



**Law
Commission**
Reforming the law

Leasehold home ownership: buying your freehold or extending your lease

Report on options to reduce the price payable

The Law Commission has rejected the most radical proposals for reform which included a multiplier of the Ground Rent or a percentage of the capital value. Whilst simple to implement and result in huge savings to leaseholders, the arbitrary results that it produced would be likely to result in a successful Human Rights Challenge by freeholders..a so called AP1P challenge (Article 1 of the First Protocol), which protects the right to the peaceful enjoyment of possessions.

However, they provide 15 options to reform the current valuation basis for the government to consider.

The most radical known as **Scheme 1**, abolishes marriage value, which is likely to result in huge windfalls for leaseholders with unexpired terms at 80 years and below. Considered to have almost a 50% to a AP1P challenge.

Scheme 2 reduces marriage value to "hope value". Again, large windfalls for leaseholders with unexpired terms at 80 years and below.

Medium to low risk of a AP1P challenge.

Scheme 3 is basically no change to existing system.

I would suggest this is likely to be the outcome, as the other schemes carry a risk the taxpayer will end up footing the bill for providing leaseholders with a windfall.

None of these schemes help any leaseholders with unexpired terms above 80 years.

There are some other "sub options" that might help these leaseholders. The main ones are as follows:

- 1) Prescribing cap rates and deferment rates - these rates are already more or less are fixed with Capitalization Rates now at between 6 and 7% for most ground rents since *Nicolson v Goff* and Deferment rates at 4.75% for Houses and 5% for flats since *Sportelli*.
Fixing the rates below the market rate is more likely to lead an AP1P challenge so I suggest it's an unlikely option.
- 2) Capping Ground rent valuations at 0.1% of Property Value. However exceptions are suggested, where freeholder's have reduced the selling price of the flat but have a higher ground rent to compensate. This exception is to avoid an AP1P challenge. The result is likely to lead to the worst onerous ground rents being down valued. The devil will be the drafting of the exception which is fraught with difficulties.
- 3) Differential system favouring owner occupiers over investors. It would certainly ring with most home owners and could help to reduce the risk of an AP1P challenge.

Overall , I would suggest there is little in these "options" for leases above 80 years and it would be surprising if the Government went for any option that didn't derive from the market value for fear of an AP1P challenge.

I would be interested to hear any other views on this subject.

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