant problems for consumers. In our view, in most cases, those clauses are likely to be unfair terms<sup>11</sup> and therefore unlawful and unenforceable as a matter of consumer protection

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<sup>10</sup> Under the Digital Markets, Competition and Consumer Bill currently being considered by Parliament, it is proposed that the CMA will in future have powers to make binding rulings whether a practice is unlawful under consumer protection law, and indeed to impose deterrent fines if it finds unlawfulness. But those powers were not available to the CMA during our leasehold investigation and are not yet available to the CMA.

<sup>11</sup> Consumers routinely receive legal advice prior to entering lease contracts. However, our view, which is also the approach taken by the courts in considering unfair contract terms (see *Andrew Harrison v Shepherd Homes Limited* [2011] EWHC 1811 (TCC) at 113), is that whilst legal advice may be a factor that is relevant to the fairness assessment, it is not determinative. The fact that a consumer was legally advised does not make a term fair. And even if a solicitor draws a term to a consumer's attention or advises them of its effects, the reality is that, if they are a significantly weaker contracting party, the consumer is in no position to refuse the inclusion of the clause.



law<sup>12</sup>. It is hard to see what provision of goods or services by a trader to a consumer justifies imposing a periodic doubling obligation and no persuasive justification has been given during our investigation. Doubling clauses increase the consumer's financial obligations under the lease without any or any commensurate increase in benefit to them. Consequentially the doubling ground rent liability is likely to make it harder for the consumer to exercise their rights to deal with or dispose of their interest by selling or mortgaging it. This notwithstanding that the consumer's right to deal with or dispose of their interest by sale or mortgage is a fundamental part of long-term property ownership and that the consumer will have paid a substantial premium for their home.

20. It is possible that the inclusion of doubling clauses in leases may in some cases have been stimulated by investors. Whatever the reason, clauses that doubled ground rent more frequently than every 20 years were included in leases by some developers as a matter of policy and they are particularly disadvantageous for consumers. We have not seen any good evidence that developers considered the consequences of doubling ground rent or other forms of ground rent increase for leaseholders: in terms of leaseholders' ability to pay amounts that would increase significantly or in terms of the saleability and mortgageability of their property or in terms of security of tenure under the Housing Act 1988.

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<sup>12</sup> In relation to contracts entered into before 1 October 2015 the Unfair Terms in Consumer Contracts Regulations 1999, under Regulation 5(1), require terms in consumer contracts to be fair. The Consumer Rights Act 2015 contains the same requirement in relation to terms entered into after 1 October 2015. A term is unfair if contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer.

21. We should note in this context that terms allowing a business to increase the amount payable by a consumer, particularly where, as with a lease, it is difficult for the consumer to walk away from the contract to avoid the increased costs, raise obvious fairness concerns as a matter of law. Those concerns increase where a consumer receives no additional benefit in return for their increased payments. The courts have emphasised the particular importance of protecting consumers entering into contracts which relate to an essential need such as somewhere to live. For most consumers, the purchase of a property is an important, rarely encountered, complex and expensive transaction, which carries inherent and significant risks. In addition, there have hitherto been no statutory safeguards for consumers in relation to ground rent (in contrast to, for example, service charges). That ground rent was unregulated may have been attractive to investors.

22. The approach we adopted in pursuing remedies for consumers in relation to less than 20-year doubling clauses reflects our view that they are unlawful (see paragraph 19 above) and thus that the remedy is that the clauses are unenforceable and cannot be relied on by the freeholder.

23. The undertakings we secured (see paragraph 5 above) have been first and foremost to prevent freeholders collecting or relying on ground rent in excess of the initial ground rent in the lease. The undertakings help leaseholders immediately, relieving them of the obligation to pay increased ground rent now – but also when they are confronted with problems of the mortgageability and saleability of their properties down the line.

24. We have also required freeholders to repay ground rent collected in excess of the initial level and to support variation of leases to remove doubling clauses.

25. We have taken issue not only with extant doubling clauses but also with those RPI clauses that have replaced them as a means to increase ground rent periodically. That is, where the freeholder agreed with the leaseholder to replace a doubling ground rent clause with one under which the ground rent rose in line with RPI. This reflects our view that unfair terms law provides that an unfair term should be excluded from the contract (that is treated as though it had never been in the contract) rather than amended or replaced.<sup>13</sup> That we have not taken specific action against ground rent clauses that increase by RPI other than in this context does not mean that our concerns about them, noted at paragraph 16 above, have diminished.

26. Developers who had sold freeholds with the benefit of less than 20-year doubling clauses have under our remedies paid incentives to freeholders to provide us with the comprehensive remedies identified above.

## **ii). Ground rent issues and their impact on consumers**

### **Key problems that ground rents are causing for leaseholders**

27. It is clear to us from our investigation that ground rent can cause a wide range of problems including, but not limited to, circumstances in which lease terms are likely to be unfair and unlawful under consumer protection law.

28. The CMA agrees that the issues set out in question 1<sup>14</sup> of the consultation are consistent with problems which may be faced by leaseholders in connection

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<sup>13</sup> See, for example, paragraph 4.3.1 of the European Commission Guidance on Directive 93/13/EEC, and the case law referred to there.

<sup>14</sup> The issues identified at question 1 include that the full terms related to ground rent payments are not initially made clear when buying the property that leaseholders have to pay a ground rent for no clear service given in return, that ground rent payments are unaffordable, that ground rent payments get more expensive over time, that leaseholders

with ground rent terms. To expand further on the problem of lack of clarity when buying a property, the CMA noted in its Update<sup>15</sup> that purchasers of new-build properties were often required to sign a reservation agreement, which is a contract between consumer and developer, at a very early stage of the purchasing journey. In some cases this was before lease terms and their implications had been explained to, let alone fully understood by, the prospective buyer. For example, not all reservation agreements explained that ground rent would increase.

29. In the following stage of the purchase, when the conveyancing process begins, the lack of clarity can persist despite the purchaser having engaged a conveyancing solicitor. For example in paragraph 50 of the CMA's Update we highlighted concerns raised by the public with the CMA about the use of "panel solicitors". The main concern was that where solicitors earned fees from recommendations made by a developer, the solicitor's duty to act in the best interests of their client, the purchaser, was at risk of compromise. This was compounded by concerns about the effect of some inducements offered to purchasers to move to speedy exchange of contracts.

30. Although it will not assist all those purchasers already affected by problematic ground rents, lack of awareness about ground rent has for the future been alleviated by the Leasehold Reform (Ground Rent) Act 2022 limiting ground rent under new leases to a peppercorn. We also note the positive work being carried out by National Trading Standards, in conjunction with a number of

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do not know or understand when their ground rent will increase, that leaseholders do not know or understand how much their ground rent will increase, that the property cannot be bought or sold because mortgage providers do not like the ground rent terms.

<sup>15</sup> Paragraph 11 above.

online property portals, to improve the availability of up-front information, including ground rent obligations, when consumers are searching online for property.<sup>16</sup>

31. In general, it is a feature of home-buying that consumers will have invested time, effort and sometimes a lot of money, early in the purchase process (e.g. through the viewing of properties and appointment of solicitors/surveyors etc). They may therefore feel a sense of commitment to and 'ownership' of the property in question, prior to receiving comprehensive information about the ground rent obligations and other lease terms which attach to it.

32. During our investigation, we saw lease clauses providing for the escalation (or up-rating) of ground rent, for example those linked to RPI, which varied significantly. We continue to think that prospective homeowners may well not understand how an RPI-linked increase is calculated (and this problem may be compounded by the drafting of lease clauses).

33. Therefore, even with full transparency of the substance of RPI lease terms prior to the purchase process, many consumers would be likely to experience difficulties in forecasting the amount of ground rent which may fall due in future (this is separate from the inherent uncertainty regarding inflation rates). They may also be equally unable to predict whether individual mortgage lenders would interpret the level of ground rent to be unreasonable or onerous in the future, thereby affecting the saleability of the property (see also paragraph 50 below regarding in-contract price rises).

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<sup>16</sup> Referred to at paragraph 8 above.

34. Beyond the list of issues set out in question 1 of the consultation, the CMA has become aware of additional difficulties faced by leaseholders in some circumstances, including the use of back-dated rent review clauses, meaning that ground rent may already have been increased or up-rated beyond its face value prior to purchase. The CMA is aware of at least one unreported action for non-payment of ground rent in which the annual ground rent demanded by the freeholder in respect of a small leasehold property is several thousand pounds per annum because of back-dating. The legality of such back-dating clauses is, to the CMA's knowledge, untested as a matter of consumer law. While helpful legal precedent may in due course emerge, intervention at a statutory level to cap ground rent would assist existing leaseholders in such circumstances and limit the scope for expensive up-rating practices to impact consumers.

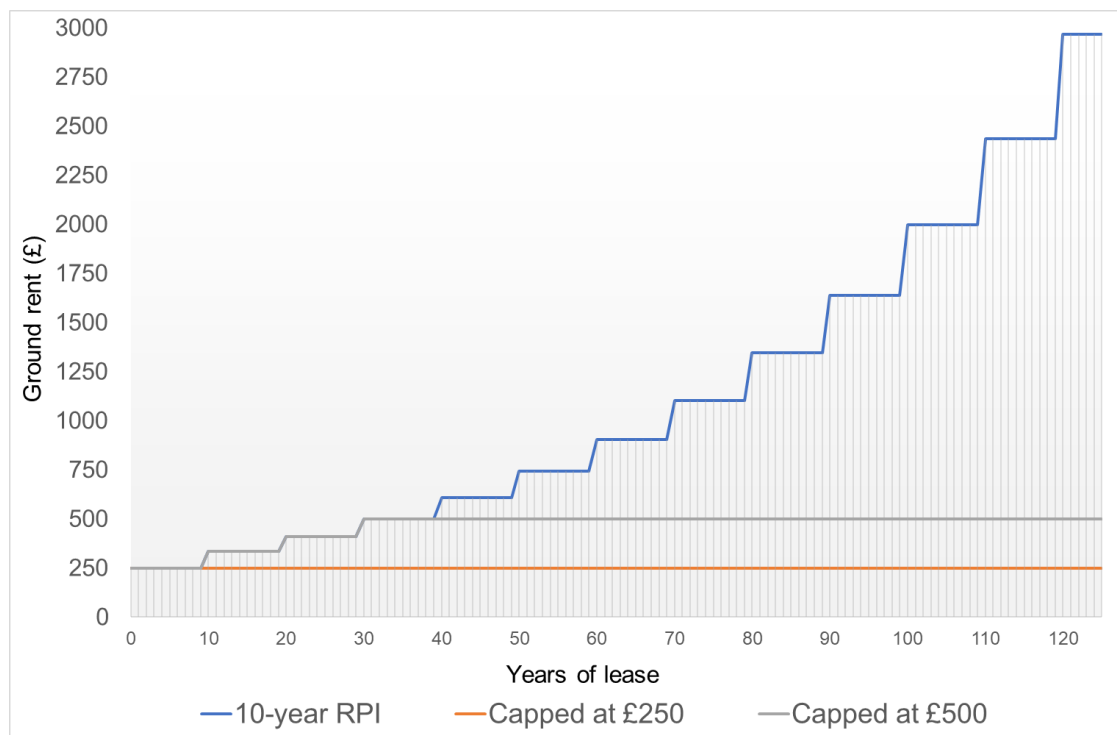
35. The impact on individual leaseholders from ground rent terms can be substantial. We have seen cases in which freeholders have (post-purchase) explained that the ground rent on leaseholders' property is set to rise to over £5000 by 2055. This is not untypical of the levels of up-rating ground rent seen during our investigation. Beyond the obvious financial impact that this has (even accounting for inflation) leaseholders report wider consequences in terms of their wellbeing and ability to make life decisions about when they may be able to move home, change location to get a new job or start a family.

36. The CMA's investigation has focused on ground rents which double more frequently than every 20 years and are unfair under consumer law. However, in pure financial terms as noted above at paragraph 16, an RPI-linked up-rating ground rent term will cause ground rent to more than double in 20

years if the Retail Price Index rises by 3.7% (or more) per annum over the course of that 20 year period. Information gathered from developers during the CMA's leasehold investigation indicated that index-linked ground rent terms (most commonly RPI) were more prevalent than doubling terms, so the financial benefit to the public from capping ground rent is likely to be significant.

37. The following example is a simple model of how an individual consumer may be impacted financially by a ground rent cap, if such a cap was set at a level of either £250 or £500. It assumes that the consumer has a 125 year lease, with a starting ground rent of £250 and their lease terms cause their ground rent to rise in line with RPI every 10 years (which we think is a realistic example of the terms many of many leases).

Example of RPI linked ground rent impacts:



38. The example reflects the position if RPI averages 3% over the first 10 years and 2% thereafter. The left-hand axis indicates the amount of ground rent the consumer would be asked to pay annually (and as previously noted, the CMA found no compelling evidence that anything is provided to leaseholders in return for ground rent). Thus, in simple monetary terms, the cumulative amount below the staggered line represents the potential direct transfer of value from freeholders to leaseholders in the event of a fixed cap being introduced, or from leaseholders to freeholders should ground rent continue to be paid.<sup>17</sup> We have used a fixed cap example because some of the other potential capping options are more complex to model, however we note that a number of the other potential cap options – in particular a cap at a peppercorn<sup>18</sup> – would result in a greater transfer of value to consumers.

39. With regard to the future of RPI, proposals to align the RPI with the Consumer Prices Index (CPI) in 2030<sup>19</sup> may be viewed as an improvement because observers regard RPI to over-estimate inflation.<sup>20</sup> From the perspective of transparency for homebuyers we note that, in other contexts, there is evidence that a significant proportion of consumers do not understand what either RPI or CPI measure (see also paragraph 49 onwards concerning uprating of ground rent).<sup>21</sup>

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<sup>17</sup> The CMA recognises that from the perspective of the lease's current value to the freeholder, payments in future are worth less due to discounting, consequently the effect of capping on that value won't be as large as it appears in the chart.

<sup>18</sup> In the event of a peppercorn ground rent cap the amounts below the orange line would also be included in that transfer of value from the freeholder to leaseholder in the example.

<sup>19</sup> [A consultation on the Reform to Retail Prices Index \(RPI\) Methodology](https://www.gov.uk/government/consultations/a-consultation-on-the-reform-to-retail-prices-index-rpi-methodology) - GOV.UK ([www.gov.uk](https://www.gov.uk))

<sup>20</sup> [Shortcomings of the Retail Prices Index as a measure of inflation](https://www.ons.gov.uk/economy/inflationandpriceindices/articles/shortcomings-of-the-retail-prices-index-as-a-measure-of-inflation/164620) - Office for National Statistics ([ons.gov.uk](https://www.ons.gov.uk))

<sup>21</sup> Ofcom research commissioned in relation to its 2023 Review of inflation linked telecoms price rises found that nearly half of customers did not know what RPI or CPI measure: [Ofcom to review inflation-linked telecoms price rises](#) - Ofcom



**iii. Different ground rent cap models from a consumer perspective and the potential effects of delayed implementation and up-rating**

**Ground rent cap models**

40. We have explained that our investigation targeted the doubling element of ground rent clauses because that was where we saw the greatest harm to consumers. Under our enforcement action, leaseholders remained liable to pay the original amount of ground rent under their leases. The UK government has now proposed five different ways to cap ground rent. One of these, to cap at a peppercorn, is effectively to abolish ground rent. The other four methods would each perpetuate it.

41. Assessed from the consumer perspective, the main question to consider in deciding whether to impose a cap, and at what level, is what reason there is to believe that consumers receive anything in return for ground rent. If they do not, there is a strong case for abolishing ground rent altogether.

42. The CMA heard representations about leasehold purchases which claimed that where a premium and rent are both payable the fabric of the building is purchased by the premium while the land on which it stands is rented (with such rent having a market value that is likely to rise over time). We also heard consequential claims that the up-front premium for acquiring a property where ground rent remains payable is lower than for an equivalent property free from such an obligation. However, we saw no evidence that persuaded us that a significantly reduced premium was generally charged by developers for properties with a ground rent obligation when compared with equivalent

properties without one, though we were of course focusing on modern leaseholds and in the context of developers setting the price of their new-build properties.

43. As noted above our conclusion was that ground rent was neither legally nor commercially necessary, and we saw no persuasive evidence that consumers receive anything in return.<sup>22</sup> The UK government will of course receive submissions from many parties on this and will reach its own conclusion. Nor did we think, essentially for the reasons outlined in paragraph 1.72 of the consultation document, that there was good reason to believe that ground rent improved the standard of estate management.

44. We can also see that the UK government's broader view that the housing market has to be modernised, and released from anachronistic practices, is a highly relevant consideration in its decision-making. The UK government will of course receive evidence on the costs and consequences to freeholders and investors from caps of different forms and will take those considerations into account. In our February 2020 Update Report we assessed the total value of the ground rent market as being in the region of £10bn (though this was a very approximate figure)<sup>23</sup>. In our view, subject of course to the proviso that the figure is approximate, there is a direct transfer of value of that amount from consumers to freeholders and other investors.

45. From the perspective of protecting the consumer interest, we agree with the limitations identified in the consultation document relating to each of the

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<sup>22</sup> See also paragraph 13, the CMA's concerns related to modern leaseholds.

<sup>23</sup> Based on net present value of ground rents payable, where ground escalation stops after 50 years.

different caps. While each of the proposed models offer advantages to consumers, from a consumer perspective, and subject to one proviso, we think the least advantageous cap would be a percentage of property value.<sup>24</sup> This would give freeholders a share in the change in value of a leaseholder's property, a position that has little rationale in circumstances where the leaseholder has paid a premium to purchase property (and where the change in value may reflect improvements made to the property by the leaseholder and at the leaseholder's expense). It would also have all the disadvantages identified in paragraph 1.52 of the consultation, creating the real risk of uncertainty, disputes and further costs. The proviso is that a fixed per cent, in contrast with freezing ground rent at current levels, may assist those consumers, of whom there could be many, who already pay more than that percentage value (and in some cases the current liability to ground rent can be very high, see the example given at paragraph 34).

46. The main disadvantage of limiting ground rents to their original level is that it could leave some leaseholders with expensive obligations, adding to current cost-of-living challenges felt by so many.<sup>25</sup> We have not carried out systematic research on this point but we have heard evidence that, as the consultation document notes, the initial level of ground rent has increased in recent years. Alternatively, if ground rents are frozen at their current level that will provide only limited assistance to leaseholders who may already face

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<sup>24</sup> While we note that [a similar model of cap is currently proposed](#) for the purposes of statutory enfranchisement/lease extension valuations (in which context an administrative valuation process is already required), in the context of routine ground rent collection a cap based on value may introduce additional administrative and financial burdens on the leaseholder and/or freeholder.

<sup>25</sup> While, per paragraph 6, the CMA's approach in its investigation was to require that leaseholders with doubling clauses would not pay more than the initial level of ground rent, this outcome was a function of pursuing alignment with consumer law outcomes based on the specific leases in question.

expensive obligations. A freeze at current levels will also leave many consumers paying ground rent that has increased by RPI (an increase many will not have understood) or that has increased pursuant to a term otherwise liable to have been unfair in consumer protection law, in circumstances where few consumers are able to take legal action to address that unfairness. None of these approaches, or an upper bound, would deal with the “anachronistic” aspect of ground rent identified in the UK government’s consultation.

### *Impacts of delayed implementation*

47. The CMA recognises that some market stakeholders, such as freehold investor groups, may foresee benefits to a short delay in implementation if this permits them to restructure funding arrangements to accommodate a reduction in future income (we note that the process of considering available options may in any event commence in advance of implementation of a cap). The impact of delay on leaseholders, however, is that they will continue to be impacted by the collection of ground rent and, in some cases, the level of ground rent charged may increase substantially during an offset implementation phase where, for example, a rent review period in the lease is due.
48. Given that the amounts of ground rent payable by leaseholders can in some cases be substantial, from a consumer perspective there is a compelling rationale for implementation without delay.

## *Uprating ground rents*

49. From a consumer perspective, if no service or other advantage is being provided in return for ground rent, it is hard to see the justification for any uplift in future ground rents.
50. In the context of service contracts under which (in contrast with ground rent) a tangible service is provided in return for consideration, the CMA set out its general stance towards in-contract price rises in its November 2022 response to [the Advertising Standards Authority's \("ASA"\) consultation relating](#) to a code of practice concerning fixed term broadband and mobile phone contracts. At page 4 of the CMA's response it was noted that:
- "...section 68 of the [Consumer Rights] Act requires a consumer notice to be written in plain and intelligible language - in addition to being prominent – so that consumers can make an informed choice without undue further investigation. The CJEU, in RWE and Kasler, has explained that the Act's requirement of plainness and intelligibility means that a term or notice should not only make grammatical sense to the average consumer, but must also put him in the position of being able to "evaluate, on the basis of clear, intelligible criteria, the economic consequences for him which derive from it [the term or notice]"*
51. As outlined above at paragraph 39 we think there is a good basis on which to doubt that the majority of consumers can understand and forecast their future liability for increased costs under index-linked price rises.
52. Of course, service contracts differ substantially from the payment of ground rent under a lease and as noted above we doubt that in ground rent anything is provided in return for the periodic payment. However the concerns about service contracts are relevant to increases in ground rent and to an even greater extent because of the substantially higher financial commitments

involved for leaseholders together with much longer length of time that the leaseholder is likely to be locked into a leasehold contract.

53. That ground rents will rise in future (or have already risen) by an amount which may not be readily ascertained by consumers in their property search creates the risk that consumers cannot make sound and timely judgements about the relative value of properties which otherwise meet their suitability criteria – even where such consumers are legally advised at a later stage. Accordingly a cap which reduces the likelihood of such uncertainty (which a cap that allows uprating of ground rent may not achieve)<sup>26</sup> is more likely to result in a leasehold market which offers greater transparency to prospective purchasers. In many of the leases we saw during our investigation where ground rent could rise in line with RPI, there was no equivalent term providing for a decrease in ground rent should there have been a negative change in RPI over the relevant period.

**iv. Service charges; refunds and compensation for consumers/freeholders; and ground rent cap exemptions.**

**Service charges vs. ground rent**

54. As outlined in paragraph 13 above we saw no persuasive evidence in our leasehold investigation that consumers receive anything in return for ground rent. We agree with the general proposition in paragraph 1.77 of the consultation document that matters relating to management and maintenance costs are addressed separately through service charges (where buildings are

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<sup>26</sup> Noting that the current rate of ground rent may not appear on the face of the lease.

not self-managed). To the extent observations made in the [CMA's 2014 Market Study regarding Residential Property Management Services](#) are likely to remain relevant on this point, its findings also indicated that these charges have tended to be identified separately, for example see paragraphs 4.82-4.91.

55. The CMA notes the reference in paragraph 1.76 of the consultation document to a code of practice proposed by a number of freeholders. While industry-led proposals for improvement are to be welcomed where these can comprehensively address issues affecting leaseholders, we remain mindful that at the time of responding to the present consultation, and as outlined on our case page and at paragraph 10 above, the CMA continues to engage with a minority of investor freeholders who have not yet given undertakings to address our concerns and assist consumers. Observations made at paragraph 1.34 of the consultation, that not all freeholders who signed up to the public pledge<sup>27</sup> have subsequently followed through on the commitment to assist leaseholders, accord with what we saw when we looked at this early in our investigation.

56. As noted above, even if the majority of freeholders wish to see improvements for all leaseholders secured consistently across the market, some may not support such improvements in practice, and comprehensively better standards for all are only likely to be achieved through legislative reform.

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<sup>27</sup> [Public pledge for leaseholders - GOV.UK \(www.gov.uk\)](#)

## **Compensation for freeholders / landlords and refunds for leaseholders**

57. We have explained above that the remedies in our investigation and enforcement cases include compensation for freeholders and refunds for leaseholders. That ground rent should be refunded reflected the jurisdiction under which we acted in which unfair terms are treated as having had no effect. Therefore amounts of ground rent collected were wrongly collected and had to be repaid. We note that this will remain the case in respect of rent paid under unlawful ground rent clauses even if the UK government decides to cap ground rent for the future. That developers should compensate freeholders reflected an important component of our remedies given that developers had created and then sold freeholds with the benefit of unlawful terms.

58. However, we can see that these may not be germane considerations where the UK government is planning to cap ground rents to modernise the housing system and/or to ease cost of living pressures on the public. The UK government could, if it agrees that less than 20-year doubling clauses are an egregious case, legislate specifically to require repayments of ground rent already paid. The burden of reimbursement could be shared between those who have received the ground rent and those who have profited from the sale of freeholds.

## **Exemptions**

59. In respect of the application of any appropriate exemptions from a ground rent cap, the CMA's concern would be that an exemptions regime should not permit adverse outcomes for some groups of consumers as a result of



opportunistic behaviours by a sub-set of freeholders who may seek to exploit perceived 'loopholes'.

60. For example, one exemption for consideration is at paragraph 1.99.B. "*A long residential lease where the current freeholder can prove they have negotiated an agreement resulting in the current leaseholder not having to pay a premium*". We understand the concern behind this possible exemption.

However the CMA is aware that it is possible for interconnected or related companies/individuals to hold both the freehold and the leasehold interest in a property simultaneously, and in that context to 'agree' a variation to lease terms, at no premium, introducing adverse ground rent terms, whose burden may then fall entirely on a subsequent leasehold-purchaser or under-lessee. It would be helpful to ensure any exemptions framework limits the scope for such practices.

**Competition and Markets Authority**

January 2024