



**Law
Commission**
Reforming the law

Leasehold home ownership: buying your freehold or extending your lease

Law Commission Consultation Paper

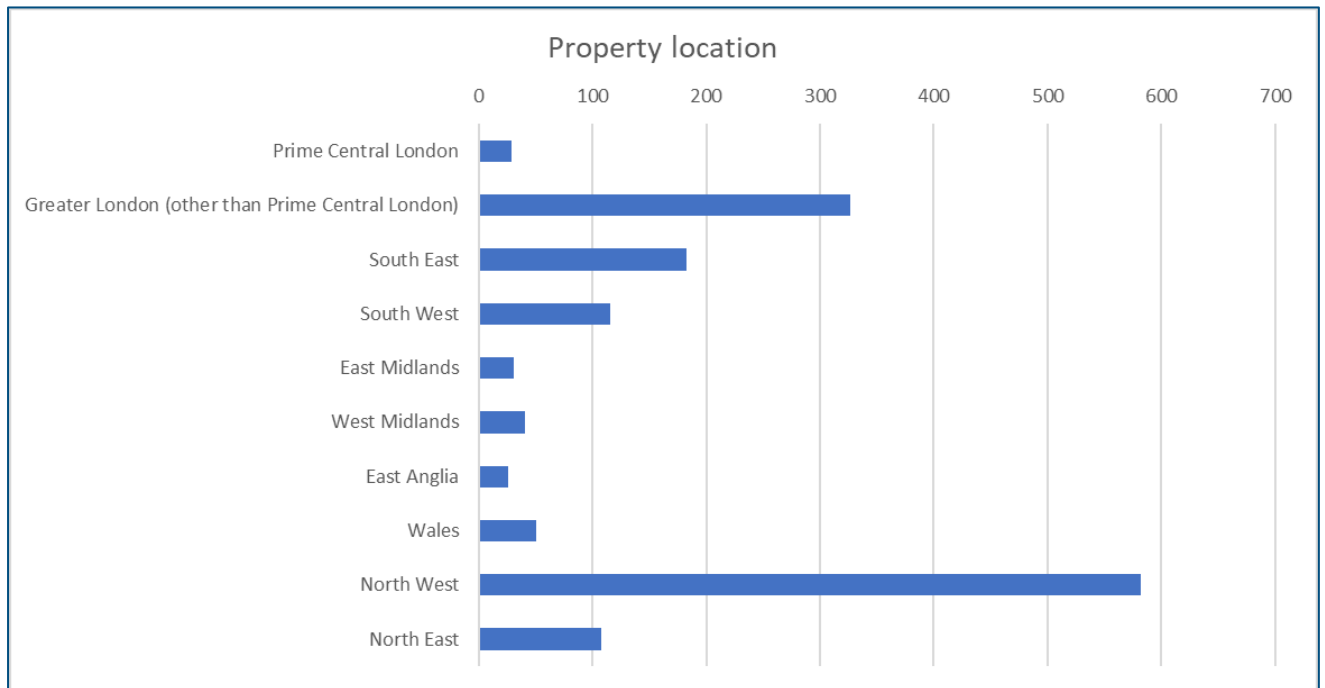
Analysis of responses to Leaseholder Survey

LAW COMMISSION LEASEHOLDER SURVEY ANALYSIS

- 1.1 Alongside our online form for responding to the Consultation Paper (*Leasehold home ownership: buying your freehold or extending your lease*), we also provided a “Leaseholder Survey”. The idea of this survey was to hear directly from leaseholders and former leaseholders about their personal situations, the types of properties they owned on a leasehold basis (either prior to enfranchisement or sale, or currently) and the nature of their leases, as well as their experiences of enfranchisement (if any). It was not intended to be a detailed review into the nature of the leasehold market, and we are fully aware that the responses do not provide statistics from which we can reliably extrapolate across the millions of leasehold properties in England and Wales. However, the survey has been extremely useful in providing a window into some of the issues affecting leaseholders themselves. Although we are not able to engage with each person individually, the responses we received to this Survey have fed into our options for reform in relation to valuation, as well as the recommendations for reform that we will be presenting in our subsequent report on enfranchisement. The responses provide real-world and useful examples of some of the issues arising in leasehold and enfranchisement law.
- 1.2 1,507 people responded to the leaseholder survey: several hundred more than responded to the Consultation Paper. There was a wide variety of responses to the leaseholder survey, in terms of geographical location, types of property, types of landlord, and the length and terms of leases.
- 1.3 Throughout the responses to the Leaseholder Survey, the strength of feeling of many leaseholders was apparent. A large number of leaseholders expressed their anger at the situation in which they found themselves, and at the perceived injustices with leasehold. There were also many leaseholders, as is raised below in the analysis, who found their ownership of a leasehold property, along with their attempts at enfranchisement or sale, to be highly emotionally distressing, or a source of significant stress or unhappiness. We thoroughly appreciate the time that leaseholders have taken in responding to this survey, and in expressing their views to us.
- 1.4 Below, we consider – at a high level – the responses we received. Some of the questions we asked can be and are analysed statistically, though the statistics must be treated with an appropriate level of caution, as we appreciate that they may not be representative. Other questions required substantive answers, and we give a brief overview of some of the key points made by leaseholders or former leaseholders in responding to the survey.

Geographical location of properties (Question 3)

1.5 The responses in respect of the geographical location of properties were as follows (in respect of the 1,494 people who responded to this question).



Property location	Total	Percent
Prime Central London	29	1.94%
Greater London (other than Prime Central London)	327	21.89%
South East	183	12.25%
South West	116	7.76%
East Midlands	31	2.07%
West Midlands	41	2.74%
East Anglia	26	1.74%
Wales	51	3.41%
North West	582	38.96%
North East	108	7.23%

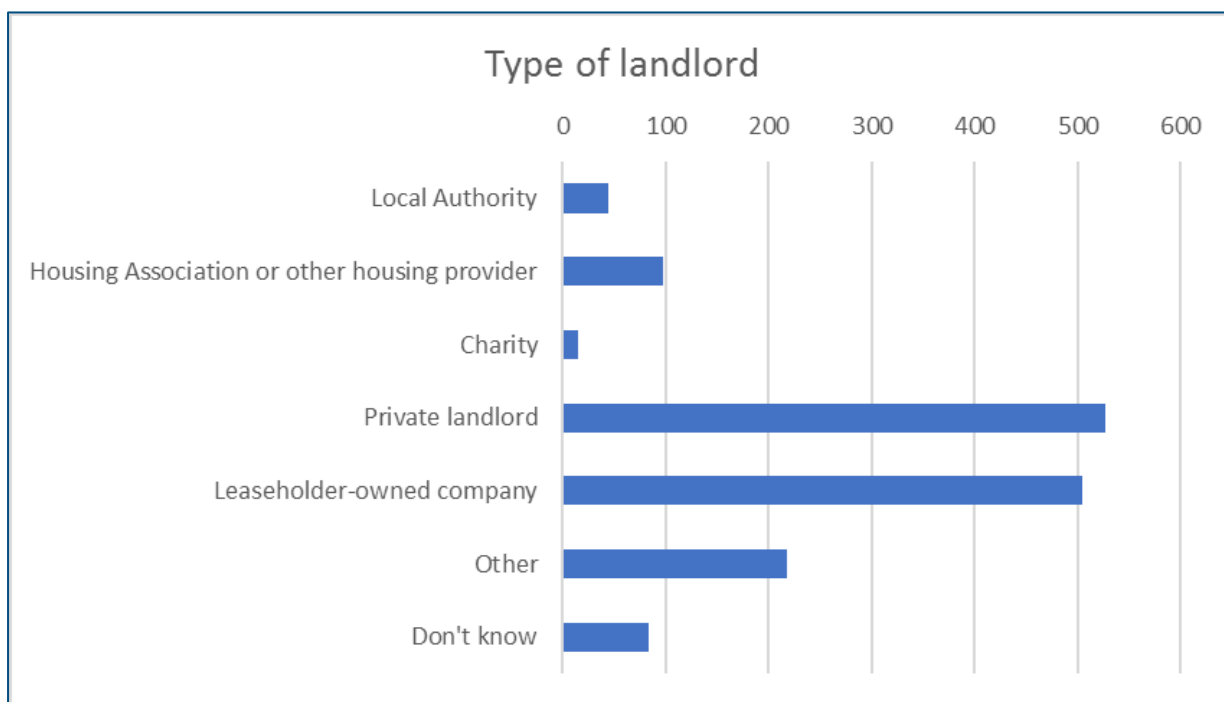
House or flat (Question 4)

1.6 We asked those answering the survey whether they had a lease of a flat or a house. Of the 1,492 respondents who answered this question, about half were leaseholders of houses and half were leaseholders of flats. The exact statistics were as follows.

House or flat	Total	Percent
A house	767	51.41%
A flat	725	48.59%

Type of landlord (Question 5)

1.7 We also asked respondents about the type of landlord they had. In respect of the 1,490 people who responded to this question, the results were as follows.



Type of landlord	Total	Percent
Local Authority	45	3.02%
Housing Association or other housing provider	98	6.58%
Charity	15	1.01%
Private landlord	527	35.37%
Leaseholder-owned company	504	33.83%
Other	218	14.63%
Don't know	83	5.57%

1.8 We asked those who answered “Other” to give further detail. 314 people responded to the “Other landlords” free text box. While this number was primarily composed of those who had chosen “Other” in response to the tick-box part of the question about types of landlord, some respondents who had chosen a specific type (such as “Private landlord”) provided further details about their landlord. Most of those in the latter category named the actual freeholder or landlord in their particular case. The key themes which emerged from those who responded to this question were as follows.

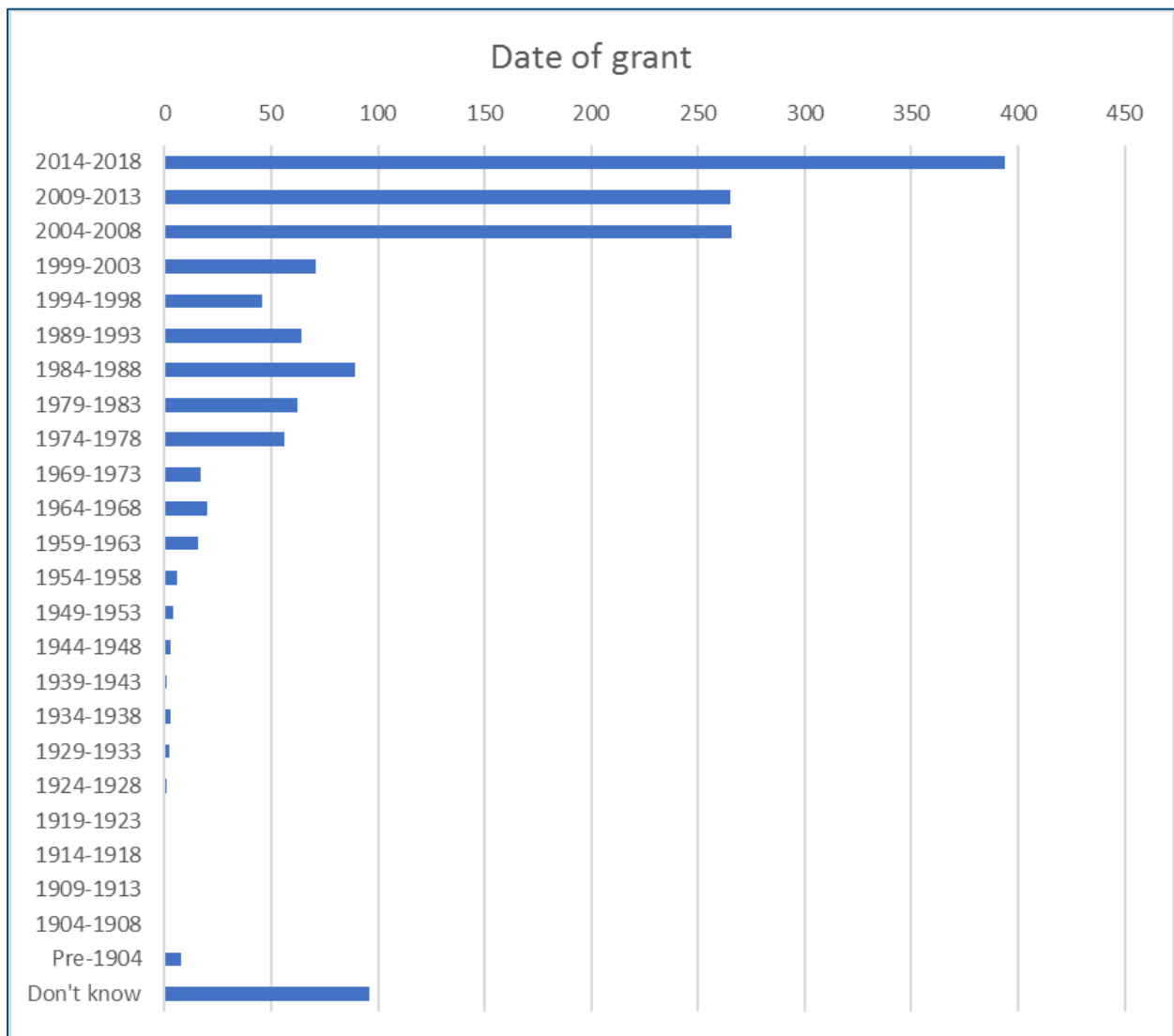
- (1) Many of the substantive answers from those people who ticked “Other” also aligned with the options we provided. For example, the majority of people who answered the tick-box as “Other” then named their landlord (usually a well-known private investor or developer). Others explained that they had a “private landlord”, often including more details, such as the fact that the landlord was a “live-in” landlord, or that the landlord had registered and transferred the freehold to a limited company. Others explained the changes of ownership of the

freehold which had occurred during their time as leaseholder – where the freehold had been sold on, usually to a private investor.

- (2) A small number of people responding were either freeholders or had previously been freeholders, or had a share of the freehold (for example, before an enfranchisement claim was made against them). These people also explained how their freeholds were currently held: usually by a leaseholder-owned company. Some respondents also explained that their landlord is a leaseholder-owned company or a residents' association (often following a collective enfranchisement), where only some of the leaseholders are members of the company – and others are leaseholders only. A few responses implied that the freehold of a small block was held in the joint names of the neighbours, rather than through a company.
- (3) That said, there were a variety of different types or identities of landlord which were raised by those responding to the survey. Notable among them were numerous construction companies or developers which built the building (one particular example being developers of retirement villages), investors or companies based overseas, insurance companies, absent landlords, and charitable landlords. Several people referred to their freeholder or landlord merely as a "property speculator".
- (4) Some people could not identify their freeholder, writing that communications they received (regarding, for example, the collection of ground rent) were from an agent instead, and that the leaseholders had no means of identifying the landlord. Others identified the managing agent as their landlord.

Date of grant and length of lease (Questions 6 and 7)

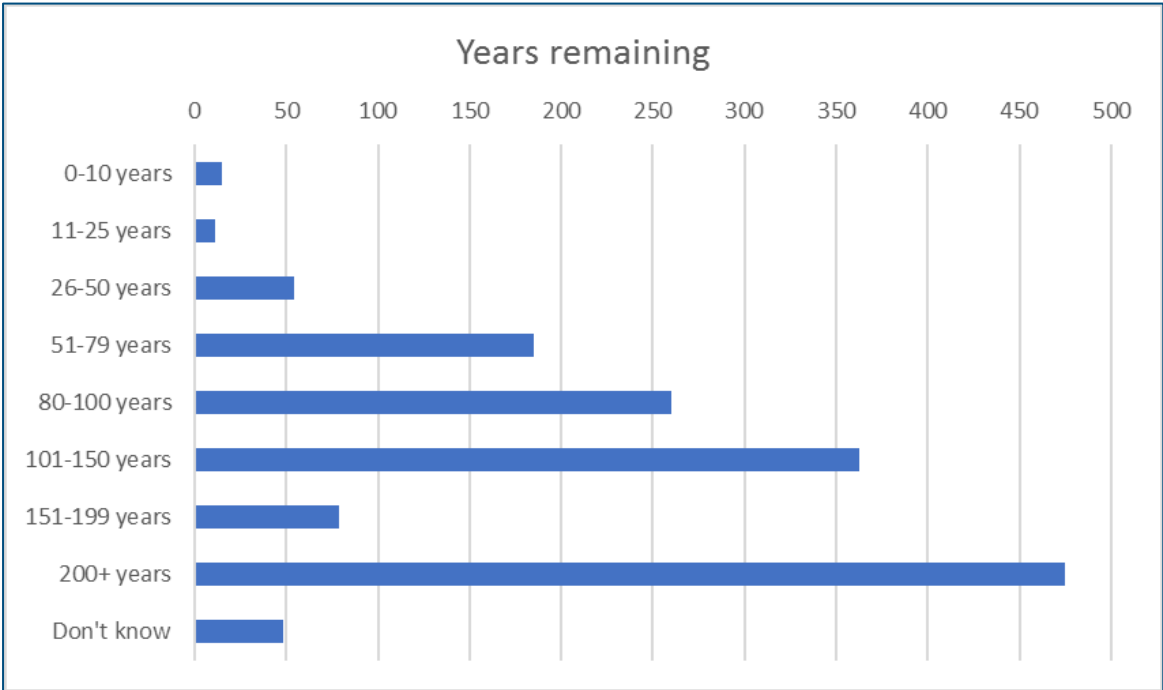
1.9 We asked respondents when their lease was initially granted (Question 6). There was a wide spread of results. It is notable that a majority of responses indicated that their leases were granted since the year 1999 (around 71.4%). In respect of the 1,490 people who responded to this question, the statistics are as follows.



<u>Date of grant</u>	<u>Total</u>	<u>Percent</u>
2014-2018	394	28.26%
2009-2013	265	19.01%
2004-2008	266	19.08%
1999-2003	71	5.09%
1994-1998	46	3.30%
1989-1993	64	4.59%
1984-1988	89	6.38%
1979-1983	62	4.45%
1974-1978	56	4.02%
1969-1973	17	1.22%

1964-1968	20	1.43%
1959-1963	16	1.15%
1954-1958	6	0.43%
1949-1953	4	0.29%
1944-1948	3	0.22%
1939-1943	1	0.07%
1934-1938	3	0.22%
1929-1933	2	0.14%
1924-1928	1	0.07%
1919-1923	0	0.00%
1914-1918	0	0.00%
1909-1913	0	0.00%
1904-1908	0	0.00%
Pre-1904	8	0.57%
Don't know	96	6.89%

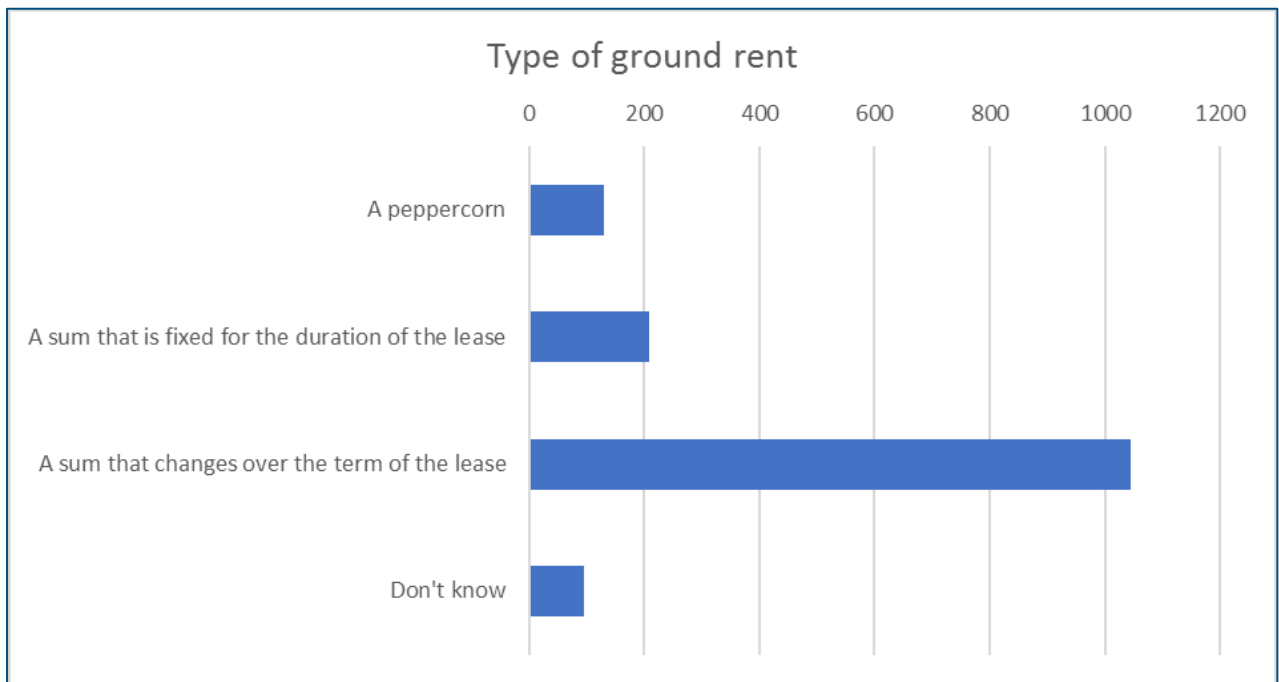
1.10 We also asked how many years remain on respondents' leases – and, if they no longer had a lease because they had acquired the freehold, how many years remained when they did so (Question 7). In respect of the 1,490 people who responded to this question, the statistics were as follows.



<u>Years remaining</u>	<u>Total</u>	<u>Percent</u>
0-10 years	15	1.01%
11-25 years	11	0.74%
26-50 years	54	3.62%
51-79 years	185	12.42%
80-100 years	260	17.45%
101-150 years	363	24.36%
151-199 years	79	5.30%
200+ years	475	31.88%
Don't know	48	3.22%

Ground rent (Question 8)

- 1.11 We asked several questions about ground rent (there were several parts to Question 8).
- 1.12 First, we enquired what type of ground rent obligation those responding to the survey had under their lease. The results were as follows in respect of the 1,478 people who responded to this part of the question.

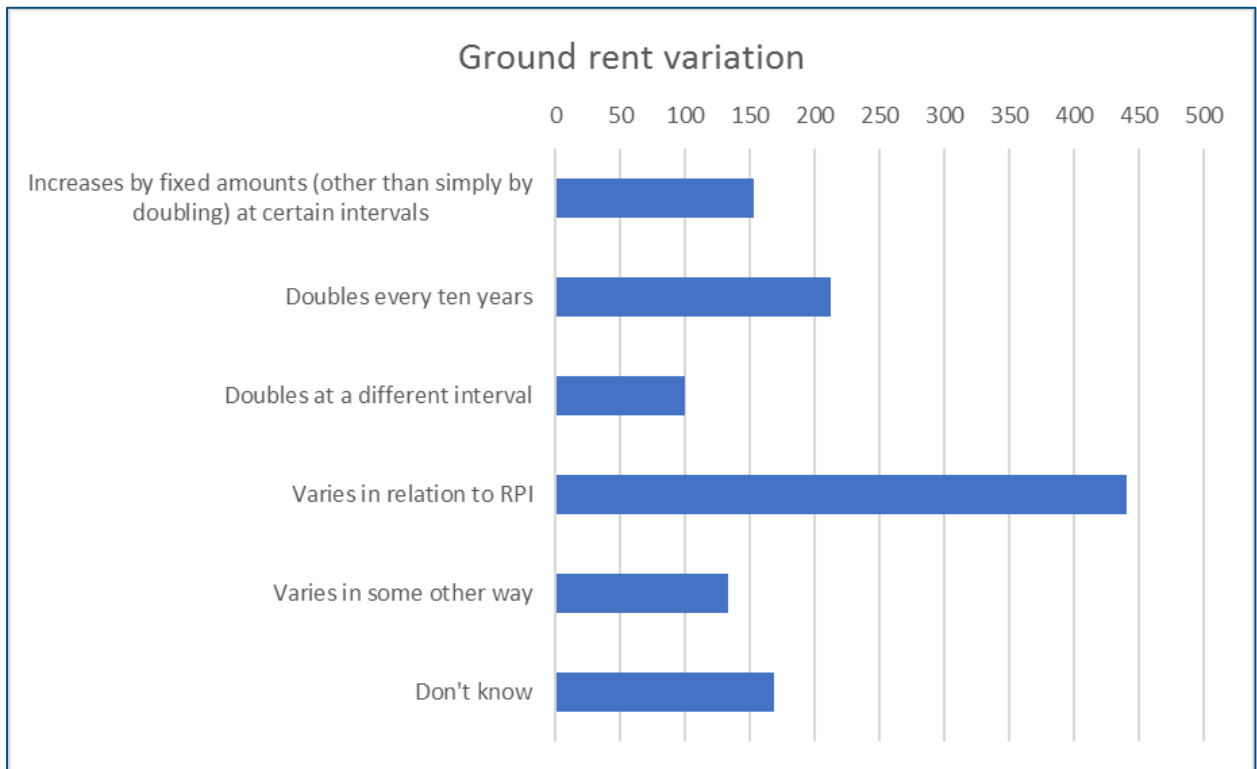


<u>Type of ground rent</u>	<u>Total</u>	<u>Percent</u>
A peppercorn	130	8.80%
A sum that is fixed for the duration of the lease	208	14.07%
A sum that changes over the term of the lease	1044	70.64%
Don't know	96	6.50%

- 1.13 Secondly, we asked those who had ground rent obligations *other* than a peppercorn what their ground rent was at the beginning of their lease. 855 people responded to this, and the key themes were as follows.

- (1) Numerous leaseholders gave the initial figure for their ground rent, and explained that they did not know whether there would be any increases during the lease. The most common figures were £10, £50, £100, £125, £150, £200, £250, £295, £300, £350, £400 and £500.
- (2) Some initial ground rents were notably high – for example, one at £2,600 per annum. It was also notable that some of the ground rents’ starting figures were above 0.1% of the purchase price: one leaseholder wrote that their purchase price was £149,995, and that the ground rent started at £295 (rising in line with the retail price index – “RPI” – every 10 years).
- (3) Further information about the ground rent reviews in these leases is given below.

1.14 Thirdly, we asked about ground rent variations in the leases of those responding. The results were as follows regarding the 1,206 people who responded to this part of the question.



Ground rent variation	Total	Percent
Increases by fixed amounts (other than simply by doubling) at certain intervals	153	12.69%
Doubles every ten years	212	17.58%
Doubles at a different interval	100	8.29%
Varies in relation to RPI	440	36.48%
Varies in some other way	133	11.03%
Don't know	168	13.93%

1.15 For those who had “Other” types of variation in their ground rents, we asked for more detail. 222 people responded specifically to this question – but many responding to the previous part of the question (concerning the starting figure of their ground rent if not a peppercorn) also included details of their ground rent reviews, and their answers are considered together with those responding to this part of the question. The key themes were as follows.

- (1) There were many instances of a doubling ground rent, frequently every 10 years, but other periods included 15 years, 25 years and 33 years.
- (2) Other leaseholders explained that their ground rents increased with RPI (at intervals such as every 10 years, but other periods included 25 years, 15 years, 7 years, 5 years, and even 3 years). Others stated that their ground rent was tied to CPI.
- (3) Others increased by a fixed amount, such as by £150 every 10 years.
- (4) Others increased by some other amount. For instance, one leaseholder wrote that his or her ground rent was “1/500th of the property value, reviewed every 33 years”. Another wrote that the ground rent “doubles or 1/1000th of the market value, whichever is the highest, every 15 years”. Others explained that the review is to 0.1% of the value of the property at each review period (two examples being every 23 and every 25 years).
- (5) Other reviews were apparently more discretionary. A number of people explained that their landlord could decide their ground rent at the review. Others referred to a “Rent Officer” or “Board of Directors” or other body or mechanism for determining the new ground rent at the reviews.
- (6) Some ground rent review periods altered through the term of the lease – for instance, with a first review after 10 years and subsequent reviews every 5 years.
- (7) Some leaseholders explained that their ground rent escalated over a period then remained static for the remainder of the lease – for instance, several 10-yearly doubling ground rents became static after 50 years.
- (8) Some review formulae were more complicated. One example given was as follows.

The rent is restricted to $\frac{2}{3}$ RV minus £1 and is reviewed at 60 and 85 years.

- (9) Some leaseholders referred to having converted their doubling ground rent to a RPI-linked increase following negotiations with their landlord.
- (10) Other leaseholders explained that they had extended their lease under the 1967 Act and were now paying a modern ground rent. One example of this was given as follows.

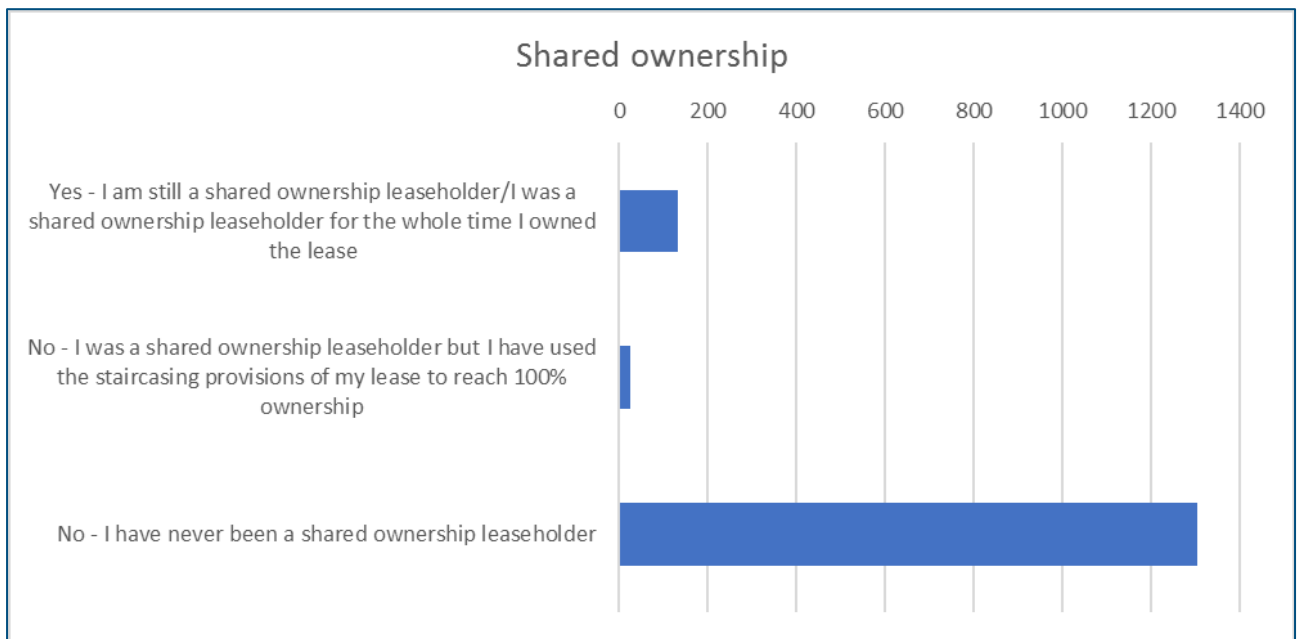
The ground rent was originally £250 p.a. Following a 50-year extension under the 1967 Leasehold Reform Act the ground rent increased to £35,000 Modern

Ground Rent in 2001. We are due a rent-review 25-years after that date in 2026. The lease expires in 2051.

- (11) Comments were also made by shared ownership leaseholders, who explained how it was difficult to identify whether any ground rent was payable alongside the market rent on the “unowned” share of the property.

Shared ownership (Question 9)

1.16 In the Survey, we asked whether people owned a shared ownership lease (or a lease which had been bought as a shared ownership lease). In respect of the 1,460 people who answered this question, the results were as follows.

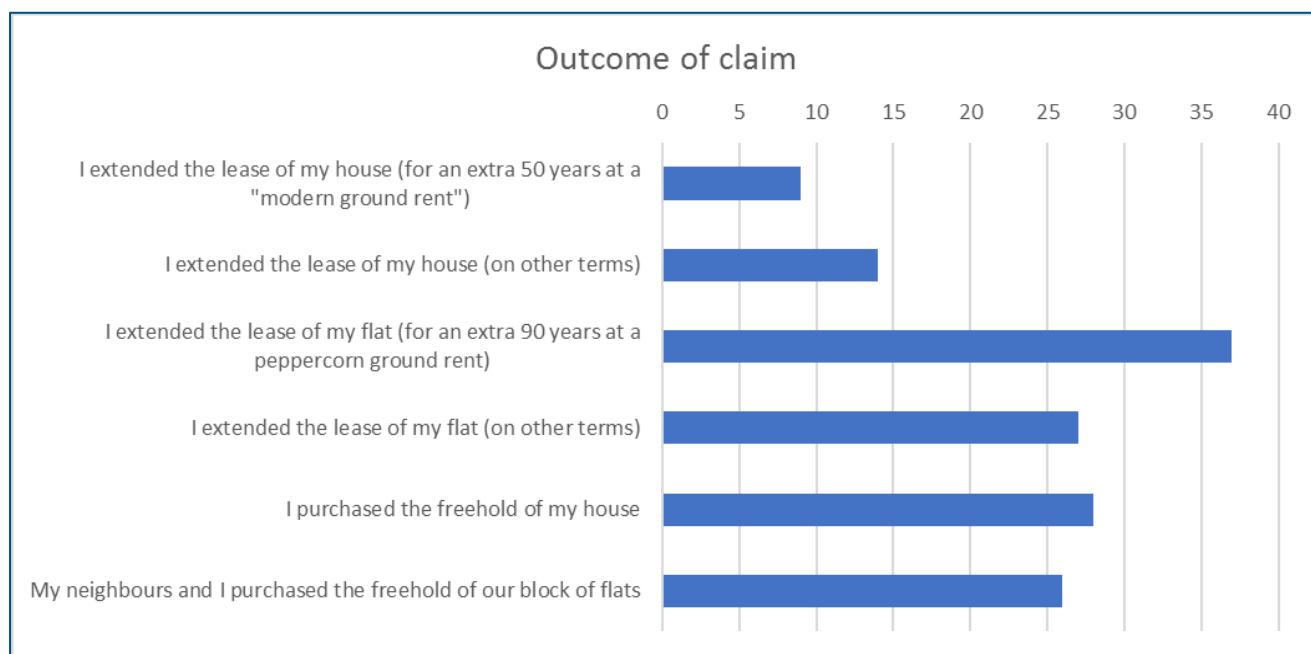


Shared ownership	Total	Percent
Yes - I am still a shared ownership leaseholder/I was a shared ownership leaseholder for the whole time I owned the lease	132	9.04%
No - I was a shared ownership leaseholder but I have used the staircasing provisions of my lease to reach 100% ownership	25	1.71%
No - I have never been a shared ownership leaseholder	1303	89.25%

Enfranchisement claim (Questions 10 to 13)

Outcome of claim (Question 10)

1.17 Finally, we asked about the experience of conducting an enfranchisement claim. First, we asked about the outcome of any enfranchisement claim made by respondents (Question 10). Only 141 people responded to this question – and the results in respect of those people were as follows.



Outcome of claim	Total	Percent
I extended the lease of my house (for an extra 50 years at a "modern ground rent")	9	6.38%
I extended the lease of my house (on other terms)	14	9.93%
I extended the lease of my flat (for an extra 90 years at a peppercorn ground rent)	37	26.24%
I extended the lease of my flat (on other terms)	27	19.15%
I purchased the freehold of my house	28	19.86%
My neighbours and I purchased the freehold of our block of flats	26	18.44%

Experience of enfranchisement (Question 11)

1.18 We then asked people to give details about the experience of exercising enfranchisement rights (Question 11).

1.19 The vast majority of responses were negative about the enfranchisement process. The key themes (from 240 responses) were as follows.

- (1) Many people who responded explained that the process of enfranchising took over a year, with some stating that it took significantly longer (one example being "the process took around 3 years, from notifying the freeholder informally

in Nov 2015, the extension was finally signed off by the freeholder in Feb 2018 and we received the paperwork from the land registry in Oct 2018”).

- (2) Enfranchisement was described by many along the following lines: a “very long painful experience”, and “awful”. The main theme which emerged from responses was that the process was “too costly”. In fact, some leaseholders wrote that this had meant that they had not been able to enfranchise. Others explained that the fees incurred by the landlord had been “excessive”.
- (3) Some people stated that they had not commenced the enfranchisement process because they would have to pay a significant amount merely to find out how much enfranchisement would cost: “it will cost me money to simply find out how much I can buy my lease for”.
- (4) One element of the premium which was raised by numerous respondents was marriage value. Leaseholders and former leaseholders contended that “the calculation of marriage value is complex and not easy to understand for non-technical or legal people”, and some went further in arguing that is an “inexplicable artifice of no merit other than to serve as a penalty to longstanding leaseholders”.
- (5) Others raised costs associated with specific elements of the enfranchisement process. For example, a leaseholder of a house stated that she had to engage solicitors to prove that her property fell within the low rent test “at a considerable cost”.
- (6) Other leaseholders of houses raised the fact that on a lease extension under the 1967 Act, the modern ground rent was expensive – tending towards a “full market rent” (despite one such leaseholder writing that the extension had been described to them as “free”).
- (7) We were told that some landlords faced with enfranchisement offered informal extensions or freehold transfers to leaseholders, inserting onerous terms into leases and retaining high or doubling ground rents. Many respondents also explained that their landlord attempted to maintain all permission fees and other fees in the lease on enfranchisement. A number of respondents who had obtained their freehold on an informal transfer described the outcome as “fleecehold”. One former leaseholder wrote that “what we got is not a true freehold... we still have the same leasehold terms – the only difference being we don’t pay ground rent”.
- (8) A repeated theme was landlords being “obstructive” to the process of enfranchisement, even when the process was being conducted under the legislation rather than informally. Some landlords demanded a higher premium by virtue of the leaseholder choosing to use the statutory route – many referred to landlords making an immediate “counter offer of £5,000 more since they know it will cost leaseholders at least that to oppose” or to take the case to Tribunal.
 - (a) One leaseholder explained that they had to “on more than one occasion... make applications to the Tribunal simply to protect our

position as the Freeholder always delayed responses until the last minute of deadlines". This point was made by other leaseholders – for instance, one leaseholder referred to legal fees incurred of £4,112:

this included fees to Tribunal to ensure claim not lost after 6-month delay in response on landlord.

- (b) We were also told about some landlords attempting to delay completion of the transfer of the freehold to increase costs – including, in one former leaseholder's case, an extra year's worth of ground rent.
 - (c) One respondent was a solicitor who helped his parents extend their lease. The landlord refused to engage in the process at all, until the day before the Tribunal hearing, when the premium was agreed. The solicitor said this followed the racking up of costs – particularly surveyor fees, and an abortive barristers fee (for preparing the hearing). Despite writing that the publicly-available information regarding enfranchisement is helpful (a view not echoed, in particular, by lay leaseholders), the solicitor wrote that it was a "very stressful experience", and that there is "no incentive at all on the landlord to agree a sensible figure. The procedure requires the tenant to 'do all the running' in terms of issuing and progressing the claim, paying the deposit, and having to cover the landlord's costs, and the landlord took advantage of this".
- (9) Other respondents mentioned the time limits causing them issues in the enfranchisement process. For instance:
- My first attempt at extending the lease was unsuccessful [because] the time lapse[d] and I was left out of pocket. As you have to wait a certain amount of time to start again I was left in limbo.
- (10) Numerous people also referred to the complexity of the process, writing, for instance, that the:
- legal information is not clear and difficult to understand, complex terms make it difficult to understand the process and implications of certain steps. There is not enough plain English explanation of how this works.
- (11) Some people commented on what they considered to be low standards of professionals in the enfranchisement process, along with their high costs. For instance, one leaseholder explained that they had to pay for the landlord's surveyors to value the flat twice (once for the informal extension offer, and then during the subsequently commenced statutory process), and neither time did the surveyor attend the flat, despite costing several hundred pounds. Another wrote about the difference in price and approach between her surveyor and her neighbour's surveyor, stating that she believed that her choice of surveyor had cost her thousands of pounds more in terms of the premium.
- (12) Other issues which were raised included determining the boundaries on a collective enfranchisement (where, for example, leaseholders are "breaking out our block from a larger property"), or the obligations which were to be

undertaken by leaseholders following the collective enfranchisement (“the site had in olden times been a fur and skinning factory and leaseholders raised concerns about potentially harmful materials having been disposed of (such as tanning chemicals of carcasses) on site”). Some leaseholders had struggled to identify or contact their landlord, which had added to the time and costs of the process – with one particular example involving an absent freeholder who appeared to be in breach of repair obligations, but who still wanted, when the leaseholders managed to find them, “the highest premium possible”.

- (13) The difficulties of undertaking a collective enfranchisement were raised by a number of people. Some were prevented by the qualifying criteria required to undertake a claim – one criterion which was raised by numerous people was the 25% non-commercial use threshold. Other criteria included the 50% actual participation requirement: one leaseholder wrote that her block has “lots of first-time buyers who used ‘help to buy’ They have no money to buy the freehold, this means we can’t get half of them together to purchase the freehold”.
- (14) Various special provisions and exceptions appeared in the responses. One leaseholder wrote that she lives in a two-unit building and cannot enfranchise because the other leaseholder also owns the freehold. A different leaseholder explained that they had been prevented from enfranchising due to the rural exemption in the 1967 Act.
- (15) As was the case in consultation responses, we also heard from some people who had never held a lease of a term longer than 20 years, and thus who did not qualify for enfranchisement rights. There were also a number of responses from leaseholders of “chalet” or bungalow-style properties, who explained that they were having to go to court to prove that their properties were “houses”. One leaseholder explained that these properties are “brick-built, permanent dwellings; they have water, power, attract council tax”.

1.20 However, some people responding were positive about the enfranchisement process.

- (1) One former leaseholder who had undertaken a collective enfranchisement explained that their landlord had been “entirely amicable and cooperative (though commercial)” throughout – highlighting the issue of the 80-year marriage value threshold, for instance. This person explained that, due to the cooperation of the landlord in this case, the leaseholders had agreed to give a leaseback of the non-participants’ flats to a corporate emanation of the landlord rather than to the landlord itself – a slight departure from the norm.
- (2) One theme which arose was that when leaseholders “teamed up” with their neighbours, it led to reduced costs. One leaseholder wrote “six of my leasehold neighbours joined me so we achieved relatively low unit expenses... no difficulties encountered”. Someone else explained that they managed to save costs on an extension of a relatively short lease because she teamed up with her neighbour to use the same consultants, describing the process of enfranchisement as “relatively straightforward”.

- 1.21 We also had responses from a few people who had had enfranchisement claims made against them and who raised issues with the enfranchisement process. One example considered the problem of notices.

The current law allowed my freehold to be taken away from me. In a block of 4 flats two flat owners (one a solicitor this with greater understanding of the law) took the freehold away from the other two. The solicitor, now the freeholder, created the lease which is flawed and the building is currently in very bad repair. It may be important to note that the legal papers were delivered to an address at which I did not live, (I was overseas for some months) but this was apparently legal, so I was not even aware of the legal proceedings.

- 1.22 Another couple of respondents explained that they had held a third-share or the whole of the freehold, but their neighbours collectively enfranchised against them, and did not let them join in. One wrote that that her neighbours subsequently granted themselves 999-year leases, leaving her with her old lease which is now approaching the 80-year mark. The other respondent explained that she would simply like a one-third share of the freehold.
- 1.23 Some people wrote about their experience of leasehold generally, rather than of enfranchisement. There were responses, for example, in which people said they had been mis-sold leasehold flats on doubling ground rents which had now been rendered unsellable and unmortgageable.
- 1.24 Further detail on the difficulties with the enfranchisement process is contained in the analysis of the responses to Question 13 below.

Other terms (Question 12)

- 1.25 We also asked respondents who replied that the outcome of their enfranchisement claim had been to extend the lease of their flat “on other terms” what those “other terms” were, and why they had been accepted (Question 12). The key themes (from 90 responses)¹ were as follows.
- (1) A number of leaseholders explained that they had agreed a peppercorn ground rent for the future. It is not entirely clear from some of the responses whether this was through an “informal” agreement, or whether it was through the 1993 Act procedure. However, with some there was clearly an informal arrangement resulting in a peppercorn ground rent, such as:
- We added 100 years to the lease and abolished ground rent.
- (2) Other leaseholders had agreed ground rents other than a peppercorn, with one example being “for a 125-year lease and ground rent £200 doubling every 25 years”. Other doubling ground rents which were mentioned had review periods of 20 years.

¹ More than the number who, in fact, chose that option on the survey, as some responses were not related to the question and numerous people simply responded “N/A”.

The freeholder insisted on increasing the ground rent from £150 to £300 immediately on extension of the lease, and then doubling every 25 years of the lease thereafter. I accepted these terms as my lawyers advised me that the freeholder was not willing to negotiate this point.

Other leaseholders appeared to accept different terms due to a reduction offered in the premium. For instance, one wrote that he:

had a limited budget and the freeholder was 'being considerate' allowing us to proceed at a lower premium but for a considerably shorter lease. I wasn't happy about the £200 ground rent doubling every 10 years but I felt I had little option.

- (3) Other lease extensions appeared to result in the introduction or the increase of permission fees or other forms of fees, with one leaseholder explaining that he "had to increase the fee for new mortgage and other legal work from £25 to £75".

- (4) One leaseholder gave an example of a lease extension working in her favour.

As well as wanting £36,000 premium for a Statutory Lease Extension my landlord also offer[ed] a cheaper non-statutory RPI lease starting at £350 per annum with 10 year reviews for a premium of £21,750. I had prepared entirely on my own, a strong case for a Statutory Lease 90-year lease extension at a peppercorn rent. After several months negotiation I obtained a new lease which was 90 years longer than my existing lease for a premium of £5,500. My initial ground rent was reduced from £500 to £325 p.a. increasing by 30% every 10 years which is equivalent to a 2.66% annual increase which offers certainty and should work out cheaper than an RPI linked lease. I decided it was not worth my while to pursue my case to a hearing at the FTT for a statutory lease extension. This would probably have cost me a premium of at least £15,000 which I thought was not worth it. I had prepared a very strong case for a lowish premium for a Statutory lease extension. This gave me some leverage. I realised that Landlords will do their utmost to retain some kind of financial interest in the property. I was pleased that I achieved a very fair compromise. I did not use a valuer having been very disappointed with my valuer's actions and performance on a previous lease extension. Because valuers work both for Landlords and Freeholders they are often too quick to accept an easy compromise which is often not in the leaseholder's best interests.

- (5) Another leaseholder explained that the statutory route had its disadvantages: "primarily if the process failed we couldn't try again for a few years and our lease was getting very low", explaining that "by initially pursuing the negotiation route we could test out the waters and upscale to the statutory route if necessary".

- (6) We were also told about other arrangements which were created following a collective enfranchisement, where the nominee purchaser granted very long (999-year) leases to leaseholders at no additional cost (as agreed in the participation agreement).

- (7) Some respondents explained that they had no choice in accepting other terms, because of the identity of their landlord (some of whom fell within specific statutory exemptions). One leaseholder had accepted an informal lease extension of 15 years “following a mediation process arranged shortly in advance of a County Court hearing on the case brought by the landlord seeking a denial of my right to enfranchisement” (on the basis that the lease was for fewer than 21 years).
- (8) Some leaseholders wrote that they had no knowledge of the statutory route.

Decision not to enfranchise (Question 13)

1.26 We asked people who had considered exercising enfranchisement rights, but then decided not to (or were not able to), why this was the case (Question 13). There were 995 responses to this question.

1.27 The analysis of this question is broken down under the following subheadings.

- (1) Main problems
- (2) Nature of landlord
- (3) Nature (or ownership) of lease or premises
- (4) Collective enfranchisements
- (5) Leases of houses
- (6) Nature of leasehold ownership
- (7) Other comments
- (8) Positive views

Main problems

1.28 Once again, responses to this question revealed overwhelming negativity about the enfranchisement process.

1.29 The main reasons why those responding to this question explained that they had not enfranchised were as follows.

- (1) The **cost** of doing so. This was the most common reason given by leaseholders for their decision or inability to undertake the process of enfranchisement. This stemmed from a number of factors.
 - (a) Primarily, the premium was frequently referred to as being very high or too high. Many people merely responded “too expensive” to this question.
 - (b) Furthermore, there was a lot of uncertainty around the premium, causing concern to leaseholders at the start of the process (and allowing space for negotiation). One leaseholder explained that her valuer had given a lower estimate of £15,600 and a higher estimate of £59,100.

- (c) Numerous leaseholders referred to the costs of obtaining a valuation or an estimate of how much exercising rights would cost as “excessive” – putting them off even enquiring about enfranchisement (some leaseholders “are very concerned by the potential costs of not just the purchase but all the associated costs in actually getting to a price in the first place”). A large part of this was a feeling that “to simply get a quote from my freeholder I have to employ a solicitor which of course costs money”, following which the landlord would start to build costs at the leaseholder’s expense. A multitude of other respondents wrote that even to send an enquiry to their landlord, asking for an estimate of how much the freehold would be, costs money – “it costs £996 just to get a quote to buy the Freehold which is outrageous”, wrote one person, while another explained that “we had to pay £108 to get a quote”.
- (d) The uncertainty around the landlord’s costs was also a common theme, with a number of leaseholders explaining that “we are... totally in the dark about what they may try to charge as their legal fees”. These costs were said to increase where there is a headlease: “effectively two landlords... As I have to pay the legal costs of all parties this increases my charges considerably, particularly as there is no incentive on the part of the other parties to complete the process speedily”. One leaseholder who had extended her lease (and who was, by profession, a solicitor) wrote that:
- I felt that I had some advantages when compared with other home owners, because of my legal training. I still found the process to be stressful, particularly because it is so difficult to understand the likely overall costs and valuation at the outset. For me, my abiding feeling is of a sense of unfairness. This was largely with the level of the professional costs involved, for which I was liable, and which were a significant proportion of the premium that I ended up paying for the lease extension. The system appeared to favour the freeholder and the professionals, who had every incentive to draw out the process with negotiations at no cost to themselves, while my costs bill mounted.
- (2) The **complicated** nature of enfranchisement, alongside the inaccessibility and lack of clarity of the process. Numerous leaseholders, in response to this question, gave comments such as: “[I] would like to [enfranchise] but process too complicated and costly”, or that enfranchisement is “too complicated... too difficult getting enough on board and the freeholder has a reputation for opposing any enfranchisement and weaponising legal costs”. This was compounded, some said, by the lack of reasonable quality legal advice available in the market: “many practitioners are not aware of the process and options... it took 6 months to find a law practitioner who is actually knowledgeable and reasonable”.

Nature of landlord

- 1.30 Various other reasons for not pursuing enfranchisement were given. One leaseholder wrote that to attempt a freehold acquisition would have caused significant enmity between her and her landlord.

- 1.31 Some explained that the identity of their landlords prevented them from enfranchising, or restricted the exercise of rights (for example, through specific charitable exceptions).
- 1.32 Others explained that identifying the landlord at all, or determining where to serve notices, caused issues – particularly where the landlord’s address was offshore, or there were multiple such addresses. Others referred to their landlords as “obstructive”, or that they did not respond to requests for information, or were otherwise very uncommunicative.

Nature (or ownership) of lease or premises

- 1.33 Some people were in a difficult situation as a result of the timing of the acquisition of their lease, the nature of their lease, or the nature of their property.
- 1.34 A number of those responding explained that they had bought their leases within the past two years, and therefore had no rights to a lease extension until more time had passed. In some cases, this was expressly stated to be causing issues. For instance, one leaseholder wrote that she would have to wait for two years to elapse, but that “extending the lease today would cost circa £10k, in two years it will cost circa £14k”.
- 1.35 Regarding the nature of the lease, one example saw a number of respondents explaining the difficulties associated with shared ownership leases, with one stating that he had not been told that extending the lease would be an additional cost to staircasing to 100%. Furthermore, he explained that although the provider had provision for an informal extension process (arguing that there is no statutory right to extend), he would have to pay fees both to the provider and to a surveyor in order to obtain an indication of what such an extension may cost. Another leaseholder explained that the high number of shared ownership leaseholders in his block meant that a collective enfranchisement was not possible.
- 1.36 We also heard from a number of leaseholders of leases which were shorter than 20 years – some of which are over properties which have been held on a leasehold basis since 1930 on leases of varying lengths, but never above 20 years, so these leaseholders did not qualify for rights.
- 1.37 An example concerning the nature of the leaseholder’s property causing issues involved two-flat buildings. Several leaseholders wrote explaining that they were stuck with their leasehold flat because the other leaseholder in a two-flat building did not want to participate in a freehold acquisition, sometimes because of the cost involved. Another example given was as follows.

Our leasehold covers 3 out of the 4 floors of the property and the back garden. We live in over 70% of the floor space of the property. Yet the freeholder still owns the basement flat and freehold. Our front garden is overgrown and damp is rising from the flat below yet we are powerless to buy or obtain a share of freehold because technically there are two flats and we own one each.

Another leaseholder lived in a two-flat building, where the other flat was retained by the freeholder (as part of the freehold, rather than as a separate leasehold interest), and therefore the leaseholder was prevented from enfranchising.

- 1.38 Other cases where leaseholders had experienced problems included those where buildings fell foul of the “self-contained building” condition from the 1993 Act (“my building overlaps with a small section of a self-contained house to the rear of our property”), or the 25% non-residential use threshold.

Collective enfranchisements

- 1.39 There were also examples of different configurations causing issues for leaseholders who were attempting to carry out a collective enfranchisement claim. One leaseholder explained that her attempt at a collective enfranchisement claim had failed because the freeholder came into ownership of two of the four flats in the building, and subsequently surrendered his leases, so that the leaseholders fell short of the requisite qualifying criteria.
- 1.40 Other leaseholders, as mentioned in response to Question 11 above, referred to the difficulties in bringing together 50% of a block of flats in order to participate. This was a common theme, with numerous leaseholders explaining that “we couldn’t get the required number of leaseholders to sign up”. A theme which emerged from responses was that some leaseholders had found it difficult to explain to other leaseholders in their block of flats why pursuing a collective enfranchisement claim would be beneficial.

Some fellow residents just don't understand the whole process and are scared of the costs, delays. The guidelines should be clearer and simpler for all parties involved. The guidelines should bear in mind that there are people of varying ages, research abilities, experiences and qualifications.

- 1.41 One of the main related problems in attempting a collective enfranchisement claim, we were told, is the difficulty of identifying the other leaseholders in a block: “we do not have access to the details of the other flat owners, and nor will they have access to our information and with GDPR requirements, the opportunity to coordinate with fellow leaseholders to exercise this right is effectively blocked”. This was an issue raised by numerous leaseholders, another example being:

We wished to enfranchise but could not get the qualifying required number of tenants due to the managing agent’s refusal to give us the current owners’ addresses or names.

- 1.42 This difficulty was augmented, some respondents explained, by the high numbers of buy-to-let flat-owners (“we were unable to locate all our neighbour owner details as some of them are rented out”) and of foreign-owned flats in London. A low participation rate was said either to disenfranchise a block, or make exercising the collective rights prohibitively expensive: “we were first quoted £32,000 per flat, which rose to £54,000 per flat when some occupants could not afford to opt in”.
- 1.43 As a slight aside, the current lack of a right of estate enfranchisement was raised. One leaseholder wrote that his:

development consists of a mixture of individual bungalows and a block of flats. The current legislation only gives the right to the flat owners, thereby preventing us from a collective approach which is universally desired by all the residents.

Leases of houses

- 1.44 A common theme which arose particularly with regard to leaseholders of houses was that the leaseholders were told on purchasing the lease from a developer that they would be able to purchase the freehold for a nominal fee after two years. However, in the intervening period, numerous people explained that the developer sold the freehold interest to a third party (usually a commercial investor), often without informing the leaseholders. These commercial investors, we were told, tend not to wish to negotiate informally:

I contacted them again one last time to suggest a grown-up way forward was to avoid lengthy court processes. Given we both knew I could buy the property through enfranchisement I suggested I would be willing to pay a premium of what I would have paid for their and my legal fees to arrange the sale informally. This was again rejected.

- 1.45 Another issue which arose particularly in responses from leaseholders of houses, and which seems to have discouraged some people from enfranchising, was the fear of what some called “fleecehold” – freeholds burdened by leasehold-like covenants. For instance, one leaseholder wrote:

The main issue is that there is no guarantee that when I buy my freehold it would be completely free of the previous freeholder. They are keeping covenants in the transfer documents that would mean I would not have a true freehold free of other people’s interests in my property.

- 1.46 We also heard from leaseholders who, stemming from the “complexity” issue (and associated problems of inaccessibility and lack of clarity) raised above, were struggling to identify the very type of property they owned. For instance, one leaseholder wrote that his house is “a flat over three garages whereby the block is completely detached, one of the garages belongs to me and the other two garages belong to lessees of flats also on the development. I am unclear whether I am a 'house' or a 'flat' and whether I am allowed to enfranchise as a sole dwelling in my 'block'”. Further evidence of difficulties over the meaning of the word “house” was provided by other leaseholders – for example:

it is not certain that the property would fulfil the criteria for a 'house' as it is a bungalow on a Holiday Park. I would have to bear the expense of a case to the Property Tribunal for myself and the Landlord.

- 1.47 Another leaseholder of a terraced house had experienced problems, as it was not clear to whom the roof of the terrace was demised:

We hope that we will be able to buy the freehold but we are still very much nervous as to whether they will argue that the roof belongs to the landlord - rejecting therefore our right to enfranchise. The houses are structurally detached - only the roof is common in the terrace. We have extensively researched the literature on 'what is a house?' and we can't find any case law / decisions on whether we have the right to enfranchise if the roof is not expressly demised to us. Also, does the landlord maintain ownership of the roof and they can block our right to enfranchise if the lease doesn't specify that the roof belongs to them?

Nature of leasehold ownership

- 1.48 Some comments were made about the nature of leasehold ownership, including regarding the question of how voluntary a decision to buy a leasehold property with a significant ground rent is. One leaseholder explained that:

We have attempted to invest only in flats with peppercorn rents/share of the freehold but have found this very challenging. We had 4 aborted purchases incurring legal fees to withdraw once full lease details became available - details that are only available by progressing the sale to access lease details.

- 1.49 Numerous people said that they had been mis-sold their properties, not understanding the implications of various terms in the lease – or even knowing what a lease was when they acquired it. Some people attributed this lack of understanding to inadequate legal advice:

My solicitor did the minimum necessary, to cover their own liability and did not accurately describe how this trend has become so toxic (they used the phrase "unusually high ground-rent" in passing, and "there are considerable covenants that you must agree to").

- 1.50 Other issues regarding leasehold generally were raised, including the difficulties associated with selling a leasehold property which has a high ground rent (and particular reference was made to Ground 8 in Part 1 of the Housing Act 1988 in that context – and the associated difficulties of obtaining a mortgage over such leasehold properties), or with a short term remaining (but being unable to extend because of the high premium which would be required, increased by the inclusion of marriage value). A significant number of people wrote that they were in favour of a simple regime, with fixed costs, and several people expressed support for 10 times ground rent as the premium calculation methodology. Others referred to the difficulties associated with challenging service charges, and to what they considered to be substandard managing agents.
- 1.51 Many comments were also made about the offer from various developers to convert doubling ground rents to RPI-linked ground rents. Numerous leaseholders were worried about doing so, as accepting such an offer usually involves “giving up all right to claim against them”.

Other comments

- 1.52 A number of respondents wrote that they were waiting for the outcome of the leasehold reforms before attempting enfranchisement. One example is as follows.

I would like to purchase the freehold for my house, but am undecided at the moment as to whether to proceed now or to wait until the proposed new legislation is in force. It is an expensive business and at present I am uncertain whether waiting for the change in the law will save me money, or whether it will not make any difference or could even cost me more. If the legislation doesn't actually go ahead, then waiting will definitely cost me more as under the current system the shorter the lease the more enfranchisement costs. It's a dilemma I wish I didn't have to grapple with.

- 1.53 Many people also explained that they had found undertaking the enfranchisement process extremely stressful, and detrimental to their health. A significant number of respondents described themselves as feeling “trapped” in their homes, and many wrote that issues with leasehold generally, and the enfranchisement process, were taking up huge amounts of their time, alongside causing them serious emotional distress. There was a noticeable strength of feeling among many respondents, with many leaseholders angry about the situation in which they now find themselves.

Positive views

- 1.54 There were extremely few answers which expressed a positive view of why enfranchisement had not been pursued. One example of this concerned a retirement village.

I live on a retirement village development comprising apartments and cottages. As well as routine property management services the landlord provides a high level of services and facilities far in excess of "normal". For example, restaurant, bar, medical and health centre, bus service, laundry service etc. to name a few. Enfranchisement or indeed Right to Manage would allow residents to opt out thus destroying the economies of scale for the very services one bought into as a condition of the lease and which were explained to all residents on purchase.

However, many other leaseholders of properties in retirement villages expressed a strong desire to enfranchise.

I live in a house on a retirement estate of 24 houses. Many of us would like to purchase the freehold of the site but legislation applies to flats only. We are desperate to get away from the intimidation and bullying of our landlord.