PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

LEASEHOLD AND FREEHOLD REFORM BILL

First Sitting

Tuesday 16 January 2024

(Morning)

CONTENTS

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not later than

Saturday 20 January 2024

The Committee consisted of the following Members:

Chairs: Dame Caroline Dinenage, Clive Efford, Sir Mark Hendrick, † Sir Edward Leigh

† Amesbury, Mike *(Weaver Vale)* (Lab)
† Carter, Andy *(Warrington South)* (Con)
† Davison, Dehenna *(Bishop Auckland)* (Con)
Edwards, Sarah *(Tamworth)* (Lab)
† Everitt, Ben *(Milton Keynes North)* (Con)
† Fuller, Richard *(North East Bedfordshire)* (Con)
† Gardiner, Barry *(Brent North)* (Lab)
† Glindon, Mary *(North Tyneside)* (Lab)
† Hughes, Eddie *(Walsall North)* (Con)
† Levy, Ian *(Blyth Valley)* (Con)
† Maclean, Rachel *(Redditch)* (Con)
† Mohindra, Mr Gagan *(South West Hertfordshire)* (Con)
† Pennycook, Matthew *(Greenwich and Woolwich)* (Lab)
† Rimmer, Ms Marie *(St Helens South and Whiston)* (Lab)
† Rowley, Lee *(Minister for Housing, Planning and Building Safety)*
Smith, Chloe *(Norwich North)* (Con)
† Strathern, Alistair *(Mid Bedfordshire)* (Lab)

Huw Yardley, Katya Cassidy, *Committee Clerks*

† attended the Committee

Witnesses

Mr Martin Boyd, Chair, Leasehold Advisory Service

Sebastian O'Kelly, CEO, Leasehold Knowledge Partnership

Liam Spender, Senior Associate, Velitor Law

Katie Kendrick, Co-founder, National Leasehold Campaign

Jo Derbyshire, Co-founder, National Leasehold Campaign

Cath Williams, Co-founder, National Leasehold Campaign

Amanda Gourlay, Barrister, Lazarev Cleaver LLP and Associate, Tanfield Chambers

Public Bill Committee

Tuesday 16 January 2024

(Morning)

[Sir Edward Leigh *in the Chair*]

Leasehold and Freehold Reform Bill

9.26 am

The Chair: Before I begin, I have a couple of announcements. *Hansard* colleagues would be grateful if Members emailed their speaking notes to hansardnotes@parliament.uk. Obviously, electronic devices should be switched off.

Ordered,

That—

(1) the Committee shall (in addition to its first meeting at 9.25 am on Tuesday 16 January) meet—

(a) at 2.00 pm on Tuesday 16 January;

(b) at 11.30 am and 2.00 pm on Thursday 18 January;

(c) at 9.25 am and 2.00 pm on Tuesday 23 January;

(d) at 11.30 am and 2.00 pm on Thursday 25 January;

(e) at 9.25 am and 2.00 pm on Tuesday 30 January;

(f) at 11.30 am and 2.00 pm on Thursday 1 February;

(2) the Committee shall hear oral evidence in accordance with the following Table:

Date	Time	Witness
Tuesday 16 January	Until no later than 9.50 am	The Leasehold Advisory Service (LEASE)
Tuesday 16 January	Until no later than 10.25 am	Leasehold Knowledge Partnership; Velitor Law
Tuesday 16 January	Until no later than 11.00 am	The National Leasehold Campaign
Tuesday 16 January	Until no later than 11.25 am	Law & Lease
Tuesday 16 January	Until no later than 2.30 pm	The Law Commission
Tuesday 16 January	Until no later than 3.00 pm	The Financial Conduct Authority
Tuesday 16 January	Until no later than 3.40 pm	Free Leaseholders; Commonhold Now; HoRnet (the Home Owners Rights Network)
Tuesday 16 January	Until no later than 4.15 pm	The Property Institute; Fanshawe White
Tuesday 16 January	Until no later than 4.50 pm	The Home Buying and Selling Group; The Conveyancing Association
Tuesday 16 January	Until no later than 5.15 pm	Public First
Tuesday 16 January	Until no later than 5.40 pm	Dr Douglas Maxwell
Thursday 18 January	Until no later than 12.10 pm	HomeOwners Alliance; The Federation of Private Residents' Associations; Shared Ownership Resources
Thursday 18 January	Until no later than 12.40 pm	Professor Andrew J. M. Steven (Professor of Property Law, University of Edinburgh); Professor Christopher Hodges OBE (Emeritus Professor of Justice Systems, University of Oxford)
Thursday 18 January	Until no later than 1.00 pm	The Building Societies Association
Thursday 18 January	Until no later than 2.20 pm	Competition and Markets Authority
Thursday 18 January	Until no later than 2.40 pm	Policy Exchange
Thursday 18 January	Until no later than 3.10 pm	The Law Society; Philip Rainey KC
Thursday 18 January	Until no later than 3.30 pm	The Residential Freehold Association
Thursday 18 January	Until no later than 3.50 pm	End Our Cladding Scandal

(3) proceedings on consideration of the Bill in Committee shall be taken in the following order: Clauses 1 to 4; Schedule 1; Clauses 5 to 11; Schedules 2 to 5; Clauses 12 to 19; Schedule 6; Clauses 20 and 21; Schedule 7; Clauses 22 to 37; Schedule 8; Clauses 38 to 65; new Clauses; new Schedules; remaining proceedings on the Bill. (4) the proceedings shall (so far as not previously concluded) be brought to a conclusion at 5.00 pm on Thursday 1 February.—*(Lee Rowley.)*

Resolved,

That, subject to the discretion of the Chair, any written evidence received by the Committee shall be reported to the House for publication.—*(Lee Rowley.)*

The Chair: I take it that we do not need to move the motion about deliberating in private; just intimate to the Clerk or me that you want to speak, and we will proceed informally. We are sitting in public, and the proceedings are being broadcast. Do any Members want to make a declaration of interest?

Matthew Pennycook (Greenwich and Woolwich) (Lab): My wife is the joint chief executive of the Law Commission, and we are hearing evidence from it.

Examination of Witness

Mr Martin Boyd gave evidence.

9.27 am

The Chair: We will now hear oral evidence from Martin Boyd, chair of the Leasehold Advisory Service. Before I call the first Member to ask a question, I remind all Members that questions should be limited to matters

within the scope of the Bill. We must stick to the timings in the programme order that the Committee has agreed. For this panel, we have until 9.50 am. Perhaps the witness could introduce himself briefly.

Mr Martin Boyd: Good morning, everyone. My name is Martin Boyd. I am the newly appointed chair of the Government's Leasehold Advisory Service. I am also chair of the charity the Leasehold Knowledge Partnership, and I am chair of the resident management company in the place where I have a flat.

The Chair: I think perhaps the Opposition spokesperson wants to start off with the questions.

Q1 Matthew Pennycook: Martin, thank you for coming to give evidence to the Committee. I have two questions to start off with.

Ms Marie Rimmer (St Helens South and Whiston) (Lab): Excuse me, Chair. Is the loop system on? No? Can we arrange to have it on, please? *[Interruption.]* Oh, we cannot; I understand.

Matthew Pennycook: One of the aims of the Bill—certainly in the terms of reference handed to the Law Commission, whose recommendations frame a lot of parts 1 and 2—was to provide a better deal for leaseholders as consumers and increase transparency and fairness. In your view, to what extent does the Bill as a whole do that? Are there any specific clauses or elements of the Bill that we might seek to tighten up to further improve the experience for leaseholders as consumers? I am thinking of the fact that leaseholders are still liable to pay certain non-litigation costs and that right-to-manage companies are still liable when claims cease.

Mr Martin Boyd: As you may recall, when the Law Commission originally looked at this area of the law, it suggested to the Government that a consolidation Bill was warranted. However, there was not the budget at the time, so it was then given the three projects on right to manage, enfranchisement and commonhold to look at. The enfranchisement proposals and some of the right-to-manage proposals, but none of the commonhold proposals, have been brought forward in the Bill. The difficulty with the Bill is that there is an almost endless list of things that could be added. In removing the one-sided costs regime, the Bill does quite a lot to balance the system during the enfranchisement process. It also attempts to address the problem of the costs regime at the property tribunal. In the current system, the landlord is in a win-win position. Even if they lose the case, they are able to pass on some of their legal costs under most leases. The Bill tries to address some of those issues.

We still have a whole set of problems in the way that resident management companies and RTMs operate. They do not have a legitimate means of passing on their company costs within the service charge. There are still sites where they effectively have to cook the books to pass on the legitimate costs to the service charge payers. There are still many more things to add to the Bill. Clearly, we will continue to have problems with multi-block right-to-manage sites as well. They do not operate effectively anymore, and unfortunately the Bill does not address that element of the problem.

Q2 Matthew Pennycook: Just so I am clear, you think there is scope to tighten the clauses in the Bill when it comes to non-litigation costs at tribunal and RTMs incurring costs?

Mr Martin Boyd: Yes. There are several things that could be added.

Q3 Matthew Pennycook: My second question relates to managing agents. Lots of the freeholders that leaseholders have to deal with are offshore and hard to reach. Managing agents are the first point of contact, and in many cases are the only point of contact. To what extent do you think that the Bill will function effectively without some kind of regulation of managing agents? Should we be looking to introduce that into the Bill?

Mr Martin Boyd: The RoPA—regulation of property agents—report, which the Government undertook some years ago under Lord Best and which proposed statutory regulation of managing agents in this sector and within the estate agency world, has unfortunately not moved forward. There are proposals in the Bill to bring estate agents within codes of practice, but nothing in particular changes on property management. We have a slightly strange position at the moment. In the social sector, there is now an obligation for a property manager to have a proper level of competencies to look after high-rise buildings, or high-risk buildings, as they are still called. In the private sector, though, we have nothing. There are no requirements to have any qualifications to look after and manage the highest of our high-rise buildings in this country. That is simply wrong, so I would support fully a move to the statutory regulation of agents.

Q4 Mike Amesbury (Weaver Vale) (Lab): Hello Martin, good to see you. Are there any risks in banning new leasehold houses but not flats?

Mr Martin Boyd: Yes, there are risks. Currently, we do not have a viable commonhold system. Even if the Government were to come forward with the full Law Commission proposals, those had not reached the point where they created all the systems necessary to allow the conversion of leasehold flats to commonhold flats. I see no technical reason at the moment why we should not move quite quickly to commonhold on new build for extant stock. I think it will take longer—and, at the end of the day, conversion will be a consequence of consumer demand. People would want to do it. On my side, I would not want us to convert to commonhold, because I could not yet be sure that it would help to add to the value of the properties. It would make our management of the site a lot easier, but I could not guarantee to anyone living there that it would add to the value of their property—and that is what people want to know, before they convert.

Q5 Richard Fuller (North East Bedfordshire) (Con): Mr Boyd, I want to pick up something you said in answer to the shadow Minster, when you were talking about the treatment of property managers or managing agents in the private sector. You enumerated a list of three options: a code of conduct, which you said existed in the social sector; legislation or regulation; and also qualification, which I took to be professional qualification. Which of those three is the preferred path, in your view?

Mr Martin Boyd: I do not think the Leasehold Advisory Service would have a specific preferred path. At least two of those are important. I will add a fourth, actually. It is illogical that we do not have a requirement for professional qualifications for those managing particularly complex buildings.

Q6 Richard Fuller: Why is it illogical? I have no qualifications to be an MP; I am supposed to look after lots of things.

Mr Martin Boyd: I will be cautious, so that I am not rude in answering that. There are a set of skills that you would expect to acquire as an MP, and a certain set of skills that you need to acquire as a property manager. Buildings are complex entities, particularly large buildings. They have a lot of plant and a lot of complex systems. There is quite a complex interaction with the people who live in those buildings. There are voluntary qualifications that we have in the sector. The Secretary of State decided recently that there should be a mandatory level of qualification in the social sector. I do not see there being a logic in saying that we need one or the other.

In terms of regulation of managing agents, there is a problem. The ex-chair of the managing agents' trade body said that it is perfectly legal to set up a property management company in your back bedroom in the morning and be collecting a large amount of money in the afternoon, without any regulation. I think that is a problem. One of the issues not considered in the Bill—perhaps it would not be relevant, although the Government need to consider it at some point soon—is that there is still no proper control of leaseholders' funds. It is very likely that the two largest managing agents in this country hold between them somewhere between £1 billion and £2 billion. There is no Financial Conduct Authority regulation of how that money is held.

The Chair: Just one more question—we have many coming up.

Q7 Richard Fuller: I notice in Mr Boyd's resume that LEASE is

"to champion the rights of leaseholders and park homeowners."

I have a number of park home owners in my constituency, as I am sure many colleagues do. Are there any provisions in the Bill, or is there anything that could be added to it, that would improve the lot of park home owners?

Mr Martin Boyd: Yes, there is, but again that goes on to the long list of things that could be added to the Bill. Park homes have been a difficult area for many years. It is a relatively small part of LEASE's work, but it is work that will be expanding as we move forward. I am more than happy to talk to you about some of the provisions on park homes that could be added.

Richard Fuller: There is nothing that leaps out at this stage.

Mr Martin Boyd: Nothing leaps out.

Q8 Barry Gardiner (Brent North) (Lab): Mr Boyd, you just spoke about the accounting of funds. At the moment, there is no requirement to show any separation between sinking or reserve funds and the normal service charges for managing the property. Many leaseholders have suggested that that is a problem, and that they are not clear what is happening with their sinking fund. Sometimes they believe that the moneys that were there for future capital works on the property are being raided. Would it be a good idea for the Bill to contain something that enabled leaseholders to see precisely what was happening to those reserve or sinking funds?

Mr Martin Boyd: There were proposals in sections 152 to 156 of the 2002 Act to help to improve protection for leaseholders' funds. Currently, we are left with a set of voluntary codes. One is applied by the Association of Residential Managing Agents—the Property Institute, as it is now called—and sets out that managing agents should hold separate bank accounts for each of the sites that they manage. The Royal Institution of Chartered Surveyors' code does not require that. I am aware from experience of my and other sites that, in the recent period of higher inflation, some managing agents used consolidation accounts, accrued the interest in the service charge funds to themselves and passed very little on to the leaseholders. So yes, I think it would be very helpful if we had greater transparency and protection.

Q9 Barry Gardiner: Indeed. You nicely lead me to my other question, which concerns something else that was in the 2002 Act but was never brought into effect: the provision that, if the landlord had not complied with the rules around service charges and the charges were unfair, leaseholders should be able to withhold their service charge. I have no idea why that was never brought into effect, but would it be a good idea? The Bill sets out extensive obligations that have to be followed in relation to service charges. If those are not followed, should leaseholders have the right to withhold the service charge?

Mr Martin Boyd: I can tell you why it did not move forward. One of the reasons it did not move forward is that, when there was a consultation, the organisation that I now chair argued very strongly against the implementation of that section. That was one of the things that annoyed me when I found out about it over a decade ago. It is not something that we would argue for now.

Q10 Barry Gardiner: So you would agree that it would be a good provision to insert into the Bill.

Mr Martin Boyd: It was a very good provision, yes.

Q11 Rachel Maclean (Redditch) (Con): Mr Boyd, it is good to see you. You have talked about commonhold. Would you mind just being quite succinct and clear on your view about commonhold? There are proposals from various groups who are active in the sector to make it mandatory to sell all new leasehold flats as commonhold. Would that be a good idea, and if not, why not?

Mr Martin Boyd: I am proud to say that it was LKP that restarted the whole commonhold project in 2014. At the time, we were told, "The market doesn't want commonhold." The market very clearly told us that it did want commonhold; it was just that the legislation had problems in 2002. One of our trustees, who is now unfortunately no longer with us, was part of a very big commonhold project in Milton Keynes that had to be converted back to leasehold when they found problems with the law.

I think the Government have been making it very clear for several years that they accept that leasehold's time is really over. I do not see any reason why we cannot move to a mandatory commonhold system quite quickly. What the developers had always said to us—I think they are possibly right—is that they worry that the Government might get the legislation wrong again, and they would therefore want a bedding-in period where they could test the market to ensure that commonhold was working, and they would agree to a sunset clause. They had fundamentally opposed that in 2002, and we managed to get them in 2014 to agree that, if commonhold could be shown to work, they would agree to a sunset clause that would say, "You cannot build leasehold properties after x date in the future." I think that that is a viable system.

Q12 Ms Rimmer: Good morning, Mr Boyd. How will the Bill impact on your work as an advisory service and the advice that you give to leaseholders?

Mr Martin Boyd: As some of you may know, I have been very critical in the past of the organisation that I now chair, because I thought that it was doing the wrong thing. The Government took what some might see as a brave decision in asking me to take on the role as chair. LEASE is going to become a much more proactive part of the system, and, as far as I see it, we now have several roles rather than one. While we are predominantly there to help advise consumers about the legislation and how to use it—and hopefully when not to use it—we will also have a role in helping to press Governments to make sure that they improve the legislation. That was not a remit that we had, but it will be very much part of our remit going forward.

Q13 Ms Rimmer: Thank you. Will the provisions of the Bill lead to many more leaseholders seeking advice, and, if so, do you feel adequately resourced to provide that service?

Mr Martin Boyd: As I said to the all-party parliamentary group yesterday, the organisation does not currently have the budget. The Government have said that they will give us the relevant budget. If they do not give us the budget, I will not be staying, so I am very hopeful that we do get the budget.

Some aspects of the Bill do quite a lot to reduce the amount of time that leaseholders would need to spend asking for help. If the enfranchisement process goes through and we get to an online calculator system, where you simply feed in your data and it produces the answer, that will make that whole system much easier. That will reduce not only the amount of work that comes to us, but the amount of work that goes to various solicitors and surveyors in that field.

The Chair: That is the end of our allotted time for this session; I think we got everybody in who wanted to ask questions. Thank you for coming to talk to us today.

Examination of Witnesses

Sebastian O'Kelly and Liam Spender gave evidence.

9.50 am

Q14 The Chair: Good morning and welcome to our Committee. Could you briefly introduce yourselves, and then my colleagues will have some questions? You have been listening so you know the form.

Sebastian O'Kelly: I am Sebastian O'Kelly, director of the Leasehold Knowledge Partnership. I am not a leaseholder; I am a commonhold owner in another jurisdiction, not in the UK.

Liam Spender: I am Liam Spender, senior associate at Velitor Law. I am a leaseholder in London. I am also a trustee of the Leasehold Knowledge Partnership.

The Chair: As usual, we will start with the Opposition spokesman.

Q15 Matthew Pennycook: Gentlemen, thank you for coming to give evidence to the Committee. I could ask about a huge range of issues, but I will start with ground rents.

Various provisions in the Bill touch on ground rents. You will know, for example, that schedule 2 imposes a 0.1% cap on their treatment in valuation. Clause 21 and schedule 7 deal with existing ground rents and how we will treat those. What are your views on the fact that those provisions provide leaseholders with the enfranchisement right to buy out their ground rent under a very long residential lease, but we also have the consultation ongoing with five options? How do those provisions interact? Why have the Government specified an option in clause 21 for a particular type of very long residential lease, while we also have this consultation ongoing and, in theory, a commitment to bring forward further measures that apply to all existing ground rents? Does clause 21 in the Bill as drafted make sense to you?

Sebastian O'Kelly: Not especially. We are eager to hear the result of the consultation on ground rents. We very much support the peppercorn ground rent option and are delighted that the chairs of the all-party parliamentary group also support that. It would be a game-changing measure if that did come about—frankly, stripping out the one legitimate income stream in this ghastly system—but I can see that, as a precautionary measure, you might have that 0.1% provision in the Bill for dealing with enfranchisement. It will assist with some of the enfranchisements where you have very onerous ground rents.

Liam Spender: I agree; it is not clear why the 150-year threshold has been chosen. As far as I understand it, the Law Commission did not consider that in its work. That might be something that could be fruitfully explored in this Committee's more detailed work.

Q16 Matthew Pennycook: I have two other brief questions. The Bill does not include provision to ban new leasehold houses. If the Government's intention, as I think has been made clear, is to bring those provisions forward through Government amendments in Committee or on Report—at a later stage—what should they look like? In your view, should we look for those Government amendments to do or not to do particular things?

On the right to manage, only eight of the 101 Law Commission recommendations on right to manage have found their way into the Bill. We face the issue that Mr Boyd referred to—we could add in many more provisions to the Bill. Are there any specific RTM recommendations from the Law Commission that it would be really worthwhile to try to incorporate into the Bill?

Sebastian O'Kelly: In relation to leasehold houses, it is a bit of an embarrassing omission that the proposal is not there. The spreading of leasehold houses around the country simply to extract more cash from the unwitting consumers who had purchased houses from our plc house builders was a national scandal, actually, and it was frankly a try-on too far and caused a huge amount of kerfuffle. There will be times when you would have to build a leasehold house—when the builder does not actually own the land—but they are very isolated cases, and largely this scam has self-corrected through the adverse publicity.

On the right to manage, one of the most egregious issues is where groups of leaseholders have attempted to get a right to manage and have been hit for extortionate legal costs, where their petition for right to manage has been resisted by the landlord. There are certain landlords out there who always, always, unfailingly take this through the legal steps. They rack up legal costs, but of course they can get that back through the service charge. That is an issue that I urge is the worst deterrent to right to manage.

Liam Spender: The lack of right to manage for fleecehold estates—for estates subject to management schemes—is one of the most obvious omissions in the Bill. The Law Commission did an awful lot of work on how to improve the process for multi-block sites, particularly following the Supreme Court decision two years ago on Settlers Court. I think that is another missed opportunity.

Q17 Rachel Maclean: Mr O'Kelly, you are one of a large number of leaseholders who has been adversely impacted by your personal situation. If I am correct, what has happened in your case is that your freeholder has used the service charges from you and others in the block to take you to court—it is an appalling situation. You have updated the APPG and others. For the Committee's benefit, will you say how much you are out of pocket and whether the provisions in the Bill will address the issues that you have faced and will face in the future?

Sebastian O'Kelly: This is for Liam really, because I am not a leaseholder at all; it is Liam's court case.

Rachel Maclean: Sorry, I was looking at Mr Spender and I misspoke.

Liam Spender: I quite understand anyone being distracted by Mr O'Kelly. Thank you for the question. In our case to date, the freeholder has put £54,000 of its legal costs through the service charge. It did so in breach of a section 20C order, which is the current restriction that is supposed to prevent landlords from doing so. We complained and got most of that money back, but they have served something called a section 20B notice: they intend to recover the costs in the future if they prevail on appeal, by which point we could be looking at a substantial six-figure sum. This is all to do with us fighting to get back unreasonable service charges.

We are currently owed about £450,000—to give a round number—pending appeal. There is an appeal in April and I am carrying the burden of doing all that work myself. I quite understand why leaseholders without legal training give up and things will fall by the wayside. The system is very much stacked in landlords' favour.

The cost provisions in the Bill are welcome. As you probably know, they changed the default so that the landlord has to ask for their costs. The issue is what has been created as a just and equitable jurisdiction; the tribunal can do what it thinks is fair in the circumstances. I believe—I think many people who have much more knowledge of this than I do would agree—that what that will mean in practice is probably that the tribunal will be inclined to give landlords their costs if they have won the case, so it will not change anything.

The other problem is that the first-tier tribunal considers itself a no-cost jurisdiction, and that is a generational way of thinking, so that has to be overcome and it has to get into the mindset of awarding costs to leaseholders and against landlords. Provisions could be included in the Bill that would make that that process easier—for example, prescribing a regime of fixed costs as applied to other low-value civil litigation. It is not a magic bullet, but I think that would be better than the current provisions in the Bill.

Q18 Mike Amesbury: Is there anything else you would like in the Bill that is missing at the moment?

Sebastian O'Kelly: We would like to see a commitment to mandatory commonhold for new builds, frankly. How many more times are we going to try to reform the leasehold system? How many goes have we had at this since the 1960s? If you keep having to reform leasehold, is the answer not that it does not work? Why do you want this third-party investor—now, invariably, somebody offshore—hitching a ride on the value of somebody else's home? It is a nonsense. One Duke of Westminster we can accept—the political continuity of our country maybe allows a freehold such as that—but we will create 1,000 of them with this. It is a nonsense. Bring it to an end and bring us in touch with the rest of the world—that is my statement.

The Chair: Right, that is very clear.

Q19 Andy Carter (Warrington South) (Con): Can I just pick up your comment to Rachel Maclean a moment ago on the legal aspect that you are fighting? Can you outline to the Committee what unreasonable service costs you are fighting to recover in court?

Liam Spender: Yes, happily. The main items in dispute are our intercom, car park gates and barriers. Our satellite TV dishes are rented in perpetuity; they were costing £240,000 a year, which is somewhere between 10 and 20 times what they should cost. The reason for that is that the developer chose to enter into a long-term rental and maintenance contract. That contract has never actually been—the technical term is "novated"—transferred to the current landlord, so there is no legal obligation on the current landlord to pay those costs at all. However, the landlord has dug in, so we are more than two and a half years into a service charge dispute. We prevailed in the first instance—that was the largest single item we won—and we must fight an appeal in April, and potentially another one after that, depending on what the landlord chooses to do.

Q20 Andy Carter: Just so I am clear, at the point that you purchased the flat, did you know that those sorts of service charges would recur on an annual basis?

Liam Spender: I knew the general amount of service charges. I was not aware that there was a perpetual maintenance contract, because it was not disclosed in the searches.

Q21 Barry Gardiner: Mr Spender, I want to ask you about what I find to be one of the more complicated aspects of the Bill: the leaseback arrangements. Nominee purchasers can require a landlord to take a leaseback on certain units. Those are the units that, in an enfranchisement process, are not participating in the enfranchisement. You might have a block of 100 units, and 30 of them do not go in with the leaseholders who want to enfranchise. At the moment, they are then, in perpetuity, leaseholders, are they not? They cannot ever enfranchise because the others have already enfranchised. Should there not be a provision in the Bill to enable those locked-in leaseholders—if they have the money in future, because many times it will be because they did not have the money available at the time to participate—to buy their share of the enfranchisement?

Liam Spender: I agree; you have summarised it very well. To borrow a loose analogy from company law, there is something called a tag-along right. If someone comes along and buys a certain proportion of shares in a company, the other shareholders can exercise the right to tag along to join the purchase. That could be adapted to those who do not participate in an initial enfranchisement to address exactly the issue that you raise.

Q22 Barry Gardiner: Grand. If I can pursue that area, at the moment, the lease is granted to the demoted freeholder—so they become the head leaseholder, perhaps, and the other leaseholders are now subject to the head leaseholder. Their contract was always with the previous freeholder, who is now the head leaseholder. Should there not be some provision in the Bill that requires those minority leaseholders, who are still in a relationship with the former freeholder, to actually pay their service charge to the new freeholder? But there is not, is there?

Liam Spender: I think the provisions introduce a degree of complexity into buildings because, exactly as you say, you are creating a new class of landlord. That could be solved by—

Q23 Barry Gardiner: But the specific question I want to probe with you is whether there is any provision in the Bill to require the minority leaseholders who did not enfranchise to pay their service charge to the new freeholder, namely the majority who enfranchised. I cannot see where that contractual obligation lies in the Bill. All I can see is that they will continue to have a relationship with the previous freeholder.

Liam Spender: That is right: there is no statutory mechanism to transfer to the newly enfranchised freeholders.

Q24 Barry Gardiner: So you think the Committee should look at that very carefully.

Liam Spender: The Bill creates a lot of new areas of complexity, and that is certainly one that would merit detailed attention.

The Chair: Well, gentlemen, I think that is it. Thank you very much.

Examination of Witnesses

Katie Kendrick, Jo Derbyshire and Cath Williams gave evidence.

10.6 am

Q25 The Chair: Welcome to our Committee this morning. Perhaps you would like to introduce yourselves.

Katie Kendrick: I am Katie Kendrick. I am the founder of the National Leasehold Campaign, which has been running for seven years. I am also a trustee of LKP.

Jo Derbyshire: I am Jo Derbyshire. I am one of the co-founders of the National Leasehold Campaign and a trustee of LKP. I am not a leaseholder; I enfranchised and bought the freehold on my home. I had one of the now-infamous 10-year doubling ground rents on my house.

Cath Williams: I am Cath Williams. I am one of the co-founders of the National Leasehold Campaign. I am no longer a leaseholder, but I did buy a leasehold house.

Q26 Matthew Pennycook: Thank you for coming to give evidence to us. I have a general question to start. Large parts of the Bill are broadly uncontroversial and uncontentious, not least because they implement Law Commission recommendations. There is lots we could add in, but let us try to keep a focus on what is in the Bill. In your view, to what extent does the Bill deliver for leaseholders in terms of transparency, fairness, enhanced consumer rights and empowerment? What areas could we look to strengthen or tighten up?

Katie Kendrick: The Bill is very much welcomed and long overdue. As we all know, the Law Commission reports were fantastic and very detailed. The Bill is lacking significantly on the detail of the Law Commission recommendations. The headline was that the Bill would ban leasehold houses, and obviously the Bill as it stands does not do that. I am confident that it will, in the end, ban leasehold houses, but currently that has not been achieved.

The Bill improves the transparency of service charges, but just being able to see the fact that leaseholders are being ripped off more does not actually fix the root cause of the problem. As we all know, the root cause of the problem is the leasehold system per se. I am concerned that the Bill sticks more plasters on a system that we all agree is immensely outdated and needs to go. There is no mention anywhere in the Bill of our long-term vision of achieving commonhold. That is our vision, and it is the elephant in the room. The Bill does not even mention commonhold and how we can move towards it.

A peppercorn ground rent would massively change the playing field and help us to move towards our vision of commonhold, so we need to get a peppercorn ground rent for existing leaseholders in there. With the Leasehold Reform (Ground Rent) Act 2022, which means new builds do not have a ground rent, we have created a two-tier system. The Bill really does need to look at existing leaseholders and what can be done to help to put them in a similar position to new leaseholders. If ground rents are wrong for the future, they were wrong in the past and we therefore need to be bold enough to go back and fix that. Peppercorn ground rent has to be the solution. This is an amazing opportunity and I hope that will be the outcome of the consultation.

Cath Williams: On peppercorn ground rent, we have noted a new definition of a long-term lease being 150 years, which we have never come across before. Many members in our group—there are over 27,000 members in the National Leasehold Campaign—have modern leases with ground rents at significantly less than 150 years, at around 99 or 125 years. That means that the provisions in the Bill do not give them the opportunity to revert to a peppercorn ground rent. If we have read it correctly—we

are not legally trained—they would be excluded as having a non-qualifying lease. That is our understanding: that they would be excluded. That could be a significant number of leaseholders who will not benefit from the peppercorn ground rent opportunity in the Bill.

Q27 Rachel Maclean: You mentioned that you welcome the peppercorn ground rent. It has often been put to me by campaigners on the other side of this argument that leaseholders do not mind paying ground rents. What is your view on that proposition?

Jo Derbyshire: I had a ground rent that doubled every 10 years. It meant that my ground rent would be £9,440 after 50 years. It certainly is not a trivial issue in my experience. A ground rent is a charge for no service. That is the big thing for me. Some warped genius at some point in the mid-2000s decided to create an asset class on our homes. It is just wrong.

Q28 Rachel Maclean: Do you agree with some of the arguments that are put forward by the freeholders lobby and organisations that abolishing ground rent will destabilise the pensions industry and mean that nurses and care workers and the good people who are toiling very hard in our public services will have their pensions destroyed? What do you say to that?

Jo Derbyshire: I think that is project fear. I work in pensions. I work in administration, not investments, but I sit on a lot of pension committees where we talk about the assets that pension schemes hold. They have investment strategies and they protect themselves from over-investing in one asset class. The amount of ground rents held by pension funds in this country would pale into insignificance compared with, for example, the impact of the mini-Budget and what happened with equities shortly after that. This is deliberate scaremongering.

Q29 Mike Amesbury: I have two brief questions. Are there any risks in terms of banning new leasehold houses but not flats? Why do you think this country is an outlier in the world and is so wedded still to this day to the feudal system of leasehold?

Katie Kendrick: You cannot just ban leasehold houses and not flats—70% of leaseholders live in flats, so you are not tackling the problem. You are cherry-picking the easy things, and banning leasehold houses is easy. It is more tricky with flats, but that does not mean it is not achievable. As you have said, it has been achieved everywhere else in the world. We do not need to continue to mask that leasehold system. It is deeply flawed and it ultimately needs to be abolished.

We do understand that there is no magic wand and this is not going to happen tomorrow, but there have been a lot of campaigners, well before us, who have highlighted the issues of leasehold, and yet here we are, still, again, trying to make it a little bit fairer. It does not need to be a little bit fairer—it needs to go. That needs to be the ultimate aim. Everybody needs to work on this. There is something better out there, despite what the other lobbying groups will tell you.

Q30 Richard Fuller: This is a question I will ask a number of witnesses. We do an impact assessment for legislative change to all Bills, sometimes done well and sometimes less so. This has an assessment of the total cost of the Bill, with the best estimate being £2.9 billion. That is quite large for a Bill. A large part of that—about two thirds—is a transfer of the value from freeholders to leaseholders. That is at £1.8 billion, or £1.9 billion. What are your thoughts about that transfer of wealth?

Jo Derbyshire: It is long overdue; bring it on.

Q31 Richard Fuller: From that, are you implying that your view is that it has been a rip-off to date, and therefore there are monies that you should have been having for all the years you have been paying and there was no value to it?

Jo Derbyshire: If I think of my estate, there was no reason whatsoever to create leasehold houses other than to make money from the people who had bought them. That is partly why, going back to an earlier question, it is taking so long to dismantle the system in this country: it is because there is so much money for nothing in it. That is why it is so hard to dismantle it.

Q32 Richard Fuller: I cannot remember whether it was you, Jo, or Kate—if I may call you by your first names—who works in a pension fund.

Jo Derbyshire: I work in a pension fund.

Q33 Richard Fuller: On the change in pension funds and investments, you may have different views about how important that is and my colleague asked you that question. However, putting yourself in the place of the people who own the freehold—some may be large overseas entities, some may be members of the peerage of the realm and there may be others—what is your view and what assessment have you made of the impact on them?

Jo Derbyshire: From my perspective, it is just about how all investment carries risk. This is no different. This is about rebalancing the scales in terms of leaseholders and freeholders. For me, it is about fairness for leaseholders. That is what the Law Commission was tasked with a few years ago, it is what we have been fighting for over the last however many years and that is what this does.

Q34 Barry Gardiner: I apologise because I came in slightly late today, Chair, so I do not know if people have declared their interest. I should say that I am a freeholder; I am not a leaseholder. I have been a leaseholder in the past, but always with a share of the freehold.

Ms Kendrick, you said that there were things that the Law Commission report had talked about that have not been included in the Bill. One of those is in relation to shared services. Often, in a mixed development, if there is a commercial element to the block of flats, with flats above, you will find that there is a common plant room or a common car park. I welcome the provisions in the Bill that say that you can go from 25% commercial to 50%; that is a good move. However, the Law Commission actually said something specific about whether you should be allowed, if there are shared services such as the car park or the plant room, to be able to take over control, because the flats—the leaseholders—would only have control over the plant room as it related to their block. Is that a provision that you think should be introduced? Otherwise, it makes a mockery, to a certain extent, of increasing from 25% to 50% if you are still going to be precluded from gaining control of your block because of the plant room or shared services.

Katie Kendrick: Yes, there are clever ways in which they exclude people from being able to do that. We welcome the increase to 50%, but they are very creative when they design these buildings, with the underground car parks and stuff, as to what they can do to exclude the leaseholders from taking back control of their blocks. It is all about trying to have control over people's homes. We should be able to control our homes—what is spent. No one is saying that you should not have to pay service charges, but it is about being in control of who provides those services. At the moment, leaseholders have no control. They just pay the bills.

Q35 Barry Gardiner: And the residents having the right to manage that themselves.

Katie Kendrick: Absolutely, yes.

Q36 Barry Gardiner: If commonhold will not be in the Bill, would you support a principle that all future leasehold flats should have to be sold with a share of the freehold?

Katie Kendrick: Absolutely.

Q37 Barry Gardiner: And that any residents' association should be able to have the management of the block?

Katie Kendrick: Absolutely. If they are saying that commonhold is not ready to rock and roll, to have a share of freehold to mandate, a share of freehold for new flats moving forward would be a good step closer.

Q38 Andy Carter: I hope you do not mind if I start by congratulating you on the work you have done with the National Leasehold Campaign. I know that my constituents in Warrington South have greatly valued the assistance and knowledge you have managed to secure through bringing people together. Thank you for the work you have done there. May we just go back a little bit? Can you tell the Committee what sort of problems leaseholders have when they go to buy their freehold?

Katie Kendrick: All three of us have now successfully bought our freehold. Yes, we are still here.

Jo Derbyshire: There are a number of things. The first is that most leaseholders do not understand the difference between the informal way and the statutory way to do that. The more unscrupulous freeholders will write to leaseholders with a "Get it while it's hot" type of offer, which can be quite poor value for money. So, there is understanding the process in the first place. Then, regardless of which way you go—if you go the statutory way, currently you pay your own fees and the freeholder's fees. There is an element of gamesmanship that goes on at the moment, which is why the online calculator is so important. Your valuer and the freeholder's valuer will argue about the rate used to calculate the amount and then you will try and have some kind of an agreement. It is not a straightforward process at all. Cath will tell you what happened with her transfer, because they leave things in the transfer documents.

Cath Williams: Yes, they did. In my case, it took 15 months and £15,000 to get my freehold.

Q39 Andy Carter: It cost £15,000?

Cath Williams: Yes, £15,000 on a house. It took that long because I found—this is one of the problems that leaseholders have—that I knew more than the alleged leasehold-specialist solicitor who was dealing with my case at the time. That was very early in the campaign, so a lot of education needs to go on for everybody: leaseholders, conveyancers and solicitors. Because I had done some research and tried to get my head round leasehold clauses and what were fee-paying clauses, shall we say, in the TP1, which is a transfer document, they tried to carry across all the fee-paying clauses. Essentially, it would be freehold but fleecehold, because I would still have to pay to the freehold investors.

It took that long because I kept redacting my own TP1, putting a red line through it and sending it back, saying, "I am not doing that, that or that." Eventually, we got rid of them. The problem now is that we still have a lot of conveyancers who do not do that for the leaseholders. If the leaseholder does not understand the system or the lease terminology, that is always a big barrier. The way that leases are written—all their legalese—means the general public generally cannot understand; so, it is difficult.

Q40 Andy Carter: Sorry to interrupt. When you were buying your house initially, did you know it was leasehold?

Cath Williams: No, there was nothing on the site or in the paperwork to say that it was leasehold.

Q41 Andy Carter: So when did you find out?

Cath Williams: I found out on the day that I paid my deposit and went in to look at the extras list, which you tick to say, "I'm going to have carpets, curtains" and so on. The sales person said, "There's something I need to add", took a pencil and wrote "leasehold" along the bottom. *[Interruption.]* It is a true story. I said, "What's this?", because I had bought so many houses that were newbuild. I said, "I don't understand why you are writing 'leasehold'." They said, "Did we not tell you?" I got a story about how it was local council land and had to be leasehold, which turned out to be completely untrue.

Q42 Andy Carter: So you paid your deposit.

Cath Williams: Yes, I paid the deposit, and I had sold my other property. We were very late on in the process, so I believe that I was mis-sold and misled, as were many members of the National Leasehold Campaign. We hear very similar stories.

Q43 Andy Carter: I have residents in 40 or 50 homes on an estate in Chapelford in Warrington where not one of them was told about them being leasehold until they paid the money.

Cath Williams: That is right. You are committed, and you are at a point where if you do not continue, you will lose even more money. You have an emotional connection to the property that you want to buy and lots of other pressures as well—people might be moving jobs or trying to increase the size of their home.

Jo Derbyshire: I knew, but the salesperson told me that we could buy the freehold at any point for about £5,000. What they did not tell me was that the business model was to sell it on and what the implications of that would be. They sold it on less than two years after I bought the house, and the price went from the £5,000 they asked for to £50,000.

Q44 Andy Carter: Did you know that they were selling it on? Did they tell you that they were selling it on? Did they give you any notice of it?

Jo Derbyshire: No.

Katie Kendrick: No, because legally it is unlike in flats, where when they sell the freehold on they should offer the people in the flat the right of first refusal. That does not apply to houses, so the land was literally sold from beneath us and they told us afterwards. Because we were not entitled to buy the freehold for two years—you must live there to qualify to enfranchise—they sold the freeholds on before the two-year point, so the freeholder was no longer the developer that we originally bought from; it was an offshore investment company that then increased the price significantly. We were never told that that would happen.

Q45 Andy Carter: Can I just go back to your point, Jo? You said that it went from £5,000 to £50,000. Have they given you any rationale for the £50,000? Where did that number come from?

Jo Derbyshire: That was the market value for a 10-year doubling lease.

Q46 Matthew Pennycook: A huge amount of the Bill is left to future regulations and statutory instruments. That is understandable in many cases—I am thinking of the service charge provisions and others. Are you concerned that it will take a long time to bring some of the measures into force? Is there a specific concern about the incentives that that creates in the time between them coming into force and the Bill receiving Royal Assent? As the Bill is drafted, there are some hard cliff edges, for example, on the new 999-year leases, where you have people who must extend before they come in. However, there are some potential cliff edges if the commencement dates on lots of these things are 12, 18 or 24 months away. Is that a concern?

Katie Kendrick: It is a big concern, because leaseholders are trapped. They are in limbo, so they do not know whether to enfranchise now or to wait for the Bill to go through. The Bill says that it will make it easier, cheaper and quicker, but the devil is in the detail, and we do not know what the prescribed rates will be. We are being promised that it will be cheaper, but will it? It all depends on who programmes the calculator. Ultimately, will it actually be cheaper? The Bill says that it will abolish marriage value, which is hugely welcomed by leaseholders, so those people with a short lease approaching the golden 80-year mark are waiting. Do they go now?

Q47 Matthew Pennycook: Some of them will not have a choice, will they?

Katie Kendrick: No, some people do not have a choice. People's lives are literally on hold, and have been for many years, waiting for the outcome of the legislation. If we need further legislation to enact the Bill, people cannot sell. Housing and flat sales are falling through every single day because of the lease terms and service charges. It is horrendous. It will grind the buying and selling process to a halt.

Q48 Barry Gardiner: I want to ask you about this whole business of people being unable to sell, and, in effect, the interaction between what the Government have tried to tackle in the Building Safety Act 2022 and what we have in this Bill.

Under the Building Safety Act, the provision is to appoint a designated person—an agent—to deal with the safety of the building. Often it will be the developer who is responsible for the remediation of a building that has fire safety defects and so on, which the Government are quite rightly trying to address, but they will argue that it is not possible to do that unless they have control over the management of the block as a whole. Therefore, there is a conflict between the Building Safety Act and the provisions in this Bill to help leaseholders gain the right to manage.

You might have just enfranchised and got the right to manage your own block, yet there is now an appointed person who will be told by the court that they have the right to manage the block. Very often, it will be the person you have just liberated yourself from. You will have just enfranchised yourself from that freeholder, only to find that they are now back in control. Do you feel there is a way in which the Committee should try to remediate and address that problem when it is looking at the Bill, and do you have any ideas as to how we should go about it?

Cath Williams: First of all, the situation that flat leaseholders are in at the moment, where they have building safety issues and leasehold issues, is so complex. It is horrendous. We hear daily in the National Leasehold Campaign about these poor leaseholders. It is really heartbreaking.

Barry Gardiner: It is awful.

Cath Williams: People are at breaking point.

Barry Gardiner: People have committed suicide, have they not?

Cath Williams: People have committed suicide, yes. That is worth noting.

They ask for advice. We have never been flat leaseholders; that is the first thing, but there is a lot of support in the group to try to help people navigate their way through the Building Safety Act first of all, and now we have this Bill as well. In principle, I think they would really welcome some sort of cohesion between the two. I don't know what that would be; it is really hard.

Katie Kendrick: It is really difficult because we are encouraging people to take control, but by doing that they are liable for more of the building's safety. The two Bills have to work together.

Q49 Barry Gardiner: There is a real tension here, is there not?

Katie Kendrick: There is.

Q50 Barry Gardiner: You have talked extensively about ground rent and, Ms Derbyshire, your situation with it doubling. We all know the story about the inventor of chess, who asked for a grain of rice on the first square as his reward as long as it doubled until the last square, and then there was not enough rice in the world to provide it. This is clearly inequitable. You said that you welcome the provision in the Bill to be able to get rid of ground rent—to take it down to a peppercorn. Given that we have the consultation at the moment, would it not better if the Government just did that rather than you having to pay for it, which is what is recommended in the Bill? You should not have to pay to get out of a situation that is unjust. It was unjust in

the first place, and it would be much better if the Government simply moved the consultation onwards and got rid of it.

Cath Williams: Yes.

Jo Derbyshire: The Leasehold Reform (Ground Rent) Act 2022 has essentially created a two-tier system where you have new builds without ground rent. As Cath mentioned, we are concerned that clause 21 and schedule 7 of the Bill seem to say a qualifying lease for buying out to a peppercorn rent must have a term of 150 years. We have seen lots of examples in the National Leasehold Campaign of new build properties—flats in particular—where the lease is 99, 125 or 150 years from the start, so a whole swathe of properties would be automatically excluded.

However, for us, because ground rent is a charge for no service, peppercorn is the answer. We also fear that, in terms of the timetable for legislation and getting this through, the sector will fight intensively and try to tie this up in the courts for years. It has nothing to lose; why wouldn't it?

Q51 Andy Carter: Katie, can I just go back to your earlier point about how lots of sales are falling through? Can you just explain why that is? What is causing sales to fall through on leasehold properties?

Katie Kendrick: Because an escalating ground rent worries mortgage lenders and buyers are unable to get mortgages because of an escalating ground rent. Where that is because of the £250 assured shorthold tenancy issue, my understanding is that that will be sorted through the Renters (Reform) Bill, so that will close that loophole, but lenders do not like—for most leases now, the doubling has half-heartedly been addressed and a lot of leases are now on RPI—the retail price index.

However, with RPI being the way that it is—it has been really high in the last couple of years—some of those ground rents are coming up to their review periods and are actually doubling. Therefore, RPI, as Jo said many years ago, is not the answer. Converting to RPI is not the answer because an escalating ground rent is still unmortgageable, and it takes it over the 0.1% of property value, which, again, mortgage lenders will not lend on.

Therefore, a lot of mortgage lenders are asking leaseholders to go to the freeholder and ask them to do a cap on ground rent, which is then costing the leaseholder more money to get a deed of variation from their freeholder. That is if the freeholder agrees at all, because the freeholder does not have to agree to do a deed of variation to cap the ground rent. That is coming at a massive cost if someone wants to sell, but without that people are losing three, four or five sales, and people have given up because their properties are literally unsellable.

Cath Williams: There is a house on my estate where sales have fallen through twice already. It is a townhouse; it is worth about £220,000. The ground rent currently—it is on an RPI lease—is £400, which takes it over the 0.1% of property value. Two sets of buyers have had problems getting a lender to lend in that situation.

Q52 Andy Carter: A final question from me: on your social media channels, you talk about the leasehold scandal as being very similar to Mr Bates—who is in Committee just over the way—against the Post Office. I mean, is that true? Is it David versus Goliath?

Katie Kendrick: Absolutely. When I watched the programme, I was shouting out loud. The parallels—the similarities—are astounding. The system there was a computer system; the system here is leasehold. People have been ripped off for so many years and paid unnecessary fees, and lots of leaseholders are thousands of pounds out of pocket. And that is because the system—the leasehold system—has allowed that to happen, and it is a scandal of the same magnitude, as far as I am concerned. People have, unfortunately, lost their lives. I have become a bit of an agony aunt for people; my phone never stops because people contact me in tears, and I have stopped people from taking their own lives because of leasehold. It is horrendous—absolutely horrendous—when you are living it and you feel completely trapped. It is when they feel that there is no way out that people look at taking another way out, and it is horrendous.

Cath Williams: And we were both told, weren't we, by the CEOs of the developers that we bought our houses from, that there was no leasehold scandal?

Katie Kendrick: Yes.

Q53 Mike Amesbury: Can you tell the Committee about what is commonly known as "fleecehold"? Does this Bill in any way deal with aspects such as that?

Katie Kendrick: Our campaign coined the term fleecehold, and it has been used as a bit of an umbrella to describe all of the different ways that we can be ripped off through our homes. It first began because, when we were enfranchising and buying our freeholds, the freeholder was trying to retain all the same permission fees—such as permission to put on a conservatory or to paint the front door—in the transfer document. Ultimately, you could be a freeholder but still have to pay permission fees to the original freeholder.

That is where fleecehold came from, but fleecehold is now used as a much broader phrase because we have estate management charges. The new build estates all have estate management charges attached to them. They have replaced one income stream—leasehold—by creating another asset in the open green spaces. We all have lovely big open spaces and lovely parks, but it is the residents who pay for that. Again, it is a private management company that manages them. You have no transparency over what they are spending.

I can remember somebody ringing me up and saying, "Katie, I have a breakdown of my estate management charges and they are charging me such-and-such for a park, so I rang up and said, 'You're charging me.' 'Yes, Mr Such-and-Such. You have to pay for the upkeep of your park.'" And he went, "I understand that, but I haven't got a park." It is outrageous. It is great that they are going to give people more right to challenge the costs, which they do not currently have with their freeholders. They have fewer rights than leaseholders to challenge at tribunal. But ultimately why have we gone to a private estate model? Why are people paying double council tax? They are paying full council tax the same as anybody else is, yet they now have to pay thousands of pounds in estate management charges. It is a ticking timebomb.

The estates look very nice now, but in the future when the pavements are falling to pieces—I spoke to a police officer and things are not enforceable because they are classed as private. Speeding restrictions? You could have a boy racer running through the estate, but the police cannot enforce anything. The same with double

yellow lines and things like that. It is a ticking timebomb, because new build estates are popping up all over the place with private management companies.

Jo Derbyshire: There are some things in the Bill that try to stop things. Typically on fleecehold estates there might be freehold houses, but the estate management charge is secured legally by something called a rent charge. What most people do not understand is that if they withhold their estate management fees, the property can be converted from freehold to leasehold. Again, that cannot be right.

Q54 Rachel Maclean: I just want to clarify your understanding of something that Mr Gardiner said earlier. I might need to put this to the Minister later, but Mr Gardiner said that if the new provisions on ground rent go through and ground rent goes to peppercorn or zero—I might be misquoting him.

Barry Gardiner: You have been spot on so far.

Rachel Maclean: You mentioned that in the new Bill leaseholders will have to pay to get their ground rent to zero. Can you set out what that provision is? Where is that in the Bill?

Cath Williams: I don't think we know. That was one of our questions. There is a process in the Bill about how a leaseholder can acquire the peppercorn ground rent, but who pays for that is not clear. I think that was raised before. I do not think leaseholders should pay, because it should not have been there in the first place.

Katie Kendrick: Or there should be a prescribed cost—"apply for your peppercorn now"—with a simple process. Otherwise it will be exploited, and lawyer will charge different amounts to convert. You can see what will happen, so it needs to be streamlined. Whatever we go for, it needs to be streamlined.

Cath Williams: And we need an online system that cuts out everybody in the middle, so that there is no confusion or discussion about what it should cost.

Rachel Maclean: Thank you so much for clarifying that.

Q55 Alistair Strathern (Mid Bedfordshire) (Lab): I could not agree more about the challenges you set out around people finding new ways to extort homeowners and the moves towards charging for the maintenance of public space. In my constituency of Mid Bedfordshire, many estates suffer from this issue. Mr Fuller will have similar ones on his estates in North East Bedfordshire. I completely agree that it feels shocking for lots of people that they are essentially paying twice for services: once for council tax and once for a charge that they have little control over and where there is often little guarantee of good services.

There are many estates in my patch where you can literally see where it becomes private because the condition of the road is shocking compared to 2 feet away, or the condition of the public space completely deteriorates. What measures would you like to see added to the Bill to help address that? Would you agree that ultimately we need mechanisms to ensure that a stated object can happen in a way that everyone can have confidence in?

Katie Kendrick: In an ideal world, the local authorities would be adopting these areas. I do not think there should be a private management at all. Local authorities used to, and they can charge the builders more for the land at the start.

Cath Williams: I agree.

Katie Kendrick: Adopt the lot.

Q56 Ms Rimmer: Katie, it seems to me that you and your team should be congratulated—you are the agony aunts. Believe you me, people look to these ladies and groups of people as their saviours rather than the Government. Already, leaseholders are saying, "Well, perhaps we can make this peppercorn. If we all go for this peppercorn, perhaps we can work then to get that peppercorn and get in there, and get shut of it that way." Really, this is the opportunity. We should be listening to them—granted—and I genuinely believe there is listening going on with this Bill.

We have to tie it down and not let the situation become like the one we have seen with the post offices. It is an obstacle course. People have committed suicide. Managers have broken down. Homes have been lost. Jobs have been lost. The management charges are unbelievable, and I do not think people understand that. I have not seen it anywhere, but a leaseholder has to write if they want to change the carpet; they then get charged a couple of hundred pounds for that, they get charged for the answer, and they get charged when somebody comes to have a look at it. That is how it goes on. The management charges are as big a fear as the lease, because leaseholders do not know where they are going.

The Government simply have to step in. It is the biggest money-making racket in this country now—and it is a racket. It is said that people have sat down and designed this system, and we should not leave these people to do the fighting on their own. I genuinely believe that there is desire to do so from both the Minister and our shadow Minister. Please come forward with your thoughts; do not give up. I do not believe for one minute you will give up.

Katie Kendrick: I believe there is political will to do this from across the House; there is unanimous agreement and there is no dispute. If there is no dispute, we just need to get it done.

The Chair: Right, that is probably it then—*[Laughter.]* Thank you.

Examination of Witness

Amanda Gourlay gave evidence.

10.48 am

The Chair: Good morning. Would our last witness like to introduce herself?

Amanda Gourlay: I am Amanda Gourlay. I am a barrister at Lazarev Cleaver LLP and I am an associate member of Tanfield Chambers. I have been in practice for nearly 20 years—I think it is 18.

Q57 Matthew Pennycook: Amanda, thank you for coming to talk to the Committee. You have expertise in a number of areas, but I wanted to probe you on something that we have not gone into the details of—the

service charge provisions in clauses 26 to 30. Lots is left to regulations, but these clauses are potentially quite transformative—particularly clause 27, as most leaseholders will experience that clause as it relates to service charge demands. In your view, looking to improve the Bill further, what are the flaws, inconsistencies, deficiencies and problems with these clauses, albeit the regulations are coming, and what stipulations might we look to put in the Bill about what those regulations must look like?

Amanda Gourlay: I would like start by quickly saying that while the Bill is welcome—as far as I am aware, we have been working towards leasehold reform for about six years now, from a service charge perspective—in an ideal world, although I appreciate that we are not starting with an ideal world, the best starting point would be to repeal everything we have so far so that we can codify and consolidate everything. I say that in relation to service charges, which apply only to leasehold properties, but also to bring all the charges relating to services and works that homeowners, occupiers and residents might pay within one regime, so that we are not looking at a separate regime for estate management charges or for estate management schemes, which are different from estate management charges, but we bring everything into one place. If I receive a demand for payment of maintenance of a park on my estate, it matters not to me whether I am a leaseholder or a freeholder—the money that I pay is exactly the same.

I wanted to set that out as my starting point, if I had a blank piece of paper and endless parliamentary time and patience. Having said that, we are where we are. I have made notes and, with your permission, I will run through them as quickly as I can, while still providing some degree of detail. I am a lawyer—I am one of those people whose living is derived from working with leasehold. I am one of the people who is often criticised in this arena.

I have had a good look at the clauses of the Bill. There are good things: there are time limits and an enforcement provision, and we are undoubtedly attempting to achieve some transparency. I wanted to put that out there as the good news to start off with.

From an improvement perspective, I want to start with clause 28, which deals with the provision of the written statement of account and the report the landlord will be required to provide. I have very little to say about clauses 26 and 27. Clause 26 brings the fixed service charge into the service charge regime. Clause 27, as you say, relates to the service charge demand. We do not know what the regulations are going to say. We do have an existing framework—a relatively limited one—for service charge demands, so there is something there, but we will need to see what the regulations do. What we would really benefit from is consistency in the regulations, so that across the board, as a leaseholder moves from one flat or property to another, they can expect to see the same charges set out in the same way, broadly speaking—so that they know what to look for when they go from one place to another.

The clause I have had quite a look at, with the benefit of some accounting input, is clause 28. It will insert two new sections into the Landlord and Tenant Act 1985, which is the framework we are looking at when looking at the Bill from the perspective of these clauses. It is good that we have a time limit for the provision of service charge accounts. I have come across many cases where leaseholders are repeatedly asked to pay on-account service charges and they never receive a reconciliation at the end of the year, so there is no real knowledge of what is being spent.

We could do with looking at a template for the provision of service charge accounts. That may be a matter for regulation, rather than the Bill, but I want to explain to you why I say that is important. When the service charge accounts come over, they have often been prepared by the managing agent, who has then instructed an accountant to review them in some shape or form. Often, the accountant will simply say, "I have agreed a set of procedures that I am going to follow in relation to the service charge accounts. I am going to check that the numbers have been properly extracted and check a small sample of the invoices to make sure that what is said has been invoiced has found its way into the accounts." What we do not find for leaseholders, unless the lease requires something like an audit, is a proper review of service charge accounts with a balance sheet, an income and expenditure report, and notes to the accounts.

The first thing I must say as I am explaining this is that I am not an accountant—far be it. If I may make a suggestion, it would be extremely helpful for the Committee to engage with either a firm of accountants or, in fact, the Institute of Chartered Accountants in England and Wales; the Committee could then ask how they would go about formulating a proper system—probably in conjunction with the Royal Institution of Chartered Surveyors, under the fourth edition of the code, hopefully—in order to bring service charge accounting into the arena that it is currently in in the commercial code, or the professional statement that the commercial environment has in it.

Accounts is a big area, and it would be immensely helpful to have more involvement all round from accountants. I will not say accountants are the elephant in the room, as that would be a discourteous metaphor. They are the people who are never seen in tribunals. They are the people who do not speak loudly to Committees such as these. Yet, service charges are as much about the money as they are about the services. A balance sheet will give completeness. Income and expenditure will tell you what has come in and what has gone out. It makes sense.

While we are there, might I also invite the Committee to consider trying to bring together the differing understandings of "incurred" in the 1985 Act, as against what an accountant will understand. An accountant will understand a cost being incurred when that service is effectively provided. When I consume electricity, I incur a cost from an accountant's perspective. From a lawyer's perspective, I do not incur that cost until either, as a landlord, I receive the invoice, or I pay that invoice. So, they are very different dates and times. Some consistency between those professions would be helpful.

We would very much benefit from cost classifications that would support the provision of service charge accounting. It would also support the tribunal in understanding where to look for certain costs in relation to service charges. Cost classification would simply be some headings, some detail beyond that and then detail of the service that has actually been provided.

I am stepping entirely outside my area of comfort, but I confess I am married to a chartered accountant who specialises in commercial service charges. I have

some wonderful Sunday morning conversations with him over breakfast. Those are points that, between us, we have come up with—looking at the way that service charge accounts have been prepared.

Further, in clause 28, there is a word I have not seen before in relation to service charges. That is that there is an obligation to provide leaseholders information about variable service charges "arising". I am not sure what that means, and it would benefit from some explanation. That is the sort of word that will find its way into tribunals, I would expect. If "incurred" did, and found its way to the Court of Appeal, "arising" could do with some explanation.

The report, which is the second element in clause 28, which a landlord is required to—

The Chair: May I interrupt?

Amanda Gourlay: Of course you may, with great pleasure.

The Chair: The point is not to make a long speech. The purpose is to answer questions. You might want to draw your remarks to a conclusion, so that my colleagues can ask you questions.

Amanda Gourlay: Certainly. I was asked a question and the only way I could answer was by taking you through the detail, because general comments are not going to help the Committee in formulating its way forward.

The Chair: I am a lawyer, too; I know that we manage to speak quite a lot.

Amanda Gourlay: I am grateful, thank you very much.

Q58 Dehenna Davison (Bishop Auckland) (Con): Thank you for comprehensive run-down so far. I am sure there is more to come.

Amanda Gourlay: I am going to try not to go too far. I have been described as enthusiastic and I find I have to pull back slightly.

Q59 Dehenna Davison: We need that level of enthusiasm, and the granular information really helps us to formulate our views. You were sitting in on the previous evidence session, when we heard some strong, and in some ways harrowing, evidence from the brilliant campaigners from the National Leasehold Campaign, particularly around transparency, not just on service charges but with regard to the sale of leases, and the lack of information on that, and the increased cost for leaseholders who wish to enfranchise.

What did you make of that? Clearly, the Bill contains a number of provisions, particularly on consumer rights. From my perspective, the most interesting is around transparency. Do you think the Bill goes far enough? You have already given examples on service charge accounts, but are there other ways that the Bill could go further to improve that?

Amanda Gourlay: What I would say, to start with, is that my area of expertise is service charges. I know the Committee will hear from Philip Freedman KC (Hon) and Philip Rainey KC on Thursday. I would defer to them on all matters on enfranchisement. That is my preface to your question. Transparency is going to come from consistent information being provided in the service charge arena. Thinking specifically about the sale of properties—the assignment of leases and the sale of leases—one issue that comes up quite regularly is the provision of information on the position on service charges, including questions like, "Has the leaseholder paid all the service charges?", "Are there any works proposed for the future?" and those sorts of general questions that we all want to know the answers to if we are going to buy a property. There is no regulation of that whatsoever at the moment, and it is quite a sticking point.

I have had one or two cases where I have been involved in those sorts of issues—where a leaseholder has wanted to sell on their lease and has simply not been able to obtain the information from whoever it is who should be providing it and to whom the request has been made. That information is really something that we need to see pushed forward.

The Bill does provide two clauses about the provision of information. Provided that it is understood that those provisions extend not only to the leaseholder—"Please tell me about my service charges"—but also to the packs that conveyancers will ask for when flats are being sold on, it would be a good thing to move that forward, because it has been a real struggle to impose an obligation or to find a way of obtaining that information in a reasonable time and at a proper price from the managing agent. That would be my answer in terms of sales.

Q60 Dehenna Davison: What would you consider a reasonable time? I mean, 24 hours would be great, but—

Amanda Gourlay: Twenty-four hours would be great, but that would probably sow total panic at the receiving end—I know that it would if I received that and I was doing something else. It will depend very much on the nature of the property. There are some very complex developments over in the east end of London. On the other hand, there are Victorian houses that are only two or three flats, and that should be much more straightforward.

I am aware that people have been able to pay for, say, a seven-day or five-day service, and there has been an uplift in the price for that. I am not the best person to ask about what the price should be. What I would say is that if a managing agent to whom this request would normally go is keeping their records up to date, one would hope that with the progress we have in software nowadays, that should very much just be the pressing of a button.

On work that is going to be carried out in the future, I have heard talk about, for example, mandatory planned maintenance plans. I have not seen those in the Bill. If a building or property is being well managed, one would expect there to be a plan for the next five or 10 years—what is needed to be done in terms of decorating, lift replacement and so on. Again, if that is in place, I would anticipate that it should be relatively straightforward to produce the information. I cannot give a specific answer; what I would say is that if we are all keeping our records up to date, that should be a relatively speedy process.

Q61 Barry Gardiner: I understand that you were involved in the Canary Riverside judgment just before Christmas.

Amanda Gourlay: That is correct—yes. Forgive me; I was involved in Canary Riverside between 2016 and 2017. My involvement finished in June 2017.

Q62 Barry Gardiner: Thank you. But you are aware of the judgment that came through just before Christmas in the case.

Amanda Gourlay: I am not sure that I am—no.

Q63 Barry Gardiner: Were you involved in relation to the uncovering of the £1.6 million commission for insurance?

Amanda Gourlay: No, I was not involved in that element of it.

Q64 Barry Gardiner: In that case, I am probably better putting those questions to a later witness.

In relation to that case, and on the accountable person provisions and section 24 amendments in the Building Safety Act—this relates to a question I asked earlier—the tribunal decided in the Canary Riverside case that the section 24 manager cannot be the accountable person, and that risks the section 24 management order failing, and the failed freeholder coming back to take control of the leaseholders and their service charge moneys. The implications of that decision really are quite dramatic. It means that the lifeline of the section 24 court-appointed manager provision from the Landlord and Tenant Act 1987 has been removed from leaseholders, particularly those who cannot afford to buy their freehold or do not qualify for the right to manage. How should we address that problem in the structure of the Bill?

Amanda Gourlay: I do not think you need to do that in the structure of the Bill. Casting my mind back to the Building Safety Act, which is now in second place to the Leasehold and Freehold Reform Bill in my mind, my understanding is that there is provision for a special measures manager in that Act. If that were brought into force, one would have a recourse. I am very happy to open my computer and look at the Act, but I do seem to recall that there is provision for a special measures manager to take over the building safety or the accountable person role in a manner of speaking. I say that in the loosest terms, without having checked the law.

Q65 Barry Gardiner: I am sure Ms Maclean will have details from her past life. Thank you for that—it is extremely helpful. You referred to clauses 27 and 28 and said that the word "arising" was one that troubled you. Could you point us to which clause that is in, so that we can be clear about it? You will have heard the question I put to another witness about making provision in the Bill, as there had been, although it was never brought into play, in the Commonhold and Leasehold Reform Act 2002, for leaseholders to be able to withhold their service charges if all that is set out in proposed new sections 21D and 21E has not been complied with?

Amanda Gourlay: There is always a concern looking forward as to how things might play out. I will deal your question on "arising" first, then come to your other point. Clause 28(2) inserts proposed new section 21D, "Service charge accounts". Subsection (2)(a)(i) talks about the variable service charges "arising in the period".

Barry Gardiner: Ah, "arising in the period". Gotcha.

Amanda Gourlay: Turning to the second part of your question, one of the very big difficulties with the reform of leasehold is that good and bad—to put it in very binary terms—do not sit on one side or the other. While it seems to me that in an appropriate situation it would be entirely reasonable for a leaseholder to be able to withhold their service charges, there may equally be leaseholders who consider that this is an opportunity not to pay, for different reasons. There is always that risk. If one does not pay one's service charge and is obliged to do so—for example, by going to tribunal and the tribunal says that actually £2,000 is payable—one is at risk of legal costs, which I am sure we will come on to in relation to the risk of forfeiture.

Q66 Barry Gardiner: I was thinking not so much about where there is a dispute over reasonableness but more about whether the process that is set out in proposed new section 21D had been followed—for example, someone had not laid the accounts within six months and had not gone through all the set requirements in the Bill. Rather than it being a dispute about substance, the charge would be withheld on the basis of a failure of process by the freeholder.

Amanda Gourlay: Yes, and I understood your question that way. I think my concern is that if there is a minor breach, is that simply a situation where we withhold service charges entirely? The question is the nature of the breach and whether it is or is not a breach. In principle, I would agree that it would be a sensible form of enforcement, because it is the absolute. It is the most draconian form of enforcement. One should always bear in mind, however, that if a third-party management company—a residents management company—is obliged to insure a building and has absolutely no wherewithal to insure it, there is that risk. Things may need to be done that simply cannot wait but, in principle, I see no reason why that should not be a remedy for failure to follow the process.

Q67 Barry Gardiner: Although I said at the outset that I would not pursue the insurance costs with you, I think we can probably agree that the £1.6 million commission that was ruled illegal will take out the idea of commission—but that will move to fees instead. Given what you said about "arising", do you have similar fears that fees for work charged might also open that up to a multitude of sins in the Bill?

Amanda Gourlay: Do you mean generally, or in relation to insurance?

Barry Gardiner: In relation to insurance—because it will no longer be possible to charge commission, but it will be possible to charge a fee.

Amanda Gourlay: That is always a risk. In fact, that is a risk across the whole Bill where more obligations are imposed on a landlord. If the costs of those obligations are recoverable under the terms of the lease as part of the management, it is almost inevitable that charges will go up. They will have to: I am going to have to do more work, so I would like to be paid more." The only control of those that we have at the moment is under section 19 of the Leasehold Reform Act 1967, which is whether the costs are reasonable in amount for the standard of work that is provided. One would hope that there would

be degrees of transparency, but of course there is no obligation to account necessarily for the fees, save for the limitation of administration charges and the obligation to publish a schedule of fees of administration charges.

Again, however—I am sorry that I am providing such long answers—where it comes to publishing a schedule of administration charges, that is quite straightforward for most cases, but clearly if someone wants to carry out a significant change to a flat on the 15th floor of a building, the costs will be difficult to quantify in advance. There is still wriggle room, I think, in the administration charge limitations for costs to be higher.

Barry Gardiner: Finally, proposed new section 21E of the 1985 Act talks about annual reports, while proposed new section 21D sets out the basis of the accounts and when they must be presented. What is your understanding of the difference between the report—as set out,

"before the report date for an accounting period, provide the tenant with a report"—

and the accounts, which have to be presented at the end of the sixth month after the period? Is there any requirement in the Bill as drafted to ensure that the information available in the accounts is greater or more detailed—indeed, in any way different—from the report?

Amanda Gourlay: That is a question with which I have battled for a number of hours. The conclusion I reached was that proposed new section 21D very plainly envisages the involvement of a chartered accountant—a qualified accountant; proposed new section 21E is different because it would appear to be more narrative, a more general description of the information that has to be provided.

If you look at the Bill, subsection 21E(3), which entitles the appropriate authority to make provision about information to be contained in the report, is extremely broad. It refers only to

"matters which…are likely to be of interest to a tenant".

That is a very wide scope. The information in effect has to be provided within a month of the service charge year-end, whereas the service charge accounts must be provided within six months.

While I am on that point, proposed new section 21E is enforceable under the enforcement provision, which I think is clause 30; rather peculiarly, however, proposed new section 21D is not. I invite the Committee to consider whether that new section 21D should be brought within the scope of clause 30.

Barry Gardiner: Thank you. That is extremely helpful.

Q68 Matthew Pennycook: I just wanted to follow up on something, so that I am clear in my own mind in relation to Mr Gardiner's question about the provisions in the 2002 Act that have not been brought into force, and it directly relates to what you have just said about proposed new section 21D.

In some senses, many of the new requirements in this section are covered by the enforcement measures in clause 30. Is proposed new section 21D the only example, or are there other examples, of where that power in the 2002 Act might be considered necessary for a leaseholder to use, because the enforcement provisions do not cover the full gamut, if you like? I suppose that I am trying to get to where the enforcement clause is lacking. Is Mr Gardiner correct in specifying that there are circumstances in which you would want to withhold because the non-payable enforcement clauses do not bite in the relevant way?

Amanda Gourlay: I am instinctively nervous about withholding, even if it is simply a question of process.

Q69 Matthew Pennycook: I suppose what I am getting at is that you would not need to withhold if the enforcement clause properly covers all the requirements therein.

Amanda Gourlay: It seemed to me that when I was reading through the clauses in the Bill that it was really section 25D that stood out as the measure that was not covered by clause 30. Clause 30 very clearly enumerates that we have section 21C(1) which is about the demand for a payment; 21E, which is about the reports—obviously, between C and E there is D, which is not in there—and then we also have 21E covered. You can literally trace those measures through. D was the one that stood out for me as being a necessity.

It might be said that that is because the provision of those accounts is outside the control of the landlord, because the accountant is the person who is preparing the accounts and they may—you will understand that I am trying to argue both against myself and for myself. There is that possible argument that may be proposed as a counter-argument to mine.

Q70 Richard Fuller: Ms Gourlay, I just wanted to go to part 4, which is about the regulation of estate management charges. You talked at the outset about bringing everything together in the process and we have heard a lot about people saying how it is all a bit of a David and Goliath process, so I wanted to get your views on how effective you think some of the measures in the Bill are when it comes to trying to help David in his battle against Goliath. We should always remember that David actually beats Goliath; I do not know why or whether that is a bad thing.

You talked also about the provision of information and how important it is that people have access to annual reports and so on. In clause 49, there is a provision whereby the failure to provide things such as annual reports will carry a charge, with a maximum charge of up to £5,000. Then in clause 51, which addresses other aspects of what should be provided—in this case, charge schedules; you said how important they were—there is a maximum charge of £1,000. Does that sound like a sufficiently large sling from which a shot may be fired, or is it just a cost of doing business?

Amanda Gourlay: Again, we come back to the fact that for some landlords, particularly those that might be management companies with no other assets, £1,000 would be crippling; effectively, that might put them into insolvency unless they can recover those moneys from other leaseholders. For other landlords, even £5,000 will be next to nothing. It is a shot across the bows; it is clear that such failure is regarded with disapproval.

What I would like to do is to take those figures back, because they appear in part 3 as well as in relation to the estate management charges. The way in which they are formulated is that they are damages that can be awarded to a tenant if they make an application, certainly on the leasehold side of things—

Q71 Richard Fuller: Not in this section.

Amanda Gourlay: Not in that section.

If it is effectively a civil fine, there needs to be a sliding scale. In the tenancy deposit scheme, the way that things work is that, as you may know, if the landlord has not protected the deposit, they have to pay back an amount that is between one and three times that deposit. Some form of sliding scale would seem to be appropriate. I am not the right person to ask about sums and amounts; that is a policy question, really.

Q72 Richard Fuller: However, I think you have given some view about how you think it should be assessed.

Amanda Gourlay: I think it should be assessed on a sliding scale, to take account of the differences of interest—

The Chair: We have four more people who want to ask questions, so we need quick answers.

Q73 Richard Fuller: The other part is that bringing a lot of this together will mean that the first-tier tribunal has a lot more work. Do you think that people may want to get justice, but that it will be denied because the first-tier tribunal is going to be overwhelmed?

Amanda Gourlay: I would not anticipate that the first-tier tribunal would be overwhelmed. At the moment, I find that my hearings go through within a reasonable period of time. That is the best I can say.

Q74 Mike Amesbury: Would commonhold being the default position make your job less complex?

Amanda Gourlay: In the first few years, it would make it more complex, because I would have to learn about it. I have read the Law Commission's report, and any new scheme is going to involve some bedding down. From what I read and hear about commonhold, it should make matters less litigious. That is what I hear. I have no experience of commonhold directly, however.

Q75 Andy Carter: Having heard from some of our other witnesses, and from the casework that I see in my office, it strikes me that there is a lot of bad practice in the sector. We heard from one of our first witnesses this morning about recurring charges not being disclosed at the point of sale. Does the Bill address that sufficiently? Would it be more sensible to have a clause stating that if recurring charges are not disclosed when the transaction is complete and you purchase the property, they are not paid?

Amanda Gourlay: The difficulty always comes back to what information people are given when they purchase a property, or when they take on the lease of a flat or a house. On the whole, those in the conveyancing industry who behave ethically do their best to inform people. I have very little conveyancing experience, so I am going to hold my fire on that a little. Clearly, if something is important, it should be drawn to a purchaser's attention. Recurring charges are something I would have anticipated. Anecdotally, I have heard that people will say, "I don't understand why I am paying a service charge—I own my flat." "Education" always sounds slightly high-handed, but more information being made available or accessible would be useful.

Q76 Andy Carter: It is one thing knowing that you have a service charge—when you buy a flat, you know that—but it is quite another when you do not know about it and it suddenly hits you after you have signed on the dotted line. To me, that is more of a problem, but thank you very much.

The Chair: We have just three minutes left, as we are bound by the programme motion. We will hear questions from Rachel Maclean and then Barry Gardiner, and we will finish by 11.25, as per the programme motion.

Q77 Rachel Maclean: Have you ever acted for freeholders against leaseholders? Have you ever found that the leaseholders have been egregious, rather than the other way round?

Amanda Gourlay: I believe I have acted for freeholders against leaseholders on occasion.

Q78 Barry Gardiner: You referenced the damages under proposed new section 25A of the Landlord and Tenant Act 1985, which "may not exceed £5,000". The tribunal does not have to award £5,000; it is a ceiling, rather than a floor. Often a single leaseholder will go to the tribunal and get an award, but they are representative of problems that all the other leaseholders have. Rather than saying that damages under the proposed new section may not exceed £5,000, would it make sense to say that damages to each leaseholder may not exceed £5,000?

Amanda Gourlay: That would make sense, but damages are not an appropriate remedy in this particular situation. It is very rare that a leaseholder will suffer financial loss. It is more about encouraging good behaviour.

Q79 Barry Gardiner: Thank you. Will you send me a full report on the details that you did not get a chance to share?

Amanda Gourlay: I will, yes. I had no intention of making a speech, and I am sorry if I trespassed on people's patience.

The Chair: That is fine. Do not worry.

Ordered, That further consideration be now adjourned.—*(Mr Mohindra.)*

11.24 am

Adjourned till this day at Two o'clock.

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

LEASEHOLD AND FREEHOLD REFORM BILL

Second Sitting

Tuesday 16 January 2024

(Afternoon)

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No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor's Room, House of Commons,

not later than

Saturday 20 January 2024

The Committee consisted of the following Members:

Chairs: † Dame Caroline Dinenage, Clive Efford, Sir Mark Hendrick, Sir Edward Leigh

† Amesbury, Mike *(Weaver Vale)* (Lab)
† Carter, Andy *(Warrington South)* (Con)
† Davison, Dehenna *(Bishop Auckland)* (Con)
Edwards, Sarah *(Tamworth)* (Lab)
† Everitt, Ben *(Milton Keynes North)* (Con)
† Fuller, Richard *(North East Bedfordshire)* (Con)
† Gardiner, Barry *(Brent North)* (Lab)
† Glindon, Mary *(North Tyneside)* (Lab)
† Hughes, Eddie *(Walsall North)* (Con)
† Levy, Ian *(Blyth Valley)* (Con)
† Maclean, Rachel *(Redditch)* (Con)
† Mohindra, Mr Gagan *(South West Hertfordshire)* (Con)
† Pennycook, Matthew *(Greenwich and Woolwich)* (Lab)
† Rimmer, Ms Marie *(St Helens South and Whiston)* (Lab)
† Rowley, Lee *(Minister for Housing, Planning and Building Safety)*
† Smith, Chloe *(Norwich North)* (Con)
Strathern, Alistair *(Mid Bedfordshire)* (Lab)

Huw Yardley, Katya Cassidy, *Committee Clerks*

† attended the Committee

Witnesses

Professor Nicholas Hopkins, Law Commissioner for property, family and trust law, Law Commission

Matt Brewis, Director of Insurance, Financial Conduct Authority

Harry Scoffin, Founder, Free Leaseholders

Karolina Zoltaniecka, Founding Director, Commonhold Now

Cathy Priestley, Founder and Co-ordinator, HorNet

Halima Ali, Joint Co-ordinator, HorNet

Mr Andrew Bulmer, CEO, The Property Institute

Angus Fanshawe, Specialist in leasehold enfranchisement

Kate Faulkner OBE, Chair, Home Buying and Selling Group

Beth Rudolf, Director of Delivery, Conveyancing Association

Professor Tim Leunig, Director, Public First

Dr Douglas Maxwell, Barrister, Henderson Chambers

Public Bill Committee

Tuesday 16 January 2024

(Afternoon)

[Dame Caroline Dinenage *in the Chair*]

Leasehold and Freehold Reform Bill

Examination of Witness

Professor Nicholas Hopkins gave evidence.

2 pm

Q80 The Chair: Good afternoon, everyone. Lovely to see you all. We will now hear from Professor Nicholas Hopkins, the law commissioner for property, family and trust law. We have until 2.30 pm with this witness. Will the witness please introduce yourself for the record?

Professor Hopkins: I am Professor Nick Hopkins. I am the law commissioner for property, family and trust law. I have led the Law Commission's work on enfranchisement and commonhold since our work began in 2017. Since 2020, I have also led our work on the right to manage.

The Chair: Will Members please indicate whether they would like to ask a question of the witness? We will start with Matthew Pennycook.

Q81 Matthew Pennycook (Greenwich and Woolwich) (Lab): I again put on the record my declaration of interest that my wife is a joint chief executive of the Law Commission, which Professor Hopkins is representing.

Professor Hopkins, thank you for coming to give evidence to us. I have two questions, perhaps three if we have time. My first relates to those clauses that implement options or recommendations made by Law Commission reports. Parts 1 and 2 of the Bill implement not all but a subset of those recommendations. I expect that the Law Commission will have had a dialogue with Government about what the clauses look like, but ultimately what goes into the Bill is a political choice for the Government. With a view to strengthening the Bill, I will be grateful if we can get a sense from you whether any of the clauses that draw on those options and recommendations is in any way problematic? Do they contain flaws? Are there omissions that mean they will not work in the way that the Law Commission intended them to?

My second question is related to the Law Commission's reports as a whole. My understanding is that they were meant to work as a complete package. In drawing on only a subset of recommendations, is there a risk that some of the underlying rationales for the options and recommendations that you made will be blunted or limited by the fact that others have not been included?

Professor Hopkins: To answer your first question, I am confident that the clauses of the Bill that implement the Law Commission recommendations achieve their desired intent. I know from my team that there will be a number of technical amendments. I do not think that that is necessarily unusual, given the complexity of the legislation, and it reflects the continuous process of examining iterations of clauses to ensure that robust scrutiny is applied.

I should explain the Law Commission's involvement in the clauses. We have worked in much the same way that we would in producing any Bill: Law Commission staff have written instructions to parliamentary counsel, scrutinised drafts and iterations of the clauses, and commented back to parliamentary counsel. We have provided our usual role in the development of draft clauses.

As for the robustness of the clauses, as you said, our reports—in particular on enfranchisement—gave recommendations that would have wiped away the Leasehold Reform Act 1967 and the Leasehold Reform, Housing and Urban Development Act 1993, to provide an entirely new and unified scheme for houses and flats. In the process of instructing counsel, the Government have made decisions on what to implement. We have had to think about how to carry over that policy in the context of legislation that performs keyhole surgery on existing legislation, rather than starting with a blank sheet. With that constraint in mind, however, I am confident that the clauses achieve their desired purpose.

Q82 Matthew Pennycook: To ensure that I have understood you correctly, do you expect some technical amendments, whether minor or not, to come to clarify the provisions?

Professor Hopkins: There will be some technical amendments to come that refine the operation of the clauses.

Q83 Matthew Pennycook: And on the package as a whole working?

Professor Hopkins: On the package as a whole, the Bill implements key recommendations that would be most impactful to leaseholders, in providing them with much greater security and control over their homes and in putting the financial value of the home in the leaseholder's hands rather than in the landlord's hands. It will also enable leaseholders to take control of the management of their block through the right to manage, enabling more leaseholders to do that than can do so at the moment. In particular, it extends the non-commercial threshold from 25% to 50%, which is a doubling, and it also enables more leaseholders to own their block through meeting that threshold.

What is there in the Bill will have a considerable impact for leaseholders exercising enfranchisement rights, whether individually or collectively, and for leaseholders who are exercising the right to manage. There are other things in our schemes that are not there, and other benefits that will not be obtained. For example, sweeping away the '67 and '93 Acts, and providing a unified scheme, would bring with it the ability to remove some procedural traps that can arise. So there are other things in our scheme as a whole that are not in the Bill, but what is there will have considerable impact and a very positive impact for leaseholders.

Q84 Matthew Pennycook: On what is not there, the Government have chosen to include none of the recommendations on commonhold. We very much think that commonhold should be the default tenure going forward. Without enacting all of the 121 recommendations

on commonhold, are there any that could be included in the Bill fairly easily, and in a way that would pave the way for commonhold in the future?

Professor Hopkins: During Second Reading, the Secretary of State said that he thinks commonhold is preferable to leasehold, and I concur with that. We concluded that commonhold is a preferable tenure to leasehold. It gives the benefits of freehold ownership to owners of flats—the benefits that owners of houses already enjoy.

Commonhold does of course have a history. It was introduced in the Commonhold and Leasehold Reform Act 2002 and has not taken off. Our recommendations as a whole were designed to provide a legal scheme that would enable commonhold to work more flexibly and in all contexts—to work for complex, mixed-use developments. With commonhold having failed once, there is a risk of partial implementation, meaning that commonhold has a second false start, which would probably be fatal to it. I think that the legal regime for commonhold needs to be looked at as a whole, to ensure that it works properly for the unit owners, developers and lenders who lend mortgages over commonhold. We need the legal regime that works. We need to remove any other blocks on commonhold.

Q85 Mike Amesbury (Weaver Vale) (Lab): Do you think that it is a missed opportunity not to take those recommendations on commonhold forward?

Professor Hopkins: It is our job at the Law Commission to make recommendations for Government reform and of course we would like to see those recommendations implemented, but ultimately what goes in the Bill is a matter for the Government to decide, not the Law Commission. There is a lot in this Bill that is very positive for leaseholders, albeit the commonhold recommendations are not there.

Q86 Mike Amesbury: Have the Government spoken to you about why they have seemingly rowed back on the direction of travel on commonhold?

Professor Hopkins: Since we published our reports in 2020, we have been supporting the Government as they work through the reports and develop their legislative plans, but I cannot speak for what decisions they have made and what has led them to make those decisions on what is and is not in the Bill.

Q87 Ms Marie Rimmer (St Helens South and Whiston) (Lab): Good afternoon, professor. You have provided several recommendations to the Government on leasehold enfranchisement. Do you believe that the provisions in the Bill will make it easier and cheaper to buy a freehold or extend a lease?

Professor Hopkins: Yes, they certainly will, and I will draw attention to a number of provisions. First, those that deal with the price that leaseholders will pay will ensure that it is cheaper. For the first time, how that price is calculated is mandated, and it is designed to identify the value of the asset that the leaseholder is receiving. At the moment, the focus is on compensating the freeholder for the asset they are losing. The price will consist of two elements. There will be a sum of money representing the terms and buying out the ground rent, but that will be capped so that onerous ground rents are not taken into account in calculating that sum, and a price representing the reversion, which would be the value today of either a freehold or a 990-year lease that will come into effect at the end of the current lease. In calculating those elements of the price, the deferment and capitalisation rates will be prescribed, so that will remove the current disputes.

The price is mandated and the price is cheaper, and there are other things in the Bill that will help, such as the ability of leaseholders to require the landlord to take leasebacks of property when they are exercising a collective enfranchisement so that, for example, they do not have to pay for the expense of commercial units that they do not want responsibility for. There is a lot in there. There is reducing price and also reducing the ability for disputes to arise.

I will also refer to the provisions on costs that will generally ensure that parties pay their own costs in relation to a claim. Leaseholders will not be paying the costs of freeholders.

Q88 Ms Rimmer: Is it fair to say that you are content with the provisions that the Government have put in the Bill?

Professor Hopkins: It is fair to say that what the Bill does will be of substantial benefit to leaseholders.

Q89 Rachel Maclean (Redditch) (Con): Thank you for all your work. Can you remind the Committee how many recommendations you made in total?

Professor Hopkins: Across enfranchisement, right to manage, and commonhold, we made around 350 recommendations.

Q90 Rachel Maclean: And how many did you make on commonhold?

Professor Hopkins: I think we made around 120.

Q91 Rachel Maclean: You had to go through a long process. When did you start your deliberations on the commonhold provisions?

Professor Hopkins: We began it as a package of work that was being conducted in parallel. We began in 2017 as part of the 13th programme that we published in December of that year. We published three consultation papers on enfranchisement, right to manage, and commonhold. We ran public consultations from September 2018 to January 2019. We received around 1,800 responses across those papers, and around 1,600 responses to leasehold surveys that we undertook for enfranchisement and right to manage. Then, in 2020, on the basis of all the evidence we had, we published four reports: a report setting out options relating to valuation to reduce the price payable, and then a report on each of enfranchisement, the right to manage, and commonhold in July of that year.

Q92 Rachel Maclean: So you started your work in 2017.

Professor Hopkins: Yes.

Q93 Rachel Maclean: Without going through all the work that you have just described, what is the risk if the Government adopt policies or measures such as making commonhold the default position?

Professor Hopkins: We have to separate the two issues. Our work on commonhold was designed to provide the legal fixes needed so that commonhold can work. In our report we concluded that commonhold is the preferred alternative to leasehold. The question of whether commonhold becomes a default or whether it is mandated was not a matter on which we were asked to provide advice to the Government. You need the legal fixes to be in place, though, and then the decision must be made about what is done in order to ensure that commonhold is given a fair chance.

Q94 Rachel Maclean: Thank you for that clarification. As a follow-up, if any Government adopted a policy on commonhold such as has been talked about sometimes, but without doing the legal fixes, what would be the risk?

Professor Hopkins: The risk at the moment is that the legal regime that governs commonhold is too rigid. It does not apply effectively in larger, mixed-use developments, because they were not envisaged at the time. The risk is that you mandate a legal regime that does not work. You need a legal regime that works, which could then be mandated if that is what the Government chose to do.

Q95 Barry Gardiner (Brent North) (Lab): First of all, let me thank you for the Law Commission's work, which was extensive and hugely helpful. I am conscious that the recommendations on structural dependency rules have not been adopted by the Government in the drafting of the Bill. Even those leaseholders who are going to benefit from the uplift of 25% to 50% of the non-residential limit in the Bill may still be disqualified, because of the shared plant room in underground car parks and so on. Do you believe it would be preferable and helpful to introduce into the Bill at Committee stage some of the recommendations that you made on that?

Professor Hopkins: I do not think I would like to comment on whether specific amendments or recommendations could be introduced. They would have to be seen in the light of what they would do to the scheme that is in the Bill and how the provisions interrelate. That basic uplift from 25% to 50% is significant and will enable many more leaseholders to exercise their rights. There are perhaps things around the edges, but what is there is beneficial.

Q96 Barry Gardiner: I totally agree. It is certainly beneficial that there is the uplift from 25% to 50%. However, if one were to adopt the view that the commission take on structural dependency and those shared services, some groups would be prevented from benefiting unless we adopt the terms that you have recommended.

Professor Hopkins: Yes, although you have to look at what impact that would have in terms of what is in the Bill as it stands.

Q97 Barry Gardiner: Of course, commonhold is not within the scope of the Bill. Indeed, the way in which the Government framed your remit meant that your report was closely constrained in what it could say about recommending that as a tenure. Following on from what the hon. Member for Redditch said, do you think it would be helpful to move to a system where all new build flats had a share of freehold and that that was the only tenure going forward? In effect, that would give us a foretaste, and all the caveats that you outlined to the hon. Member for Redditch could gradually be put in place around that.

Professor Hopkins: It is certainly the case that it is easier to do things with new builds than it is for existing leasehold blocks. Our report includes recommendations on the conversion of existing blocks, which is undeniably more complex than building a commonhold block from the start.

We concluded in our report that commonhold was the preferred tenure because it gives the advantages of freehold; leasehold is really performing a job it was never designed to do. When I gave evidence to the Select Committee on the Ministry of Housing, Communities and Local Government, as it then was, I said that if commonhold works, you do not need leasehold. But whether you then mandate commonhold is not just a legal question; there is a political question there.

Q98 Barry Gardiner: Indeed. Currently, a leaseholder who has three or more flats in a development is instantly disqualified from participating in an enfranchisement claim. The Law Commission concluded that that regulation should be scrapped because it is hard to enforce and can be easily gamed by what I think you called sophisticated investors. You said that the practical effect of that 1993-era policy is to deprive leaseholders of the ability to buy out the freehold and to enfranchise. Are the proposals we are talking about ones you would be pleased to see introduced in Committee to get rid of that barrier?

Professor Hopkins: Again, all these things are Law Commission recommendations, and I am always going to say that the Law Commission would like to see our recommendations implemented—

Barry Gardiner: I am delighted; that is what I wanted you to say.

Professor Hopkins: But I cannot say whether they are the right things or the most impactful things to add to the Bill. What is there is great and is going to be hugely beneficial. There are lots of other things in our recommendations that would benefit leaseholders—

Q99 Barry Gardiner: Improve the lot of leaseholders, yes. At one point slightly earlier, you seemed to give the impression that we were—I think this is the polite way of saying it—polishing an excrescence in this Bill. Is that broadly your view, and should we just get on with commonhold eventually?

Professor Hopkins: No, that is absolutely not my view. Whatever happens with commonhold, leasehold is going to be with us for a long time. There are people who own 999-year leases. The system has to work. When we published our reports, we published a summary of what they were seeking to do. We identified them as having two distinct aims. One is to make leasehold work, and work better, for those who now own the leasehold and who will own it in future. Secondly, it is to pave the way for commonhold to be available so that everyone can enjoy the benefit of freehold ownership in future. But we always saw those as two entirely legitimate aims that legislation would need to pursue.

Q100 Barry Gardiner: One way of tackling this would surely be to enable all leaseholders ultimately to gain the benefits that freeholders, or people who have a share of the freehold, currently have, by enabling them to convert to commonhold.

Professor Hopkins: Yes. Conversion is always going to be more difficult than building from the start. We have recommendations that would enable conversion and enable more people to convert than can at the moment, where unanimity is required, but leasehold is going to be with us for a very long time.

Barry Gardiner: Well, it has been with us for a very long time, hasn't it?

Professor Hopkins: Yes. So the system has to work, and that is what the Bill achieves in relation to leasehold.

Q101 Richard Fuller (North East Bedfordshire) (Con): Can we talk a little about discount rates? I think there are two, but there may be more. There is the capitalisation rate and the deferment rate. Could you explain how, if at all, the Bill changes either of those discount rates and what the rationale for that change is?

Professor Hopkins: The Bill ensures that those rates will be prescribed by the Secretary of State. At the moment, on every enfranchisement claim—whether it is the lease extension or the purchase of the freehold—the rate used to capitalise a ground rent and to determine the price paid for the reversion has to be agreed for the individual transaction. That is a significant source of dispute, and it is a dispute where there is a real inequality of arms.

The leaseholder is only interested in what they have to pay for their home and the landlords have an eye not only to that particular property, but also to what it would mean for their portfolio of investments—so they agree a particular rate on one flat in a block, for example. The Bill ensures that those rates are fixed by the Secretary of State and mandated, so there is then no argument about what rate applies in an individual case. It takes away that whole dispute and ensures that the same rates are applied in all claims.

Q102 Richard Fuller: What is the merit of allowing politicians to fix the rate? Does that not that create other hazards?

Professor Hopkins: The politician will be fixing the rate through advice that they receive.

Q103 Richard Fuller: Well, we do not allow politicians to set interest rates any more, because we realise that that was subject to political whimsy and error, so we gave that to the Bank of England—which of course is always right. I am just wondering, does there not seem to be some hazard here? I understand the point about trying to get the rate fixed and the imbalance in individual discussions, but why is it not in the Bill that it would be based on market conditions or prevailing rates? Why not go for something like that, which everyone can see and is transparent—you can feed it into a calculator—rather than allowing politicians to have that role?

Professor Hopkins: In our report on valuation, we set out a number of options for reform to reduce the price payable. In relation to the fixing of rates, we identified two separate options: they could be fixed at market rate; and they could be fixed at below market rate to reduce the price leaseholders pay to a greater extent. We put the decision on how to fix the rates as a matter for the Government to consider, and now the power is given to the Secretary of State.

Q104 Richard Fuller: If I may, I have another question. We always do an impact assessment on Bills. This one has quite a large impact assessment, which is in the billions of pounds—£2.984 billion is the present value for costs. I looked in detail at that, and the vast majority is about a transfer of value from freeholders to leaseholders; it is not about benefits from more efficient systems. If I look at the first section, £2.8 billion is transfers and £400 million is benefits. Is there a particular reason why it is so heavily weighted to transfers?

Professor Hopkins: The impact assessment is not a Law Commission impact assessment. We have provided technical input to the Government in preparing that assessment. I am not sure that I can give a definitive reason why so much more was in one pot than the other. It is probably because the Bill removes marriage value from the premium, which adds a significant sum to premiums now for leaseholders who have 80 years or less, so I think a lot of that sum is the saving.

Q105 Richard Fuller: And that was the Law Commission's objective.

Professor Hopkins: The terms of reference that we agreed with Government for the project in relation to premium were that we would provide options to reduce the price payable while providing sufficient compensation to landlords, recognising their legitimate property interests.

Richard Fuller: That was very helpful; thank you very much.

The Chair: Mindful of the fact that we will be drawing this to a close at half-past, I call Matthew Pennycook.

Matthew Pennycook: May I press you a bit further on valuation? This is a phenomenally complex area to understand, and the standard valuation method in schedule 2 is extremely technical. The Law Commission set out options—it did not make recommendations—but the Government have chosen to allow the Secretary of State to prescribe the applicable deferment rate.

In all your work, did you wrestle at all with the fact that there may be some leaseholders who do not benefit from a fixed rate, in the sense they could have negotiated higher and more favourable rates in certain circumstances? Is that potentially a risk? Related to that, will it be the case that the Government need to set multiple rates to account for regional variations? Is a single fixed rate going to be an issue?

Professor Hopkins: In answer to both questions, I cannot sit here and say that every leaseholder will pay less. I can identify the fact that leaseholders with 80 years or less on their lease will pay less, because they will not pay marriage value, and that leaseholders with onerous rents will pay less, because of the cap on those taken into account.

Overall across the system, having the prescribed rates will be a considerable saving for leaseholders on the whole, because that takes out the legal and valuation costs in negotiating a rate and a price. It takes out that entire source of dispute, which will be beneficial—

The Chair: Order. I apologise for interrupting you. I am afraid that brings us to the end of the time allotted for the Committee to ask you questions. I thank our witness very much on behalf of the Committee.

Examination of Witness

Matt Brewis gave evidence.

2.30 pm

The Chair: We will now hear from Matt Brewis, director of insurance at the Financial Conduct Authority. We have until 3 pm for this next session. Will the witness please introduce himself for the record?

Matt Brewis: Hi. I am Matthew Brewis. I am director of insurance at the FCA, so I am responsible for regulation of all brokers and insurers that operate in the UK.

Matthew Pennycook: Thank you for coming to give us evidence, Mr Brewis. The FCA published a report in September 2022 on insurance for multi-occupancy buildings. In a general sense, on the basis of the recommendations and potential remedies you outlined, to what degree do clauses 31 and 32 faithfully enact those recommendations? Furthermore, it would be useful to know whether the FCA might have any ongoing role in the arrangements that those clauses will introduce. Finally, in that report, the FCA made a recommendation about a pooled risk insurance scheme. Could that be introduced into the Bill as an additional means of providing leaseholders with protection?

Matt Brewis: I will set out what the FCA is responsible for and what it is not, because that is the context for this and probably the questions to follow. Insurers write a policy and brokers sell it to a freeholder or property management agent who is the customer. They pass on charges to the leaseholder, who is partly a beneficiary of the product, but the primary beneficiary is the freeholder. The FCA is responsible for the insurer and the broker, the creation and selling of the product. That is where its role ends.

Traditionally, the customer has been the freeholder, who has been the beneficiary, but our review found that there was no benefit in freeholders shopping around to get the best price, because they simply pass on the cost to the leaseholder, often with significant add-on charges and other functions. We found that the risk price that insurers charged between 2016 and 2021 pretty much doubled. The brokerage charge by brokers increased by more than three times, or 260%-ish. The service charges added on increased by about 160%, so they more than doubled.

In our report, we recommended a number of pieces, including that leaseholders should be partially party to the contract, in that they should be provided with a copy of the documentation—previously, they have not been—and that insurers and brokers, when creating and selling products, should consider the needs of leaseholders, the people who are paying, in a way that insurers and brokers have previously not been required to.

We also made a number of recommendations about the parts that were not relevant to FCA regulation but were part of the chain and to do with freeholders and property management agents. That is where the clauses that you mention, 31 and 32, come into effect—where there is a restriction on the commission that can be charged by the brokers or by the property management agents to the leaseholders. I think that how much impact these clauses will have will depend on how broadly or tightly the secondary legislation around these points is drafted. Of course, I and my colleagues will work closely with the Department as that gets put together.

In terms of your second question, "Should a pooling scheme be included as part of the legislation?", we believe, based on how parts of the market currently work, that pooling does work. By putting together buildings under one roof, as it were, for an insurance contract, you spread the risk; that reduces the cost of insurance. We see that as how it operates at the moment. We recommended that the Association of British Insurers work with the market in order to put together a pooling arrangement, which they have been working on—

Q106 Matthew Pennycook: For a very long time.

Matt Brewis: For a very long time. Unfortunately, I do not have the power to force anybody to write business that they do not want to. But the ABI has been working closely with a number of firms, and progress is being made. I believe that pooling remains the best option to reduce the cost to leaseholders. In terms of how that could be achieved, I think it is appropriate that the market try to do that. It is always possible for the Government to step behind that, albeit that would be at a significant cost—

Q107 Matthew Pennycook: But it would not necessarily require primary legislation—or would it, in your view, in terms of how you would implement such a recommendation?

Matt Brewis: It does not require primary legislation for the market to do it itself, as it is seeking to do at the moment, working with us, working with the brokers and working with colleagues at DLUHC.

Q108 Rachel Maclean: Mr Brewis, thank you for coming here. Is it within your remit or do you have any helpful information for the Committee to understand a point that has been put to me and that I am seeking to test with you, which is that when some of these freeholds have been sold off in the past, the insurance obviously is then sold off—sorry, let me start again; it is very complicated. The contention is that in the past some leaseholds have been sold off or converted, so now the freeholder, which may be an insurance company or a pension scheme, does not have that income stream that it used to have, and there is a consequent risk on insurance companies or pension funds that have previously been reliant on that income stream to make the returns to the pensioners. Is that something that you recognise? Do you have any powers to update us on it? Do you have any powers to investigate it? Do you have any thoughts on it?

Matt Brewis: If I understand your question correctly, you are saying, "Is there pressure on freeholders to charge more to make increased returns to pension funds?" I cannot answer that question, I am afraid; it was not part of our review to date. Sorry, I cannot tell you—

Q109 Rachel Maclean: Okay, but do you recognise that as an issue, if I can put it that way? It is a fact that in the past some leaseholders have been able to buy out their freeholds, so the freeholder then would not have the income stream from the insurance—

Matt Brewis: I understand. What we have found in the past is that actually, for the insurance part, it is not necessarily a panacea for leaseholders to take over the freehold, because, as I was just explaining, when you have a pooled number of properties, that can reduce the cost. We have found, for leaseholders who have tried to insure their building on their own, that it has proved more costly when they have done so. That is more to do with market dynamics and trying to insure one building as opposed to a portfolio of buildings. It does not necessarily follow that it is cheaper for leaseholders who have taken over the freehold to—

Q110 Rachel Maclean: That is really helpful, although it was not quite what I was trying to get at. If you are a freeholder, you may also be an insurer. A lot of big freeholders are insurers, and pension funds and so on, that are underwriting the pensions of many people in the country—in the NHS and so on. The claim that they have made is that in the past some of the leaseholders have bought out their freeholds. I might have slightly misunderstood the situation, but it has been put to me that, now that this flow of insurance is no longer coming to the insurers—or, to put it another way, now that the service charges and so on that are paid by the leaseholder to the freeholder are no longer coming to the insurance industry—that will somehow destabilise the insurers' balance sheets and make them unable to meet their commitments. Is that something that you recognise, from your industry perspective? I am not talking about the individual leaseholder.

Matt Brewis: I do not believe that the size of the insurance part of the market is significant enough to destabilise any firms. I have not heard that claim before, but I do not think that this part of the market, in the types of firms that we are talking about, is of a size that would cause structural issues.

Q111 Mike Amesbury: In September, Sheldon Mills, an executive director at the FCA, issued a strong statement:

"Insurance firms must now act in leaseholders' best interests and ensure that their policies provide fair value."

Now I will give you a live case, which happens to be in a neighbouring constituency to mine. It is called The Decks. They have a remediation day and Taylor Wimpey has accepted responsibility, yet insurance premiums are going up again—poor value and high cost, as I think was cited in the review. New year was going to be a new broom to intervene and shape the market, yet you have got insurance companies like this, and many more up and down the country, laughing at people in this room—key stakeholders such as yourselves. What are you going to do? What powers have you got to intervene? Also, we have discussed insurance. Are clauses 31 to 33 in part 3 sufficient to deal with the issue?

Matt Brewis: Our new rules around ensuring that these products are fair value came into force on 31 December last year. The cost of insurance of multiple-occupancy buildings has increased, and our report of 2022 found that this was not an area where insurers were making significant profits, or super-profits, of any form because of a number of different parts—around fire safety risks, but more to do with some of the structural issues around the quality of the buildings and how they had been constructed. Escape of water was something that was causing significant losses in these buildings.

We found some of the biggest issues around the brokerage charges, which were increasing, and the payaways—payments that insurance brokers were making to property managing agents for services that they were apparently providing for them. So our new rules require them to be very clear what value they are providing and how they are doing that as brokers, as managing agents, and for that to be made clear to the leaseholders. We are undertaking reviews of those with a number of firms. This will provide leaseholders with more information so that they can challenge their freeholders, so that they can challenge the insurers and the brokers at a tribunal if necessary.

Where this Bill goes one step further is that although, as I have explained, we are not responsible for the managing agents or the freeholders, by effectively banning those payments of any commissions, as the Bill does in the clauses that you mention, it will go significantly further than I can with the powers that the FCA has to restrict the payments to other parties and therefore to reduce the cost to leaseholders. In my view, this is in line with the recommendations that we made in that report and results in a better product—a cheaper product—for leaseholders.

Q112 Andy Carter (Warrington South) (Con): This morning, we heard from the founders of the National Leasehold Campaign about some of the poor practices that their members had told them about. Do you think that provisions in this Bill make it easier for consumers? Do they address the challenge of transparency and the ability to obtain information from freeholders in a way that will be noticeable to owners of leasehold properties?

Matt Brewis: In terms of the provision of information, yes. And it goes alongside the rules that we have introduced that require brokers and insurers to pass information to the freeholder to pass on to the leaseholder. This further tightens up that. It allows for leaseholders to take their freeholders to tribunal to reclaim costs, as necessary, that have been incurred. So this does go further, and I welcome that.

Q113 Andy Carter: With regard to the redress element, again, it is a small, individual leaseholder taking a ginormous freeholder, managing agent, or whatever, to court. There is an imbalance there.

Matt Brewis: Yes.

Andy Carter: Is that suitably addressed in this legislation?

Matt Brewis: We have talked with the Department for Levelling Up, Housing and Communities about how to do that. The tribunal is a mechanism, but from talking to leaseholders, we recognise that taking a firm to court is a big step for anyone. There are a number of routes that strengthen that in this Bill, and we welcome that, albeit—

Q114 Andy Carter: So are there no other ways that the balance of power could be shifted to make it easier for the small homeowner who is facing the challenge of dealing with something that is far, far bigger than themselves?

Matt Brewis: There are other mechanisms—an alternative dispute resolution mechanism—that we have seen used in some parts of financial services. The Financial Ombudsman scheme is one, where it is not a legal test; it

is more of a fairness test about how you are treated as a consumer. But the tribunal is another mechanism—the insurance part is a very narrow part of a much wider piece, and I am not equipped to talk more broadly about the leasehold ownership structure.

Andy Carter: No, that is helpful. Thank you very much.

Q115 Barry Gardiner: Mr Brewis, I think we all welcome the FCA's work to try and make things more equitable for leaseholders, so thank you for your endeavours there. I am sure you will be familiar with the Riverside case from before Christmas, in which it was discovered that an FCA-regulated broker could not provide a written contract of the insurance to the first-tier tribunal. Do you find that strange?

Matt Brewis: I cannot talk about individual cases. However—

Q116 Barry Gardiner: Okay. Should there be a case in which an FCA broker is unable to provide a written contract to a first-tier tribunal, would you find that strange?

Matt Brewis: Yes.

Q117 Barry Gardiner: Thank you. After a three-year campaign, that poor leaseholder managed to find out, through the leasehold tribunal, that £1.6 million had been paid to her landlord for the insurance services. You will be aware that this Bill outlaws commission as a permitted charge for landlords to charge. However, you will also be aware that, in that first-tier tribunal case, it was not regarded as a commission. In fact, it was accounted for as a fee, which is chargeable under this proposed legislation. How will that leaseholder know that this legislation does not allow her to be ripped off in exactly the same way as she was ripped off before?

Matt Brewis: The value assessments I talked about require firms to approve what value they are providing, for there to be transparency to a leaseholder around—

Q118 Barry Gardiner: How do you do that if you cannot get a written contract?

Matt Brewis: Under our new rules, which came into force at the start of this year, that needs to be provided.

Q119 Barry Gardiner: But that is not actually here in the Bill, is it? Would it be helpful if, under clause 31 or at another appropriate place, we were to say that a written copy of any insurance contract must be provided to all leaseholders? Then they can at least see what it is they are supposed to be benefitting from.

Matt Brewis: The new Financial Conduct Authority rules around this do provide that, in a way that was not the case previously.

Q120 Barry Gardiner: But the Bill does not.

Matt Brewis: I believe that would be duplication of a clause that is already in the new rules from the regulator, which require a broker to provide that information.

Q121 Barry Gardiner: No, sorry; there is a distinction here. You are talking about the broker providing it to the landlord; I am talking about the landlord providing it to the leaseholder. If you want transparency here, surely that also has to be part of that transparency? Ultimately, we know that it is not the landlord paying for the insurance services—it is the leaseholder. Indeed, in the case that you cannot particularly talk about, it was the landlord getting £1.6 million of a kickback for the privilege.

Matt Brewis: In the event that the freeholder is not forthcoming with the contract, it is incumbent on the insurer to provide a copy of the contract to the leaseholder directly. It is in our rules that the leaseholder has the option of going directly to the insurer now, in order to get a copy of that contract, in a way that was not previously possible.

Q122 Barry Gardiner: To be absolutely clear: a leaseholder can write to the insurer—the insurance company—to obtain a copy of the contract that their landlord has, which insures their property?

Matt Brewis: Yes, and they will be in breach of the FCA rules if they do not provide it.

Q123 Barry Gardiner: Does that rely on the landlord telling the leaseholder who the contract is with?

Matt Brewis: Which insurer it is?

Barry Gardiner: Yes.

Matt Brewis: Oh, goodness.

Q124 Barry Gardiner: Because at the moment, there is no compulsion on the landlord to do that, is there? It is certainly not in this Bill.

Matt Brewis: If you follow that chain of events, when they do not know who the broker is and they do not know who the insurer is, and the landlord refuses to provide the documentation—

Q125 Barry Gardiner: Then the leaseholder has no access to the contract.

Matt Brewis: One would hope—expect—that it is a very low-likelihood situation, but that would be the case.

Q126 Barry Gardiner: We have made legislation on the basis of optimism before, and it has not proved successful.

Matt Brewis: For some buildings that have material issues around fire safety or other issues, it can be very difficult to place insurance. It is about time and cost. There is value in the services that brokers provide, and sometimes some of that work is outsourced to property-managing agents. Assuming that is done appropriately—itemised and billed—I have no issue with the payment of commission or brokerage, where it is for services that have been rendered effectively. Where it is a blanket case, in the way that you described—

Q127 Barry Gardiner: Of course, those fees for insurance services are chargeable under clause 31, in proposed new section 20G of the Landlord and Tenant Act 1985, but there is nothing in the Bill that says they have to be reasonable. The Bill says that excluded insurance costs have to be

"not attributable to a permitted insurance payment",

but not that they have to be costs that are reasonable. There is a difference between a permitted insurance payment and a reasonable permitted insurance payment, is there not?

Matt Brewis: My understanding is that the secondary legislation that will follow will set out what those are.

Q128 Barry Gardiner: God bless the Secretary of State! So we are waiting to see whether the Secretary of State introduces the word "reasonable"—or would it not be better to have the word on the face of the primary legislation?

Matt Brewis: One would still need to define reasonable.

Barry Gardiner: I think the law has done a pretty good job of that over the years.

Q129 Matthew Pennycook: To further explore Mr Gardiner's point about fees, not commissions, what is your understanding of proposed new section 20G of the 1985 Act, which defines these excluded insurance costs? What would that cover? Or is that something for the secondary legislation as well? In which case, what should it cover, to fully protect leaseholders from all types of insurance costs that might be passed on unreasonably?

Matt Brewis: It is quite a significant list. The question effectively is: what are the reasonable costs of writing an insurance policy, and then the appropriate checks to be carried out to ensure that that policy is enforceable? From my perspective, that is focused on providing the information to the insurer or the broker that allows them to appropriately price the insurance—to understand the risk factors of that building, to determine the likelihood of escape of water, the quality of its fire defences and other things, all of which in sum add up to whatever the risk price is. There are different methods for determining what is an appropriate brokerage fee. We have seen some firms come out to suggest that it should be a maximum of, say, 10% of the cost. Others take a time-and-costs-incurred approach, based on how much work they have done. Being clear about things that are directly relevant to the pricing of the insurance is the best starting point for what should be allowed to be charged.

Q130 Matthew Pennycook: In general terms, do I take from that that we should seek to define excluded insurance costs fairly widely, beyond a strict definition of commission, to ensure that we are broadly protecting leaseholders from the problems that you outlined in your September 2022 report?

Matt Brewis: Yes.

The Chair: Thank you. If there are no further questions from Members, I thank the witness. We will now move on to the next panel.

Examination of Witnesses

Harry Scoffin, Karolina Zoltaniecka, Cathy Priestley and Halima Ali gave evidence.

2.58 pm

The Chair: We are now going to hear from our seventh panel, which is Harry Scoffin, founder of Free Leaseholders; Karolina Zoltaniecka, founding director of Commonhold Now; and Cathy Priestley and Halima Ali, co-ordinators of the Home Owners Rights Network. We have until 3.40 pm for this session. You are all welcome. Would you please introduce yourselves for the record?

Harry Scoffin: Hi there. I am Harry Scoffin, founder of Free Leaseholders. I am also deputy chair of One West India Quay residents' association—a block on the Isle of Dogs, east London.

Karolina Zoltaniecka: Hello. I am Karolina, founder and director of Commonhold Now. I am a right-to-manage director, leaseholder and commonhold owner in Australia under what is called strata. I have been a director over there for 30 years, and I am also a forensic analyst who does audits on service charges.

Halima Ali: Hi. I am Halima Ali. I am a joint campaign co-ordinator for the Home Owners Rights Network. We campaign for regulation and, ultimately, for adoption and for management on private estates.

Cathy Priestley: Hi. I work with Halima. We have worked together since 2016—a little longer than the National Leasehold Campaign has existed, in fact. We both reached the same stage in our journey of horrors at about that time. We were put together by Paula Higgins at the HomeOwners Alliance. We decided that there would be other people out there who had discovered the same situation and who felt entrapped and angry about where they were—they were tied into paying estate charges, and most were unaware at the point of purchase that that was the liability they were taking on. So we set up a website, social media and so on, and we are 11,000. We have continued our journey of exploration and learned a lot during the last eight years, and I hope we can help you.

The Chair: We are very grateful that you are here, Cathy. Thank you very much. I call Matthew Pennycook to start us off.

Q131 Matthew Pennycook: Thank you all for coming to give evidence. I have two questions—one for Harry and Karolina and then one for Cathy and Halima.

Harry and Karolina, we heard earlier from Professor Hopkins from the Law Commission, which had 121 recommendations on commonhold. It is clearly not feasible to add all those to the limited Bill we have in front of us at Committee stage. Professor Hopkins says there is a risk of partial commonhold legislation that might create unintended consequences. Are there any of those recommendations that we can reasonably add in that might make things easier in the future and pave the way for commonhold? That is my question to both of you.

Cathy and Halima, clause 59 in part 4 of the Bill seeks to amend the Law of Property Act 1925. Would you agree that section 121 of that Act needs to be done away with? Are we attempting to, if you like, ameliorate an historic law that should really just be freehold forfeiture and should be done away with? On part 4 generally, we have sought to introduce by amendment an RTM regime for private estates. Are there any other tweaks to part 4 that we could reasonably look to make?

Harry Scoffin: In terms of the commonhold point, obviously, attitudinally, I have accepted that it will be seen as out of scope of the Bill. But we also have to remind ourselves that England and Wales are the only two jurisdictions in the world that persist with this fundamentally unfair system. The Law Commission—we heard from Nick Hopkins earlier—gave a big endorsement of commonhold in 2020. They flew officials out to Australia and Singapore, where I grew up and where we lived under strata title, a form of commonhold where residents are in control. But there is no point crying over spilt milk.

There is a good alternative, interim measure before second-generation commonhold eventually comes through. Bear in mind that I have been campaigning now for six years—that is six years of my life that I have wasted trying to abolish leasehold. The fact is that the time to have brought in commonhold was now. We did not even necessarily have a guarantee that this Bill would be here. After the Queen's Speech in 2022, it was dropped at the last minute because of pressure from No. 10. So I am not going to hold my breath for commonhold.

However, one thing we can do, which is a pragmatic halfway-house compromise, is to say that all new leasehold flats come with a share of the freehold. That still persists with the leasehold system, but residents have control from day one. They are like Alan Sugar on "The Apprentice": if they are being ripped off, they say, "You're fired," and they get a better company in—that is capitalism, that is choice and that is the right way forward for now if we are not doing commonhold, which is obviously too meaty.

Secondly, all new leases must be 990 years. At the moment, shared ownership leases under the new model lease through Homes England and the Greater London Authority must be 990 years. I think it is obscene that, after this Bill comes in, people can buy a brand-new flat from one of these developers and be hit with a 99 or 125-year lease. They need to be able to get a 990-year lease from the beginning, given that Parliament has already got rid of ground rents—two years ago, it got rid of ground rents—and our argument is that the value in the freehold is now valueless.

Ground rents have gone, so why do you not just require developers to hand over a freehold with a resident management company? I understand that Matthew Pennycook is halfway there with an amendment to bring in resident management companies; we just need the freehold. If we do not have the freehold, we will allow the expensive middleman, the rip-off freeholder, to have some form of control going forward. I know of developments with an RMC, where you might think, "Bob's your uncle, they've got control," yet they are still being ripped off on things like insurance, even though they appoint the managing agent.

From that point of view, let us not let perfect be the enemy of the good, but leasehold must stop and, with leasehold, we must get rid of its toxic forms so that everyone has a share of the freehold from day one. As we heard from Nick Hopkins, it would be much easier for those guys to convert to commonhold later, but we should give people the ability to have the freehold to begin with.

It is not just me who says that; in 2006, an academic who is on the Commonhold Council—this is in my written submission—expressed the view that, if people have super-long leases of 990 years and zero ground rent, it is asking nothing of developers to hand over the freehold, because the freehold is valueless. They might as well give the freehold, as opposed to expecting leaseholders to go through the rigmarole, stress and cost of buying it later. Also—we might get on to this later—getting 50% of a large block is impossible, so doing that is absolutely the right thing.

Another point is that the market for leasehold flats has collapsed, so the gap between the average price of a house and that of a flat is at its widest in England in 30 years. The fact is that buyers have woken up to the toxicity of leasehold, particularly after Grenfell and the cladding situation. They have worked out that this is a hideously one-sided deal. It is like the sub-postmasters, this idea that, every way you turn, people say, "You signed the contract. You're responsible for the shortfalls. That's the law, that's the contract," but it is so hideously one-sided.

If you can do only one thing to the Bill, even though it will not directly help existing leaseholders, it should be to say that all new flats must be share of freehold with a resident management company. Give us control of our homes, our lives and our money, please. It is 22 years since the last Act. Let's do this.

Q132 Matthew Pennycook: Halima and Cathy, on part 4 and rent charges—unless you have something to say, Karolina. I am leaving it to you to self-police.

Karolina Zoltaniecka: The Bill is very welcome. It does remove a few of the barriers to commonhold, but I feel that a few more things could be done, through amendments, to take steps towards commonhold and to make it easier to convert once we enfranchise and buy the freehold. We could lower the agreement rate from 100% to 75%. They have that in Australia already; you only need that amount to have a special resolution. There is already a trial for 20 blocks in the country. We cannot say it is not working, because it is working.

There is a lot of miscommunication around commonhold in the industry. There could be an education and awareness campaign. The Bill could also be amended to introduce a sunset clause for existing flats. There could be some sort of agreement between the commercial and the leasehold residential blocks to pave the way for how this will be defined when we get to commonhold and people can convert. That would prepare people and get them ready, in practical terms, for how to run and maintain their blocks. There could be long-term maintenance plans and we could give people real, practical skills in how to do that.

Commonhold is so much easier. Having a strata, I know that. You do not have complex laws. You talk to each other and work problems and disputes out. You have meetings. Laws are prescribed, so it is easy for people to know what to do each step of the way. I do believe that there are things that could be done with commonhold in the Bill to pave the way and say that we have a future with commonhold and it will happen en masse.

Q133 Matthew Pennycook: Thank you. Halima and Cathy on part 4, please?

Halima Ali: Overall, I want to say that the model of maintenance that has been implemented is a scam, and all this Bill is really doing is legitimising the scam. Homeowners are being fleeced. This needs to be brought under control. In terms of the Law of Property Act, this is a positive step, but I would argue as a homeowner that a management company should not have its foot on my neck. This is my property. It is my hard-earned future for my family and kids, and no management company should have any rights over it. I feel that the model should be abolished altogether. There are two different tiers—fixed rent charges and variable rent charges—that are being allowed to continue in the private estate model. This needs to be abolished altogether.

Cathy Priestley: I do not really have anything to add except to say, would all the measures in the Bill really be necessary if the fundamental, underlying problem of private estate management was addressed? The estates we are talking about are not gated; they are not private. They contain public facilities, public open space, play parks and community centres. They might have private sewage systems and pumping stations. They almost always have sustainable urban drainage systems, because that is the way that flooding is mitigated these days. In the past, all these areas would have been adopted by the local authorities, but they are not being. If they were, there would not be any need for regulating managing agents or for the abolition of section 121.

Q134 Matthew Pennycook: I agree with you about the underlying point, and we may seek to address that, but if we have to work with this new regulation of estate management regime, are there any ways you would like to see it strengthened or tightened?

Cathy Priestley: It would be helpful for those who are on truly private estates and who do have private management, but we do not see any reason why homebuyers on estates should suddenly become estate managers for their local community.

Halima Ali: It is exactly as Cathy said: normal homebuyers are not qualified to manage estates. If we are given the right to manage, if we are looking at a development of over 100 homes, it is really hard to get in touch with 100 people who will agree and be on the same page. It is not workable. The Government are insisting on regulating, but realistically the Bill is not doing anything for us. Literally all it is doing is maintaining a scam.

The Chair: I am mindful of the fact that we will have to bring this session to a conclusion at 3.40 pm and five more Members have indicated that they would like to speak, so you can time yourselves accordingly. I will start with Andy Carter.

Q135 Andy Carter: I will be brief. Cathy and Halima, can I pick up on your point about estate management? Do you have any examples of members of your forum who are paying fees on a regular basis, but there is no delivery of management? Do you have examples of where things are just not happening?

Halima Ali: I am the perfect example. I have living on a fleecehold estate for 13 years.

Q136 Andy Carter: Can you tell us what is not happening?

Halima Ali: There is no management happening at all.

Q137 Andy Carter: What should be happening?

Halima Ali: It should be managed.

Q138 Andy Carter: Yes, but tell us what you would expect to be happening.

Halima Ali: The management company should respond in a timely manner, do the work and communicate with the residents. The situation is horrendous. On our estate alone, we are paying £30,000 to maintain a field that is half the size of a football pitch. That makes no logical sense.

Q139 Andy Carter: So they are not cutting the grass and they are not tidying—

Halima Ali: They are cutting it, but at a substandard level. On top of that, the grounds that they are maintaining have not even been built to a standard for local councils to adopt.

Q140 Andy Carter: Have you talked to the council about its ability to be involved in this?

Halima Ali: I have had meetings with the head of planning. I have raised so many complaints.

Q141 Andy Carter: What did the council say?

Halima Ali: They just do not want to know, literally, because they are not regulated and it is not their concern. They just will not do anything.

Q142 Andy Carter: The problem we will find, if we are not careful, in putting through legislation that allows the right to manage is that there is still no route to get somebody to make things happen if you have a council that does not want to get involved. Who is the ultimate person that you can say—

Halima Ali: It has to be central Government. They need to regulate that councils need to start adopting all new build estates going forward and in the situation that we are stuck in.

Q143 Barry Gardiner: Halima and then Cathy, let me pick up this business of the fleecehold estates, as you refer to them. They are a relatively new thing in leasehold; they were not there in the same way 20-odd years ago when we were passing the Commonhold and Leasehold Reform Act 2002. They have been seen as a revenue stream for developers. Do you think that it would make sense for local councils, when they sell public land for housing development, to insist that that public land should not be used for a private estate model in this way? Developers can of course build the homes and you can buy them, and they can make their profit from the payments that you make to buy those homes, but they should not then have an ongoing source of revenue from the substandard management, as you described it, of the estate.

I have one estate in my constituency where they were charging residents for the management of land that they did not even own. It took us months to get the documentation to prove that they did not own that land. The fence that they had mended had actually been mended by the council. Other things like that are going on, but if that restriction were put in place in the first place, they would not be able to do it, would they?

Cathy Priestley: Our understanding is that the land belongs to the developer. It is not public until it is made public through section 106 agreements with the council.

Q144 Barry Gardiner: I understand what you are saying, but I am referring specifically to when a council makes available land that has been publicly owned by it to developers for development and puts that restriction in place.

Cathy Priestley: Well, yes, you would not want more and more privatisation, would you? I do not think any policy is in place that is pushing for privatisation of the management of public open spaces, is there?

Q145 Barry Gardiner: Mr Scoffin, you talked about this issue having wasted six years of your life; I think it has only wasted about 25 years of mine, since before the 2002 Act. You spoke about future development. What would actually make it better for existing leaseholders? There are things in the Bill that I think do improve the lot of existing leaseholders, but how can we make it even better?

Harry Scoffin: There are a number of quick wins. One is to get rid of forfeiture, because that allows these freeholder overlords to extort money from ordinary people. It is not like mortgage foreclosure, where if you cannot keep up with the mortgage payments you get the difference back less the debt; with forfeiture, in theory, a freeholder could take back a £500,000 flat on a £5,000 bill. Now, what the freeholder lobby will say when they come on later is, "There are only about 80 to 90 cases a year." That is potentially 80 to 90 homeless families a year. More important, in a way, is that it is the threat of forfeiture that gets leaseholders to go, "Oh my God, I'm going to pay that bill."

My mum is on £33,000 a year, for a three-bed with no swimming pool, no gym and no garden. The freeholder is one of Britain's richest men, sheltering in a tax haven in Monaco—a billionaire. Everyone who is not a leaseholder says, "Why would you pay that? That's more than someone's salary." She says, "If I don't pay it, I'll lose the property." So get rid of forfeiture.

Q146 Barry Gardiner: Was forfeiture not part of the 2002 Act?

Harry Scoffin: Yes. They draw it out. There is a process now in the courts, where you can go, "Oh, I forgot to pay it" or "Here's the money." The point is that it does not give leaseholders the confidence to challenge unreasonable bills. They have the sword of Damocles hanging over their heads—they are being treated almost like criminals. The Law Commission recommended in 1985, in 1994 and more recently in 2006 getting rid of this iniquitous element, arguably the most feudal element of leasehold. It has not been done. The Government recently asked the Law Commission to update its 2006 report, so we know work has been done, but it is not in this Bill.

I think you spoke earlier today about this section 24 business. That is a really important issue that many Members may not be aware of. Since the Building Safety Act came in, there has been a very interesting regime about the accountable person, trying to make developers and freeholders take responsibility for their buildings. This was heard in tribunal in December—I was there—and I understand that Michael Gove has taken a personal interest in this, but there is again no guarantee that we can get the fix.

The problem is that, at the moment, any building over 18 metres cannot have a court-appointed manager, because the court-appointed manager cannot be the accountable person. It is like an aeroplane being flown with two pilots flying in completely different directions. The freeholder, who has been stripped of his management rights—because, basically, he has defrauded leaseholders or been absentee, is not doing remediation works in a timely manner, or is not giving information—will now be the accountable person. But the manager cannot manage the building, because you will have two managers for one property.

The tribunal for Canary Riverside—I add a disclaimer that this is my sister estate; we have the same freeholder, so I was there at the tribunal—said that, as much as we would like to help the leaseholders at Canary Riverside, Parliament has made it very clear that, while a non-freehold owning right to manage company or a non-freehold owning resident management company can be the accountable person, a court-appointed manager specially vetted by the tribunal is no longer allowed to be one.

What is happening at Canary Riverside is that the freeholder—the same one that we have—is looking at getting back a building that he was removed from controlling in 2016. There was even a letter from the Secretary of State to the leaseholders, which they cleverly submitted to the tribunal, saying that he was the man who passed this Act and he genuinely, honourably, had no idea that that was the implication. That is another thing, because many blocks are not going to be able to buy the freehold or be able to get right to manage. They are in a monopolistic position with these freeholders. If there is no ability to buy the freehold, you are trapped.

In our building, we cannot sell the flats. We cannot even give them away at auction. It needs to be allowed that a manager appointed under the Landlord and Tenant Act 1987 can be the principal accountable person where a tribunal deems it appropriate.

There is one other major point. At the moment, many people may stand to benefit from getting the right to manage or buying the freehold, with the 25% rule going up to 50%. I know that because I have campaigned for it for the last six years. Nick Hopkins at the Law Commission used to have a joke that he would probably have to take out a restraining order against me, because I really pushed on this issue. The problem is that there are so many people who would benefit from that, but if they have that plant room or that underground car park, they still will never be free. They will never be able to get the freehold or right to manage. That is something that the Law Commission already recommended. We can get that into the Bill.

Another point to note is that if you cannot participate, for whatever reason, in buying the freehold—you do not have the money to join your neighbours—in perpetuity, you will never be able to buy that share of the freehold ever again. If you cannot get the money together, you are out. That needs to be sorted. The right to participate was very popular with the Law Commission consultees. That absolutely needs to happen.

There is one last thing. Nickie Aiken MP and other MPs, such as Stephen Timms, have been pushing on this point. At the moment, to buy the freehold or get right to manage, you have to get 50%. In our building, which is 20 years old, we are very lucky that we have managed to get 82% of the leaseholders. Do you know how much work that has involved? It is cornering people in lifts, paying the £3 to the Land Registry, doing some weird investigations. It is Herculean. You have to go back to 1931 in this country to find a political party that has won a general election with 50% of the vote, so why is it fair for residents who are being ripped off to be told, "You need to get 50%"? That should come down, because most big blocks, particularly the newer ones, will never hit 50%, and given that the Government are talking about a long-term housing plan and about

building up in the cities, we have to make flat living work. We have the second lowest proportion of flats of any country in Europe, after Ireland—

Q147 Barry Gardiner: Sorry, can I just ask you to amplify what you were saying about the 50%? I understand the difficulty, if you have 900 people in a high-rise block, to co-ordinate to get 450 plus one to do it, but surely many of those apartments will be buy to let, so you may not ever be able to meet or get in touch with the actual leaseholder. You are going to be able to do that only through a subtenant, and that makes it almost impossible, doesn't it?

Harry Scoffin: Some leaseholder advocates say, "We do not touch the 50%," and I do not understand them for it, but the fact is that they just say, "Give leaseholders more information." I have to be honest: even once you have got in touch with guys from Singapore, Hong Kong, the middle east and all the rest of it, when you try to explain what leasehold is, it goes over their head; when you say "right to manage", it goes over their head. They say, "Well, I've bought the flat. I don't need to get involved." And then you say, "It's £2,000 or £3,000. We all need to do it—each—to club together." These guys are mean—some of them—and they are not going to get involved. So the fact is that at least on right to manage, where you are not compulsorily acquiring the freehold interest, it should at least come down to 35%, in line with the suggestion from Philip Rainey KC, whom you will be hearing from on Thursday. The London housing and planning committee also said that 50% is very, very difficult in large developments, particularly in London. So that does need to be thought about at least—it coming down on right to manage.

Barry Gardiner: Ms Ali wants to come in.

Halima Ali: I just want to make this specific point. It is clear that rules and regulations regarding leasehold and RTM are not working. It is very—what is the word, Cathy?

Q148 Barry Gardiner: Unfair? Unjust? Inequitable?

Halima Ali: It is very unfair and inadequate, and it makes no logical sense for freeholders on a private estate to be given the same rules and regulations when it is not working for leaseholders.

Q149 Barry Gardiner: It is the imbalance of power.

Halima Ali: Yes.

Q150 Rachel Maclean: Harry, can I just ask you a couple of things? On the forfeiture point, is it your view that there is absolutely nothing in the Bill to prevent the forfeiture issue?

Harry Scoffin: There are not specific provisions to improve the position on forfeiture. I would love it to be abolished, but if we have to have some form of mechanism that is still going to be called "forfeiture", at least say that if it happens, the equity is returned to the departing leaseholder when the flat is sold and it is just the debt that the freeholder gets back. The idea that he gets a windfall is obscene. That has to go. At the moment, forfeiture can kick in at £350, so what some law firms are doing is, for a breach of lease, a 350-quid charge, so forfeiture already kicks in there. So bring that up. Some people have suggested £5,000. I would go even higher—£5,000 is the figure for personal bankruptcy proceedings—and bring it up to £10,000.

There will be these freeloading freeholders that will come before you today or on Thursday and say, "Well, if these leaseholders are not paying, the whole building is going to fall to rack and ruin. It'll be like this country in the 1970s where the bins weren't getting collected and bodies were piling up. You've got to keep the lights on in a block of flats." What you say to them is, "Sue for a money judgment."

Rachel Maclean: Do not worry: I know what to say to them. That is fine.

Harry Scoffin: Yes, you know. Okay, good. The point is that we do not need forfeiture, but if you cannot abolish it, at least get rid of the windfall.

Q151 Rachel Maclean: Thank you. I will ask a second question, if I may. You mentioned the issue of the pump room. Can you explain very briefly what the issue of the pump room is? Is this for a conversion or an enfranchisement claim? Where is the pump room issue coming into play?

Harry Scoffin: It is for mixed-use buildings that would otherwise benefit from the 25% non-residential premises limit going up to 50%. Let us say that you have an underground car park, a plant room or maybe, more recently, a heat network. Basically, because you are now linked, almost like Siamese twins, with a hotel, for example, or some shops, under the current 2002 Act for right to manage and even the 1993 Act for buying your freehold, you are out. So even though the Law Commission and the Government mean well, saying, "We're going to liberate mixed-use leaseholders," for many of those mixed-use leaseholders, where they are completely linked with the commercial, it is game over; you will never be able to qualify. That definitely needs to be revisited because the Government will not get any political benefit from moving, rightly, from 25% up to 50% and even to mandatory leasebacks for when you buy the commercial.

The quick argument—the Law Commission understood it—is that at the moment, the plant room will normally be managed, yes, by the hotel, but the freeholder for the flats will appoint a managing agent who will also have access to the plant room. We are not changing that position. The only difference is that the managing agent that the freeholder appointed, who has access to the plant room, would now be working directly for people like my mum. So it is not disrupting—we are not going to become hoteliers. We are not going to become shop owners. If we rely on a service and are paying for it—53%, mind—we should have access to it, but the key thing is that we need the right to manage. Without right to manage, or without buying the freehold, you are, literally, perpetually in this abusive relationship with a freeholder who has your cheque book and is spending it how he likes, whether that is reasonable or not. That is a fact.

On the point about section 24, that needs to be revisited so that the manager, where a tribunal deems it appropriate, can be the accountable person. In our building, we have mobilised—ironically, it is over 50% of the leaseholders. We now face going back to them—with their cash, by the way—and saying, "We can't now get

one because of this unintended consequence of the Building Safety Act". That is a quick bit of drafting—I have spoken to lawyers about it. It would be very easy for you guys and that would help, particularly on cladding developments, where the cladding is not getting done because the freeholders are sitting on their hands. You need an officer of the court who is going to turn around the development and be accountable.

Karolina Zoltaniecka: Can I say something about the right to manage? At the moment, the process is so complex. There are three notices that need to be served. I believe there needs to be only one, to say to the freeholder, "We are taking over the right to manage and this is the date we are going to do it on", and that is it. There are solicitors who specialise in analysing notices to pick holes in them to prolong the process, so that leaseholders give up, and costs just go up and up. And I completely agree with the forfeiture point from Harry. It is unnecessary and a breach of lease, and especially, arrears can be taken to the county court to recover if the arrears are real.

Q152 Mike Amesbury: Is leasehold ownership home ownership?

Harry Scoffin: No, it is a tenancy scam. You do not own anything. You own the right to sell on a bit of space in a flat you occupy. You do not own, even though you may have paid a freehold price and you thought you owned it—you do not.

Q153 Mike Amesbury: Given that the Bill does not ban new leasehold flats—70% of leaseholds happen to be flats—is leasehold, the feudal system, still alive and kicking?

Harry Scoffin: Completely, because—

Mike Amesbury: In England and Wales?

Harry Scoffin: Yes, because people are coining it in and they want to keep it that way. I understand that a political decision was made by No. 10 not to have commonhold in the Bill and not to say even "a share of freehold". Let us do that. Let us work with the Government to get share of freehold in. That is maybe an English fudge, but at least it gets us halfway to the ideal of commonhold, whenever it comes. I am not going to hold my breath for commonhold, sadly, because we have wasted the last seven years talking about it.

Mike Amesbury: Keep going.

Karolina Zoltaniecka: I would not give up on it; it is well worth waiting for.

Harry Scoffin: We need share of freehold in the meantime, at least.

Q154 Richard Fuller: Part 4 of the Bill is called "Regulation of estate management", which I think is a particular area of interest for you. You said that it all starts at the beginning, when councils and developers decide to do that. Do you think that getting control of that is an essential part of the effective regulation of estate management?

Halima Ali: I do not agree that it is. All it is doing is creating a two-tier system where a set of homeowners, like myself, living on a private estate are dealing with this situation, whereas other homeowners are not. I do not see how regulating it is helping, because overall, the management company still get to set the fee.

Q155 Richard Fuller: Actually, I was trying to say that we should stop it altogether because—

Halima Ali: Oh right, sorry—

Richard Fuller: I was not being very clear, I am sorry—it is my job to be clear, not yours. I think what you were saying is that this is trying to fix the problem, but the root of the problem is that councils are permitting this to go ahead.

Halima Ali: Yes, absolutely.

Q156 Richard Fuller: I am sure we will have a debate about what is and is not in scope of this Bill, in terms of that very important issue, but I wanted to hear you say that that is a crucial part of what you would understand by effective regulation of estate management.

Cathy Priestley: Yes. There are other detrimental effects on estates, other than those on the homebuyers, because non-adopted areas are not built up to adoption standard, so there is a quality issue. There is also a community cohesion issue, if you have one lot of people paying for everybody else's open space.

Q157 Richard Fuller: The whole issue of adoption may or may not be in scope, but there were some other suggestions that you had, such as that estate management charges may not include fees for areas that are open to the general public. You feel—this is on your website—that someone can walk down a grass verge or by some trees and you are paying for that twice, through your council tax and through estate management charges. Is that right?

Halima Ali: That is correct. I will make a specific point; I am sure this is the situation nationwide as well. When I purchased my property, the council tax for band C was around £1,000. Currently, it is at £2,000. If you look at that and the average family income, there is a big disparity. How are we able to afford all this? Ultimately, we are paying council tax twice. It is unfair on us. It is unfair on vulnerable people who generally do not understand all these arbitrary rules and regulations and who are coming to us for support.

Cathy Priestley: Most of the people in our group were unaware of what they were getting into. They are unaware of the unlimited liability, because this cannot be capped. It is what it is, and it costs what it costs.

Q158 Richard Fuller: I think we can look at strengthening some of the provisions at the start and at the end, in terms of the rights if someone wants to sell their property and how people are leant on if they have not paid all the fees, affecting their ability to sell their property. I know we have limited time, but another aspect is the compensation for those who suffer these charges. If we cannot look within scope at adoption and just cancelling the whole lot, what are your thoughts, since there will be a separation of charges and a new cost structure, about enabling people who have estate management fees for common areas to deduct that off their council tax? Essentially, you would not pay twice.

There will be a number of those costs that generally would be seen as being covered by your council tax in other circumstances. Do you think the Bill should include a provision where you would be entitled to pay only once for those by deducting that cost from your council tax?

Cathy Priestley: I do not know what councils would think about that. About 50% of the estate charges are just administrative fees. Councils could do it much cheaper. I do not think it would be acceptable to councils, but it would be great for us, yes.

Richard Fuller: It would make them adopt them quicker though, wouldn't it?

Cathy Priestley: It certainly would, yes.

The Chair: Finally, we have two minutes left—Marie, please.

Ms Rimmer: We need to be careful on this. Councils are constantly picking up bills from other people, and these costs are the costs of poor developers. There are different ways of dealing with different aspects of this. One is safety development. To take a leaf out of the Health and Safety at Work etc. Act 1974, you design, you develop, you construct—for use, maintenance and everything. Why not do the same for future housing developments, so that we do not have estates built without roads or pavements or these nice park features that would be lovely for children to play out on?

Nobody's going to maintain them and they end up like a rubbish tip. People tip there, because nobody cleans it up. And what happens? More people tip there. No developer should be allowed to develop things that cannot be put right. They should pick up the costs on development, so people know what they have got. Then you have the old properties—I call them asset-rich and purse-poor. The properties are worth a fortune. They are beautiful big old houses—you would give your right arm for one of them—but when it comes to maintaining all this and their paths, the older people cannot do it. To bring that up to standard is a cost. It is not a cost for the council to pick up.

The Chair: Marie, is there a question?

Ms Rimmer: No, I was picking up on that point. The lady present understood it. She was saying that it is not that the councils are paying twice for something; everybody looks—

The Chair: Order. I am afraid that brings us to the end of the allotted time to ask this panel questions. Apologies, Marie. On behalf of the Committee. I thank all our witnesses for coming in.

Examination of Witnesses

Mr Andrew Bulmer and Angus Fanshawe gave evidence.

3.40 pm

The Chair: We will now hear from Andrew Bulmer, CEO of The Property Institute, and Angus Fanshawe, specialist in leasehold enfranchisement. We have until 4.15 pm for this session. Will the witnesses please introduce yourselves for this session, starting with you, Andrew?

Mr Andrew Bulmer: I am Andrew Bulmer, chief exec of The Property Institute. There was supposed to be a third chair here today, in that an organisation called ARMA—the Association of Residential Managing Agents—was invited to attend as well. For the benefit of the Committee, if I may clarify, The Property Institute is the merged organisation made up of the former Institute of Residential Property Management, which was 6,000 individuals with qualifications to manage buildings, and ARMA, which used to be a trade body for the managing agent firms, with approximately 350 managing agents. Between them, they manage about 1.5 million leaseholds.

Angus Fanshawe: Good afternoon. I am a valuer specialising in leasehold enfranchisement, specialising in helping people to extend leases on their flats and to buy their freeholds. I am a member of the Royal Institution of Chartered Surveyors, or RICS, and of the Association of Leasehold Enfranchisement Practitioners, or ALEP. I am based in central London, and all my work is in central London. I probably act about 50:50 for leaseholders and for freeholders. My first case was in 1994, so this year is 30 years since I did my first extension case—in Belgravia, I think it was. Acting for both leaseholders and freeholders, I hope that I can bring a balanced view to the Committee today.

Mr Andrew Bulmer: Apologies, Chair, I should declare that I am on the Commonhold Council.

The Chair: Thank you for the clarification. I call Matthew Pennycook to start us off.

Q159 Matthew Pennycook: Thank you, gentlemen, for giving us your time this afternoon. I have a question for each of you. Andrew, in the regulation of managing agents, do you think it is necessary to ensure that the provisions of the Bill work effectively? Your Best working group report is slightly out of scope, but if we do not introduce the parts—if not the entirety—of it, on the regulation of managing agents as it impacts on the Bill, would that harm the operation of the measures in the Bill? That is my question to you.

Angus, we have exchanged correspondence on valuation, and I know that you take the view that the deferment rate should not be fixed by the Secretary of State. I wanted to explore that a bit further, in the sense that the 2007 Cadogan *v.* Sportelli judgment, which has broadly set deferment rates, was made in the context of 0.5% interest rates. I have heard it put to me by people in other parts of the country that it may work in London, but it is very out of kilter with what works in different regions. If the Government are minded to remain of the view that the Secretary of State should fix the deferment rates, how best should the Secretary of State do that? What would need to be taken into account? Is there a need to set multiple rates for different parts of the country to deal with the variations? I want to explore the prescribed rates a bit more and how they can function most effectively if schedule 2 is to remain.

Mr Andrew Bulmer: Thank you for the question. On the regulation of managing agents, I should also declare that I was on Lord Best's working group. There were three components to Lord Best's recommendations: first, there should be a regulator; secondly, the regulator should have a code of practice through which to hold the industry to account; and, thirdly, there should be mandatory competency standards. That applies to sales and lettings as well as to block, or leasehold block

management. He made a distinction with block: because of the large sums of money and the high risks involved, block should be qualified to a higher standard—indeed, minimum level 4.

There is a compelling reason why regulation is required. The way to think of it is the apocryphal tale of "The Ambulance Down in the Valley", a famous poem. There is a large cliff, and people fall off it. Should there be a fence at the top of the cliff or an ambulance down in the valley? Redress and the first-tier tribunal, as well as the ombudsman, are the ambulance down in the valley, but it would be better to prevent harm occurring in the first place. Minimum competency standards and a regulated sector are the fence at the top of the cliff.

Lord Best made his recommendations four or five years ago now and I wholeheartedly support them—we support them. If we take Lord Best's basket of reasons, put it on the table in front of us and acknowledge that, we will then have to consider where the industry has moved. Since that time, we have had the Building Safety Act, which was supposed to introduce a building safety manager. That was abandoned and the building safety manager is now in effect the property manager. The property manager now has to learn half of a new profession. The responsibilities and the technical knowledge that go with that are considerable.

For leaseholders who are RMC directors, the Building Safety Act also makes the RMC the principal accountable person, and to whom do they turn? The first port of call is the building manager. The Building Safety Act has the unfortunate consequence of inevitably driving leaseholders, who may be very intelligent individuals—such as the lead violinist of the London Philharmonic Orchestra, a brilliant individual but not an expert in building safety management—to their building manager. That means the Act is now driving lay consumers into the hands of an unregulated sector. That is another basket of reasons, in addition to Lord Best's basket, on why the sector should be regulated.

Then we come to this Bill, which we warmly welcome and very much support. We can go into the details of it, but let us be very clear that we think it is a Bill that is going in the right direction. One of the Bill's effects is going to be empowering leaseholders to look after their own affairs, and that is a good thing. But, again, we have the leaseholder, who is not daft—they could be a brilliant surgeon, or a lead violinist—but are none the less not property experts, so, again, the move towards self-determination and self-control means that they are being driven into the hands of an agency sector that is entirely unregulated. If Lord Best's basket of reasons were not enough, if we add to it the Building Safety Act, then we add to it the inexorable drive towards leaseholder control of their own homes and their own affairs, it is surely now time that the sector was regulated.

If there is no appetite to regulate in this Bill, with its limited time going through Parliament, at the very least we should introduce minimum competency standards. It has been done already, swiftly and elegantly, following the death of poor Awaab Ishak, where mandatory qualifications were brought in in the social sector.

Many buildings are mixed use. A building manager will be walking down a corridor, qualified to manage the units on the left-hand side but not the units—or homes, I should say—on the right-hand side. That is inequitable and it makes no sense. Further, it also assumes that those in the private sector are not vulnerable. Vulnerable people live in the private sector too. The argument for, at the very least, having a code of practice and mandatory qualifications for building managers is, in my view, all-compelling.

Angus Fanshawe: On fixing rates and the deferment rate, before the Cadogan *v.* Sportelli case, which you mentioned, the deferment rate was always a contentious point. In my years of practising, that case has probably been the most important; really, it removed the deferment rate as something that was in dispute. Since that case, I cannot recall that I have ever had a disagreement on a deferment rate or a problem with agreeing the deferment rate.

Cadogan *v.* Sportelli set the rate at 4.75% for houses and 5% for flats. There are a couple of exceptions—well, maybe one or two more than that, but there are two significant exceptions where you can depart from 4.75% or 5%. My concern is that if we fix the rate, we will remove the opportunity, as is the case now, for leaseholders to agree a higher rate than 4.75% or 5%.

As I say, there are two cases where there are significant exceptions. The first is that if you have an intermediate leasehold—so, you have a head leaseholder who has a reversionary period—then commonly you would agree that at something higher than 5%, normally 5.5%, to the benefit of the leaseholder. Also, with some buildings there is an element of obsolescence—so, will the building actually be there at the expiry of the lease in, say, 80 years' time? With a building built in the 1960s or 1970s, which perhaps has a life expectancy of 50 or 60 years, is there certainty that it will be there at the end of the term? In those circumstances, you can agree—I do not think with too much controversy—a slightly higher rate than 5%, again to the benefit of the leaseholder. If you are going to fix the rates, that will bring an unfairness, either to the leaseholder or the freeholder, depending on what rate you are going to fix.

It also ties in with capitalisation rates, if you are going to fix the capitalisation of the ground rent. There was a case on capitalisation rates—Nicholson *v.* Goff in 2007—that set out very clearly how the capitalisation rate should be assessed: so, the length of the lease term, security of the recovery, the size of the ground rent and the rent review provisions, if any.

Every ground rent is different; every circumstance is different. Again, if you are going to fix the capitalisation rate in the same way that you are going to fix the deferment rate, that could certainly bring about unfairness. It could be unfair to freeholds, it could be unfair to leaseholders, but the problem with fixing the rate is that it does bring unfairness.

Q160 Matthew Pennycook: Just to probe you further on why, from your point of view, the Cadogan *v.* Sportelli rates are 4.75% and 5%, is that just for central London or is it your view that it works broadly across the country?

Angus Fanshawe: Yes, you are right. The case was about a flat in Cadogan Gardens—so, London SW3, prime central London. However, it was very clear. It set out how the deferment rate should be assessed. If the rate is to be assessed, I think the Cadogan *v.* Sportelli case sets out very clearly how it should be assessed. That would be the starting point: if the Government decide to do that, that is the starting point.

Q161 Ms Rimmer: If there were to be amendments to the Bill on regulation of estate management and so on, what would be the most important thing to keep in mind to avoid any unintended consequences?

Mr Andrew Bulmer: First of all, let us be clear that we—

Q162 Ms Rimmer: Could you speak up a little, please?

Mr Andrew Bulmer: Sorry—yes. I am afraid that I do not have a voice that projects, but I will do my best.

We warmly welcome regulation of managed estates; it is an anomaly that the management of those estates is unregulated. I was in the room earlier and I heard some eloquent discourse around the fact that some of these estates exist at all as managed areas and that those common areas are not adopted. I have personal experience of managing estates where there are two grass strips, a couple of gullies and a little piece of road, for which you need to set up a limited company, find directors, get them insured, do a health and safety risk assessment and a whole load of other stuff—a whole load of on-costs—for what amounts to, as I say, two strips of grass and a couple of gullies. Clearly, for that kind of small estate, that is utterly disproportionate and I strongly recommend that those areas are adopted by the council. There has to be a way through it, through planning legislation, section 106 agreements, commuted sums and so forth. I would strongly make that point.

On the regulation of those estates that either exist and cannot be adopted or alternatively perhaps are part of a much more complicated scheme and it is therefore inevitable that they will be managed areas, then, yes, absolutely bring them in. I would recommend that you align the regulations and the processes for reporting and service charge accounts, or charge accounts, as closely as you possibly can to the reformed leasehold regime so that there is consistency.

Q163 Barry Gardiner: Mr Bulmer, would it not be easier for your members to just pursue a claim in the county court, rather than go through the whole business of forfeiture in order to recover what are sometimes actually quite trivial sums?

Mr Andrew Bulmer: Would it be easier? I am not entirely sure. A substantive point was well made earlier. At the very minimum, there was a call for the equity that is left in a forfeited property to be returned to the leaseholder.

Q164 Barry Gardiner: Just so that the public and everybody is absolutely clear on this, at the moment, for a debt to your freeholder in excess of £350, you could lose the entire property, valued at several hundred thousand pounds, and the difference is not given to you. Is that correct?

Mr Andrew Bulmer: As I understand it, that is absolutely correct. Yes, the freeholder takes a lot.

Just to be clear, it might just be worth saying that we represent only managing agents. We do not have freeholders as members and we do not represent freeholders. That is sometimes misunderstood and, while I am clarifying, probably 50% or thereabouts of the estates that my members manage are RMC controlled. We also have members in Scotland who are freehold entirely, so we are very comfortable with freehold, commonhold and resident control.

Q165 Barry Gardiner: Your members do come in for a lot of flak, I know, and I just want to put it on record that I do not think that they are only the agents doing wicked freeholders' biddings. They have a difficult job to do and many of them do it well. Do you find that your members' mental health improves when they are dealing with tenants who are in a right-to-manage block, where they have that sense that it is they that are in ultimate control, as opposed to dealing with people on behalf of a freeholder who has that control?

Mr Andrew Bulmer: We do a mental health survey of our members. We have done it now for, I think, three years. I am sad to report that the answers of property managers to the question of "Is your life worthwhile?" are in the bottom 17% of the UK population, which is certainly a cause for concern. We ask for the sources of stress, and they include the cost of living and things external to their work, but it is roughly equally balanced between freeholders and leaseholders.

Q166 Barry Gardiner: So people can be equally bloody minded whatever they are.

Mr Andrew Bulmer: I think it rightly places property managers roughly in the middle of all this. Shall we say that?

Q167 Barry Gardiner: In terms of sinking funds and reserve funds, do you believe that there should be a separation and an accountability for income and expenditure in and out of those funds to the tenants?

Mr Andrew Bulmer: I would go further than that and say that we have been calling for a standardised chart of accounts for quite some time and that standardised chart of accounts would be able to separate out and highlight the various funds. It is important that each individual leaseholders' funds can be readily identifiable in terms of their own account.

Q168 Barry Gardiner: Thank you. That is extremely helpful and I am sure the Minister has taken very good note of it. You will remember that this was something in the 2002 Act, and the British Property Federation have lobbied for it. Would you agree that there should be separate trust accounts to make sure that there is no financial mismanagement by the freeholder?

Mr Andrew Bulmer: Yes. The Property Institute standard, the old ARMA standard for member firms, requires separate accounts for each development and for those to be trust accounts—it is leaseholders' money held on trust.

Q169 Barry Gardiner: You mentioned the code of conduct for your members. ARMA also had a code of conduct, did it not? It introduced a code of conduct back in the early noughties. What went wrong?

Mr Andrew Bulmer: First of all, it still does have that code of conduct. We are in the middle of rebranding from ARMA to TPI. Just to be clear, the legal entity is The Property Institute, but we are still running on the ARMA and IRPM brands for the next few weeks, when the branding will finally change. I am not quite sure what the phrase, "What went wrong?"—

Q170 Barry Gardiner: Let me put it this way: what does the new code of conduct specify that you consider to be a great improvement on the old one?

Mr Andrew Bulmer: There is a plethora of codes. I am good with this: when I was residential director at RICS, I project managed the delivery of the third edition of the RICS code. There is a fourth edition of the code, which I think sits with the Department for Levelling Up, Housing and Communities at the moment. Separately from that, Baroness Hayter's overarching code of practice, inspired by RoPA, is in draft form and goes across all agents. There is then the ARMA standard. There is a plethora of codes. It is the RICS code that the Secretary of State adopted, so again I would love to answer your question, but I do not quite understand it yet. How can I help you?

Q171 Barry Gardiner: I want to know how you feel that the latest code of practice you have instigated has helped to tighten probity and ensure that the transparency and probity of the dealings between a freeholder and a leaseholder have been improved by what you have done.

Mr Andrew Bulmer: We are not a regulator. For firms to join us, they volunteer to do so. It is to their credit that they do so, but there is a limit to what we are able to enforce. We can embrace standards, and our job is to raise standards by pulling—

Q172 Barry Gardiner: You can throw somebody out of the institute, can you not?

Mr Andrew Bulmer: And we have done so. We can raise standards by pulling firms and members along. We can have adventurous conversations, we can set standards and, in extremis, we can remove agents from the institute. We have done that for both individuals and firms. But, ultimately, we are not a regulator, and if you are truly to drive standards you need both pull and push. The role of the regulator would be to push.

Barry Gardiner: I think you have given a very eloquent explanation of why, try as you might, we need to ensure that within the primary legislation we have the adequate safeguards, because they cannot be done by voluntary effort outside in a complete and effective way. Thank you.

The Chair: Are there any further questions from Members? No? Okay, in which case I thank the witnesses for attending today. We will move on to the next panel.

Examination of Witnesses

Kate Faulkner OBE and Beth Rudolf gave evidence.

4.30 pm

Q173 The Chair: We will now hear from Kate Faulkner OBE, the chair of the Home Buying and Selling Group, and Beth Rudolf, the director of delivery for the Conveyancing Association. We have until 4.50 pm for this session. Will the witnesses please introduce themselves for the record, starting with you, Beth?

Beth Rudolf: I am Beth Rudolf. As you say, I am the director of delivery at the Conveyancing Association. I started my working life as an estate agent, became a licensed conveyancer and now work with the Conveyancing Association to improve the home-moving process for the consumer.

Kate Faulkner: Hi, my name is Kate Faulkner. I am chair of the Home Buying and Selling Group. If you are not familiar with it, it is a massive volunteer group. Our steering group has more than 30 different organisations, because that is how complicated it is to buy and sell a home in this country, be it leasehold or not. We have participants who are practitioners, as well as all the trade bodies, regulators and redress schemes. Our aim to improve the home buying and selling process, to prevent the one third of fall-throughs when a sale has been agreed after the offer stage and to reduce the length of time, which impacts on people's uncertainty of life when they are buying a home. I have worked in all property sectors, from part-exchange to helping people who need to move into a retirement home and working with agents. Most of my work involves trying to communicate to consumers from an industry or Government perspective.

Q174 Matthew Pennycook: Thank you, ladies, for your time. Unless I have overlooked them, there are no provisions in the Bill to mandate or impose any requirements on time and fee for providing home buying and selling information. Several witnesses referred to that being a problem and to not having relevant information at the point of a sale going through. Should those clauses be added to the Bill?

Kate Faulkner: There are various issues. I heard one of the best descriptions of this recently, which was that, if I ask you to bake a cake with 20 ingredients but I only give you five of them, it is a bit difficult to do. Once you have made the offer and the legal companies have had a look at it and at the agreements, in a couple of months' time you might get up to 10 of those ingredients. Eventually, four or five months later, you might have all 20 and you can then buy and sell that property. That is the biggest problem we have.

One of the massive opportunities with the Bill is to mandate the information required for people to understand what they are purchasing with a leasehold property. A key thing that we do not have in the property sector that other areas have—I have worked in the health, beauty, food and drink sectors—is an awful lot of natural education on how to buy things. We have nothing; there is no natural education of the public in our sector, apart from in the media, where any property story is particularly negative.

The work we are doing now has been fantastic. It has improved consumers' education so that they really understand what they are buying into and that leasehold is very different from freehold, but they have now got the impression that leasehold is a bad thing. When leasehold works, it is not a bad thing.

From my perspective, and certainly from all the work we do with our participants on the Home Buying and Selling Group, it is essential that information be provided up front. Fantastic work has been done by the group that worked with trading standards, who now require up-front information, but it is not mandated. Although agents are supposed to understand all the property rules and regulations, from the discussion you had earlier, apparently nobody thinks that they should be qualified, and there is no regulation, so one problem is that agents have no idea about the trading standards up-front information that is coming through. A lot of good work is being done; the issue is that it is not working on the ground.

On leasehold specifically, people have to get hold of leasehold packs. There is a cost associated with them, and the time it takes can be excruciating. Anything that

can be done to cap those costs would be welcome, but we need to make sure that quality is still required. The danger of the cost being too low is that we do not get quality leasehold packs, and they are essential due to the complexity of leasehold. The time it takes is also essential. Mandating up-front information specifically for leasehold would help us to reduce fall-throughs and reduce the time it takes, but most importantly, it would mean that people could get on with their lives more quickly than they currently can.

Beth Rudolf: I am the co-ordinator of the leasehold property enquiry form and the freehold management enquiry form, which are supported by TPI, RICS, the Law Society, the Conveyancing Association and right across the sector. The intention of the forms was to create a standard template for the information required. It is noticeable that, of the questions raised, only five are time-sensitive, such as failings to pay ground rent or the current budget—the kinds of things that change over time. Most of the information is standardised across the whole of that estate; nothing is going to change. Certainly, when we were looking at the regulation of property agents with Lord Best, it was clear that some of the bigger managing agents already have templated tenant portals where people can go to get that information. That needs to be put across the whole of the leasehold sector, the rent charges and the managed freehold estates, because we are seeing charges of up to £800 for the information.

We are also seeing the duplication of those charges. We will go to the landlord and they will say, "We only answer the ground rent ones, but we still want £400 to answer those. You will need to go to the managing agent to get the information about the service charges." The managing agent says, "Right, well, we charge £400 for that, but you will need to go to the Tenants Association to get information about disputes and consents," and so it goes on.

The timescale to getting the information having paid for it is about 57 days. For the consumer, it is an absolute nightmare. As Kate says, guidance from National Trading Standards came out on 30 November 2023 which sets out the material information—the information that would be relevant to the average consumer. It is not all the information. What we need mandated is what information and what data should be reviewed to identify what the relevant material information is, because without that how do we know if somebody has the information from the leasehold property inquiries or from the seller's or the estate agent's guesswork? Certainly, without the regulation of property agents, there is nothing to say, if they do just make it up, that anybody can take anything against them. We absolutely need that to be incorporated. It was promised and there was an announcement, I think, in 2018 that the leasehold property inquiry information should be made available at a cost of £200, with a refreshment fee for those time-sensitive elements of £50, and that that information should be made available within 10 working days. We have still not seen that and there is nothing in the Bill that identifies that.

Q175 Rachel Maclean: I have one question for each witness. Kate, if I can come to you first. You made the point that leasehold works for some leaseholders. We know that there are something like 4.98 million leasehold properties. How many would you say it is working for? That might be impossible, but what is your gut feeling?

Kate Faulkner: I do not think we have ever asked that question, so it is very difficult to answer. Also, the issue with property is that people change a lot. As a result, you could have a block that works brilliantly because we have a wonderful violinist or—my grandma used to own a little place at The Poplars in West Bridgford in Nottingham and, through complications, the family still owns a garage where my grandma used to live. The two guys who run that estate—the guy who does the accounts and the guy who does the overall management—are absolutely fantastic. They are a pleasure to deal with, and it is an extraordinarily well-run block. Now, if either of those were to move on, who knows whether there is anybody to replace them?

If we take another situation—I must say that this was quite a shock for me and I was a bit green in those days—I owned a flat and I thought it was safe to buy because it was owned by a housing association. Thirty per cent of those flats were owned privately. We were treated abominably by that housing association, and I would go as far as to say that they really did not like private leaseholders. I understood; they were social homes originally and they did not want us to own them. I felt we were treated as if we were an ATM machine. The original agreement that we signed up for with the housing association was a good one, but we found that they were changing that agreement over time and changing it so fast with so much paperwork that by the time the roof needed to be replaced, all the reasons we had bought that property, which we thought was safe, had been taken away from us. I know what I am doing and I asked all the right questions, but we still ended up with a situation where we had no control whatsoever over what was happening.

You have two cases there. In one, you have a wonderfully-run estate, but that could change overnight if different people take over, and in the other, you have a situation where I thought I would be safe with the housing association, only to find all the rules were changed.

To give you some idea, I think it is the complexity of this that is so scary. However good anybody is, the missing qualifications are just horrendous. That just has to be sorted. The best way I could describe it to you is that when I moved, I had a bag. Do you remember those big Asda bags? Not the ones that they do now, because they seem to have got smaller, like everything else. I had a big Asda bag, and after owning this flat with the housing association for 10 years, I had three lever-arch files full of paperwork.

When we brought the complaint against the housing association about how they had dealt with the roof renovations, it took a year to take that to a complaint situation. When I suggested that I take it to a first-tier tribunal, I was told—this is one of the good things—that if I drove my other leaseholders into taking them to a first-tier tribunal, it would cost more than £30,000. I was asked whether I wanted that responsibility on my shoulders. Taking that cost off is one of the good things, but my worry is that however good we do, until you give the leaseholders parity with the legals—the surveying and the accounting expertise of the freeholder or agent or whoever it might be—we will still never dig ourselves out of the situation we have. That parity service has to be free, or every leaseholder puts in a hundred quid a year or something to provide them with some sort of service.

Q176 Rachel Maclean: I am conscious of time, so I ask you to be brief in your answers. It is interesting and useful for all of us to hear the other side of the argument. I am not nailing my colours to the mast here. I am just making the argument that some people would argue in favour of leasehold, because it suits some people in certain situations. You have made that argument, but you have been very clear that it is obviously complicated: people can move on, and then they have no protection, and so on. Do you still think there is value in leasehold as a concept, if it can be addressed by the measures in this Bill or maybe some others? Do you still think leasehold should exist, as long as it can be reformed?

Kate Faulkner: Absolutely. That is in one of my notes. If we make sure all houses are freehold, but we keep flats as leasehold, is that a problem? Well, actually, we can make leasehold work. We spend so much time looking at how to solve the bad bit, but what we do not do in this industry—which I have always done in others—is learn how it goes right, and how we can pull everybody up to that standard. We spend so much time looking at what happens when it goes wrong.

Q177 Rachel Maclean: Yes, because there are obviously egregious cases, and it is those that reach our attention. Thank you so much for that, and I will obviously scrutinise your evidence.

Beth, it is often presented that your industry and your members are perhaps part of some of the problems we see, because conveyancing is not done to high standards. We have heard so many times that people do not know what they are buying. Surely, that should be the role of conveyancers? Is it your view that there are some poor people practising in your industry? How much of this leasehold problem would have been avoided if we had had decent conveyancing right from the beginning?

Beth Rudolf: We have to go back to the understanding that, as Kate said, if you only have a few of the ingredients up front, then you are going to give misinformation. For example, let us think that without any information going to the buyer, they have decided to buy that property. Now, their intended use and enjoyment of the property is then what the conveyancer needs to do the due diligence on, to ensure that the buyer gets the information and understands what it means to them.

The issue we have with the current conveyancing process is that because of the dematerialisation of deeds, there is no need to keep deeds packets in fireproof safes any more. Consequently, they are just returned to the property purchaser, who loses them without realising their use, or they keep them really safe and then take them with them to the next property. All of that information goes missing, which means that every time the property is sold, the information and archive of the data has to be reconstructed. If I, as a conveyancer, was selling a property back in 1990, I would just get out the deeds packet and send through the contract pack on the day that a buyer was found. Within that, I could put old local searches, planning and documentation, warranties and guarantees, and insurances.

Now, when I get instructed, I have to start from scratch. I have to go to the lease administrator and planning authority and get all the information. That takes time. The trouble is that, as a buyer's conveyancer, I am trying to report to the client on the information as it comes in. I hopefully get in the material information that the estate agent gets when they put the property on the market, but then I have to do the transaction form that the Law Society requires, which duplicates what has already been provided, but is slightly different, so you do not get the right information there.

On top of that, I get the search results in, but I probably do not order those until I get the mortgage instructions in. But the mortgage instructions are based on a valuation done by a valuer who did not know what information was available on the lease, so I then have to go back to the valuer and say, "No, you've got the wrong information." By the time I have reported to my client on each thing, I have had to change my story each and every time. So conveyancing transactions take about 20 weeks before you can even exchange contracts, because each time you are trying to recreate the information about the property.

What we need is for the property data to be digitised and stored in property log books at the end of the transaction so that it can then be used when the seller wishes to instruct an estate agent to sell their property. To advertise it, they can then pull down the property pack, get the relevant material and information out of it, and ensure that when the buyer puts their offer in, they know what they are buying, and that the valuer for their mortgage company knows the details about the valuation. Where that happens—in Norway, Denmark and Australia—we see binding offers with cooling-off periods, and the only stress is trying to work out what you are going to move and what stuff you are going to give to charity.

Kate Faulkner: You have to bear in mind that when people are moving, they are also having a baby, getting divorced or getting married—or somebody has died, or they are in debt. Maybe they are trying to get in for a school time. As much as I wear a consumer hat, they are not in the most rational mode.

One of the difficulties that the conveyancer, the agent or anybody else has is actually getting people to sit down and understand the paperwork and what they are doing. We have a huge problem: consumers do not really understand, and do not always take the time to, either, because they just need to get into the property. We have a real education issue. One of the things I would do is work with companies to help them to educate consumers. I have to say that, in all my jobs, getting them to understand from a property perspective is the toughest thing.

That is why we have to bring everything up front. If we wait until they have made an offer and had it accepted, we have lost them—they are interested in what colour the walls are and what the sofa is, and if anybody, such as a surveyor, gets in their way and says, "You shouldn't buy this property", they are almost cross with them. The mindset of a consumer during the buying and selling process with property is very different from any other consumer mindset I have ever worked with.

[Chloe Smith *in the Chair*]

The Chair: By way of explanation, for the next 10 minutes I am Caroline Dinenage.

Kate Faulkner: Many congratulations!

The Chair: Otherwise, my name is Chloe Smith. I am temporarily chairing the session to allow for a very short break.

Q178 Andy Carter: I was really struck by your comments around the natural education process of buying and selling houses. You are quite right; most of us probably do it once or twice in our lifetimes, and we do not know the questions we need to ask. We rely on conveyancers and those in the legal environment to give us that information. Looking at the Competition and Markets Authority's report on mis-selling, it strikes me that some really shady practices have been going on. Beth, I will ask you this question first: what would be in an up-front pack if we were to mandate to say, "If you are going to sell a leasehold house, this is everything we need to know about"?

Beth Rudolf: What you have in there is the energy performance certificate; the title to the property, including a plan and any documents referred to in the title, such as a lease or a conveyance containing covenants; the searches—the local authority search, the drainage and water search and environmental data, which will tell you whether the property is impacted by coastal erosion or flooding; and the BASPI, or the buying and selling property information, which is completed by the seller and provides information about their understanding and ownership of the property.

You verify the identity of the seller digitally to ensure that they are the person registered as the proprietor to avoid seller impersonation fraud, through which people have lost £1.3 million. Those are the things that you need available. For a shared amenity property with a leasehold or managed freehold estate rent charge, you also need that shared amenity information—the LPE1, or the leasehold property enquiries form, and the FME1, or the freehold management enquiries form.

[Dame Caroline Dinenage *in the Chair*]

Q179 Andy Carter: That is the bit that I am glad you got to, because that seems to be the bit that gets forgotten with leasehold properties. What are the ongoing service charges—what are you paying your money for and when do you pay it? Constituents who have purchased leasehold properties tell me that they have not been told about that.

Beth Rudolf: It is about building safety. Is remediation required? What will be the impact on you? How much will you have to contribute? Are you a qualifying leaseholder? How the hell do we know?

Q180 Andy Carter: Is that something you think we should be mandating for people buying a leasehold? Should that be in the Bill?

Beth Rudolf: For any house, yes, absolutely. It needs to whack up the material information under the Consumer Protection from Unfair Trading Regulations 2008, which impact estate agents by saying, "These are the prescribed documents." The home report in Scotland shows that that is pretty much what they have done. They have 60% fewer fall-throughs than we have and their transaction time is much faster. If we can go that way, it will absolutely deliver. When estate agents and conveyancers have worked together to deliver this already, it has knocked transaction times from 22 weeks to 10 weeks and fall-through rates have plummeted.

Kate Faulkner: Obviously, I work right across the property industry, from self-build to the leasehold side, and a lot of the work that has been done, including the rent reform and the work that has been done here, focuses on what happens after. For me, there is a problem with property from a consumer perspective, because there is a shortage of properties and owning a property is such a complex thing. You cannot compare it to buying a toaster—it often is, but please let us get rid of that.

For property to work for consumers who are moving, buying property or selling after deaths, divorce and so on, you have to make sure we have no bad freeholders, no bad landlords and no bad or poorly qualified agents. The good thing about the leasehold Bill is that you are doing some of those things. The Renters (Reform) Bill is not doing those things; most of it is after the event, but that is too late because consumers have to put a roof over their head and get their kids into school, so they will compromise on their rights. They will compromise when they are told, "You need to understand this information from your conveyancer, which means you should pull out of this deal." We therefore have to put the protection in first. We must regulate agents and make sure the bad elements cannot be there. There is such a massive scale, ranging from the brilliant people I work with right through to the criminal, and we have to move everybody up.

Beth Rudolf: Just to catch you there, because we are short on time, the regulation of qualifications is a key point.

Q181 Andy Carter: I was going to ask you about that. Is the Bill sufficiently robust in that area at the moment?

Beth Rudolf: No. It is wonderful that you are opening up the jurisdiction of the tribunal, but it still does not cover administration charges—I have talked about how ridiculously expensive they are—and their duplication. The point is that, as Kate says, the consumer is not educated, and nor is the estate agent. The material information guidance has come out, but none of the estate agents knows about it. When conveyancers ask them whether they can help them prepare the summary of the material information, the estate agents say, "Well, why? What are you talking about?" They have no idea.

The point is, as Andrew says, that we want to put a fence at the top of the cliff, not an ambulance at the bottom. The tribunal is the ambulance at the bottom; regulation of property agents is the fence at the top. That will ensure all people are educated, including the consumer, the estate agent and the property manager, and we also need to include the landlords and the developers in that. They need to be regulated too, because otherwise it is all going to slip through the net. The enterprise reform regulations do not incorporate anything where you are not instructed to work on behalf of somebody else, so your landlord is not going to be regulated, and they already do not have to be part of a redress scheme. Bringing these things in will help with education, so that they know what they are supposed to do and they will not make these mistakes that cause people to have a nightmare in their own homes.

Q182 Andy Carter: I have one more question, if I may. In relation to the challenge of estates not being adopted by councils, I am conscious that you may not know a great deal about this—

Beth Rudolf: No, I have so much to tell you about this. In Worcester, the county authority has a £35 million overspend on adult social care. Because of that, it is not putting any money into the adoption of public open spaces. It is not putting any money into supporting those. It will absolutely look for developers that will take on those open spaces, create these estate rent charges and make a bit of wonga by collecting all that money.

Q183 Andy Carter: In your experience, is this driven by councils?

Beth Rudolf: It is council resources, as much as anything. Then, on top of that, developers see it as being a financial asset, because they continue to have an economic interest in that land by gathering the referral fees, the commissions on the insurance and things like that.

Q184 Andy Carter: Finally, do you have any data on how many of these estates are not adopted and are being operated in that fashion? Is there any knowledge around that?

Beth Rudolf: All I can tell you is that currently the council that I am aware of will not adopt anything. The dowry that it used to receive for adopting is no longer enough to cover the cost of bringing it up to an adoptable standard and, as was mentioned before, if the developers leave before bringing it up to an adoptable standard, you are completely stuffed: there is no resourcing and no money available to fund this.

Q185 Andy Carter: The challenge that we are going to face is that we are going to build hundreds of thousands of homes over the next however long, and how those estates are looked after and the cost—

Beth Rudolf: Bring in commonhold. Enable commonhold on managed estates, because then people will at least have their control. With commonhold, you immediately get people saying, "You don't have professional property managers running it." Well, require that, when the commonhold association takes over, it has in place a professional, regulated property manager with a limited contract, so that the association can tender for a replacement if it turns out that that estate manager is not good. That means that you are starting to drive it on the basis of customer satisfaction: if you do not do it fairly, well and reasonably, the commonhold association is going to replace it. We did a survey of the commonholders—

Andy Carter: I am conscious of the time. Others may want to—

Beth Rudolf: I know, but I was going to say that the commonholders did not complain about being commonholders. Some of them had been leaseholders, and they said that they would prefer to be commonholders.

Kate Faulkner: One of the things from the developers' side—and I was not clear about this—has to do with where this leaves people with shared ownership, because you cannot have two-tiered systems. The housing associations and shared ownership should be as protected with these rules and regulations, because, unfortunately, not all housing associations do a good job.

Beth Rudolf: One more thing: the ground rent capping referenced in the Bill requires the lease to be a qualifying lease, so it will not impact leases under 150 years. But the majority of the mis-sold leases with onerous terms and escalating ground rents were well under 150 years. They will not be touched by this, so that needs to change.

The Chair: Thank you very much. I do not think there are any further questions, so I thank you both very much for attending today.

Examination of Witness

Professor Tim Leunig gave evidence.

4.34 pm

The Chair: We will now hear from Professor Tim Leunig, who is the director of Public First. We have until 5.15 for this session. Can the witness please introduce himself for the record?

Professor Leunig: I can. I am indeed Professor Tim Leunig. I was an employee of the Department that is currently known as the Department for Levelling Up, Housing and Communities, where I served as economic adviser on housing supply to three Secretaries of State—Clark, Javid and Gove respectively—and any number of Housing Ministers, to be honest, one of whom is here. I served almost all of them between Brandon Lewis and Rachel Maclean.

I am now the director of economics at Public First consulting and am chief economist at the think-tank Onward. I am employed by University College London Consultants to train Treasury civil servants. I run a Substack and I am a visiting professor at the London School of Economics school of public policy.

The Chair: Thank you very much. I call Rachel Maclean.

Q186 Rachel Maclean: It is nice to see you, Professor Leunig. Why do we have leasehold in this country when other countries do not have it?

Professor Leunig: I think that is a question that people often ask medics: "Why do I have this?" Who cares? The question is, "Am I going to get any better?" I have not got the faintest idea about the origin of leasehold, but I contend to you that that does not matter; all that matters is whether this is an effective system and, if it is not, what we could do either to improve or replace the current system. Those two questions I can answer, but I am afraid that I get an E grade for my answer to the question that you actually asked.

Q187 Rachel Maclean: Okay. You are very frank about that. I just thought that you might have some ideas, but let us move on to the point that you just made, which is that we do have leasehold; we are where we are.

We have a Bill in front of us. What is your view on the Bill? Does it address the problems that we have all heard and are familiar with?

Professor Leunig: It is a step forward; there is no doubt about that. I do not suppose that any person has appeared in front of you today and said, "Oh, this is a terrible step." I do not suppose anyone has argued that we should keep leasehold for houses or that we should have 99-year leases or 49-year leases or anything like that.

Rachel Maclean: No.

Professor Leunig: In that sense, it is obviously a step forward. I have not been here all day, but I am guessing that you have had a consensus on that throughout your evidence sessions. I am part of that consensus. I think that it is very good that leaseholders have increased rights to information and that we are eliminating ground rent for longer leases, although I agree with the person who was sitting here before me—whose name, I think, was Beth Rudolf—that 150 years is a rather long thing before you get rid of ground rent. The case for ground rent seems to me to be extraordinarily weak. I think that it would be better to move to commonhold.

First of all, I should say that I am not a lawyer. Indeed, once, when I made a remark about the law in a meeting with one of your predecessors as Housing Minister, said Minister remarked that, as an analyst, I should know better than anyone else that the first four letters of analyst stand for, "am not a lawyer", which, I have to say, was wittier than most Housing Ministers.

I am not a lawyer. I am an economist, but I can say that leasehold is a peculiarly economically inefficient construct, because it usually constrains a person, for whom the largest single thing they will ever invest in is a leasehold—their house—from doing all sorts of things. It constrains improvements, for example. It also holds them open to the risk of forfeiture, and the risk of forfeiture is particularly bizarre: for a very small amount of service fee, you can lose the entire value of your flat or, occasionally, your house. That is disproportionate to any sense of economic, moral or any other kind of fair play, and it acts as a disincentive to people.

In that sense, leasehold is a fundamentally economically inefficient construct, as well as having dubious morality. For sure, if you do not pay your service charge, there needs to be some way of enforcing, whether it is commonhold or leasehold, but that is why we have things like the small claims court. Ultimately, we have bailiffs if you do not pay a bill. You do not lose your entire property because you failed to pay your telly licence or something like that, and nor should you for a service charge. In that sense, I think that leasehold should be killed off.

I also think that leasehold is, on occasion, an absolute magnet for sharks and other wretched creatures who disgrace our society and the good name of capitalism. I think it was Edward du Cann who made a remark—before I was born and before at least some of you were born—about the "unacceptable face of capitalism" when companies behave very badly. We see that happening in leasehold with the companies who had doubling ground rents until a property was worthless and the companies who pursue forfeiture over tiny bills. Bluntly, if I am allowed unparliamentary language—I think I am but you are not—there are bastards out there, and your job is to construct the law to constrain those people who have bastard tendencies. Leasehold does not do that; commonhold does. That is why I think that commonhold is a much safer construct for people who are currently leaseholders. It should be the norm and the requirement for all future building, whether that is flats or houses, and we should be looking to move leaseholds to commonholds over time.

Q188 Rachel Maclean: One of the arguments against making commonhold mandatory now is that it would destabilise the existing leasehold system. There are many millions of leasehold properties, and it is argued that that would result in a lack of confidence, in a lack of investment and in even fewer properties being built. We all know that we want to build more houses, more flats and so on; part of the long-term plan for housing is to build more flats, as I think Mr Scoffin alluded to. What do you make of that argument? Secondly, what do you make of the linked argument that freeholders are providing a very good service in some ways, because that asset class is funding the pensions of NHS and care workers and policemen in the country?

Professor Leunig: The final point is factually incorrect, because of course the nurses pension scheme is unfunded, so there are no assets behind—

Rachel Maclean: That is probably a bad example.

Professor Leunig: It is, but people always put forward nurses and policemen when they want an "Oh, woe is us" story. Well, the NHS pension scheme is unfunded; it is underwritten by us as taxpayers and is thus completely and utterly secure.

Although I accept that there are some people who have these in their pension funds, any good pension fund is diversified. No sensible pension fund has more than a trivial amount of its money invested in this class. Of course, if you have a self-invested pension plan and you decided to put it all in this, that is a risk that you took when you decided to invest all your money in it.

Changing to commonhold will make not a jot of difference to the number of houses that are built over the next year, or the number of flats. The number of houses and flats built is determined entirely by whether the builder believes that they can make a profit. This is a for-profit sector, and that is right and proper, as is the manufacture of pens, mobile phones, bits of paper, quasi-plastic cups and everything else. It depends on whether the buyers have enough confidence to buy, on whether they think their job is secure and on whether they can get a mortgage at a rate that seems acceptable and is competitive with renting. That is what matters. It also matters whether the builder thinks the market will be radically better in the following year, in which case they will quite understandably delay building for a bit.

Frankly, the difference between the value you will get for a leasehold and what you will get for a commonhold is at best slight; in so far as it exists, it is based on confusing and bamboozling buyers. Sometimes the builders of a leasehold flat say, "Ah, but we can sell them for less, because we make some money by selling off the right to the ground rent." If that is true, the buyer is not better off, because they have got it for less, but they have to pay ground rent. The buyer would be perfectly able to pay a little more, because their monthly or annual outgoings would be exactly the same.

The only way in which the builder is able to do better is if the buyer does not realise that they have to pay ground rent and is unable to do a net present value calculation in their head, which I grant you is more than likely—I challenge any of you to tell me on the spot what the net present value of £250 a year discounted by 3.5% a year is, over any number of years you like that is greater than five. Does anybody want to do that off the top of their head? No? I even typed into Google last night, "What is the net present value of £250 discounted

at 3.5% over 10 years?" Google did not give me a number as an answer. It is not the sort of thing that we have to hand.

Yes, some people might be bamboozled into this, but a good economy never says, "Great: we can build some more houses by tricking people into being poorer later." That is not the way to have a well-functioning market—and a well-functioning market is the best guarantee that we will get the houses we need built where we need them and when we need them.

The Chair: Apologies: I mis-spoke earlier and missed out Richard Fuller.

Richard Fuller: That's all right, Dame Caroline. Let's stick with net present values, shall we, Professor?

Professor Leunig: Go for it—I'll get out the calculator.

Q189 Richard Fuller: You will be aware that impact assessments are required now for all legislation, very helpfully.

Professor Leunig: Indeed, yes. It's a very long one, by the look of it.

Q190 Richard Fuller: It is, and it seems very expensive legislation. Do you agree with that?

Professor Leunig: Yes.

Q191 Richard Fuller: The top line says that the best estimate of present value is £90 million, but then it says that the low estimate is minus £1.5 billion and the high estimate is £1.5 billion. Doesn't that indicate that the Government don't have a clue?

Professor Leunig: Oh, yes, absolutely. That is not necessarily reprehensible, because sometimes you just cannot have a clue.

I am often asked to forecast the future. I say, "Why did economists get the last four years wrong? Because we didn't predict that Vladimir Putin would invade Ukraine." Making predictions about the future as a social scientist is, by and large, a mug's game. All you can do is stand up from first principles and say, "When do market economies work well? They work well when contracts are simple and plain and everybody understands them." That is much truer of commonhold than of leasehold, which is why I support commonhold rather than leasehold.

Q192 Richard Fuller: What is clear, though, is that the business net present value is scored at minus £1.7 billion, so presumably we can pretty much say that the impact on business is going to be—

Professor Leunig: Does it have a range?

Q193 Richard Fuller: Not on my copy; I presume it must have, but this figure is listed at the front.

Professor Leunig: I have not seen the impact assessment.

Q194 Richard Fuller: Well, let me draw on that. The core of this is something I mentioned earlier. If you look at the benefits, there is a total of £2.8 billion of impact monetised, which is under a heading of "transfers" —so transfer of value—and there is £418 million under the heading of "benefits". The numbers might be different because of other things later, but that is not material to the main point. What strikes you about the intention of the Bill if three quarters, 80% or 90% is about transfers and not efficiencies or benefits?

Professor Leunig: I would want to read it before giving a definitive answer, but the information that you have given me tells me that this Bill is above all a redistributive Bill. However, both of those are static estimates. The main change in property rights is usually dynamic; for example, what does it do to the incentives for people to improve their own homes? I would be surprised if that were captured in those benefits. If it is captured, I would be interested in seeing over how many years it is captured, and so on and so forth. Of course, a lot of this Bill, as I understand it—assuming that it is like every other Bill—leaves all the important stuff to secondary legislation and regulations. I imagine that those figures, in particular the figure of £2.8 billion under "transfers", are heavily dependent on exactly how the secondary legislation is written.

Q195 Richard Fuller: So it is redistributive, primarily. It sounds that way from those numbers, but there may be some hidden benefits that have not been monetised in the report. That is helpful.

Professor Leunig: Yes.

Q196 Richard Fuller: That is helpful. What is your instinct? Most of this is about removing marriage value payments. In your understanding, what would you expect the geographic distribution of that transfer redistribution to be?

Professor Leunig: The biggest winners and losers will be in the south-east and in London, because that is where the marriage values are greatest because that is where property prices are highest. If you own a flat in Peterlee, one of the lowest value housing markets in Britain, the marriage value will be trivial at the moment, so changing the rules on marriage values will have a very small effect.

Q197 Richard Fuller: So this is a London wealth transfer.

Professor Leunig: That will be the biggest—

Q198 Richard Fuller: Is it right to say that this Bill is a wealth transfer from rich freeholders to rich leaseholders? This is primarily just moving money between rich people, isn't it?

Professor Leunig: No. Not every leaseholder in London is rich, by any means. If you are buying a flat for £300,000 in London, that will make you rich by the standards of someone in Peterlee, but I do not think a young couple buying a flat for £300,000 would meet *The Daily Telegraph*'s definition of "the rich".

Q199 Richard Fuller: So the geographic dimension—there are more leasehold properties in London—and the redistribution argument is stronger than the "all properties in London are expensive compared to everywhere else" argument.

Professor Leunig: Yes.

Q200 Richard Fuller: That is helpful to know. Therefore, does redistribution matter—it could be a social good or not—and does it matter who and how that redistribution happens? Are those things material? Should we be looking at them in detail?

Professor Leunig: Redistribution is ultimately a political issue; it is about who you think should have the money. Government engages in redistribution all the time. Sometimes it does so explicitly through the tax system—I am looking forward any day to my tax cheque coming back from HMRC for the money I overpaid last year—and in other ways it does so implicitly.

For example, as somebody who has been employed in universities for most of my academic career, my income was constrained by the fact that Government limits university fees. I teach at the London School of Economics. The fee that we charge for a master's suggests that we could charge much higher than £9,250 to undergraduates, but the Government do not let us. That is a legitimate decision by the Government. It makes me directly poorer. That is a transfer away from someone like me—broadly speaking, on the richer end of the spectrum—to people who are currently not very well off but who later on will be rich.

That is just the right of a Government to define property rights in such a way that some people are winners and some are losers. The right to borrow Jeffrey Archer's books from the library, for which he gets virtually no compensation, is exactly the sort of political decision that you are entitled to make by dint of having a democratic mandate. Apart from agreeing with you that there is redistribution, I do not think that there is a great deal that any of us at this straight table can say to those of you around the horseshoe. It is your right, privilege and responsibility to make that decision.

Richard Fuller: That is very helpful. I will stop there, but I want to come back on discount rates later if I have time.

Professor Leunig: Excellent.

The Chair: We have a very enthusiastic witness. I call Barry Gardiner.

Barry Gardiner: Thank you. I make it 296.91, actually, but please correct me if Google thinks I am wrong.

Professor Leunig: May I ask whether you used a calculator to work that out?

Barry Gardiner: Of course.

Professor Leunig: Phew! I was once involved in setting a question for Carol Vorderman on "Who Do You Think You Are?". They wanted her to work out something like that, and I said, "You've got to give her a calculator." They said, "No, she's Carol Vorderman." No one can work out 1.027^{94} in their head, not even Carol Vorderman. They finally agreed to put a calculator to hand, which she used, I believe.

Barry Gardiner: So she didn't do it in her head.

Professor Leunig: Even Carol Vorderman cannot do that in her head. If you had said that you had done it in your head, I would have put you above Carol Vorderman.

Q201 Barry Gardiner: No, no—on my calculator.

Back to the Bill. There is an argument put forward for ground rent—the Government's proposal is to take it down to a peppercorn or indeed abolish it entirely—that these are inalienable property rights, so there must be compensation and there must be proportionality. Could you elaborate for the Committee on whether the same argument was used when we compensated slave owners for the loss of their property, and whether you think that there is an analogy there?

Professor Leunig: Property rights are never sacred in the sense of being inviolable, because a property right is over and above the right to be compensated for the loss of property, so a properly inviolable property right would ban the emancipation of slaves, ban compulsory purchase and so forth.

But the Government often take actions that, de facto, end someone's business. One of the saddest things I did in Government when I was economic adviser to the Chancellor was meeting a group of people affected by Brexit. One of them was a seed potato exporter. Under EU law, seed potatoes cannot be imported into the EU, so on the day that we left, this person's business was completely kaput. He asked for compensation, but it was not granted. We can argue the rights and wrongs of that, and we can argue the rights and wrongs of Brexit, but it seems to me that the fundamental sovereign right of Parliament is to make decisions that some people like and some people do not like. If people are really unhappy, they can judicially review it. A lot of rich people own ground rents, and they may well be judicially reviewed. Sometimes almost anything is reviewed, certainly in the world of property.

I am not a lawyer, but it seems to me that there is a plausible case for Parliament to stand up and say, "We believe there are social advantages to doing this, and we have therefore done it." That is the standard defence in law, and we did this at the end of covid. I was involved in the compulsory arbitration for a commercial rent scheme; indeed, it was one of the things I came up with as an idea in my time as a civil servant. At the end of covid, just about every restaurant had a huge accumulated rent debt. The standard commercial clause says that on any day you are behind with your rent, the landlord can go in, occupy the property and seize everything that is in it. We put that into abeyance for covid, without compensation, because we had a public policy reason for wanting restaurants shut.

Q202 Barry Gardiner: Indeed, we actually did it after the Custins *v* . Hearts of Oak Benefit Society legal decision in 1967, which had reversed the Government's decision on marriage value. We then legislated to make it absolutely clear that marriage value should not be counted.

Professor Leunig: There we are.

Q203 Barry Gardiner: In 1993, that was turned over. But it is public policy that trumps those property rights.

Professor Leunig: Correct, and that was what we decided at the end of covid, when restaurants, particularly those that served fine wine, came to us to say, "As soon as we restock our cellar, the landlord will turn up, reoccupy the property, seize all the wine and sell it for the back debt." They said, "We are literally not willing

to bring wine on to the premises." It was clear that that was an inefficient outcome that risked undermining the high street, risked undermining the future of hospitality and risked undermining a sector that is the biggest employer of young people. We therefore created a compulsory arbitration scheme to prevent that from happening. Nobody judicially reviewed that, even though there were some unhappy landlords, because they understood that we had a public policy purpose for doing so. The weight of evidence that you have heard today suggests that there is a public policy purpose here but, as I say, I am no lawyer.

Q204 Barry Gardiner: Thank you. That is extremely helpful. Please do refuse to answer if this is outwith your bandwidth, but in terms of the way in which leasehold in particular enables the freeholder to extract a revenue stream and the way in which developers develop properties precisely to extract that revenue stream, do you believe that that has had any bearing on the value of land in the UK and the fact that it appears to be at a higher price—obviously there are density and population issues, but on the whole it seems to be of a higher value—than land elsewhere in comparable populations?

Professor Leunig: Let us be clear: land for housing is of higher value and agricultural land is of slightly higher value, but industrial land is often not.

Q205 Barry Gardiner: And there is a huge premium when land is transferred from agricultural to construction use, is there not?

Professor Leunig: Gobsmackingly. The field with three horses next to Heathrow airport that I go past if I ever go to Heathrow is a tragedy. It is a really dreadful little bit of land. It is used for nothing other than three horses, but its value is constrained, because it is zoned for agriculture. I think the answer is: very little. Most of the large developers are not in this in order to make a fast buck out of ground rent and so on. Indeed, from memory, I think I can put on record that Taylor Wimpey behaved very honourably, having inadvertently had doubling rents in the north-west—

Q206 Barry Gardiner: You would say that of Persimmon and FirstPort.

Professor Leunig: Hang on; I will exercise my right to finish the sentence. It actually bought them back from the people to whom it had sold them, and it had not sold them at a particularly high price. It was just a local convention in the north-west that houses were sold on leasehold. The national companies hired solicitors, who did the normal thing in their area. Just as there is in government, there is often a lot more cock-up than conspiracy in the private sector. I am much more worried about the people who buy the leases later on with a view to finding the loopholes and exploiting them, just as people buy up medicines that are not quite out of patent to force the prices up. That is why I think it is good to set up a legal system that prevents the sharks from sharking, or whatever the verb is, but I would not want to tar all developers with that brush. In terms of property prices, I should say that I think it is overwhelmingly the planning system—we can see that if you look at somewhere like Manchester, which has lots of flats where land prices are not that high. Land prices are high in London and the south-east because we do not release enough land for housing.

Barry Gardiner: I will exercise my right to interrupt.

Professor Leunig: Absolutely.

Q207 Barry Gardiner: I think you are looking at this from a historical point of view. Your example of the north-west was perfectly apt, but there have been modern developers and companies—and I would cite Persimmon and FirstPort—that deliberately go about creating this as an extractive opportunity. Yes, it is much more modern, but surely it then has an impact, if it is allowed to continue, on land value.

Professor Leunig: It could do for sure, yes. If you can extract more money for the product that you are able to sell, you are willing to pay more for the constituent parts. However, I would not want anybody here to think that if we move from leasehold to commonhold, houses will suddenly become affordable in the south-east. That would not be a credible economic prediction.

Barry Gardiner: Thank you.

Professor Leunig: For that, you need to build more houses.

Q208 The Minister for Housing, Planning and Building Safety (Lee Rowley): I am trying to keep my interventions very brief, because I will be speaking a lot next week, but I could not resist asking you a couple of questions given your history, knowledge and background that is much more than my own. You have emphasised very clearly and articulately the rights of the people sat around this horseshoe to make decisions that will have economic impacts. Can I get your understanding of what you think the economic impact of the Bill as it stands broadly is?

Professor Leunig: First of all, I repeat what I said earlier, namely that it seems to me that a lot of it is up to the secondary legislation. In particular, I think that issues of compensation are entirely in secondary legislation and regulation. As I say, I am not a lawyer; I find it very hard to read a Bill. It is not my skillset at all. I would not like to have your job.

I think that the biggest effect is the dynamic effect of creating a much cleaner and clearer property market. We have a rather ossified property market in Britain; it has become more ossified over time. There are all sort of reasons for that, including the fact that far more people are now under stamp duty, as well as the effect of financial regulations that mean someone needs a relatively large deposit to get on the housing market. There is a bunch of other costs that we really could simplify and get rid of. Take searches, for example. You can buy a house that is two years old and you have to do a completely clean set of searches. Why? When did we last find a mine in central London? We know this stuff pretty well.

I think this is part of clearing up the housing market and if we do so it can have quite big dynamic effects—for example, facilitating the better movement of people in response to opportunity. Such opportunities may be economic. I do not want to sound too Norman Tebbit

and say, "Get on your bike." However, there can be opportunities to go and live next to an aged parent who has suddenly fallen ill, in order to provide better care for them, or opportunities to move nearer to better schooling. Whatever the opportunity is, a more flexible housing market allows people to move to a house that is better suited to their needs.

All those things are good dynamic effects that in the medium term are strongly pro-growth and I see this Bill being part of it, but it is a small step forward. A move to commonhold would be a better step forward to a nice, clean system, where everybody knows exactly what they are buying and nobody is left wondering, "What sort of freeholder is this? Are they an exploitative one? Are they a reasonable one?" Many freeholders are perfectly reasonable.

Q209 Lee Rowley: Understood. Question two of three: what are the risks of getting things wrong that the Committee should be aware of when we go into line-by-line analysis of the Bill next week? Where do you see the biggest risks in the legislation?

Professor Leunig: I see no risks in anything that you plan to do; I really do not think that there are any meaningful risks in moving to 999-year leases over 99-year leases. I certainly do not see any risk in ending leasehold for houses.

However, you might have people coming back with very specific cases of supported housing, for example—you always want to check with specialist groups about things like that—but I see no meaningful risks in this Bill as far as it goes. If you had gone much further, there would have been no meaningful risks either. The fact that commonhold and similar things work in places like Australia shows that it is a perfectly possible and viable system.

The time when you want to be really worried is when you are the first person in the world doing something. Of course, that does not mean you are wrong—right? When we privatised the first utilities, or when we privatised British Telecom, that was not a wrong decision, but there were definitely grounds for caution. However, when you are doing something that is already done in many countries—of all the things you lot have to worry about, I would not worry about that one. Sleep well tonight.

Q210 Lee Rowley: Thank you. I have a final question. I know that you were not here all day, but we have heard some very compelling testimony and questions from colleagues about the potential for going further and adding things to the Bill. Next week, we will get into a discussion, as colleagues know, about what we can do and the practicalities of that; we are not going to be able to do everything. However, we think that a very sensible set of propositions have already been put forward. If you had to prioritise, where would you go first in terms of additions, because there is a necessary prioritisation that needs to come in next week's discussions and on Report?

Professor Leunig: The only prioritisation meeting I had was with the current Secretary of State for Levelling Up on the LURB—the Levelling Up and Regeneration Bill—because the first draft of the Bill had twice as many clauses as could get through Parliament. We had a meeting for about two hours with the Secretary of State and each part was read out, including what its intention was and how many clauses it required. That is the cost-benefit analysis.

If I say to you, for example, "The lady before said 150 is too big", I would agree with her; I imagine that is a very sensible change to make. By contrast, I am sure that other people have said, "Go for commonhold for everything in future". That strikes me as requiring a lot more clauses than the number that would be required to change the 150 figure to 99, or 75, or something.

What I urge you to do is to ask the lawyers—the people drafting the legislation—how many clauses would each change that has been proposed cost. Then you think, "Okay, we can probably manage another 24 clauses", or whatever it is, "or we can change 24 clauses. Which ones do best in that cost-benefit analysis?" I do not think that it would be sensible for me to give you an answer without knowing that legislative cost.

Q211 Andy Carter: The Minister has just asked three questions to help the Committee; I wonder whether I can ask a question to help the Minister. Do you think that he should include flats within the scope of the Bill? Flats are currently excluded. What is your view on that?

Professor Leunig: Yes.

Andy Carter: He should?

Professor Leunig: Yes, and it is increasingly important as more and more of us live in flats. Unless we are going to make London look like Houston and stretch all the way from the white cliffs of Dover to Oxford, more people are going to have to live in flats in London. They are going to have to live in terraced houses and flats; that is just a simple, basic sense of physics and geography.

So yes, flats are going to be more important over time. I can see no reason why new flats should not be built on commonhold for anything where planning permission has not already been granted. That gives builders amply long enough. At that point, they cannot turn around and say, "Oh, but our economics were predicated on this." You have not put in for planning permission. Do it on commonhold. Get on with it. Adjust to the new world order.

Andy Carter: I will leave it there. Thank you very much.

The Chair: I think we had a couple of follow-up questions, first from Rachel and then Richard.

Rachel Maclean: I am sorry, Dame Caroline. When you told me that there was not time, the question went out of my head. I apologise.

The Chair: In that case, we will go to Richard and it might pop back in again.

Professor Leunig: Oh no, he is going to test me on net present value.

Q212 Richard Fuller: No: discount rates. As I understand it, there are two discount rates that are currently used in the calculations—the capitalisation rate and the deferment rate—and one is sort of fixed by a legal process. In terms

of making changes to the marriage value, there is also a change in the way in which the discount rate is going to be determined; it will be done by the Minister by regulation. What are your thoughts about that?

Professor Leunig: The default rate chooses 3.5% because that is the rate in the Green Book. Again, it is fundamentally a political decision, because you put the rate one way and the value goes up. You put the rate the other way and the value goes down. It is just a political decision. I really do not think that there is a right or wrong answer to that.

The only thing to say is that I would be very cautious in using the current Bank of England base rate because it is so volatile. The idea that if we had made the calculation two years ago we would have used a discount rate of 0.25%, but today we would use 5.25%, is absurd. You need one number that you stick with through thick and thin, and the default rate, I think, is the Green Book discount rate of 3.5%. I am happy to believe that if we were in the Department and I was employed, you could sway my belief that 3.5% is the right answer, but that is where I would start.

Q213 Richard Fuller: I am interested because so many other purchase decisions—indeed the mortgage you get—will be subject to market rates at that time. Those rates can go up and down, and that will have a very material effect on the cost of your mortgage, so why take this out of traditional market principles?

Professor Leunig: Because this is a one-off decision. For example, we saw Paul Johnson mention this week that the cost of student loans has gone up dramatically because of the rise in interest rates. We do not suddenly cut the number of people who can go to university and then increase it when interest rates are low, because we accept that most people de facto get one shot at university when they are 18 or 19. Over the 25 years of your mortgage, you will re-mortgage a number of times so it averages out, whereas this is a one-shot thing. We do not really want people acting strategically on which day to do it. That is why we would prefer to have a single number over time.

It is not a stand-up case; I grant you. You have a case. It is the classic thing of marking to market, right? When you retire, if you have a defined contribution pension scheme, you are to some extent at the whim of the market on the day you retire and in the five years before, as you move out of equities and into bonds. If you are a defined benefit pension holder, de facto we use the scape rate, which is a long-run average. I argue, in effect, for something similar to the scape rate for something like this.

Q214 Richard Fuller: At the moment, we do not know what will be in the regulations in relation to how the Minister should go about determining that. Do you have any advice for how he should structure that part?

Professor Leunig: As I say, my main advice would be to make a political decision and pick an interest rate, rather than to make a political decision without realising you have made a political decision and go for Bank rate, or Bank rate plus two or minus one, and to have complete randomness over the following years.

The Chair: If there are no further questions from Members, I thank the witness very much. We will move on now to the final panel.

Professor Leunig: May I say well done? You have had a very long day.

Examination of Witness

Dr Douglas Maxwell gave evidence.

5.10 pm

The Chair: Apologies, Douglas, I have one eye on the screen, where the Minister is now on his feet in the Chamber—we do not want to keep you waiting while we do lots of voting. Douglas Maxwell of Henderson Chambers, will you introduce yourself quickly for the record, please?

Dr Maxwell: Good afternoon. My name is Douglas Maxwell. I am a barrister in private practice at Henderson Chambers in London.

Q215 Matthew Pennycook: Dr Maxwell, I want to ask you about two things: A1P1 and compensation. The Secretary of State's view is that clause 21 is compatible with the relevant ECHR provisions. I presume you agree. The Government have five options out for public consultation at present. There is a sliding scale of risk in the potential for litigation—although they might well all be litigated in due course—from the capping of the peppercorn down to the freezing of ground rents at their current levels.

On the existing ground rents, to what extent do you think that any of those courses of action in the five options will be compatible with the provisions of A1P1? On compensation, how credible do you find the figure in the Government's impact assessment? They cite the figure of £27.3 billion as the estimated change in asset value from calculating the loss of ground rent income on the relevant leases. Do you find that a credible figure, or is it subject to a heavy amount of caveats, assumptions and so on?

Dr Maxwell: To deal with your first question, I think it is important to start by looking at how the European Court of Human Rights, the Strasbourg Court, considers applications under article 1 of the first protocol. The Court has said consistently that where a deprivation of property occurs—article 7 interprets that effectively as when your entire right to property is extinguished and all economic value is lost—there is what is called a presumption of compensation. I am not entirely sure, because we do not have the proposals set out in statute—we simply have the consultation document—

Q216 Matthew Pennycook: But the Secretary of State has expressed a preference for the first option, so let us say it is capping a peppercorn.

Dr Maxwell: In most instances, it would appear that that would fall within control of use: the freeholder's right to property is not entirely extinguished, because they retain the ability to use, sell or whatever that property, and they retain the ability to make money through other means such as enfranchisement fees or lease extension fees. I discussed this yesterday with Professor Bright at the APPG, which I know some of you were present at, but there might be instances where it falls within the category of a deprivation, or certainly gets close to that category, where the entirety of the income is derived from ground rent and the removal of that would effectively remove the value.

Absent sight of those sorts of leases and the relevant facts, we are dealing only in hypotheticals here, so that brings us to another question, which is to look at the macro picture of the options as a whole and the micro application of that to certain facts. It might be that on the macro approach, looking at the totality, we are dealing with a control of use, which means that there is no presumption of compensation, but it could be that if we looked at the micro analysis, certain individual circumstances do fall into that. Again, absent the relevant facts, it is only possible to speculate. It is a very broad market and there are lots of different leases.

Q217 Matthew Pennycook: Understood. What about the impact assessment figure?

Dr Maxwell: I am not an economist. I have skimmed the impact assessment figures and noted the figures that seemed to be quite substantial. I noted for option 1—correct me if I am wrong, but I do not have a copy in front of me—I think it said that in the first 10 years, the loss of ground rent might be £5 billion, and then a loss of value of about £27 billion. I am not an economist, so I cannot really comment on whether that figure is remotely correct or reflective at all.

Q218 Matthew Pennycook: Understood. On a practical level, would you expect any of the five options that are out to consultation to be the subject of litigation on the part of landlords? Or are there some that are safe, well beyond the infringements we are discussing?

Dr Maxwell: If any of the options are implemented, it will result in a significant loss in value of freeholds. As a result, there is a prospect of challenges being brought. I cannot comment on where those challenges will come from, but it would be slightly naive to say that any of those options are completely safe from challenge. However, the prospect of a challenge being brought is very different from the finding of a violation; seeking to bring or threatening judicial review is very different from the actual court finding that a violation has occurred. Obviously, the risk register—if you want to call it that—of the finding of a breach is effectively reduced if you go down the relevant options to the final one of freezing ground rent, and there are other questions about the proposals as set out in there.

This was discussed last night with the APPG, but it is important to recognise that there is Strasbourg case authority concerning cases from Norway that went to Strasbourg on the capping of ground rent. Obviously, ground rent in Norway is not exactly the same as it is in England and Wales, but there are some similarities. There was an initial case called Lindheim where the Strasbourg Court said that a cap of 0.2% in Norway breached the right to property of article 1 of the first protocol. That was because, effectively, the value was completely lost.

The Norwegian Government engaged in a process like this—a very considered discussion and consideration within the political sphere of the best way forward—and they effectively set a cap, which was the equivalent of about £600 a decare—I had to look that up—which is 0.2 acres. They set a cap, which again was challenged in a case called The Karibu Foundation, and that was when the ground rent related to about 0.6% of the land's value. In that case, the European Court of Human Rights said, "No, there is not a violation here, because the Norwegian Parliament have clearly considered this and they have what the Strasbourg Court calls a 'broad margin of appreciation'. These sorts of questions are for Parliament"—they are for you. The EHCR said that it had been adequately considered, they have retained the property, and that is reflected. Therefore, there cannot be seen to be what the Strasbourg Court usually refers to as an "individual and excessive burden" on this foundation, and it said that a breach had not occurred.

The principle is that a cap or a limit on ground rent is not necessarily a violation, but you have to apply it to the certain facts and see whether it falls within causing an "individual and excessive burden." But we are absent from facts and again dealing in hypotheticals here. We have to look at the macroanalysis.

The Chair: Are there any further questions?

Q219 Rachel Maclean: Dr Maxwell, I understand you have written a book—oh, your thesis was on the proportionality of state interferences with possessions under article 1 of protocol 1 to the ECHR.

Dr Maxwell: There is a book, but it is probably not on your Christmas list.

Rachel Maclean: You are presuming what is on my Christmas list! Anyway, are you able to express a view on whether this Bill and what we are proposing is a proportionate interference in property rights?

Dr Maxwell: That is an exceedingly broad question. There are 65 clauses in this Bill, and there is a consultation with five potential options. We do not have time to go through every single clause, but in terms of the risk register and potentially successful challenges being brought, I would focus on option 1 of the consultation, on reducing ground rent to a peppercorn.

There are various other people who have looked at this. For example, Giles Peaker, who is a very respected solicitor and has appeared before these Committees previously, has recently written that it would quite obviously, in his view, be a violation and it is important not to give people false hope. There is an undeniable risk of a violation being found in the relevant options. I suspect, but I do not know, that the prospect of a challenge being brought is very high, but again that depends on the relevant facts. It would be my understanding that it cannot be brought in a macro sense against the Bill as a whole, and it would depend on the relevant facts.

For example, the Supreme Court found a breach of the right to property in a case called Mott, which concerned limits on an individual's right to fish on the Severn estuary. The Environment Agency's policy of fishing as a whole—limiting fishing for the benefits to the environment—was considered okay. But for Mr Mott, it resulted in a complete loss of his income—fishing represented 95% of Mr Mott's entire income—and it therefore did cause a breach to Mr Mott in particular. That is why I am slightly apprehensive about giving broad conclusions about consultations and clauses when we do not have the ability to analyse the impact on an individual or entity.

Q220 Rachel Maclean: But it is my understanding that doing a consultation in and of itself is essential and helps to guard against the future risk of such claims being found successful. Has that been borne out through the courts system? Have you seen that?

Dr Maxwell: Yes, so in the case I referred to earlier—The Karibu Foundation *v.* Norway—one of the factors that the Strasbourg Court gave a lot of weight to was that the Norwegian Parliament had sat down with the Council of Europe, because it was following a breach in the Lindheim case, and considered all the relevant options. It was properly aired and debated and they got in experts from various fields. That is clearly a consideration. It shows that the democratic institutions—Parliament—have properly considered it, rather than it being, say, a last-minute amendment without justification.

Rachel Maclean: Thank you.

The Chair: I am quite keen to wrap this up before the Minister concludes speaking in the Chamber, because otherwise we will have to keep the witness for at least an hour during votes, and I do not really want to inconvenience him that much. Can we have very quick questions and swift answers if possible, please?

Q221 Barry Gardiner: The Norwegian example that you have cited related to land that, I understand, did have a rental value because it was agricultural land, whereas you cannot rent out a piece of land that already has a building on it, obviously, except to the tenants. I think there is a relevant difference. Have you made a study of elsewhere in the world, such as Australia, Hong Kong and America—the British empire led us to seed leasehold around the world—and what they do?

Dr Maxwell: In relation to your first point on the Norwegian case, yes, as I said, it was different. It is about agricultural land value. The value was equivalent to several thousand euros. As for what happened with the adoption of, say, strata title in Australia and so on, that is not within my knowledge. What I know or have studied in detail is—

Q222 Barry Gardiner: I just found it a strange example to choose Norwegian agricultural land, rather than where we know it has actually happened—where these payments were not made, the courts did not find that huge payments needed to be made, and there were no huge court cases. If we look at where else in the world this has happened, actually, it has happened without that sort of thing. I understand you are a lawyer, and no lawyer I have ever known has wanted to refuse a client the opportunity to go to court. But it seems odd that we are not talking about where we know it has happened in an exactly parallel situation. Our leasehold system was introduced in those countries, transformed into strata title or condominium structures, and no great crisis resulted.

Dr Maxwell: The very short answer to that is that we are dealing with article 1 of the first protocol to the European convention on human rights. Countries such as Australia, and particularly places such as Hong Kong now, are not signatories to the convention, nor do they have a domestic law-giving effect to it. That is why we are dealing with article 1 of the first protocol, and that is why we are dealing with case law from other jurisdictions that is, perhaps, not directly analogous.

As for the sorts of cases, or whether any cases were brought in those jurisdictions when that system was adopted, that is not something I am aware of or can comment on, unfortunately.

Barry Gardiner: Thank you very much.

The Chair: And then, very succinctly, Andy Carter.

Q223 Andy Carter: My question will be very short. What are the main implications of the provisions in this Bill for the legal profession, particularly solicitors? A relatively short answer, please.

Dr Maxwell: I am not a solicitor; I am a barrister. I am not able to really comment on the main implications of the Bill for solicitors, unfortunately. That is a nice, succinct response.

Andy Carter: That is fine. Thank you.

The Chair: Thank you—I do apologise for that. Thank you very much on behalf of the Committee. That brings us to the end of this afternoon's sitting. The Committee will meet again on Thursday to hear further oral evidence on the Bill.

Ordered, That further consideration be now adjourned. *—(Mr Mohindra.)*

5.24 pm

Adjourned till Thursday 18 January at half-past Eleven o'clock.

Written evidence reported to the House

LFRB01 Community Land Trust Network
LFRB02 James Dart, Dart Compliance Ltd
LFRB03 Christopher Jessel
LFRB04 Homehold Services Ltd
LFRB05 Gabriel C Santos
LFRB07 Annington Management Limited
LFRB08 Michael Hayman
LFRB09 Harriet Fleming
LFRB10 Justin Bennett
LFRB11 Charlie Coombs
LFRB12 Shared Ownership Resources
LFRB13 Izabela Klasa
LFRB14 M H Adcock
LFRB15 British Property Federation
LFRB16 Miriam Lewis
LFRB17 Peter Ballard
LFRB18 Anonymous
LFRB19 The Property Institute
LFRB20 Homeowners Rights Network
LFRB21 Nick Hopkins, Law Commissioner
LFRB22 Homewise Ltd
LFRB23 Dr Mark Andrew and Dr James Culley
LFRB24 Wallace Partnership Group
LFRB25 Mark Loveday, Barrister
LFRB26 Lewis Rolfe, of Audbern Ltd, a Freehold Ground Rent Investor
LFRB27 Anthony Shamash, director and owner of various ground rent investment companies
LFRB29 Anthony Brunt, Anthony Brunt and Co Surveyors and Valuers
LFRB30 Chris Booth
LFRB31 ALEP—the Association of Leasehold Enfranchisement Practitioners
LFRB32 Ania Symonowicz
LFRB33 HorNet, Home Owners Rights Network
LFRB34 Grosvenor

PARLIAMENTARY DEBATES

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GENERAL COMMITTEES

Public Bill Committee

LEASEHOLD AND FREEHOLD REFORM BILL

Third Sitting

Thursday 18 January 2024

(Morning)

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Monday 22 January 2024

The Committee consisted of the following Members:

Chairs: Dame Caroline Dinenage, † Clive Efford, Sir Mark Hendrick, Sir Edward Leigh

† Amesbury, Mike *(Weaver Vale)* (Lab)
† Carter, Andy *(Warrington South)* (Con)
Davison, Dehenna *(Bishop Auckland)* (Con)
Edwards, Sarah *(Tamworth)* (Lab)
Everitt, Ben *(Milton Keynes North)* (Con)
† Fuller, Richard *(North East Bedfordshire)* (Con)
† Gardiner, Barry *(Brent North)* (Lab)
† Glindon, Mary *(North Tyneside)* (Lab)
† Hughes, Eddie *(Walsall North)* (Con)
† Levy, Ian *(Blyth Valley)* (Con)
Maclean, Rachel *(Redditch)* (Con)
† Mohindra, Mr Gagan *(South West Hertfordshire)* (Con)
† Pennycook, Matthew *(Greenwich and Woolwich)* (Lab)
Rimmer, Ms Marie *(St Helens South and Whiston)* (Lab)
† Rowley, Lee *(Minister for Housing, Planning and Building Safety)*
† Smith, Chloe *(Norwich North)* (Con)
Strathern, Alistair *(Mid Bedfordshire)* (Lab)

Huw Yardley, Katya Cassidy, *Committee Clerks*

† attended the Committee

Witnesses

Ms Paula Higgins, CEO, HomeOwners Alliance

Bob Smytherman, Chairman, Federation of Private Residents' Associations

Sue Phillips, Founder, Shared Ownership Resources

Professor Andrew Steven, Professor of Property Law, Edinburgh University

Professor Christopher Hodges OBE, Emeritus Professor of Justice Systems, Centre for Socio-Legal Studies, University of Oxford

Paul Broadhead, Head of Mortgage Policy, Building Societies Association

Public Bill Committee

Thursday 18 January 2024

(Morning)

[Clive Efford *in the Chair*]

Leasehold and Freehold Reform Bill

11:30 am

The Chair: Before we start hearing from the witnesses, do any Members wish to make declarations of interest in connection with this Bill?

Matthew Pennycook (Greenwich and Woolwich) (Lab): My wife is the joint chief executive of the Law Commission, whose work on leasehold reform we have regularly touched upon.

Mike Amesbury (Weaver Vale) (Lab): I am a member of the all-party parliamentary group on leasehold and commonhold reform.

Andy Carter (Warrington South) (Con): On that basis, I am also a Member of the all-party parliamentary group.

The Chair: I think you have to declare only APPG officer posts, not just membership of them. But thank you anyway; it is best to be safe.

Examination of Witnesses

Ms Paula Higgins, Bob Smytherman and Sue Phillips gave evidence.

11.31 am

Q224 The Chair: We will now hear evidence from Paula Higgins, CEO of HomeOwners Alliance, Bob Smytherman, chairman of the Federation of Private Residents' Associations, and Sue Phillips, founder of Shared Ownership Resources.

Before calling the first Member to ask a question, I remind all Members that questions should be limited to matters within the scope of the Bill, and that we must stick to the timings on the programme motion agreed by the Committee. For this panel, we have until 12.10 pm, and that will be a sharp cut-off—a sharp guillotine. Would the witnesses like to introduce themselves for the record, please? Thank you, and welcome.

Ms Paula Higgins: Thank you. My name is Paula Higgins; I am the founder and CEO of HomeOwners Alliance, which was set up 12 years ago to support and campaign on behalf of homeowners and those who aspire to own. And that includes leaseholders, of course.

Sue Phillips: My name is Sue Phillips. I am a leaseholder. I am a former shared owner, and I set up Shared Ownership Resources in 2021 to campaign for the best interests of shared owners and people considering shared ownership.

Bob Smytherman: My name is Bob Smytherman. I am chairman of the Federation of Private Residents' Associations. I have been a leaseholder in my own block for more than 30 years, and I have been a director of my self-managing block for 25 years. Thank you for the opportunity to put the case for resident management companies across England and Wales for this exciting piece of legislation.

The Chair: Thank you for coming here and helping us with our deliberations.

Q225 Matthew Pennycook: Thank you all for coming in this morning to give evidence. I will perhaps return to Ms Higgins and Mr Smytherman if we have time in the session, but could I start with two questions to you, Ms Phillips, on shared ownership?

First, the Bill makes provision for the treatment of intermediate leases in a number of areas, but it does not contain, as far as I can read, any measures to directly resolve many of the challenges that shared owners face. Could you give us your general views on the Bill from a shared-ownership perspective? What is missing? What might we look to include if we could?

Secondly, the Government tabled more than 80 pages of complex amendments to their own Bill yesterday. Among those were amendments that would exclude certain shared-ownership leases from enfranchisement and make the new valuation method for calculating the premium payable for shared owners non-mandatory. If you have had a chance to look at those—you may not have—could you give us your views on those specific amendments? We know that enfranchisement for shared owners is expensive—it is challenging—but, none the less, is it a regret, from your point of view, that these amendments have been tabled?

Sue Phillips: I will start with yesterday's amendments. I have had a look at them and I have called around legal experts, and, of course, it is far too short notice for a legal expert to comment, let alone a lay person like me. Therefore, I will concentrate in my evidence on what I would like to see in the Bill; I cannot comment on the degree to which those amendments will achieve those things, so I just want to make it clear that I cannot comment specifically on the amendments.

In terms of the Bill generally, obviously it is aimed at leaseholders. Shared owners are a very specific subset of leaseholders. They generally face additional problems over and above the problems faced by leaseholders. They have fewer rights and protections under law. They face additional burdens. They also have fewer protections under consumer protection, including new build codes. Therefore, they are generally disadvantaged. As it stands, the Bill does not represent a better deal for shared owners. That is partly because of the issue you referenced. Shared owners are sometimes, not always, in very complex ownership arrangements. There are problems for leaseholders generally, but there you have the additional party of a housing association in the mix. I could talk for half an hour on this; I will try to be very concise.

I will just pick out one example, which relates to the fact that shared owners do not have a statutory right to lease extension. If they did, they would have a right to a 90-year extension. In the absence of that right, some shared owners are in complex arrangements where their

landlord is a sub-lessee with only a short interest in the lease themselves, so is actually incapable of offering the equivalent to the benefit that a leaseholder would get under the statutory route. That is unless you go through a process of extending all the leases, and all those costs are passed on to the shared owner. There is a real problem there that is not addressed in the Bill as it stands, in my understanding.

Q226 Matthew Pennycook: Have you explored any quick fixes for what we might look to persuade the Government to incorporate?

Sue Phillips: The problem with looking for quick fixes is that shared ownership is so complex, you run a risk of creating unanticipated consequences. Those particular questions are better directed at a lawyer or a legal expert, which I hope you will do this afternoon, when you have legal experts presenting their views on this Bill.

The Chair: Does anyone have anything to add? Do not feel that you have to; I am not putting you on the spot.

Ms Paula Higgins: There is one thing I would add. I am so pleased that Sue is here; she has done amazing work on shared ownership. I am not a legal expert, but I wonder whether you will be hearing from people from the retirement housing sector as well. That is a very complicated form of tenure, with exit fees and whatnot. Can they actually have the same rights to challenge fees and things like that? I am not sure if that is covered in some of your evidence sessions, but retirement housing is notoriously known for quite scandalous fees and charges.

Bob Smytherman: Certainly, we have seen a massive increase in shared ownership memberships coming to us for membership of residents' associations. Obviously, we are helping them through that. In terms of quick wins, I really hope the Government will finally implement an independent statutory regulator for property managers. That would be a really quick win to help leaseholders. It is very disappointing that we have not got there yet, so I really hope there will be an independent regulator for these management companies that hold large amounts of leaseholders' money.

Q227 Barry Gardiner (Brent North) (Lab): Ms Phillips, shared owners, under the Renters (Reform) Bill passing through Parliament, will get forfeiture: an improvement on mandatory grounds of possession for which relief cannot be sought in the court. Do you support, in this Bill, the right to abolish forfeiture? At the moment, I believe a shared owner has less security of tenure than a private leaseholder. Perhaps you could explain what, for example, a housing association that owns the other part of a shared ownership apartment can do to someone in circumstances where there is a dispute over a service charge and non-payment?

Sue Phillips: One of the things I would want from this Bill is for shared owners to have all the rights that other leaseholders have. Of course, as your question flags up, they face problems over and beyond the problems faced by leaseholders. The problem for shared owners is that if they—I will not speak to the specific technicalities of this—fall behind with payments, they are liable to possession with no reimbursement of the equity they have invested in their property. This is because they sit more as a tenant than as a homeowner. I would certainly like to see that addressed.

Q228 Barry Gardiner: It really is an equity trap, isn't it?

Sue Phillips: It is. Housing associations will say that they will do their utmost to prevent this scenario playing out, and that numbers are low. While that may be true, I do not think it is an argument against shared owners having the same protections in law as other leaseholders.

Q229 Barry Gardiner: If the Bill were to introduce a provision that forfeiture were abolished, so that with a debt of, say, £5,000 or £10,000, you could not lose the entire value that you have in the property as a leaseholder, should that right similarly apply to shared ownership leaseholders?

Sue Phillips: Shared owners should have the same right as other leaseholders and they should not be liable to lose their investment in their home due to a relatively small debt—absolutely.

I would add that it is a hugely important issue, but it is probably an issue that affects a fairly small minority of people at the moment and that there are other issues arising from this reform process that affect a great many more shared owners or all shared owners. It is an important issue, but I would not like for it to take up a disproportionate amount of time in this session.

Q230 Barry Gardiner: Okay. As shared owners, you pay service charges as well as rent and you are disadvantaged if there is poor maintenance of your buildings. Do you agree that shared owners should be allowed to claim the right to manage, as confirmed in the recent Canary Gateway case?

Sue Phillips: My expertise does not lie so much with right-to-manage claims; what I would reiterate is that they should have the same rights as any other leaseholder.

What is more important—what is specific to shared owners—is that they are liable for 100% of the costs of repair and maintenance, and I think there are two separate issues within that. One is the issue relating to the model. In previous sessions—

Barry Gardiner: Sorry, I couldn't hear what you said there.

Sue Phillips: Sorry. One is to do with the model and one is to do with the transparency around the model. On the model itself, in the previous sessions on Tuesday people talked about the unfairness of generating income streams from leaseholders after the profit made on the sale of the initial share, and I think that the 100% liability for service charges that shared owners have falls within those kinds of questions. It should certainly be looked at to see whether it is proportionate for shared owners to pay 100% of charges. Again, there is a great deal more that I could say, but I am aware of the limits on time.

The second issue is transparency. In evidence submitted to the Levelling Up, Housing and Communities Committee inquiry into shared ownership, one of the themes that has come out of the published responses from shared owners is that people do not seem to be aware at the

point of sale of their liabilities in this respect. Therefore, if we cannot tackle that 100% liability in this Bill, given time constraints, at the very least regulators should pay more attention to the nature of marketing and whether it is fair, transparent and compliant with consumer protection regulations.

You asked me earlier for a quick fix. I certainly have a quick fix around transparency and it is that the relevant regulators should look more closely at transparency about the model as it stands, up until we have meaningful reform of the areas that are problematic.

Q231 Barry Gardiner: In conversation with my colleague, Matt Pennycook, you talked about the lack of statutory lease extension provision. The Law Commission said that shared owners should have the right to extend. Do you consider that that would be a welcome amendment to the Bill?

Sue Phillips: I think it is essential, and this relates to the marketing that I have talked about. Shared owners come into shared ownership believing that they are a leaseholder like any other leaseholder; they have no reason to think differently. Often, there is a caveat emptor attitude and I think that is reprehensible, to be honest, when you are talking about provision of social housing to households that by definition are financially vulnerable compared with people who can afford to buy outright. It is not a failure of their due diligence; it is a failure of the Government, the housing sector and their agencies to spell out the difference between assured tenancy and leasehold.

There is a moral compass argument that they should have the statutory right to lease extension, because of the manner in which they have been sold those short leases. I think there are separate debates to be had about whether 99-year leases were mis-sold. A recent ruling by the Advertising Standards Authority outlined that it is likely to be misleading not to provide material information about the costs of lease extension. That suggests that there certainly is an argument that those short leases have been mis-sold.

We cannot change that. Most of those shared owners will be outside any scope of limitations for redress. The least we can do is ensure that lease extension is available not only to future buyers, but current shared owners, who have been left with a lease that does not actually give this right. Can they afford to take up the right? They should have a right to lease extension, but that right should be made affordable. If you are sitting there with a 50, 60 or 70-year lease, even if you have got that right to statutory lease extension, it might not be affordable to take up that right. So there is a basketful of issues to look at here, and I encourage collaboration with other regulators and with the Levelling Up, Housing and Communities Committee to resolve those other issues.

The Chair: Just one last question, Barry, because I want to get other people in. I might have the time to come back to you if you have more, but—

Barry Gardiner No, I will leave it there.

Q232 Andy Carter: Paula, your organisation, the HomeOwners Alliance, has described the Bill as a huge missed opportunity, because including flats in the changes was not done in this Bill. Would you like to elaborate a bit on that?

Ms Paula Higgins: I feel strongly about that. This is really going to be a missed opportunity. These types of Bills will come once every 20 years, so you must finish the job that you start. We saw that in the Commonhold and Leasehold Reform Act 2002, where we had the commonhold and it did not happen. If we cannot get commonhold sorted, why do we not have all flats being built having to be share of freehold—having to be sold share of freehold within five years—and have a sunset clause saying that there will be no new leasehold flats after a certain time? If you do not do it now, the next opportunity is not going to arise. I feel very strongly. We have lots of people who are waiting. We have people coming to us every day saying, "I am waiting for my lease extension. The Government are going to do something about it." We have been waiting for years; we put out our report in 2017 showing that 43% of leaseholders did not even know how much time was left on their lease. They are not expected to be experts in this; they are buying a flat to live in. So it is a real missed opportunity if we do not do something on this and it will come back to bite us.

Andy Carter: Bob, is there anything you want to say on that?

Bob Smytherman: I would just completely echo that. For us as an organisation, in 2002 we were really hoping that the Government would ban new leaseholds in the 2002 Act, and the sector would be in a very different place had we done that. This Bill is a really good step, and I hope that we can get it as a first step and then build on it from there. I would hate to think that we try to make it perfect and we end up with something less perfect. From our organisation's point of view, this is a really good starting point. I think it is the beginning of this, as Paula said, but it is a really good opportunity to get it right. But, yes, 2002 was a bit of a missed opportunity to ban leaseholds for blocks of flats.

Q233 Andy Carter: Can I just stick with you for a second, Bob? I will come back to you in a second, Paula. From your perspective as the chair of the Federation of Private Residents' Associations, Bob, can you just talk us through the main elements of the Bill that will apply to your organisations?

Bob Smytherman: Thank you for that opportunity. Our organisation is called the Federation of Private Residents' Associations. To be clear, we are talking about groups of leaseholders who come together democratically within their blocks of flats; we are not talking about neighbourhood watch groups and those sorts of residents associations.

Very different sorts of residents associations come to us for membership. We have those more informal groups that do not meet the 51% threshold to be a recognised tenants association; we have that group of RTAs that are formally recognised by their landlords; and then we have the residents management companies, which are probably the majority of our members. We have RMCs such as mine, which has a tripartite lease, which I am sure Members will understand, where you have an external freeholder and then a landlord who has responsibilities, which enables people such as me in my block to basically act as a commonholder. We are a limited company, limited by share. I am a shareholder in my block. I am elected every year as a director and we

manage our own block. Of course, we also have those RMCs that may have a different arrangement with their freeholder, and that is where the Leasehold Reform (Ground Rent) Act 2022 has been very helpful in coming into law, because there are sections, which we do not need to rehearse today, to deal with a doubling and tripling of ground rents and things like that.

So there are different sorts of residents associations, but I would argue on behalf of all of those, certainly our members across England and Wales, that this Bill is a really good starting point for all of them. I encourage leaseholders to come together in their buildings and take control of their buildings democratically, working with their neighbours.

Q234 Andy Carter: What do you think is missing from the Bill that would benefit your members?

Bob Smytherman: At the moment, I would like to see this over the line, in all honesty. There is the conversation to be had—I think Paula mentioned it—about commonhold, which I think can come later on. But in terms of blocks like mine, where we have those controls already, there is absolutely no advantage to us in banning leasehold, because we have all the controls we need.

As the directors, elected democratically by the shareholders of a limited company, we are the landlords, so we have the ability to manage that estate democratically. We hold an annual general meeting and we comply with the company law, like any company. Hopefully this legislation will encourage more volunteers. I am a volunteer, I don't get paid for what I do in my block, but I am really passionate about working together with my neighbours to make my estate better. Members of this Committee are very welcome to come to Worthing, down on the south coast, to see how we manage our own block, because I am very passionate about working together to make a real difference for our neighbours and friends where we live.

The Chair: One more question, Andy, and then I am going to move on to get everyone in.

Q235 Andy Carter: Just so I understand, you do not object to leasehold continuing, but what is your view on new leasehold?

Bob Smytherman: I think all new developments should be commonhold. It is a shame we did not do that in 2002, but I think—as Paula said—there is an opportunity to do that now. But I wouldn't want to throw everything else out at this point to die in a ditch over that, because actually I think there is some really good stuff in the Bill.

The Chair: I am sure I will have time to come back to you, but I just want to get the first batch of questions in.

Q236 Mike Amesbury: Good morning. Paula, you also said that ground rents have not been tackled by this Bill; could you elaborate? What changes would you like to see?

Ms Paula Higgins: I think that was a statement put out at the time of the King's Speech, when it was not clear. It sounded like the Government were going to consult on the ground rents, which is what they are doing now; it closed yesterday and we welcome that. I think at that time I was concerned that the King's Speech said the Government were going to consult on how to limit ground rents. At the moment, there is no justification to have a ground rent payment for nothing; any payments should be as part of the service charge.

I welcome the Bill, and I fully support the ground rent being a peppercorn, if you cannot have the legal challenge. If you cannot have it as a peppercorn, then having it as a set amount makes it clean and clear. What we want is that when people are doing lease extensions, there is a calculator so they do not need to get valuers and have lots of negotiation; there is a lot of cost in that. You want to make it a process that is as simple as possible for people to extend their lease and get rid of their ground rent.

Mike Amesbury: That is great. Bob and Sue, do you have anything to add to that?

Sue Phillips: I just want to flag that one of the distinctions between shared owners and leaseholders is that shared owners cannot eliminate a ground rent via statutory lease extension, and that is a huge problem. My understanding is that there may have previously been an expectation in Homes England guidance—although it was not mandated—that shared owners would not be subject to ground rent. There is massive inconsistency in the shared ownership sector on all kinds of aspects, but it includes the imposition of ground rent, the nature of that ground rent, and whether you encounter it at the point it is staircasing to 100%. Ultimately, the key point is that shared owners do not have that resort to lease extension to eliminate ground rent at present.

Mike Amesbury: Thank you.

The Chair: If anyone has not asked a question and wants to come in, please just indicate. Matt, Barry and Andy want to come back, so I come to you, Matt.

Q237 Matthew Pennycook: Two quick questions while I have got you here—on slightly different subjects. The first relates to the purchasing of a lease initially. In its 2018 consultation on implementing reforms to the leasehold system, the Government committed to requiring freeholders and managing agents to provide leasehold information at the point of sale within a defined time limit and a maximum cost. That is not in the Bill; would you welcome that being incorporated?

My second question is on the service charge provisions—clauses 26 to 30. In principle they might work very well; there is lots of detail to come through regulations. However, are there any specific ways in which you would like to see those service charge clauses tightened?

Ms Paula Higgins: We really welcome standardisation and having standard forms. That is what we, as the HomeOwners Alliance, when we get more than 4 million people coming to our website, can present and say, "These are the questions you can ask." I really welcome that and having everything aligned so that it is similar. I am sure that we will go on to estate charges and people on freehold estates. Sorry—what was the first question?

Q238 Matthew Pennycook: Just on whether we should require freeholders to have standardised information at the point of purchase.

Ms Paula Higgins: Even though estate agents are supposed to provide basic up-front information, when we did our report on leasehold, half of the estate agents on things we were looking at were not even providing

the information that the property was leasehold or freehold. We know that work is going on, and that estate agents are supposed to provide up-front information—we understand that there is the BASPI form—but the reality is that it is not happening. They are not regulated; they don't know what their obligations are.

This is the other piece, particularly with managing agents, as you mentioned before. We need to have better regulation of managing agents, developers, and of housing associations that are promoting shared ownership, to ensure that they are giving the right up-front information and to ensure that in blocks—as you said you did, Bob—you do the LP form right away. We know that there is lots of delay there. That is one of the reasons why buying and selling leasehold properties takes so much longer. So we really welcomed having that up-front information. That is through the BASPI form, and it is probably through the regulation and management—having regulation of estate agents and managing agents, which is another piece of the pie that I think would be really welcomed in the Bill. I would welcome it if it were put in the Bill.

Q239 Matthew Pennycook: Do you want to say anything on service charges?

Ms Paula Higgins: On service charges, I think it is about being transparent. Some of the provisions in the Bill are about having proper annual accounts, so a lot of it is about trying to get that information. I have not looked at the detail of all the clauses there, but it is about people being able to get that information. That is why you need to have regulation of managing agents—to be able to provide that information properly.

Q240 The Chair: Sue Phillips, I think you wanted to say something.

Sue Phillips: Yes, on information at the point of sale. That is a little bit more complicated for shared owners. They are often directed towards the lease, but the lease is of course silent on the issue of 100% liability for service charges, so there is an issue there. They are often directed towards the key information document. I welcome the changes to the key information document in recent times, but I think they really do not go far enough. I would direct you to a report that I wrote last year about the 2016 to 2021 key information document, which goes into detail on improvements that I think should be made.

It is important to flag up that we need to look at not just content, but understandability in format. I have previously suggested that I think it would be useful to benchmark with other sectors, such as the pensions sector, on the understandability of issues relating to risk as well as benefit, and how to ensure that that content is communicated in a way that people do actually understand.

I will make a final point: a lot of shared ownership marketing presents itself as education about the model, which I think can be problematic, particularly because housing associations and their marketing teams are very up front about the idea that their marketing promotes the benefits. But it is important that people understand the risks and hazards as well as the benefits. So we need to look very closely at exactly where shared owners get their information at the point of sale, and where improvements could be made across all those areas.

Bob Smytherman: I think we would certainly welcome improvements in the conveyancing process. One of the things that our members certainly see is that they can get the information from a very specialist leasehold lawyer, which is obviously really helpful, but as in all sectors there are conveyancers out there where people google "conveyance" and think, "Oh, that is just a standard lease." Of course, we all know that there is no such thing as a standard lease—their contracts are all very different. I know that about four or five years ago the Leasehold Advisory Service did some work around standardisation of information, so anything that we can do to prescribe that would be really helpful.

On the issue of service charges, there is absolutely one word, isn't there—"transparency"? All the disputes that we see around service charges are where managing agents hide things because there is no statutory regulator, or where landlords kick accounts into the long grass because they don't have to produce them. Having a prescribed way to be completely transparent about service charges is really important.

The Chair: We have just over 10 minutes left. I will bring in Richard Fuller and then we will try to get back to Barry and Andy.

Q241 Richard Fuller (North East Bedfordshire) (Con): We have been talking a bit about regulation, which is often seen as some sort of answer to problems and frequently is not—or, at least, is different from simplification or standardisation, which each of you have mentioned at different points.

I am interested in your thoughts when it comes to property managers and managing agents, about where you think the interaction is between simplification and regulation, and whether regulation is a matter of regulating the process—"You must provide this set of information by this date"—or of regulating the people—"Thou must have this qualification in order to do *x*"—or whether it is about the process of redress: being able to get some compensation at the end; because we are going to be wrestling with all those things here. They all have a role to play, to a greater or lesser extent. But we run the risk of just vomiting out a whole new set of what we think is going to be the solution. As you said, Ms Higgins, we have a once-in-20-years chance. I said this to Mr Gardiner on the way in—he goes back to 1993 thinking about this, and he is an MP now.

What are your thoughts? Give us some guidance on simplification and standardisation versus regulation, and then regulation of people, regulation of process and the provision of redress.

Bob Smytherman: I would not reinvent the wheel. I don't know whether you have had The Property Institute in yet, and Andrew Bulmer from the Association of Residential Managing Agents. They fill the gap as the main membership organisation for managing agents. Andrew will give you the figures, but I believe they represent about 50% of all property managers of leasehold property. That means that 50% of people are not members of ARMA and are not part of their regime, along with the Institute of Residential Property Management—obviously, ARMA and the IRPM have now merged to form The Property Institute.

They have done amazing work to fill the void, where there has been a lack of an independent regulator, and I think working with Andrew and with them would be a

really good starting point for the Government to create a regulatory regime. Certainly we would stand ready as an organisation to help with that. I just think that giving leaseholders the confidence that there is an independent body that they can go to when they have disputes with their property manager or their landlord is really important—as people do with Ofwat or Ofgem or other regulators. Having that independent regulator is really, really important.

Ms Paula Higgins: You make a really interesting point, but there are things that I would not want to see happening. We also work in the new homes area. We have legislated for a New Homes Ombudsman—fantastic—but we have not enacted it yet, and we now have a more confusing landscape for people who are buying new homes, who are probably also leaseholders and probably also shared owners; they have another competing code. It is incredibly confusing. That is not what I want to see happening.

Regulation means enforcement. There are a lot of things that estate agents have to do now, and we know from our research that they are not doing what they should be doing. The problem is that people do not have the right of redress if something happens. We have heard about the managing agents, but it is the estate agents, the developers and the housing associations who are selling these dreams. You have seen lots of people on Tuesday who feel they have been mis-sold, and others will continue to be mis-sold. These estate agents are the first port of call for the people going into the process, and we have to remember that people are buying a home, and they have not done it before. They might have bought a couch or something like that, but this is the first time they are doing this, and they can get it so wrong. People need to be protected. The estate agent is the only part of the professional world of property that is not regulated. The estate agent is that person there who is alongside the person trying to get their dream, which could go massively wrong.

Q242 Richard Fuller: When you say "regulated", do you mean they should have a qualification—that they can tick a box to say, "I was qualified to do this"—or redress, as in, there is a regulatory body above them?

Ms Paula Higgins: That is a really good point. I know the RoPA stuff—the regulation of property agents working group; in fact, we gave evidence to it. A tick box is probably not the right thing. Perhaps it is more about a proper single place for redress, but as I think Andrew Bulmer mentioned, that is the ambulance at the bottom, and what matters is what is at the top.

What we don't want is people doing online qualifications and getting a tick, and then they can jump up as an estate agent and come back down again. So I appreciate the complexities and I look forward to seeing what your deliberations will be.

Sue Phillips: I do not have the expertise to speak directly to the regulation of property management, but I would like to pick up on a couple of related issues from a shared-ownership perspective. The first is that the evidence submitted to the Advertising Standards Authority's inquiry into Black Friday marketing highlighted the fact that industry sector standards for the marketing of shared ownership are lower than other standards that are out there. For example, shared ownership is currently excluded from the New Homes Quality Board's code of practice. That simultaneously reflects the complexity of shared ownership but also the fact that shared owners do not have access to the same level of protections as other homebuyers in relation to new build codes. That is slightly off to one side.

I also wanted to pick up on the matter of transparency of service charges. Transparency is clearly essential: people should know what they are paying for. However, shared owners and other leaseholders should not have to effectively take on an audit function where it falls upon them to scrutinise accounts. They should be able to place some degree of reliance on the accuracy and proportionality of the accounts that they receive. I cannot speak to how that will be achieved, but I think that the onus should be on the providers of services and service charge accounts to be better, rather than leaseholders and shared owners having more and more obligations to scrutinise and take whatever action is required if problems are identified in those accounts.

Q243 Barry Gardiner: Ms Higgins, do you agree that it would be appropriate to allow leaseholders to withhold service charges where there has not been compliance with the very extensive requirements in the Bill to provide accounts no later than six months after, and so on? Is that an appropriate and proportionate way for leaseholders to be permitted to respond?

Ms Paula Higgins: I fully agree with that. It is a bit like the situation where, if you are getting building work done in your home and the building work is not completed or whatever, you withhold money. That happens in all of the construction industry. The stuff in relation to the forfeiture is very disproportionate, is it not?

Barry Gardiner: Indeed, yes.

Ms Paula Higgins: I fully support something like that.

The Chair: This needs to be very brief.

Q244 Barry Gardiner: Thank you also for what you said about wanting all new apartments to be leasehold with a share of freehold, Ms Higgins. That was echoed by Mr Smytherman.

In so far as new apartments are going to have a share of freehold, Mr Smytherman, you indicated that you felt that you had got the best of both worlds as a director of a freehold franchise company.

Bob Smytherman: Yes. Ours is a tripartite lease. A ground freeholder owns the land and there is a separate middle lease, which is the limited company—limited by shares—of which we are shareholders.

Q245 Barry Gardiner: As a leaseholder with a share of freehold, if commonhold were to become available, do you think that it would be equitable and fair to charge you for the privilege of transferring to commonhold, or do you think that more people would take the opportunity to transfer to commonhold if that came?

The Chair: A one-word answer, please, because I have to get to the end.

Bob Smytherman: That is difficult. It depends. If you have a difficult freeholder, then that would clearly be an advantageous thing to do. Then there is a scenario like ours, where you have a democratic limited company with shareholders.

Sorry, I cannot do a one-word answer.

Q246 Andy Carter: We have two minutes. I am conscious that you have talked to us a lot. Is there anything that you have not had the opportunity to tell us that you would particularly like us to hear from your relevant organisations?

Ms Paula Higgins: There is another thing that I feel very passionately about. People come to us—

The Chair: Less than a minute.

Ms Paula Higgins: Two minutes?

The Chair: Less.

Ms Paula Higgins: The other things that I feel very passionately about are estate charges and right to manage. We need right to manage and we need to make it so that all new-build estates are adopted by the local council.

Sue Phillips: I agree. The problems with estate charges can be overlooked in looking at service charges, rent charges and estate charges. The other thing I would flag up is for you to please look at the resale of shared-ownership homes. There are issues there.

Bob Smytherman: Simplify the process of bringing leaseholders together to form a residents association, so that they can speak to their landlord and the management with one voice.

Andy Carter: Thank you; that is much appreciated.

The Chair: Perfect, bang on. I am afraid that that brings this question session to an end. Thank you for coming in and giving evidence to us.

Examination of Witnesses

Professor Andrew Steven and Professor Christopher Hodges OBE gave evidence.

12.10 pm

The Chair: Right, that is a surprise: we have sound and vision. Excellent. We were not expecting vision, so that is all the better. We will now hear oral evidence from Professor Andrew Steven, professor of property law at the University of Edinburgh, via Zoom, and from Professor Christopher Hodges, emeritus professor of justice systems at the Centre for Socio-Legal Studies at the University of Oxford. We have until 12.40 pm for this session. Could the witnesses please introduce themselves for the record? We will start with Professor Hodges.

Professor Hodges: Good morning. Thank you for the invitation. I am not an expert at all in property law, but I am an expert in regulation, which picks up the point that Mr Fuller was just asking, so I hope to be able to help you on that. I am also an expert in dispute resolution systems—questions of ombudsmen and tribunals—which are fairly peripheral for today but are relevant to the broader regulatory systems. The interest I have is that I chair the housing and property redress group, which is an ad-hoc committee of the president of the property tribunal, the various three ombudsmen and the property and redress scheme.

The Chair: Members have a profile of our witnesses, so let us get to the questions. Thank you for that. Would our other guest introduce himself?

Professor Steven: Hello. I am Andrew Steven, professor of property law at Edinburgh University. I was a Scottish law commissioner from 2011 to 2019, and I am a member of the Scottish Government's cladding remediation taskforce. I can hear you but I cannot see you.

The Chair: We can see you, so if you want to come in on any question, gesticulate and you will hopefully catch my eye. That goes for both of you.

Q247 Matthew Pennycook: Thank you for your time, gentlemen. We have half an hour, but I would love to get in three specific questions, so I encourage you to be as brief as you can while answering.

The first question is on commonhold. Professor Steven, you have published extensively on the Scottish experience of commonhold legislation; Professor Hodges, I believe that you are a member of the Commonhold Council. On Tuesday, we heard from Professor Hopkins of the Law Commission that there are risks associated with a partial implementation of the Law Commission's recommendations on commonhold. Do you agree with that, and if you do, are there any sensible steps we might take via amendments to the Bill to pave the way for commonhold in the future—for example, share of freehold in flats?

Professor Hodges: I think that was for Professor Steven.

Professor Steven: I am reluctant to answer that in any detail, because I am really not an expert on English land law. May I say something briefly about the Scottish perspective? The difference goes all the way back to 1290, when Edward I, in England, said, "You cannot have feudal grants of property." Leasehold therefore had to be used, particularly for flats, because of the desire to impose obligations in relation to maintenance and contributions to maintenance. In Scotland, feudal grants were not banned until 2004, which means that flats and other properties were sold that way. We do not have leasehold in the way that you do. Existing feudal holdings were converted into outright ownership in 2004. We also had legislation on long leases that took effect in 2015, which also converted into ownership. The context is quite different.

Q248 Matthew Pennycook: In that case, I will move over to Professor Hodges, in the interests of time, if that is okay.

Professor Steven: Absolutely, and I can see you now.

Professor Hodges: I am very supportive of all the work that the Law Commission has done on commonhold, and we discussed it two or three years ago. I would do it, and this is part of a wider discussion that I expect we will get on to shortly. It is about change management. At the moment, it is rather like the point mentioned by the three previous witnesses. Property law moves terribly slowly—for heaven's sake, just get on with it. We have the agents, the tenants and the landlords. What we are doing is saying, "Well, do this. Then do that. Then do that. Then do that." We know where we need to get to, and that would be a very good system if we can get there. They need to train and do all sorts of things. You want to take out repetition or unnecessary cost in doing several things at once. It really is a change management point. We know where we want to get to—just do it basically.

Q249 Matthew Pennycook: Unless they confound us, the Government have been very clear that they are not going to do a commonhold package. Would share of freehold be a good interim step?

Professor Hodges: It is the obvious thing to do, isn't it? But I would go further.

Q250 Matthew Pennycook: That is all I was looking for. My second question relates to non-litigation costs. The Government, when they published the Bill, claimed that it protected all leaseholders from non-litigation costs. However, clause 12 allows those costs to be passed on, either as they are or at a prescribed rate, in cases of low-value claims. That was because the Law Commission said that the shorter the expired term, the greater the risk for leaseholders in not extending but buying out their lease. This is a point about litigation in some senses, but do you think that, because of the difficulties of challenging a claim to that prescribed sum, leaseholders will be deterred from initiating the process of extending their lease or acquiring their freehold, if they still face, even at a prescribed rate, essentially non-litigation costs as part of claims?

Professor Hodges: Quite possibly, and this is a generic point about access to justice and simplifying dispute resolution. I think the answer to that is to move towards an integrated system, which actually the tribunal and several of the ombudsmen have been working on in the past year in relation to service charges. There are too many places where disputes can go. If we simplify that to an integrated system that supports decision making—part of the answer is clarity and transparency in regulation—but if you support that, things move much more quickly. It has always been the case that, for example, courts are slow. They are a very careful process and therefore you need experts and lawyers, and it takes money—it costs. Whereas, with tribunals and improvement, ombudsmen are free and they move quickly. Getting a modernisation of that system is the answer to this basically. That is not there yet, but it is absolutely within sight and achievable.

Matthew Pennycook: If you do not have anything to add Professor Stephen, I will move on to my third question.

Professor Steven: Please move on.

Q251 Matthew Pennycook: My last question relates to ground rents. Clause 21 gives effect to schedule 7, which provides leaseholders with a right to permanently replace their ground rent with a peppercorn, without extending their lease. However, the Government are proposing to apply it only to those with very long leases, so 150 years left or more. The rationale is, as per the Law Commission, that the shorter the unexpired term, the greater the likelihood of disadvantage. Do you have any thoughts on why the Government have chosen that 150-year limit? The Law Commission said 250 years. Do you think it is right, in principle, that someone with a 120-year lease, who may wish to extinguish their ground rent but not extend, is prohibited from doing so on the basis of the Bill, as it stands?

Professor Hodges: I think that it is outside my competence to know the background. My answer would be: just move to commonhold.

Q252 The Chair: Professor Steven, do you have anything to add?

Professor Steven: No, I agree with my colleague. From a Scottish perspective, I would be more in favour of commonhold.

Barry Gardiner: Professor Steven, my question is to you. Last week, in the House of Lords, the Government indicated that they were looking at the Scottish system of tenements. Could you perhaps explain that to the Committee? My understanding is that the Scottish Law Commission has been looking to review tenement structure and actually make it more like commonhold. Is it correct that there is a lack of standardisation and no ability to ensure those share costs are split proportionately under the tenement structure, and therefore that would not be a quick cut-and-paste for the Government if they are considering what to move forward to?

Professor Steven: Yes, I absolutely agree. The legislation in Scotland is the Tenements (Scotland) Act 2004, which is 20 years old and is fairly basic. It does not have owners associations, for example, so it is less sophisticated than the commonhold proposals that the Law Commission for England and Wales made. But we have problems in Scotland too. There are always problems, no matter what the law says.

There are two particular problems. The first is where money comes from to make repairs to flatted properties—we typically call them tenements in Scotland. The second, sadly, is apathy. I was watching the earlier session, and I saw how engaged your witness in Worthing was, but sadly in other cases the owners are not so engaged. Even if you have an owners association regime, which the Scottish Law Commission is now looking at, it still depends on people being engaged. There are no easy solutions. I favour commonhold, but it will not be a magic wand.

Q253 Barry Gardiner: Nothing takes away the capacity of people to disagree with each other. I want to ask you a further question, which Professor Hodges may also have a view on. In the early 2000s in Scotland, the Government did away with feu duty in one fell swoop. You got rid of the inefficiencies of that system. Is it not unfair that we are going through all these inefficient qualifying criteria to ensure that enfranchisement happens only on a development-by-development basis? Could we not do this in one fell swoop in England too? I see Professor Hodges is smiling from ear to ear, but I will allow you to come in first, Professor Steven.

Professor Steven: As a former law commissioner in Scotland, I am reluctant to disagree with the Law Commission for England and Wales, given the amount of work it has done on this. It is clearly very complicated.

You said that we got rid of our feudal system in one fell swoop in 2004. That is broadly true, but in 1974—50 years ago—we banned new feudal payments, which are like ground rents. There was a system whereby the existing feudal payments had to be paid off when the property was sold, so by 2004 there was not much left. My impression is that in England there is quite a lot left, in terms of ground rents. Because there was not so much left in Scotland, the compensation issues and the European convention on human rights issues that Dr Maxwell spoke about on Tuesday were not so

prominent. Although we had the feudal system till 2004, it was a shell of what it originally was. In a certain way, it would be much simpler just to change leasehold into commonhold, but I fear that it would lead to all sorts of unforeseen consequences.

Q254 Barry Gardiner: Just to make you feel a little better about disagreeing with your Law Commission counterparts in England, of course they were constrained in what they could do by the parameters the Government set them.

Professor Hodges: Very briefly: modernise, because we are still living in the past; simplify, because we can easily do that on a comprehensive basis; and get it done so that people can plan, retrain and know what they have to do. You then get good behaviour throughout the system. I am very tempted to repeat facetiously the "Get it done" slogan, which crops up a lot.

Q255 Richard Fuller: My questions are for Professor Hodges. We have to deal with the Bill as it is—on the commonhold thing—so, "Get it done" is not particularly helpful, if I may say. It might be a good indication, but not particularly detailed, so help us on the detail of that. Often in Parliament, we regulate and think that that is the solution. I do not know whether you have had a chance to look at some of the regulatory details in the Bill, but what would be your guidance be to us about where it is pointing in the right direction, where it might be going wrong, and the pitfalls that we should look out for?

Professor Hodges: As far as the detail of the Bill is concerned, looking technically at what is in there without expressing a view as whether it is a good or a bad idea substantively, it seems to me to be fine. You asked a wider regulatory question earlier on—

Richard Fuller: I will come to that in a minute. But just in here, on this Bill, is there anything that we should look out for?

Professor Hodges: As far as the detail is concerned, there is nothing that stands out to me, as a regulatory expert, that says, "This is a problem".

Richard Fuller: Okay, so more generally then, on regulators—Ofgem on energy prices and Ofwat on sewage and water—that approach seems not to provide the outcomes that perhaps were originally indicated when the legislation was passed. What are your thoughts about the political use of regulation? Is there anything from those general principles that you think might apply here?

Professor Hodges: I sat on Lord Best's RoPA—regulation of property agents—working group, and there was strong consensus around the room that you need regulation of agents. Since then, how we do regulation has evolved. Regulation, in the broadest sense, is an all-encompassing idea, and looking at the problems with Ofgem, Ofwat and so on, there are two aspects that strike me. First, one historically gave specific regulatory bodies certain remits that turned out to be not wide enough, and there were not enough people involved in the conversation; they were not regulated or contributing to good behaviour.

Secondly, the traditional way within which regulation is thought of, in the way that Parliament works, is that you make a number of requirements, rules and procedures. You then identify breaches of those rules and requirements and you then enforce. You can do that through traditionally public or private ways. Public ways in the property sector would be through trading standards authorities or environmental health locally, not a national regulator, as such. The private ways would be through the courts, but that has evolved in relation to the alternative dispute resolution ombudsmen being the best model at the moment and an integration between the tribunal and ombudsman, which is on the cards and may well occur. However, that is not enough because enforcement does not affect behaviour as such. We like to think that it does, but it is a myth, and there is an enormous amount of psychology and evidence published showing that it is not enough.

Therefore, if one stands back and says, "How do we get an effective regulatory system?", it is about how one does it. That involves getting all the stakeholders together —again, that goes back to the first point about how it is not just a regulator telling people what to do, like an Ofgem or Ofcom—and saying, "How are we going to behave and how are we going to do it?" You need the rules, but you also need codes and systems involving data and support.

Richard Fuller: Rules, codes, systems, data, penalties, redress, different organisations—this is your answer as a better solution to caveat emptor?

Professor Hodges: Yes, absolutely. Now, let me give you one example only—

Richard Fuller: In all circumstances or specifically on this Bill? Well, we ought to stick to the Bill. I just want to be clear: you have just outlined the solution—this Bill is going part of the way to that—but the old way was, "I have personal responsibility," "I am responsible for the decision I make," "This is a very big decision about what I buy," and so on. I just want to make sure that we are not trying to put too much faith—one of the last witnesses made some very good points on shared ownership and the fact that people may not have the encompassing knowledge—but I just want to make sure, from your expertise on regulation, that, in this field, you cannot see any damaging consequences for the principles of caveat emptor and personal responsibility by this regulatory structure that you have outlined?

Professor Hodges: Not at all. The most striking example—

The Chair: Please answer briefly if you can, because I want to get some more people in.

Professor Hodges: There are various regulatory systems in this country that are now modernising. In many ways, the most outstanding example, which has been there for several decades, is aviation safety. Everyone works together, and they call it an "open and just culture". They are actually collaborating. They have lots of rules, but you have almost no enforcement, because the Civil Aviation Authority does not need to do it—everyone is doing something.

There are various sectors where you do need public enforcement, and where I would say you need a national system regulator. But you can do a lot through ombudsmen, codes and support. That is now emerging in, say,

information and data protection, food standards and various other areas. It is absolutely ideal for property and housing.

The Chair: Thank you very much. We have 10 minutes left. Mike Amesbury wants to come in, and then I will call Matt and Barry.

Q256 Mike Amesbury: This question is to both witnesses. Are you satisfied with the provisions in the Bill to regulate what is commonly known as the "fleecehold" phenomenon, where what leaseholders pay for communal areas—in the broadest sense—maintenance, service charges and administration charges is uncapped? Is it strong enough at the moment?

Professor Hodges: I do not really think that is a question I can answer, because it is a policy question within which economics and other factors are relevant. Technically, as a regulatory system, I do not see anything wrong with it.

The Chair: Professor Steven, do you have anything to add to that?

Professor Steven: I do not.

Q257 Matthew Pennycook: I am trying to adjust my questions to your areas of expertise, but I am trying to focus on the Bill rather than abstract discussions about regulatory systems and what we might want. I have a specific question that follows on from Mr Amesbury's question. Part 4 of the Bill provides for a new regulatory regime for private and mixed-use estates. Do you think that that is a good idea in principle? We in the House—particularly Mr Fuller and a specific set of Members in whose constituencies this is a very real issue—have been talking for years about a separate management regime. Do you think it is a good idea in principle to establish a completely separate stand-alone regulatory regime for estate management, or should we look instead to incorporate it in the existing system? Essentially, these people are all paying into the same pot, so should they not be covered by the same regulatory system?

Professor Hodges: I think there is an enormous missed opportunity for simplifying across social housing, private and so on. In particular, I would introduce the regulation of property agents working group reforms immediately. Almost everyone wants them, as far as I can see, and it would be easy to do, because you would just cut and paste the relevant regulatory bits from the recently enacted Building Safety Act 2022 and put them in for private managing agents.

As I said in the paper that I sent to you—I gather that Andrew Bulmer was talking about this two days ago here—there are three very good reasons why you need the regulation of property agents, each of which stands up on its own. There are obvious risks if you do not put that building block in place, because things are going to go wrong and there will be detriment to tenants and landlords.

Q258 Matthew Pennycook: To be clear, I agree with you on managing agents; I am talking about the regulation of private estates. The Bill provides for a new regulatory regime for private estates, which are not currently regulated. It is separate from the service charge regime. I am just wondering whether your simplification point works in this case too.

Professor Hodges: Everyone should be in and under the same regime—absolutely everyone in the system.

Professor Steven: I do not have a strong view on this.

Q259 Barry Gardiner: Professor Hodges, my colleague Richard Fuller sought to make a point about caveat emptor to you. Is it your experience that the inequity of power and information between developers or freeholders and the potential purchaser—the leaseholder—is so great that caveat emptor is inappropriate and that you need the power of regulation to sort out that inequity? I think it was the Law Commission that concluded that "any financial gain for the landlord"—

or freeholder—

"will be at the expense of the leaseholder…Their interests are diametrically opposed, and consensus will be impossible to achieve."

Professor Hodges: In any consumer or property—certainly social housing—dispute system, there is an obvious imbalance of power. People do not have the money to do things. I have chaired the Post Office Horizon compensation board advising Ministers in the past few weeks. The whole reason why Parliament needs to step in is to correct a massive imbalance of power. Private litigation did not work, or it only half worked. There have been many stories about people being traumatised, and not just unable to enforce their rights. That is why we have invented things like legal aid, Citizens Advice and an ombudsman, and we are still moving—we are still improving that one—because of the ongoing imbalance of power between the little people and larger organisations.

Q260 Barry Gardiner: Indeed. Thank you for that, and I think everyone will also want to thank you for your work on the Post Office inquiry.

I want to ask you about introducing insurance commission. I do not know whether you heard what the witnesses said on Tuesday, but you may know of the Canary Riverside case, in which £1.6 million in commission was given to a freeholder by the insurer—in a kickback—which was deemed to be inadmissible, and that is what the tribunal, mercifully, found. Although the Bill is outlawing commission, it is introducing fees for insurance services. In the Canary Riverside case, that is precisely what that £1.6 million was called. Do you fear that the Bill appears to dispense with commission, but actually reintroduces it by the back door?

Professor Hodges: Possibly, but that is why you need regulation. That is an obvious example of an imbalance of power and lack of transparency, for which you need external people to get involved. Exactly what the final result ought to be, I would leave to a regulator—for them to say that so much commission is either allowable or not allowable, or indeed not at all. It depends on the circumstances.

Barry Gardiner: We will hear about—

The Chair: Can I just interject and ask whether Professor Steven has anything to add to what you have asked so far?

Professor Steven: Very briefly, insurance law is UK-wide, but in Scotland insurance of blocks would normally be handled by managing agents because we do not have the freeholder. Since 2011, we have had legislation in

Scotland that regulates managing agents. I know that that is being considered in England as well, but that might be of interest.

Q261 Barry Gardiner: Thank you very much, Professor Steven.

Turning to the value of the building and property rights, we heard from an eminent lawyer on Tuesday about property rights in relation to ground rent. Looking at enfranchisement, I think it was the Residential Freehold Association, which is charged with guarding the property rights of freeholders, that said that their share in the value of the building was only 2.5%. The corollary of that, of course, is that the leaseholders' share in the value of the building is 97.5%. Do you feel that the way in which the costs of enfranchisement look at the total value of the building is therefore unjust?

The Chair: We have less than a minute left.

Professor Hodges: I would need to know an awful lot more to be able to answer that question, as a non-property expert. It is a very interesting question, and my answer would be that it is one for Parliament and the regulatory system to engage with.

Barry Gardiner: Thank you very much. Professor Steven?

Professor Steven: I have nothing to add.

The Chair: I thank the two witnesses for taking the time to give evidence to us today. Thank you for beaming in, Professor Steven, and thank you for attending, Professor Hodges. We will now move to our next witness—Paul Broadhead, come on down.

Examination of Witness

Paul Broadhead gave evidence.

12.40 pm

Q262 The Chair: We will now hear oral evidence from Paul Broadhead, the head of mortgage policy at the Building Societies Association. We have until 1 pm for this session. Could the witness introduce himself for the record, please?

Paul Broadhead: Good afternoon. I am Paul Broadhead, the head of mortgages and housing at the Building Societies Association, which represents all UK building societies and seven of the larger credit unions.

Q263 Matthew Pennycook: Thank you, Mr Broadhead, for coming to give us evidence. I have a very specific question about something that was briefly raised on Tuesday but that has not been explored in real depth. I have seen, as other Members may have, a noticeable rise in RPI-linked ground rent provisions in the wake of the implementation of the Leasehold Reform (Ground Rent) Act 2022—although they may not be connected. You will be aware that such terms could be considered onerous in certain circumstances. They would appear to be the result of specific mortgage lender policies, and somewhat at odds with the UK Finance position. What is your view on that trend and its causes and consequences? Specifically, how will the ground rent provisions in the Bill, namely the peppercorn 990-year lease extensions under clauses 7 and 8, the peppercorn variation under clause 21 and, potentially, complete abolition of ground rents on existing leases, impact on that trend? Will they mean that RPI-linked ground rent provisions are a thing of the past if this Bill is implemented?

Paul Broadhead: Yes, on the RPI, we have seen an increasing trend. I think that started when mortgage lenders changed their policies in terms of the escalating of ground rents—the doubling every five, 10 or 20 years, or whatever it might be. Mortgage lenders have started looking much more closely at the trends in ground rents to make sure that you can predict the affordability and fairness of those rents. You are absolutely right: the RPI change has followed on from many mortgage lenders moving to prevent the doubling of ground rents. We need to make sure we keep an eye on that and to make sure that they are fair and just.

Matthew Pennycook: They can be far more punitive.

Paul Broadhead: They can be, absolutely, with where RPI is. It is really difficult to predict. Some ground rents can grow very rapidly, which puts people in financial difficulty. From the lenders' perspective, when underwriting a mortgage, they need to consider whether the mortgage is affordable on the face of it not only today, but in the future, and to take account of any foreseeable increases in expenditure. That is one of the areas they will take into account.

In terms of the peppercorn ground rent, yes, I do believe that that will resolve this going forward. The important thing to consider is that there is still a separate consultation, which just closed yesterday, on capping ground rent for existing leaseholders. It is really important that that is brought forward to prevent this two-tier system from developing.

Q264 Barry Gardiner: Mr Broadhead, I do not know how long you have been working in your present capacity, but I suspect it is since 1984. In 1984, your organisation's report "Leaseholds—Time for a change?" said that the "leasehold system is incompatible with home ownership" and that an Englishman's leasehold home "is his landlord's castle". I thought that was a very elegant way of expressing what many of us think. Is that still your organisation's view?

Paul Broadhead: You are absolutely right. We have been advocating for the reform of leasehold since 1984. As you kindly point out, it was not me that made that comment at the time.

Barry Gardiner: That elegant comment.

Paul Broadhead: Absolutely—I wish I could be as elegant, and I will try to be throughout this questioning. Our position is that leasehold does require reform. If you were going to design the property tenure today, it is not what you would come up with. However, there are 4 million-plus leasehold properties in this country. Undoing that and replacing it overnight with a new, perhaps more just, system will take time.

The first thing we need to concentrate on is reform, to make the system fair, predictable and equitable, so that people have the security of owner-occupation. In a sense, yes, they do not own the land on which their home sits, but they have the security of tenure that they would not have in other sectors. But it is important that we ensure that that is fair.

Q265 Barry Gardiner: Let me ask you perhaps a more difficult question: how many of the mortgages that are lent to shared equity owners default compared with normal freehold owners?

Paul Broadhead: Are you talking particularly about shared equity or shared ownership?

Barry Gardiner: Sorry, shared ownership—where you have shared ownership in the property.

Paul Broadhead: I have not got those figures to hand, but we can certainly send those through to the Committee. From speaking to our membership, I think it is fairly comparable. Our sector punches above its weight in shared ownership because it is very keen on affordable housing, and we have some big shared-ownership lenders. One thing I would say about shared ownership is that underwriting and managing those cases are slightly different from managing a traditional mortgage, because you have the housing association interest and some potential staircasing—although, of course, many do not. The arrears levels tend to be higher, but the default levels, I think, are comparable. We can confirm that in writing.

Q266 Barry Gardiner: Interesting. Why do you think the arrears levels tend to be higher?

Paul Broadhead: There are two things. One is the housing association rent aspect. Affordability tends to be more stretched by people owning shared ownership properties in any event, as most people land in shared ownership as an intermediate tenure because they are not able to buy their whole home. That, therefore, means their incomes are often less predictable. They do not necessarily always understand—

Barry Gardiner: Or that property prices are too high, of course.

Paul Broadhead: Well, property prices are too high irrespective of tenure, even if you are buying as a freeholder.

Barry Gardiner: Their income may be stable and reasonable—being in shared ownership does not mean that your income is unstable in any way.

Paul Broadhead: No, not at all.

Q267 Andy Carter: I want to pick up on some of the comments we heard on Tuesday around mis-selling. You mentioned the work the building societies—your members—would do to understand the affordability and the ability of a purchaser. What steps do your members go through to ensure that the person taking out the mortgage fully understands what they are buying? I am conscious that you will not necessarily always know all the things that they know. Could you just talk us through that area?

Paul Broadhead: Certainly. The first thing to remember is that mortgage lenders are experts in mortgage lending, not in property law—it is down to the conveyancer to advise the borrower of the requirements of the lease and the purchase of the property they are buying. The way I would describe it is that the conveyancer and the surveyor, to an extent, are the lender's eyes and ears on the ground to ensure all of that is clear to the borrower, and that they are entering into that transaction with their eyes open.

What we have seen from a mortgage lender's perspective, particularly when the escalating ground rent issue started to come to a head, was lenders taking a much more proactive approach on new developments to understand the terms of some of those leases, and actually refusing to lend on those new developments. Of course, there are a whole range of mortgage lenders that will lend on a new development, but the fact is that a new development without some of those large lenders—because they will not lend against that leasehold—drives change. That is what we have seen. We have seen the effect of that with the escalating ground rent—with the reduction of that.

Q268 Andy Carter: I just want to be clear: from a consumer perspective, if somebody is buying a leasehold property, are your members telling them, "This is a mortgage for a leasehold property," or do they not have that conversation?

Paul Broadhead: They will tell them that it is a leasehold property. It may not be known when the customer comes in to apply for the mortgage, because that will come out through the conveyancing process, and often when the property is advertised it does not make clear whether it is a leasehold or a freehold property. But that will be dealt with and it will be made very clear in the terms and conditions of the mortgage what that tenure is.

What we have seen is that some of our members have turned down mortgages because they have come across onerous lease conditions, and the consumer, the prospective purchaser, has then complained to say, "I can afford this mortgage. Why have you turned me down?" When the lender has explained to them what they know—there is this asymmetry of information—the consumer, with what they then know about the terms of the lease, has pulled out of the transaction because they did not realise that before. I think the most important thing with leasehold is not necessarily more information, because you need experts to look at that information, and too much information is often as bad as too little information; it is more about making sure that the right information is given to the right person at the right time.

Q269 Andy Carter: That leads me on to the regulation of managing agents and the property sector. Is that an area that your members have any views on? Is it something that you would welcome?

Paul Broadhead: Yes, we believe that managing agents should be regulated. We think the fees—where the service charges money is spent—should be made clear to the borrower. I think that, at the very minimum, short of regulation, they should be forced to be a member of an alternative dispute resolution scheme.

Q270 Mike Amesbury: That point is very interrelated to this. A considerable number of leaseholders are excluded from provisions to remediate the buildings. An example is people in buildings that are below 11 metres, or it might be people who have more than three flats. How has the market been responding to that?

Paul Broadhead: There have been well-documented issues about building safety post the Grenfell tragedy. We did see some real difficulty about people being able to get mortgages where there was cladding on the building. Progress has been made there. I think that now, in most cases—particularly above 11 metres, as you

suggest—the market is open, because it is clear that there is recourse to either the developer or the Government scheme to fund the work. Our starting position, when this came out with the amended Government guidance note in 2020, was that no leaseholders should be responsible for making good the combustible cladding, if it was now inappropriate, because they have gone into this, they have been advised by their legal advisers, and they should not be forced to put their hand in their pocket.

We are not there yet on properties below 11 metres, because the Government have chosen to exclude them from the support scheme. I have had a number of meetings with consumer groups, looking at cladding and at leasehold, and I think we are on the same page here. We are trying to find a solution from a mortgage-lending perspective, because we want that market to open up, but what seems to be more and more frequently coming out is that the cladding issues and other building safety issues are being conflated. It is really difficult then from a mortgage lender's perspective, because if the cladding itself does not need replacing because it is safe, but there are other defects in there, there may still be some comeback that leaves leaseholders with quite a large unexpected bill that is at the moment unquantified and would affect the affordability of that borrower, going forward. We continue to meet with these groups and with Government to seek a solution, but it certainly is not operating perfectly.

Q271 Mike Amesbury: Would you welcome amendments to the Bill to try to capture that by regulation, by legislation?

Paul Broadhead: Yes. Anything that makes it clearer and gives lenders confidence and consumers confidence that their building is safe and they are not going to face an unexpected bill has to be welcome.

Q272 Eddie Hughes (Walsall North) (Con): I am slightly confused. I thought it was now the case that properties did have to be advertised as leasehold or freehold. Has that changed?

Paul Broadhead: Well, often the advert will say that a property is leasehold but that that will be confirmed by the conveyancer, so you do not know 100% whether it is leasehold or what the terms of the lease are.

Q273 Eddie Hughes: So there is not an obligation currently for estate agents to market properties in a way identifying whether they are leasehold.

Paul Broadhead: Not to my knowledge, no. I do not think there is.

Q274 Eddie Hughes: Maybe I made a mistake. You said that it would take some time to unwind the fact that we have—currently—4 million leasehold properties in the country. Can you give us an idea of how long you think it will take, depending on the outcome of the Government's recent consultation? Were they to move to peppercorn rates, how long would this take to unwind? And give us a flavour of what would be the complexities.

Paul Broadhead: In terms of the peppercorn rate, it is a really difficult question, because it is almost, "How long is a piece of string?"

Q275 Eddie Hughes: But you are a man who knows, so even if you just give us your thoughts, that will be helpful.

Paul Broadhead: I still think it would take decades to unwind everything to a peppercorn rate, because you need the group of leaseholders together to agree to enfranchise, which is quite difficult. I will give you one example we have come across, which was following the escalating ground rents. Housebuilders had written out to leaseholders and said, "We will convert your property to leasehold for free. We are going back on what we've done; we think we did the wrong thing." The number of people coming forward and taking that up was negligible. You need to engage consumers. It is not just about putting the building blocks in place to make this better; it is enabling—

Q276 Eddie Hughes: Or to make it possible. Just because it is possible, does not mean it will actually happen.

Paul Broadhead: Absolutely, and you still need to engage the public and the legal profession that is taking people through, to make sure they understand what the benefits are and the cost of that. That individual value equation will change from leaseholder to leaseholder.

Eddie Hughes: That is very helpful, thank you.

The Chair: We have five minutes left. I will turn to Lee Rowley but please bear in mind that I want to bring in Barry as well.

Q277 The Minister for Housing, Planning and Building Safety (Lee Rowley): I do not want to divert the Committee away from the core discussion, but I will just pick up on something that yourself and Mike discussed a moment ago. On sub-11 metre buildings and potential challenges with fire safety, would you accept that our standards are life-critical safety standards, and that the likelihood of an issue in a sub-11 metre building is substantially lower than one in a building above 11 metres? Fundamentally, it is unlikely that those buildings would need remediation to the extent that would be needed in higher buildings. That is an accepted position of your members, I presume.

Paul Broadhead: That is absolutely an accepted position. The point I think you are getting to is that sometimes there is still an EWS1 form requested on sub-11 metre buildings. As I mentioned earlier, the lender is the expert in mortgage lending, not in building safety, and the surveyor on the ground will have their own gangs from the Royal Institution of Chartered Surveyors that they follow. If they come back and report that it needs further investigation, the lender has to take that at face value, because that is their expert.

Lee Rowley: I am not sure that I would accept that, but I will take that up with you and your members separately.

Q278 Barry Gardiner: I will pick up briefly on what you said to Mr Carter about the way in which sometimes your members were advising people, "Actually, this is leasehold, and there are these additional costs, and service charges are so expensive that we are not prepared to lend to you." Are there any particular freeholders who have a reputation in the industry for doing that? I am thinking of people such as the Freshwater or

Persimmon Homes, or any who seem to be known for their excessive service charges. Is there an automatic flag for them in the industry? Sitting where you are, you would have parliamentary privilege to name them.

Paul Broadhead: Parliamentary privilege notwithstanding, no, we do not have individual organisations I could point to. I certainly do not get reports from my members.

Q279 Barry Gardiner: In that case, my question to you is: why not? You know very well that there are "fleeceholders" out there: freeholders who fleece their leaseholders. They have a reputation for doing it over many, many years. Should your industry not be advising somebody who approaches you for a mortgage about that, when you know full well that if they have a mortgage with that particular freeholder, the likelihood is that over the years those services charges will rack up and be abused in precisely the way that we have talked about with previous witnesses, about the inequity of power in this relationship? Indeed, these are the very issues that we are seeking to amend in this Bill. Why does your association not have those flags so that when it sees names such as Freshwater, it says to the person, "Look, we need to tell you a thing or two here"?

Paul Broadhead: In terms of coming back to me as an association, that is a level of detail that is about individual organisations. It is not really part of my role to represent that. That does not mean they ignore that, just to be clear.

Q280 Barry Gardiner: But you rightly said, Mr Broadhead, that your members would advise a prospective purchaser not to engage in a mortgage where it was leasehold, if they felt that the service charges would rack up and they would then be put into financial penury. Why do you not do it when you know that it will be the case?

Paul Broadhead: Our members will not advise; they will refuse that mortgage, because it does not meet with their policy. In terms of other service charges, they all have a panel of conveyancers that they approve to act for them, and that is for the consumer purchasing that property. The terms of those panels change as some of these practices have come to light, and they will be nipped in the bud at that point.

The Chair: Order. I am afraid that brings us to the end of the time allotted for the Committee to ask questions and, indeed, for this morning's sitting. I thank all our witnesses on behalf of the Committee for their evidence. The Committee will meet again at 2 pm this afternoon here in the Boothroyd Room to continue taking oral evidence.

1 pm

The Chair adjourned the Committee without Question put (Standing Order No. 88).

Adjourned till this day at Two o'clock.

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

LEASEHOLD AND FREEHOLD REFORM BILL

Fourth Sitting

Thursday 18 January 2024

(Afternoon)

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No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor's Room, House of Commons,

not later than

Monday 22 January 2024

The Committee consisted of the following Members:

Chairs: † Dame Caroline Dinenage, Clive Efford, Sir Mark Hendrick, Sir Edward Leigh

† Amesbury, Mike *(Weaver Vale)* (Lab)
† Carter, Andy *(Warrington South)* (Con)
Davison, Dehenna *(Bishop Auckland)* (Con)
Edwards, Sarah *(Tamworth)* (Lab)
Everitt, Ben *(Milton Keynes North)* (Con)
† Fuller, Richard *(North East Bedfordshire)* (Con)
† Gardiner, Barry *(Brent North)* (Lab)
† Glindon, Mary *(North Tyneside)* (Lab)
† Hughes, Eddie *(Walsall North)* (Con)
Levy, Ian *(Blyth Valley)* (Con)
Maclean, Rachel *(Redditch)* (Con)
† Mohindra, Mr Gagan *(South West Hertfordshire)* (Con)
† Pennycook, Matthew *(Greenwich and Woolwich)* (Lab)
Rimmer, Ms Marie *(St Helens South and Whiston)* (Lab)
† Rowley, Lee *(Minister for Housing, Planning and Building Safety)*
Smith, Chloe *(Norwich North)* (Con)
Strathern, Alistair *(Mid Bedfordshire)* (Lab)

Huw Yardley, Katya Cassidy, *Committee Clerks*

† attended the Committee

Witnesses

George Lusty, Senior Director for Consumer Enforcement, Competition and Markets Authority

Simon Jones, Director of CMA Leasehold Investigation, Competition and Markets Authority

James Vitali, Head of Political Economy, Policy Exchange

Philip Freedman CBE KC (Hon), Conveyancing and Land Law Committee, The Law Society

Philip Rainey KC, Barrister, Tanfield Chambers

Jack Spearman, Chair of Leasehold Reform, Residential Freehold Association

Giles Grover, Spokesman, End Our Cladding Scandal

Public Bill Committee

Thursday 18 January 2024

(Afternoon)

[Dame Caroline Dinenage *in the Chair*]

Leasehold and Freehold Reform Bill

Examination of Witnesses

George Lusty and Simon Jones gave evidence.

2.2 pm

The Chair: We will now hear oral evidence from our fourth panel. The witnesses are George Lusty, senior director for consumer protection, and Simon Jones, director of leasehold investigation at the Competition and Markets Authority. We have until 2.20 pm for this panel. Will the witnesses please introduce themselves for the record?

George Lusty: Good afternoon. I am George Lusty. I am the senior director for consumer protection at the Competition and Markets Authority.

Simon Jones: Afternoon. I am Simon Jones. I am a project director at the CMA and I was responsible for our leasehold investigation.

The Chair: Thank you.

Q281 Matthew Pennycook (Greenwich and Woolwich) (Lab): Chair, may I just declare, for reasons of completeness, that my wife is the joint chief executive of the Law Commission, whose work we continue to cite on a regular basis?

Gentlemen, thank you for coming in to give evidence to us. I have two questions. First, in the 2020 update report on leasehold housing that the CMA published, you recommended reforms to

"the system of redress for leaseholders, to make it simpler and less costly for them to contest permission fees and service charges they think are unreasonable or excessive".

What are your views on whether you think the Bill achieves that? If not, what needs to be incorporated to ensure that it does?

My second question is on the recommendations you also made on measures to address the assured tenancy trap, whereby leaseholders who pay ground rents in excess of £1,000 in London and £250 across the rest of the country

"risk having their home repossessed for non-payment".

Again, does the Bill address that? If not, how specifically should we seek to improve it in that respect?

Simon Jones: I will deal with the second one first. Yes, we think that the proposals in the Bill at the moment will make a big difference. We thought that there were a number of ways to go about helping people: you could have created a duration threshold for leases, as in the current proposal—that works. You could have raised the threshold for rent. That, too, would work, although we would have been less in favour of it, because over time it would be less effective. Or you could have completely removed the provisions from the Housing Act. The approach that the Department has taken seems sensible.

Q282 Matthew Pennycook: Is that both recommendations, or just the second?

Simon Jones: That is on the second point. There are a number of ways to do it, but the problem was that there was no minimum length of lease that was not subject to the assured tenancy provisions. That just looked like an oversight, frankly, but that is going to be fixed. That seems like a positive step forward to us.

On redress, the problem that everybody told us about is that you can give leaseholders all the rights that you can, but that does not really help them if they cannot exercise them quickly, cheaply and efficiently. One of the problems—as you know, a big complaint people had—was that leases often had provisions that enabled landlords to recover the costs of litigation from the tenant, regardless of whether the landlord won or lost. That was a big problem, but that has been fixed.

Q283 Matthew Pennycook: May I press you on that? I asked a different witness about that this morning. The Government are saying that with low-value claims, the cost can be passed on, but that leaseholders would have to pay either that or a prescribed sum. I wondered, because we are talking about redress, given the challenges of going to the tribunal, will those leaseholders just end up paying the minimum prescribed amount for enfranchisement?

Simon Jones: I think that the proposal in the Bill is a positive change, but is it really all the change that could be made? This is quite difficult. The tribunal system exists to help leaseholders, but it is still complicated and expensive, and it is not local. Many of the disputes that we have are about costs.

For example, let us say you are a tenant and you have a service charge, but you think it is expensive. You will incur time and expense in trying to challenge it. What you want is probably something that is local, where the panel understands the costs in that area—for painting a stairwell or changing lights, that kind of thing. What we had in mind when we wrote the report was perhaps finding a way to use more local courts to provide more summary-type justice for people, through people who probably know more about what it costs in the local area to do something.

The other problem for consumers is that they do not understand what evidence is required to bring a challenge. I think that came through quite strongly for us. You cannot fix that with legislation, but it is another important point to bear in mind when thinking about how to help consumers help themselves.

Q284 Matthew Pennycook: Is it fair to say that with this legislation, we should look, where possible, to remove instances of where a leaseholder has to go to tribunal at all? In other words, if we said, "No leaseholder should be liable for a non-litigation cost in any circumstances", on that particular point none of them would have to go to tribunal. Should we look to reduce the scope for tribunal use generally?

Simon Jones: If the purpose of all this is that the incentive for managing agents or landlords—whoever is responsible—is not to overcharge, then cost rules that encourage them to be more careful with the charges that they make ought to be advantageous.

The Chair: I remind the Committee that we have only another 10 minutes or so left on this session.

Q285 Andy Carter (Warrington South) (Con): Thank you, Dame Caroline. Simon, the CMA carried out a two-year investigation into mis-selling. Are you satisfied that the Bill contains sufficient provision to address mis-selling and to improve consumer rights?

George Lusty: I will take this one. As you say, we have used our consumer law enforcement powers directly. Ultimately, we are prepared to take developers, and in some cases the freehold investors, to court if these problems have not been fixed. Doing that has secured direct outcomes for the affected people we acted on behalf of, including getting those unfair doubling terms taken out of their contracts and giving financial support to make sure that that is reflected in the paperwork.

We need to look at a number of things together. It is about not just what is in this Bill but what the Leasehold Reform (Ground Rent) Act 2022 did in terms of setting the leases for future properties at a peppercorn ground rent, and the proposed ban on leasehold houses. In particular, that takes away a number of the things that were liable to mislead.

There is the separate consultation that closed yesterday on proposals to cap existing ground rents. That is another thing that we are very keen to support, because our action benefited the 20,000 or so householders on whose behalf we took cases, but ultimately we said that only a legislative solution could fix the problem for people with existing leases with problematic ground rent increase mechanisms.

Q286 Andy Carter: We heard evidence today and on Tuesday of what appears to be quite widespread mis-selling, particularly in this sector. I know that you spent time in my constituency looking at the Steinbeck Grange case, but you were not able to enforce any outcomes from that. My constituents still do not feel that they have had redress. You mentioned the challenge of evidence: what would you say to my constituents who still feel that they have been mis-sold?

George Lusty: Ultimately, we were not able to pursue every case that was brought to us. We brought a separate action in which we secured redress from Persimmon in particular, allowing people to buy their freeholds for an agreed amount. Our case decisions ultimately turn on the evidence and whether we think we can successfully achieve an outcome and as broad an impact as we can on the big issue.

Something went badly wrong with the sale of leasehold homes, particularly with the modern concept of leasehold that started in the early noughties. One of the biggest aspects of that was the selling of houses as leasehold when there was no real, legitimate reason to do so. The proposal to include in this legislation a ban on leasehold houses tackles one of the worst instances of mis-selling, and the problem that people were told that leasehold was as good as or effectively freehold when it was not.

Andy Carter: Or they were not told at all. That seems to be more the problem: people were not told at all.

George Lusty: Yes.

Simon Jones: May I add to George's observation? One thing that we recommended—Lord Greenhalgh picked this up and worked on it with trading standards—was that there should be greater transparency around tenure and the annual cost of owning a property whenever a property is marketed, so that when you look at it, read the spec and see what the purchase price is, you also see what it will cost you every year to own it. In the end, that is what people are trying to figure out whether they can afford. Lord Greenhalgh picked that up, and work has been done with trading standards to move that forward, but momentum needs to be maintained behind it.

Think about the disadvantages that people have with leasehold. You have to pay rent and ground rent; if the Government cap that, that is probably fixed for your constituents. If there is greater transparency around service charges and a system of redress that probably conditions the ability of people to overcharge, that is a big step forward. More generally, there needs to be greater transparency right at the start of the sales process about what you are buying and how much it will cost you. Those things would make a big difference if they all were to happen to your constituents.

Andy Carter: I have one more question if there is time.

The Chair: We will come back to you at the end, Andy.

Q287 Mike Amesbury (Weaver Vale) (Lab): The CMA—including your good selves—has rightfully highlighted concerns around estate management and some of the charges commonly known as fleecehold. You said you were going to assess that information and publish your findings. Have you done that? It would be incredibly useful in shaping the responses in the Bill and perhaps strengthening some of the regulations particularly around park law.

George Lusty: In parallel to this piece of work on leasehold property, the CMA is conducting a market study looking at the house building sector more generally. As part of that, we have looked at the issue of estate charges, the increasing tendency for roads and other facilities not to be adopted, and the framework of consumer protections around charging for those sorts of services and what individual homeowners then need to pick up not being as good as it should.

We published a working paper on that in November. In particular, we called more broadly for greater adoption of those facilities by local authorities and enhanced consumer protection frameworks. That market study will complete its report in February, when we will issue our findings and recommendations across the piece. Neither Simon nor I is directly working on that, but it is connected because leaseholders face similar issues with the service charges that they have to pay in their properties, particularly in leasehold flat blocks.

Q288 Mike Amesbury: Do you have anything else to add, Simon?

Simon Jones: Only the transparency obligations that I mentioned. The initial transparency obligations about the annual cost of owning a home ought to include, in relation to freehold homes, things such as rent charges. An awful lot of people we spoke to had no idea that there could be annual charges connected to a freehold ownership.

Mike Amesbury: Thank you.

Q289 Richard Fuller: I want to follow on from the point made by my colleague, Mike Amesbury, about your November report. When it looked at estate management charges, there was a litany of abuses against residents who own their own home. As Mr Jones has just said, there was no information—or certainly not sufficient information—about obligations at the point of purchase. There was no transparency about the way in which information is provided. There were totally exorbitant charges for provision of basic things such as a bulb to go into a lamp post. There was an inability, or unwillingness, to provide annual reports to people, and limited to no redress for consumers.

I know that you are going to get to your final report in February. This Bill, helpfully in some ways, seeks to plug some of those gaps in the protection of people who own homes, but would it not be better for us to ban the lack of adoption right at the start? Should we not go to the source and find a solution as to why councils and housing estate developers are ripping off my constituents, and I am sure many others, who own their own homes? What can be done about that in this Bill?

George Lusty: Again, in our November working paper, we pointed to that very issue of there not being enough adoption by local authorities of those facilities. We put forward possible ways for that to be fixed, either through more mandatory adoption of those amenities or through some common adoptable standards that could be followed to inform the types of amenity that were suitable for adoption more broadly. As I say, we have not issued our final recommendations, but we have already said something about the options that might be available if there was a desire to try to tackle that now.

Q290 Richard Fuller: My concern is that you are going to finish your report, quite rightly, in the fullness of time—that will be February—and this Committee will not be sitting in February; heaven help us, I hope not. Please could you go away with a piece of homework for tonight to write to the Committee about what ideas from your report so far could be put in the Bill on the adoption matter? I think all of us would find that very helpful.

George Lusty *indicated assent.*

The Chair: Thank you. A very quick question with a very quick answer, please. Barry Gardiner.

Q291 Barry Gardiner (Brent North) (Lab): In your leasehold update report 2020, you adumbrated numerous complaints and you said:

"It is a real concern that homeowners who have entered into a lease are captive consumers with very little influence over the costs incurred by landlords or their managing agents that will in due course be passed on to them."

Do you believe that the Bill will give them control or simply greater transparency and access to understand their own exploitation, and has the CMA come across any comparable part of the economy where those paying the bills have no control over the bill or the standard of service?

George Lusty: It is worth saying at the outset that we approached our leasehold investigation primarily from the framework of consumer protection law, looking at instances of mis-selling and unfair contract terms. We cannot use consumer law—

Q292 Barry Gardiner: But you are concerned with the competition, and you have rightly pointed out that these are captive consumers.

Simon Jones: You are absolutely right. We think the captive consumer problem is a real problem. We spoke to a lot of people about what the solution might be. There was not an obvious solution, but we did think that if there were better redress mechanisms, that would at least help.

Q293 Barry Gardiner: So this is not a free market as it stands.

Simon Jones: You have choice about the property you buy, but if you buy a leasehold property—

The Chair: Order. I do apologise, but that brings us to the end of the time allotted for the Committee to ask questions. I thank our witnesses very much on behalf of the Committee.

Examination of Witness

James Vitali gave evidence.

2.21 pm

The Chair: We will hear oral evidence from James Vitali, head of political economy at Policy Exchange. For this session, we have until 2.40 pm. Could you please introduce yourself for the record?

James Vitali: Thank you very much for inviting me to give evidence. My name is James Vitali. I am head of political economy at the think-tank Policy Exchange. I work on a number of areas, including economics, housing and regulatory reform. By way of quick background, I recently authored a paper entitled "The Property Owning Democracy" in which I argue for the value socially and economically of property ownership, both for democracy and capitalism. I specifically address leasehold reform in that as part of the broader question. My main interest in the Bill is the enfranchisement process.

Q294 Andy Carter: In the paper you have just talked about, you stress the importance of enabling enfranchisement for leaseholders to expand the number of people with authentic property rights. Do you believe that the Bill will make it cheaper and easier for leaseholders to buy their freehold?

James Vitali: Yes. The first point to make is that I think leasehold is effectively a simulation of ownership. Imagine that ownership comes as a sort of package of rights and responsibilities; leaseholders lack many of those rights and responsibilities. The Bill will make meaningful improvements to the situation of leaseholders, but there are some practical improvements that could be made to the Bill to give practical effect to its intent.

Andy Carter: Could you expand on that?

James Vitali: Of course. There are a couple of things in particular. One has been raised already by Mr Gardiner in the evidence sessions and concerns mixed-use buildings. I think it is great that the threshold is being increased to 50%. That will bring a lot of leaseholders into the scope of potential enfranchisement. But as it stands, there is a provision in the Leasehold Reform, Housing and Urban Development Act 1993 concerning structural dependency rules—shared plant rooms and things like that.

Effectively, as it stands, the provisions in that Act disqualify people who get to the threshold but share service and plant rooms with a commercial unit in the building. That section in the 1993 Act should just be removed. There is already a framework for co-operation between commercial units and residential units in mixed buildings when it comes to services. It should be relatively straightforward to create a framework for co-operation with the Bill.

Q295 Barry Gardiner: Policy Exchange describes itself as a conservative think-tank, so you and I might find ourselves rather strange bedfellows on this, but I welcome what you said about shared services. This whole section is really about competition and free markets and so on. Would you not agree that the leasehold system has all the hallmarks of monopolistic practices and market failure? It has a lack of choice, uncompetitive prices and high barriers to entry, and there is an inability to substitute a service, all of which are the standard accusations that a conservative think-tank might make of an unfree market, and it is against consumer interest. All credit to you, that is what Policy Exchange is supposed to be promoting: the free market and the interests of the consumer. Leasehold itself and the exploitation we have been discussing over the past few days are really embedded in a non-capitalistic structure, are they not?

James Vitali: Yes, I quite agree. One of the cases I make in the paper I mentioned is that not only is ownership becoming more concentrated in a narrow stratum of society, but the type of ownership we are offering the aspirant is being thinned out. You were just listening to the suggestion that leasehold is almost mis-sold to consumers. I think aspirant property owners are being mis-sold when it comes to leasehold. They think they are buying into a genuine form of property ownership, but in many ways, as I said at the start, they lack the rights and responsibilities that should come with an ownership tenure, so I completely agree.

Q296 Barry Gardiner: Thank you. Freeholders, in that sense—particularly in relation to ground rent—are really a rentier class because they are not providing a service in return for the revenue stream they are cashing in on.

James Vitali: Yes, charges should be connected to the provision of a service, so I think ground rents should be reduced to a peppercorn. Charges should be made through this new and very sensible regime that is being proposed in the Bill for how charges are requested and demanded.

Q297 Barry Gardiner: I cannot believe we are agreeing quite as much as this—this is wonderful stuff. That rentier class often says, "Well, we do provide a service," but of course that is to conflate and confuse what they do with the service provided by a managing agent, which of course could be equally well performed by an enfranchised community that has the right to manage their own block. The domain of the freeholder is actually simply the accumulation of the ground rent, is it not?

James Vitali: I think the key here is whether the leaseholder has a choice in who is providing the service and what service they are providing. Any functioning free market is based on strong property rights and competition. The key here is giving existing leaseholders greater choice over who is managing their building and how it is being maintained, and increasingly giving them the chance to take on those responsibilities themselves.

Barry Gardiner: Thank you very much. In order to preserve both our reputations, I will not say that you agreed with me and I trust that you will not say that I agreed with you.

Q298 Richard Fuller: Let me attempt to get back on to Conservative territory, rather than Barry's territory. There are many experts in this field, and campaigners have done some fantastic work. I am not one of them—I do not know about this—so allow me some naivety in the questions I pose. Is marriage value a real thing?

James Vitali: I think a lot of the reforms proposed in this Bill are an attempt to reflect better the fact that when the leaseholder purchases the leasehold, they are acquiring the majority value of the asset. In market terms, sure, I suppose marriage value is significant and substantive, but as it stands it seems to me that a leaseholder acquires the majority of the value of an asset when they acquire the leasehold, and that is slowly eroded. I think that is the thing that is wrong in the process.

Q299 Richard Fuller: That did not quite answer my question. My question was: is marriage value a real thing? It could be large or small. Can you describe what it is and do you perceive that it is a real thing? I read somewhere about some vases—I do not know why we have these vase analogies sometimes—and I kind of get it. There is vase A and vase B—apparently they have to be Chinese—and when you put the two together, they are more valuable than they are separately. Is that a real thing? Do you understand that as a source of value? If you do, can you explain to me the legitimacy of transferring, at a stroke, £1.9 billion of that from one group of people to another, and that not to be described as a windfall gain?

James Vitali: Tricky question. If you were to acquire some property that you have genuine rights and responsibilities for the management of, the ability to benefit from in the future and the ability to control, then that form of property would be greater than if you were subject to charges and ground rent. On the point about the £1.9 billion transfer value from freeholders to leaseholders, I did take a cursory look at the impact assessment. I do think that is a legitimate decision for you as parliamentarians to make about 10-year property rights in the UK. I think it is justified.

Q300 Richard Fuller: I have one final question, if I may. I know it is not quite at a stroke, because I think it is when they come up, but is there any way of mitigating? It seems to me that when you take something away from one person incompletely and you cannot actually say, "Well, the value wasn't there"—I understand fee-for-service but marriage value is different from that—there is no other mitigation for the loss of that party, and there is not in the Bill. We can agree that marriage value needs to go; we are finally going from class A of people to class B of people. We could, however, then put in some mitigation for those who are having a loss, which would be usual if they had not done something materially wrong. What do you think about that?

James Vitali: I think that is where the dividing line lies between you and Mr Gardiner, and perhaps you and I and Mr Gardiner.

Richard Fuller: Oh, it is much wider than that.

James Vitali: Indeed. I think a balancing act needs to be struck in this Bill between spreading genuine property rights more widely and compensating those existing freeholders. If you seek to diffuse property ownership, but in the process undermine or dilute property rights, you are undermining the thing that you are trying to spread more evenly. That is a technical question for the way that you finesse this Bill, but I do not think it is a substantive issue with the desire to give leaseholders greater control and rights over their property.

Richard Fuller: Exactly.

Q301 Barry Gardiner: On the point of marriage value, Mr Vitali, let us go back to free market principles. You and I would agree that a free market is one in which properties are sold between a willing seller and a willing buyer—would you not?

James Vitali *indicated assent*.

Q302 Barry Gardiner: Of course, the argument that Mr Fuller sought to put forward to you was based on the old cup and saucer analogy, or the pair of vases being more valuable than the one. In this situation, we do not quite have a willing seller and a willing buyer. We have an encumbered buyer, because they are trammelled by the fact that they have lived in that property for the past 30 years, and they now see it becoming worthless. When the Custins *v.* Hearts of Oak decision in 1967 went through, the Government immediately came back in primary legislation, and legislated to abolish marriage value precisely because of that purpose. If I might impair my socialist credentials even further, it was Margaret Thatcher who sought to abolish it outright, and it was only the foolishness of the subsequent Prime Minister, John Major, that brought it back in for flats in 1993. Is that not your understanding of how a free market should actually work, between a willing buyer and a willing seller?

James Vitali: I will deflect and answer a slightly different question. It is interesting that the leaseholder enfranchisement process is kind of redolent of and similar to right to buy, in that it is a no-fault compulsory purchase of an asset. The difference with right to buy is that compensating the state is a different consideration from private citizens who have property rights. All I would say is I think it is important that the compensation mechanisms in the Bill are such that it does not feel like the things we are trying to spread more equitably—property rights—are being diluted by the state.

Barry Gardiner: We will agree on that one.

Q303 Andy Carter: James, we are fortunate to have you here, as somebody who thinks a lot about the property sector. We are legislating in one area; quite often, there will be implications in the broader sector. Have you put any thought into that? Could you share any views on unintended consequences that we might need to watch out for elsewhere in the property market?

James Vitali: Delighted to. That is probably the thing that I have been thinking about the most in terms of the implications of the Bill. I understand that there is an intention for a ban on leasehold houses to come forward on Report. One thing that I am really worried about is that what will effectively be created is a two-tier system of housing or tenure types in this country, between the countryside and our cities. It is very possible, if we deal with houses and not the tenures for flats, that we will create secure, authentic property rights outside of our urban areas and create in our urban areas a slightly more precarious, maybe outdated type of tenure.

As it stands, that has not been given enough consideration, because it also does not conform with the Government's wider strategy on housing, which, broadly speaking, is to densify our urban areas and increase housing supply in our cities. There are political considerations around why they are doing that—it is a lot more deliverable to focus on the densification of cities—but there are very good economic reasons for that too: the agglomeration effects of building housing supply in a city are greater than elsewhere. We need to incentivise people living in flats in dense cities, and if we deal with leasehold as it pertains to houses, not flats, it will work against the Government's quite legitimate and justified broader housing strategy.

Andy Carter: So your solution is to deal with houses and flats.

James Vitali: It seems to me that commonhold is broadly out of the scope of the Bill now. It would be my gentle encouragement that some incentives be included in the Bill for the take-up of commonhold. The Law Commission individual who came on Tuesday said that it is very complicated and there are lots of unintended consequences that need to be taken into account, but I think some small incentives—for example, on mixed use and the threshold for conversion—could be introduced, which might incentivise the take-up of commonhold. But before that I think it should be considered whether new leaseholds come with a share of the freehold. That would be a sensible, deliverable addition to the Bill, and it would deal with the problem that I outlined of a two-tier housing market.

The Chair: Barry, very quickly.

Q304 Barry Gardiner: On mixed use, you made a very good case about the reasons for looking at the shared services previously. Would you be in favour of seeing the Bill say that the threshold should increase not simply from 25% to 50%, but maybe to 75%?

James Vitali: I have not given that too much thought, I must say; 50% seems absolutely reasonable. I think there are some practical issues in getting to that 50% threshold in itself. I have heard stories about the process by which leaseholders whip around the building trying to get together enough—

Q305 Barry Gardiner: Sorry—this is not about the number of people for an enfranchisement; this is on the shared services point that we discussed earlier. It is about if it should be where the actual commercial element of the building is more than 50%. The limit was 25%; now it is proposed to be 50%. Actually, given that the right to manage would apply only to the leasehold part of the building, it would seem fair that that should be as high as, say, 75% commercial and 25% leasehold, because at the moment it is one person—the freeholder—who is the counterparty for the shared services. In this case, it would be the managing agent of the right to manage leaseholders.

James Vitali: I must say that I have not given that a lot of thought. I think increasing it to 50% will have a significant effect itself, but you may wish to go further.

The Chair: Order. I am afraid that brings us to the end of the time allotted for the Committee to ask questions. I thank the witness very much on the Committee's behalf.

Examination of Witnesses

Philip Freedman CBE KC (Hon) and Philip Rainey KC gave evidence.

2.40 pm

Q306 The Chair: We will now hear oral evidence from Philip Freedman from the conveyancing and land law committee at the Law Society, and Philip Rainey from Tanfield Chambers. We have until 3.10 pm for this session. Could the witnesses introduce themselves for the record?

Philip Rainey: I am Philip Rainey KC. I am a barrister in private practice at Tanfield Chambers and, among other things, I have specialised in leasehold enfranchisement and service charges and so forth for probably 20 or 25 years.

The Chair: It is not very helpful when you are both called Philip—Philip Freedman.

Philip Freedman: I am Philip Freedman. I am a solicitor and therefore only an honorary KC. I am a member of the Law Society's conveyancing and land law committee. I am a member of the Commonhold Council. I am a consultant at Mishcon de Reya, and was a senior property partner there for many years. We act for both landlords and tenants, investors, pension funds, right-to-manage people and all sorts of people who have a vested interest in the different sides of these issues.

My wife and I live in a flat. We are leaseholders. It is a block that was enfranchised under the right of first refusal under the Landlord and Tenant Act 1987, when the developer wanted to sell the building. I am one of about five people out of about 75 people who are actually interested in participating in the running of the block. We have about 52 flats, and if you take everybody, including husbands and wives, there are about 72 people who could potentially be directors participating in the landlord company, and only about five of us are interested in doing so.

The Chair: Thank you.

Philip Freedman: May I add one thing? You may have received a briefing on the Bill from the Law Society. I have been asked to tell you about a small correction to it. May I do that?

The Chair: You may.

Philip Freedman: The parliamentary briefing from the Law Society refers in the summary to the issue of new leasehold houses and urges that the Law Commission's proposals for land obligations should be enacted—it says to enable "flats" to be sold as freehold. That should be "houses". The law about positive obligations under leases, as distinct from under freeholds, indicates that leases are much better in relation to enforcement than freeholds at the moment, and it would very much help if freehold law was upgraded so that the obligations on positive matters such as performing services and paying for services could be brought into line, so that freehold is as least as effective as leasehold. This is a case where freehold is not as effective as leasehold.

The Chair: Thank you. I remind the Committee that we have until 3.10 pm for this session.

Q307 Matthew Pennycook: Gentlemen, in our evidence sessions so far, we have had very wide-ranging discussions —let me put it that way—not just about the principle of the Bill but about property rights, the functioning of market capitalism and liberal democracy, and everything but. As the shadow Minister for the Bill, I would like to use your expertise to focus on what is actually in the Bill and how we might improve it, so my first question is a very specific one on clause 12. I think I put it more to Mr Freedman than to Mr Rainey because of that Law Society briefing. It relates to valuation, which is one of the more complex matters that the Bill deals with.

The Law Society has expressed concern that the provisions in clause 12 designed to protect most but not all leaseholders from non-litigation costs that landlords may incur when responding to an enfranchisement or lease extension claim may cause issues, because under the proposed new valuation method, the price payable may be below full open market value. Could you clarify why you believe that to be the case? The standard valuation method in schedule 5 provides for a market value element. Why does the Law Society believe that it does not represent full open market values?

Philip Freedman: This started with the Law Society's recommendation to the Law Commission that one thing that might save costs for leaseholders was if they did not have to pay the landlord's costs on a collective enfranchisement or lease extension. We put forward the view that if the enfranchisement price is market value, then each side should bear its own costs. If you were to buy a house, you would not pay the seller's costs; each party would pay their own costs. That is what happens in the market. We said that in the context of enfranchisement being at market value. The Law Commission took that on board, and its report very clearly says that its recommendation that each side should pay some costs and tenants should not have to pay the landlord's costs—

Q308 Matthew Pennycook: My question is: why do you not think that the valuation method in here is full market value?

Philip Freedman: Because the suggested notional capping of ground rent at 0.1%, in many cases, where it applies, will reduce the purchase price below what it is in the open market at the moment. At the moment, in the open market, the ground rent stated in the lease is payable. We are aware that there are proposals for retrospective legislation, as one might call it, to interfere with existing leases and to say that the ground rent should be capped at a certain amount, but at the moment those rents are lawful, and those rents are therefore reflected in the price that someone would pay to buy the flow of ground rent. Therefore, if you assessed the purchase price for the enfranchisement as if the ground rent were capped and would not be as much as it actually would, then you would be reducing the purchase price to below the market price.

Q309 Matthew Pennycook: That is very clear and very useful.

I have a second question, relating to clause 59, which concerns regulation of remedies for arrears of rentcharges. Do you agree with my view that the Government are trying to fix a historical law that is essentially beyond repair? Should we be looking to abolish section 121 of the Law of Property Act 1925?

Philip Freedman: I think yes. I had to draft some rentcharge provisions many years ago, when we were acting for clients who were selling some industrial buildings on a new estate. They wanted to sell them freehold. There was no commonhold at that time and the issue of enforcing positive covenants was difficult. We came up with the suggestion that the rentcharges legislation should be used to allow an estate company to collect service charges, maintain drainage systems and so forth. It was agreed that the Law of Property Act gave excessive remedies to landlords for non-payment. I am all in favour of limiting the remedies so that, if someone does not pay for something, they can be sued for it, just as with the amendment in relation to forfeiture. It seems to me—this is my personal view—that limiting forfeiture, as you have proposed doing through your amendment, is the right thing to do, although I do have three points to make on that.

Q310 Matthew Pennycook: I will quickly come to that, but do have anything to add in relation to clause 59, Mr Rainey?

Philip Rainey: I agree that forfeiture for non-payment of a rentcharge on an estate, which is usually a relatively small sum of money, is a sledgehammer to crack a nut. I would be in favour of replacing section 121 rather than repealing it, so that there is a coherent and measured set of remedies for rentcharges. That is bearing in mind, as Philip just said, that a lot of the estate rentcharges covered by that legislation have nothing to do with residential; they are quite common on industrial estates. That is one of the unintended consequences that might occur if you were simply to repeal section 121.

Q311 Matthew Pennycook: That is extremely useful. I wish that we had you both for more than half an hour.

I have one quick final question on the abolition of forfeiture. Would you agree that we should do away with forfeiture entirely—it sounds like you do—on the grounds that it is a wholly disproportionate response to the breach of a lease? If so, what should we replace it with? Is suing for a debt—as happens with any other debt—and an injunction if the breach relates to conduct a sufficient response or, if we abolish forfeiture, should we be looking to replace it with some other system of recompense?

Philip Freedman: My view is that there are three aspects of the proposed abolition of forfeiture for leasehold dwellings that we should look at. One is that it should apply to individual leases of single dwellings, rather like the ground rent abolition; it should not apply to leases of multiple dwellings, such as a lease of 50 flats to some lettings company, which is a commercial enterprise, effectively. It should apply to leases of individual dwellings granted at a premium.

The other thing is that the threat of forfeiture is over the top in relation to financial debt—arrears of rent, service charges or whatever. You can sue for those. There may be refinements in relation to suing, but basically you can sue for them. But if a tenant has knocked down walls that they should not have, caused a nuisance or annoyance to other tenants in the building, or used the property for some unlawful purpose, then the remedy would be to threaten an injunction, as you have indicated. An injunction is a difficult remedy to enforce: it is very costly and it is at the discretion of the court—there are all sort of hurdles about injunctions. If, in the residential sector, the first-tier tribunal was given the power and jurisdiction to order parties to a lease to comply with the terms of the lease, free from the constraints of existing law in relation to injunctions, then one could avoid the need for forfeiture. Removing forfeiture for financial payments and damages is fine, but for other breaches it presents a problem.

The only other point is that we need to look at section 153 of the 1925 Act, which is the right for tenants, if they have a very long lease, do not pay any ground rent—it is a peppercorn—and are not susceptible to forfeiture, to enlarge into the freehold. That is a whole area of unclear law. It is not clear what the effect would be if you had one tenant in a block who declares that he now owns the freehold; it would be very unclear whether the management of the block would be affected. I think these things need to be addressed if one is going along that line with regard to forfeiture.

Philip Rainey: Because I appreciate that we have limited time to answer, the only thing I would add is that forfeiture is arguably, again, a sledgehammer to crack a nut, but so can be an injunction: the remedy for breach of an injunction is essentially committal to prison. The prospect of not being able to forfeit and instead there being rafts of committal applications to fill up the jails with people who are, for whatever reason, refusing to comply with some kind of covenant—that is very annoying, but ultimately they should not be in prison—is also unattractive.

Ultimately, there needs to be some sort of measured method of removing a problem tenant from a block. We very much concentrate on the position of landlords against tenants, but one very difficult tenant in a block can ruin life for everybody else. The Law Commission proposed a replacement scheme, and I suggest that that should be dusted off and looked at. A lot of the objections to it come from the commercial sector, so bring it into force for residential leasehold first.

Matthew Pennycook: That is all extremely helpful. Thank you very much.

Q312 Richard Fuller: Our previous witness, Mr Vitali, talked about potential concerns about the effect of regulation on people's understanding of property rights. Do you have any significant concerns about how the Bill affects property rights? If you do, what should we do about them?

Philip Rainey: In a sense, that is a conceptual question.

Richard Fuller: You are a lawyer.

Philip Rainey: Yes, and one tends to avoid the philosophical points. Clearly, from a legal perspective the Bill interferes in an extremely significant way with property rights. Whether that is the right thing to do is a value judgment.

One thing that is sometimes overlooked—I am not defending the leasehold system; I am on record as being in favour of commonhold, which is inherently a more satisfactory system for holding flats—is that a lot of people will be disappointed when commonhold comes in. They will still find that they are not allowed to remove the supporting walls in their flat or to have a noisy party on a Friday night, because their neighbours do not want that. A lot of the things you find in leases and the restrictions when living in flats are because, if you live communally in a block of flats, you owe duties to your neighbours. There are responsibilities, in communal living, that do not apply if you live in a small house in a field, 500 yards from your neighbours. The restrictions in the leasehold system are not as unique to leasehold as you might think; I would suggest otherwise. To go back to your basic point, clearly the Bill alters property rights. It is a value judgment as to whether that is the right thing to do.

Philip Freedman: I have heard a number of cases where the property industry is concerned about the transfer of value that will be effected by capping ground rents, removing marriage value and so on, in relation not just to the benefit to leaseholders but to the burden on those landlords that are pension funds and other organisations that will find that they are deprived of rental income that they have banked on and have thought will be reliable income over many years. They bought leases that were perfectly lawful, were not, so far as one can tell, entered into under any mis-selling, and the provisions for the ground rent are not necessarily unconscionable; the ground rents were invested in in good faith.

We must not lose sight of the fact that if there are winners, there are always losers. Some provisions of the Bill, which are fine, are to say that if the tenants are enfranchising, they do not have to buy the commercial bits of the building. Those can be left with the landlord under a leaseback, and therefore the value remains with the landlord. Both parties win: the landlord keeps the value and the tenants do not have to pay as much money. But where you are transferring value, there is always a loser, and there are lots of investors who appear to have bought in good faith and were not expecting retrospective legislation. Lawyers always do not like retrospective legislation. It is up to Parliament to decide whether the social benefit is sufficient to outweigh the concern about pension funds, and so on, that have invested in ground rents. The Law Society does not take sides between landlords and tenants, or different types of clients. We just want to make sure that Parliament focuses on the issue and makes the decision in the public interest.

Q313 Barry Gardiner: Mr Rainey, first, thank you for what you said about the preferability of commonhold to leasehold. Is it your view, therefore, that it would be good if the Bill were to make all new flats that are constructed leasehold with a share of freehold, as a staging post, in effect?

Philip Rainey: Yes. In a sense, that is the downside. It is possible to create what you might call commonhold-lite. It is a leasehold system—it is so encrusted with restrictions and requirements, although you own the freehold, that it is very similar. It would be only a staging post, because one of the problems with the current system is that it creates a "them and us" situation. You see it even when tenants own the freehold. Somehow they still think, "Well, it's 'my' lease and it's 'them'", which is them under another hat as the freeholder. Commonhold should eliminate that.

Q314 Barry Gardiner: Yes, I was taken by your remarks earlier about the disputes that can go on even where you have an enfranchised situation.

Philip Rainey: If you go to Australia and look at the websites, you find "I hate my strata" websites. Neighbours will be neighbours.

Barry Gardiner: Unfortunately, legislation cannot make your neighbours more considerate. I often wish it could.

Philip Rainey: I think I would be inclined to agree that it would be a reasonable step forward to say that there should be a share of freehold with—

Barry Gardiner: Any new build.

Philip Rainey: With new build. You would have to have rules.

Q315 Barry Gardiner: I want to probe your thoughts on what I find a very tricky part of the way in which the pieces of legislation are now interacting with each other. One of the great freedoms for leaseholders who either cannot afford or do not wish to enfranchise themselves, but where the building has deteriorated to a terrible state under the existing freeholder, is the provision for a court-appointed manager under section 24 of the Landlord and Tenant Act 1987.

That is something that I hope we very much want to protect, because these leaseholders really require the protection of a court-appointed manager. However, the Building Safety Act 2022 bars the court-appointed manager from being an accountable person and from taking full responsibility for the necessary safety remediation works. That responsibility under the BSA '22 regulations is now being given, in effect, to the one person whose track record shows that they are incapable and not to be trusted to perform the obligations of managing that building—namely, the freeholder who let it go to rack and ruin in the first place. The leaseholders, whom the courts sort to protect, will have that former, negligent freeholder back in charge. I do not know, but I am looking to you to tell us, how one might draft an amendment to the Bill to preserve the protection for leaseholders who find themselves in an incredibly invidious position.

Philip Rainey: The first thing to say is that—as you may know—there is an ongoing piece of litigation, in which I am involved, where that question of whether a manager can be an accountable person is yet to be finally decided. The current position is that the first-tier tribunal has decided that the manager cannot be an accountable person. I therefore cannot comment on that outcome.

Barry Gardiner: I was aware that you were involved in the case, but I did not want to drag you into the specific—I wanted to keep you at the general.

Philip Rainey: If, hypothetically speaking, the law is that a manager cannot be an accountable person; if, hypothetically speaking, that restricts what a manager can do; and if you, as Parliament, wished to alter that position, then you would amend the definition of a relevant repairing obligation in section 72 of the Building

Safety Act 2022. That amendment would make it clear that a relevant repairing obligation includes an obligation under a manager order under section 24 of the Landlord and Tenant Act 1987.

Q316 Barry Gardiner: Right. You think faster than I can even listen. Are you saying that we could introduce an amendment to this Bill that amended the Building Safety Act 2022 in such a way that we could ensure that those protections continue?

Philip Rainey: The obvious answer is that you are Parliament—you can change any law.

Q317 Barry Gardiner: I suppose my real question is, would you care to write to the Committee framing such an amendment?

Philip Rainey: I could, if asked. As I say, you can amend section 72 to change a particular definition. Arguably at least, subject to the regulations, it is not actually necessary for Parliament to do it, because section 72 has a power for the Secretary of State to amend it—it is a Henry VIII clause, which I am not very much in favour of, but that probably could be done by secondary legislation.

Barry Gardiner: I have no doubt that the Secretary of State could do that, but I always feel more comfortable if things are on the face of the Bill.

Philip Rainey: I respectfully agree.

Q318 Barry Gardiner: If I can prevail on you for just a little longer, could you explain the just and convenient test, and how the BSA has affected that?

Philip Rainey: The just and convenient test is effectively an equitable test. It is a very flexible test intended to allow the first-tier tribunal to take into account all of the circumstances and, in layman's terms, to decide whether something is just, fair, convenient and going to work—the rights and wrongs and the practicalities of it. Because of the ongoing case, I do not think I can answer the second part of the question, as to how the Building Safety Act 2022 might have affected that.

Barry Gardiner: I am sure hon. Members can ponder on your words and work it out from there. Thank you; that is really helpful.

Q319 Eddie Hughes (Walsall North) (Con): Mr Freedman, you represent developers and investors as part of your job. You just referenced the possible impact on pension funds. How significant is that? I am hearing, on the one hand, that people have very diverse portfolios, so although it would be a big number, it would be broadly distributed, nobody would actually feel any real impact and this is just a bit of shroud waving by people who would rather be very rich instead of quite rich. However, there are other people who say, "Hang on a sec, this is not very Conservative, is it?" or, as has been said, that we are talking about transferring wealth from one bunch of people to another. Clearly, Parliament can do that, but the impact might be greater on one than the other. I just wondered about your thoughts on that.

Philip Freedman: I am afraid that I cannot give you the answer to that. because I am not directly acting for those particular clients. I am afraid I know no more—

Eddie Hughes: You do not have a view. We will not take your professional—

Philip Freedman: I can completely understand that pension funds have invested in part in long-term income that they believed to be secure when they did it—that is, income for 90 years, 990 years or whatever it was going to be. I am told that a number of pension funds and other types of investment entity have invested cautiously, not necessarily buying portfolios where there are hugely escalating ground rents, but either fixed ground rents or modestly increasing ground rents that people would not say were egregious. However, they are still concerned because, in many parts of the country, particularly in the north-east, for example, property prices are so low that even 0.1%—even 1,000th of the price of a flat—would reduce the ground rent. The ground rent might be £100 a year or something, but the cap would result in it being £50 a year or something like that. Obviously, the impact would be great for those portfolios that have hundreds or thousands of these.

Q320 Mike Amesbury: Your organisation has said it is disappointed that the Bill does not deal with the regulation of managing and property agents. Can you elaborate on that? What needs to be included in the Bill?

Philip Freedman: The Law Society has been participating in various working groups following Lord Best's report, trying to help with the preparation of codes of practice that were intended to sit underneath the regulatory framework for property agents of different types, whether selling agents, managing agents or whatever. We feel that, because tenants often do not know what their rights are, and if they did know what their rights were, they may not want to spend the time or money getting someone to help them enforce their rights, you come back to the people actually doing the management. They need to be proactively willing to be transparent, and to realise that they have duties to the tenants as well as to the landlord. It needs a mindset change in the people who are doing the management. You do not want to rely on tenants having to try and find out what their rights are and then enforcing them. We feel, therefore, that a lot of the changes in the Bill, and other changes that have been talked about, will be better achieved if property managers are regulated, and that the right people with the right tuition being told what their duties are would be improved by regulation.

Q321 The Minister for Housing, Planning and Building Safety (Lee Rowley): Mr Freedman, in terms of your previous but one comment, to Eddie, on how you were told about the potential impacts on pension funds and the like, can you tell us, either now or separately if you prefer, who told you that? What is the source?

Philip Freedman: It was one of the two partners in the firm I had been speaking to. Also, I have heard that various other bodies, like the British Property Federation, have been looking into these issues, and there has been a certain amount of it in the property press. It is only general awareness; I do not know any specifics.

The Chair: Thank you very much. That brings us to the end of this panel. May I thank the witnesses very much for their evidence? We will now move on to the next panel.

Examination of Witness

Jack Spearman gave evidence.

3.10 pm

The Chair: We will now hear oral evidence from our seventh panel. Jack Spearman is chair of leasehold reform at the Residential Freehold Association. For this session, we have until 3.30 pm. Could the witness please introduce himself for the record?

Jack Spearman: Good afternoon. My name is Jack Spearman. I am from the Residential Freehold Association. We are a representative organisation for the UK's largest professional freeholders. Our members represent, or have management over, about 1 million leasehold properties in England and Wales. I chair the British Property Federation's committee on leasehold reform. I am also a director at Long Harbour, which is a regulated investment manager, and we have invested in residential freeholds.

Q322 Matthew Pennycook: Mr Spearman, thank you for coming to give evidence to us. The Government's 2017 consultation on tackling unfair practices in the leasehold market, which I think attracted more than 6,000 responses, found that freeholders regularly price-gouge leaseholders on service charges, ground rents, lease extensions and freehold acquisitions, as well as making arbitrary and unjust rules about what leaseholders can and cannot do with their homes. Is it not the case that many, if not all, of your members routinely engage in rent-seeking behaviour by gouging leaseholders as a matter of course and that the concerns of the RFA about the Bill are almost entirely related in various ways to how it might frustrate them or prohibit them from doing so?

Jack Spearman: Each lease will set out the terms of what can and cannot happen under that lease, so when people talk about changing terms, you have to be quite careful about what you are actually saying. The rent is set as a rent and a review is set as a review, so you cannot just change rent arbitrarily—the same as for service charge and many other things. I think what you are talking about is some of the aspects that are frustrating, whether it enfranchisement or lease extensions. It will probably surprise a number of you that our members do support a large number of the measures in the Bill, including a number of the amendments that you have put forward in Committee.

Q323 Matthew Pennycook: Okay. I may come back to some other specific issues if we have time, but specifically on insurance, the Financial Conduct Authority's report of September last year on insurance for multi-occupancy buildings found evidence of high commission rates and poor practice, which were

"not consistent with driving fair value to the customer".

It also found that the mean absolute value of commissions more than doubled between 2016 and 2021 for managing agents and freeholders of buildings with fire safety defects. Is it not fair to say that, again, many, if not all, of your members have benefited hugely from soaring buildings insurance premiums over recent years, so do you think the Government are entirely justified in seeking by means of clause 31 to limit their ability to charge insurance costs?

Jack Spearman: In terms of insurance premiums, they have generally all risen, for a number of reasons that you will be aware of, whether that is cost inflation, inflation generally or insurance premium tax. Let us not forget that the Government benefit from a lot of these things, and they are all rising at the same time.

What I would say is that there is merit in making sure that people who are actually providing services to administer the insurance work have some form of compensation for what they are doing. If the insurance premium was to double because there is an issue with cladding, why should someone take the benefit of that? The same could be said for remediation projects, for example, where VAT is paid. But, yes, I agree that a measured form of that would be helpful. The problem with the Bill currently is that it leaves all of that to secondary legislation, as you know. It would be helpful to see the primary legislation set out how that might work, and that is one of our recommendations.

Clearly, our members do a lot of work on insurance, whether that is administering claims, dealing with inquiries or sending out invoices to collect the insurance premium over hundreds of people—it is a job that someone has to do. It could be risk management, so telling the insurer what is on the building. You would be amazed to see how many insurers that our members deal with offer to insure a building without knowing what is on it. When we tell them what is on it and what is in it, a very different type of cover can be offered. So there is value, contrary to what people will say, although I do accept, clearly, that, like in any system, there are bad practices.

Q324 Matthew Pennycook: Just briefly while we are on that, have you got any sense of whether your members are complying, or are prepared to comply, with the new FCA rules that are coming into force at the end of this month with regard to the right to request to see the insurance?

Jack Spearman: Again, our members have always been of the view that the insurance is for the benefit of leaseholders. They provide the cover, and they provide the certificates; it is something that we have all been doing for a large number of years. So, yes, we do, and those that do not will obviously have to anyway under the FCA regulations.

Q325 Andy Carter: Thank you very much for your written submission to us. You say in there: "The RFA has serious concerns that the Government's proposals to cap ground rent will lead to significant cost to the UK taxpayer…and have…negative consequences for leaseholders" What are the costs for UK taxpayers of this piece of legislation?

Jack Spearman: One of the key and largest impacts of this Bill has not even been considered yet, because it has not been introduced. Some form of restriction on ground rent is going to be introduced at some point as an amendment. You are being asked to scrutinise a piece of primary legislation that does not have a number of impacts in it—for example, setting capitalisation rates, deferment rates and dealing with ground itself. So you are scrutinising something that is incomplete, and the impact of which none of us here know.

Going to the taxpayer point, the Government say that no compensation will be paid, but unfortunately they also know that that is probably not going to be compliant with the European convention on human rights. Compensation is going to have to be paid, and it is either paid by the taxpayer or the leaseholder. That is what we mean by that.

Q326 Andy Carter: Okay. In terms of the Bill setting out regulation for property managers, we heard from the Competition and Markets Authority earlier, and it has found significant areas of concern within this sector. Do you accept that it is an area that needs regulation and that there are bad practices at play here?

Jack Spearman: One hundred per cent. We actually wrote to the then Secretary of State in 2018 and asked for a voluntary code of practice, which was in the leaseholders pledge in 2019.

Q327 Andy Carter: Do you think a voluntary code is sufficient?

Jack Spearman: Sorry, this is back in 2018 and 2019, when we were trying to get the Government to engage and we thought that the idea of some form of regulation was better than none. We fully support the introduction of the regulation of property agents working group, and Mr Pennycook's amendments would see measures within 24 months. I think that is a good start. But, yes, broadly, like everyone else, we are saying, "Regulate the sector." We are all tarred by the poor actors, ultimately.

Q328 Andy Carter: I note that you use the term, when we are talking about capping rents, that it will send "a very damaging signal" to investors. Is that still your opinion—that investors are getting the wrong message from Government?

Jack Spearman: It is hard not to get the wrong message when the Government have said that they—

Andy Carter: Is this not the right thing to do? When you look at the practice that has been going on and the evidence that is there—the mis-selling and appalling behaviour—

Jack Spearman: I think there are two things. Where ground rents are onerous and egregious, it is hard to say that there is not an argument for legislating to deal with them. When it comes to ground rents that are not doubling more frequently than 20 years, I think that is slightly harder.

The point about investments is that, in the same week the Government announced £29 billion of investment from pension funds into UK plc, they announced a consultation that could see a value transfer of £29 billion away from UK pension funds through the ground rent consultation. The general living sector, and building houses in this country, needs capital, and that needs to come from somewhere. There were reports over the weekend from Savills, for example, that £250 billion are required to meet housing demand in this country. Where is that going to come from? It is going to come from pension funds.

So this is, unfortunately, sending the wrong signal, and I think the Government are aware of that—we have certainly made those representations directly and to other Departments.

Q329 Barry Gardiner: I want to pick up on what Mr Carter said and your insistence that capping rents was sending the wrong signal to pension funds. I trust you are aware of the statement from the Pensions and Lifetime Savings Association that said that pension funds aggregate allocation to all types of property—commercial as well as residential—and that accounts for 4% of all pension holdings, and that none of their members have expressed any concerns with them about proposed changes to rules affecting leasehold and ground rents. Were you aware of that?

Jack Spearman: Yes, I know where that came from.

Barry Gardiner: Well, it came from the Pensions and Lifetime Savings Association.

Jack Spearman: I would advise you to go and ask them again, because the pension funds we are talking about have made representations directly to the Government.

Q330 Barry Gardiner: If we are talking about, "Directly to the Government", the Government's own statement noted that the pension funds held less than 1% of assets in residential property, and added that any hit to pension funds would be within normal investment and depreciation tolerances. They said:

"We do not think it is fair that many leaseholders face unregulated ground rents for no guaranteed service in return."

So the idea that you seemed to put out—"My goodness, the housing market was going to collapse because pension funds were not going to invest in property any more because they weren't going to be able to extract the ground rents"—is a nonsense, is it not? You talked about £100 ground rent, but you know what is being done here. Your members are not limiting to £25 or £100 ground rents or peppercorn rents. Over the past 15 years, they have created a rentier structure wherein they can extract revenues from the ground rent that are exorbitant—in some cases, £8,000 a year for no service. Is that not true?

Jack Spearman: You make a couple of points there. First, you seem to be suggesting that it is okay to steal the chocolate bar from the shop because it is only 1% or 2% of the stock—it is still not okay. The second thing I would say is that—

Q331 Barry Gardiner: Nonsense. Justify the word "steal". I would say the word "steal" is justified when there is no service being provided, and yet you are charging for it, even if it is only a chocolate bar.

Jack Spearman: I can come on to the service provided. Ground rent is a consideration as part of the lease and the premium. You are right to say that, technically—legally—the ground rent does not afford service. But we would say that, through our members, a huge amount of work gets done as a result of that ground rent and as a result of pension funds having invested in it. Take the Building Safety Act 2022, for example—remediation, fire safety audits and building safety audits are all undertaken at no cost.

Q332 Barry Gardiner: Remediation—because the freeholder did not ensure the proper safety of the building in the first place.

Jack Spearman: I disagree with that.

Q333 Barry Gardiner: Mr Spearman, since we have limited time, let me turn to what you are saying to the members of the public. You have engaged in a number of polling operations. You have told people that only 1 in 4 people in a block would be able to agree with each other about how to manage that block. The implication is that many leaseholders do not want to take on the burden of management and, actually, some of them are incapable of taking on that burden of management—almost as if you are providing them with this wonderful service that they would not want to get rid of. But the figure of 1 in 4 people that you quoted in your survey was 1 in 4 people in the United Kingdom, and not leaseholders at all, was it not? It included people in Scotland who are not involved in the provisions of leasehold in England and Wales. So you went out to people who had no connection as leaseholders and surveyed them, and then claimed that was an argument.

Richard Fuller: On a point of order, Dame Caroline. I am wondering whether my colleague, Mr Gardiner, is getting to a question rather than just expressing a view.

Barry Gardiner: I just did, but you interrupted.

The Chair: We do have very limited time, Barry, and other people want to ask questions, so can you bring it to a question swiftly?

Barry Gardiner: Indeed. Mr Spearman, you have misled people in the polling surveys and the conclusions you have drawn from them, have you not? Your own members—Consensus Business, Long Harbour and Wallace Estates—did surveying in which they found that 67% of residential leaseholders said that they would wish to take control of their building and get out from under you, but you suppressed that, did you not?

Jack Spearman: We have never said that people are incapable of managing their building—absolutely not. The desire to do so diminishes with the complexity of the building. I am sure you have seen the Government's own survey on living in shared buildings. You heard from Professor Steven this morning in Scotland about the issues with the system in Scotland—

Barry Gardiner: A manager who works for a freeholder can be no different from a manager who works for an enfranchised set of leaseholders, can it? So the idea that the complexity is beyond the leaseholders is simply not a fair comparison.

The Chair: Order. We have time for only one more question, Barry. Can I move on to Richard Fuller, please?

Q334 Richard Fuller: Perhaps Mr Gardiner will call a point of order on me. I have been talking about this transfer of value. There are non-monetised here, but there is £1.9 billion of transfer. I think we have accepted from previous witnesses of all types that it is a political decision, but it is essentially taking from group A to group B. You just, I think, said there were ground rents that are not enumerated here, and I think you said they were not £1.9 billion, but £29 billion or £30 billion. Could you elaborate on that?

Jack Spearman: This is a bit of an issue we have with the way the impact assessments have worked, because the impact assessment for the leasehold and freehold Bill did not take consideration of the consultation impact assessment that came out on ground rent. They are not working together. That is part of the issue of you not being able to scrutinise the impact assessment within the ground rent consultation, where the Secretary of State is on record as saying he wants a peppercorn ground rent; in that it says the impact would be £27.7 billion. If you add that to the £3.2 billion in the Leasehold and Freehold Reform Bill impact assessment, that is where you get to.

Q335 Richard Fuller: So just to be clear, as the Committee considers this Bill, including what may come from subsequent secondary legislation, it is not £1.9 billion of transfer, but £1.9 billion plus £28 billion. Is that fair? So we need to bring it all in, not just—

Jack Spearman: I think it is a bit more, actually. Is it not £3.17 billion in this one?

Richard Fuller: Exactly—you have added them all up. I just did the first section.

Jack Spearman: Indeed.

Richard Fuller: But a bit like an iceberg, the transfer of wealth from group A to group B is somewhere else; it is not here in the impact assessment.

Jack Spearman: Agreed. Also, in terms of the people it is being transferred to and from, remember that while a lot of leaseholders are homeowners, there are also a lot of buy-to-let investors in that group—over 50% in our membership, of leaseholders are buy-to-let investors. That is a transfer from business to business being overseen by this Bill.

Richard Fuller: Very good. Does anyone else want to come in? I had another question, unless we have no more time.

The Chair: We have until half-past three.

Q336 Richard Fuller: Can I ask you about the discount rates that are used? We have the deferment rate and the capitalisation rate. Those will be determined in secondary legislation as well. Do you have any thoughts about what guidance should be given to the Minister about how those should be set?

Jack Spearman: Yes. It is very important that, at the very least, the primary legislation sets out what reference the Minister should look to—something dynamic would be helpful, so that you don't have these ridiculously long periods of time where one party is out or in. I think people have talked about looking at some long-term ideas, whether that is the National Loans Fund rate or the longest Treasury gilt. You obviously don't want to make it too dynamic, so that it is always shifting around, but I think it should clearly reflect market value. It should be done on a no-act principle. It should be enabled to be dynamic so that, as I said, you do not have this problem of the Secretary of State having to arbitrarily change it—it should be able to move with the market. It should be something that is available for reference.

The Chair: Thank you. That brings us to the end of that session. I thank our witness on behalf of the Committee.

Examination of Witness

Giles Grover gave evidence.

The Chair: We will now hear oral evidence from Giles Grover from End Our Cladding Scandal. He is coming to us via Zoom. For this session we have until 3.50 pm. If the witness can hear me, can he please introduce himself for the record?

Giles Grover: My name is Giles Grover from the End Our Cladding Scandal campaign, which represents leaseholders in unsafe buildings across the country. I will tell you about the background if you don't mind. In early 2019 we formed a coalition of leaseholder resident groups across the country. I represent leaseholders in close to around 2,000 buildings. Personally, I have been a leaseholder since 2008. I became a director of the residential management company in my building in 2010. I was first told my home was unsafe in August 2017 and I have been heavily involved in the cladding and building safety scandal since then, where it has particularly been clear that the nature of leasehold law has played an intrinsic part in the delays to our homes being made safe.

Q337 Mike Amesbury: What are the main implications of the Bill for remediating residential buildings? There are some good things in it, Giles. What is missing in it?

Giles Grover: There are some good things for leaseholders in general. There seem to be some better things than there were. Part of the problem is that we still do not have full clarity in terms of what the legislation will look like in its final form, and supporting legislation, so it is quite difficult to comment.

On building safety amendments, I am afraid to say I don't really know what is in there. I have seen that the Opposition have tabled a couple of amendments—new clauses 27 and 28—as a starting point. However, we have been lobbying the Government, meeting the Government, speaking constantly almost on a daily basis, and having regular meetings pushing for further protective measures to make the Building Safety Act operate as intended; but I cannot really see anything there. I have seen a press release saying, "We will apportion leases," which is something we raised with the Secretary of State a long time ago. I am talking about enfranchised buildings as well. But as it stands, I am still waiting for the Government to bring forward some building safety amendments that will mean that the homes that are unsafe, many of them unsafe for six and a half years, will be finally fixed at pace—at the pace we need and the pace we deserve.

Q338 Mike Amesbury: There is provision to strengthen accountability in terms of remediation and freeholders and ensure that there is more accountability for liabilities. Are the provisions strong enough at the moment?

Giles Grover: Not yet. Again, I had a look at the 140-page Bill and it did not say anything about developers. It talks a lot about the freeholders, but I cannot see anything that will mean that those freeholders will now crack on with making our buildings safe at pace. I cannot see anything that says what the mechanisms will be to oversee that. I fear that the reality on the ground is that the freeholders are still focused on mitigating their own liabilities. Historically they have taken years, for example, to sign grant funding agreements. They have delayed work starting on site. We are seeing those same things happen with developers now.

On a wider point, the Building Safety Act came into play on 28 June 2022. We are now looking at amendments that will make it operate as intended. So I think there needs to be a raft of amendments from the Government. Some of the stuff we have been talking about in terms of their ongoing policy thinking, but ultimately one of the simple things is that we still have too many leaseholders ruled out of protection. We still have too much uncertainty on the ground. So in the King's Speech, the paragraph that talks about making it operate as intended has a heck of a lot of heavy lifting to do. I need to see the detail before I can say whether it will work or not. I fear, based on my experience, that it is unlikely to be the case.

Q339 Mike Amesbury: One final question. Do you think there should be an amendment to extend the scope of the Building Safety Act, because of the interplay with leaseholders? There are literally hundreds of thousands now excluded from the Act, including buildings below 11 metres and where there might be more than three properties.

Giles Grover: As I said, the new clauses that have been tabled would go some way toward ensuring that those non-qualifying leaseholds for more than three properties are treated the same as qualifying leaseholders. The buildings that the Government currently deem irrelevant because they are under 11 metres would be made relevant.

It is worth just setting the scene. I gave evidence to the Public Bill Committee on the Building Safety Bill in September 2021, and there was a lot of talk of, "We'll do this, and we'll do that. We'll definitely protect you." We then saw a raft of legislation come out from 14 February 2022. The problem is that it is all very high level and complicated. Some people might get some protection and some people might not. We are all the innocent victims of this scandal. It shocks me that despite the Secretary of State saying on 10 January 2022 that we are shouldering a desperately unfair burden and that industry will pay, two years later I am still talking to Public Bill Committees about what more needs to be done. It is all too slow.

Q340 Andy Carter: I am very conscious that you are a different type of witness to the others we have been hearing from today and we are talking about the cladding scandal. It is very helpful to get your insight on this. I would like to pick up on the questions that Mike has asked you. It would be very helpful if you could be as specific as you can. What is missing from the Bill that you think is a real priority for people who are in a position where they are in a leasehold property and cannot sell because of issues relating to cladding and remediation?

Giles Grover: There are quite a few things missing. The first thing to say is that what you should really do is say that there are no more non-qualifying leaseholders or people who are being arbitrarily ruled out of help. You could do that as an amendment to the Bill. From some of the ongoing campaigning and lobbying that we have done, particularly with the Levelling-Up and Regeneration Act 2023, we fully recognise that the Government do not necessarily want to protect everyone. The problem is that they have spent far too long apportioning liability and talking in theoretical terms. There are still too many ordinary people that are not protected.

Going into the specifics, if there is not the willingness to say, "Okay, we will protect all the victims of this scandal"—which you really should be doing—what we need to do is say, "How can we better protect the ordinary people who still aren't protected but who the Government say that they want to protect and should protect?". That goes back to the conversations being had with the Department and the amendments that have been tabled about extending property protection to the first three properties of all leaseholders, because that would mean that everyone is treated fairly, and about apportioning ownership, which the Government have said they will do in this Bill, to make sure that the marriage penalty, as it is known, will be done away with.

There is one other point about the distinction of where it is in perpetuity for non-qualifying leaseholders. It is very worrying. For the non-qualifying leaseholders we speak to, it is literally hanging over their necks for the rest of their lives. Even if the building gets remediated and even if it is assessed as safe, they are still treated as non-qualifying leaseholders. One element I forgot to mention is that there is a potential portfolio-size amendment that was tabled to the Levelling-Up and Regeneration Act that we hope the Department is looking at closely.

Again, all leaseholders should be protected. If there is not the will for that, which there really should be, we need to do more to make sure that the protections as they are protect more people. I could go into a lot more detail, but I do not know how much you want.

Q341 Andy Carter: That is very helpful. Thank you very much. Do you have any views on the requirements for regulation of building managers?

Giles Grover: I have a lot of views on that area. Part of the issue was that under the Building Safety Act there were building safety managers in place with certain duties. At the last minute, that legislation was moved away from, but those duties still exist. A lot of the high-rise buildings that have registered with the Building Safety Regulator are facing enormous costs of compliance, and there are real fears about the work that will need to be done. We are seeing bills land on our doorstep all over again. I got one—thankfully, I am a residential management company director and can challenge it more—with an estimate of £500 a year extra per leaseholder to comply with the Building Safety Regulator if we had not moved away from some of the strange costs that were in there.

I have seen that for other buildings: leaseholders who have just got the freehold have suddenly got a demand saying, "You are also going to have to pay for compliance with building safety." It is very worrying and strange that the innocent leaseholders we are meant to be protecting are now going to have to pay, but just in a slightly different way, to ensure the safety of the buildings that should have been made safe and should be maintained. Fire doors are another example that I could really get into, but I only have 20 minutes so I will hand back to you.

Q342 Matthew Pennycook: Giles, thank you for giving up your time to come and speak to us. I want to follow up on Mike's and Andy's questions. You may have said everything you can say about what you would like the legislation to do, but if you have some more detail it would be useful.

Mike and I tabled new clauses 27 and 28 to address some of the "in principle" issues we have been pushing for a long time on—qualifying and non-qualifying leaseholders and building height. Specifically, in terms of what the Government might feasibly bring forward, what is your experience from cases across the country of the operational elements of the Building Safety Act that are not working effectively? I am just trying to get from you a more realistic sense of what you might expect the Government to bring forward, in terms of extending this Bill to ensure the Building Safety Act operates as intended. What tweaks to the Building Safety Act are required, in as much detail as you can in the time you have?

Giles Grover: One of the major tweaks is on an issue we were first made aware of in November 2022 due to the residents of a building in Greater Manchester being forced to pay for interim measures. The council is now paying for those interim measures but it has been told that it cannot recover them through the Building Safety Act because the legislation is not in place. That is a simple one that could help.

You could ensure that resident management companies and right to manage companies can raise the legal costs where they might be needed in respect of building safety and relevant defects. There are some wider elements that are already in the Bill, in terms of stopping freeholders re-charging their legal fees. Our concern is whether that will protect non-qualifying leaseholders who are still being forced to pay fees.

This is where I can get into the specifics. I am no lawyer as such—you have had a lot of very intelligent people on before me—but I say this from the campaigning aspect of it. We need to see a fair bit more detail about exactly what happens when a freeholder is avoiding their liabilities and not giving a landlord certificate within the stated time period. The Government may tell us, "Oh, don't worry. That means they can't pass the costs on," but theoretically I cannot sell my flat without that certificate because the conveyancer is asking for it, so why not have an express duty for them to provide it? To be completely frank, the whole landlord certificate/leaseholder certificate process is an absolute quagmire and a nightmare on the ground. I would personally prefer it if the Government did away with that.

There are lots of issues like that. There are points about court-appointed managers, which cannot be the accountable person, which seems quite strange to me. We have been told that there is another route through the Building Safety Regulator, but that would require the special measures manager legislation to be enforced. There are issues with shared owners in complex tenures where you have a housing association as the head leaseholder. Will they be protected from all costs? Will they have the same rights as all leaseholders?

Philosophically, the simplistic approach should be that you have the full protection. New clauses 27 and 28 would be a massive relief. It is then a case of whether legislation is needed or whether you can use the current measures. With the developer scheme, where it is for over 11-metre buildings—could that be extended to under 11-metre buildings? The cladding safety scheme is now for mid-rise buildings; could that be extended for low-rise buildings? Could the cladding safety scheme be extended to become a building safety scheme?

For a lot of this the pushback will be, "There is not enough money," but there is money out there. There is money that can be got from industry. There are further parties, such as construction product manufacturers and providers, and the Secretary of State said they would make them pay two years ago; they have not paid yet. There are a lot more parties that could be brought into the pool. So operationally there is more they could do by saying, "We've got seven different funding schemes;" —or however many it is—"where is the oversight of all of them? Who is talking to each other? Are these regulators? How does DLUHC talk to the recovery strategy unit? Are they talking to the Building Safety Regulator? Is Homes England involved? The local regulators now have new money to take action; are they taking action?"

So, arguably, a lot of it is already in place; but what is needed is the comprehensive oversight and the proper grip to say, "Right: all these buildings—10,000 of them—are going to get fixed. This is how—this is where the money is coming from. Cladding costs are here. Non-cladding costs will come from there." What you really need to do is put the money up front, recover it. The Government say that their leaseholder protections mean that the majority of leaseholders won't have to pay. If they have got the confidence in their legislation then they can take over the burden from leaseholders.

Q343 Barry Gardiner: First, may I declare an interest? I am not sure whether it is necessary, but our witness Mr Grover participated in a documentary that I am making about leaseholds, so we have a knowledge of each other. First, Mr Grover, thank you for all the campaigning that you and your colleagues in End Our Cladding Scandal have done; it has been magnificent over the past few years.

You raised the issue, in response to Matthew Pennycook's questions, of section 24 of the Landlord and Tenant Act 1987 and applying for an officer of the court to be installed to do the works and turn around a building. Clearly, it would be something much to be wished, for many people who found themselves involved a building safety issue, if they were able to do that. Related to that, I know you are aware of the Building Safety Act 2022 ban on section 24 managers being the accountable person.

This is a matter we have discussed with a number of witnesses such as yourself. Are you aware that at one development, the management control regarding safety and remediation was given back to a freeholder who was the one who took, the tribunal found, £1.6 million in insurance commissions unreasonably? They will now be handed £20 million because of that BSA anomaly, by the Government. So the very people who could not be trusted with money are now being given £20 million to remedy the defects that they were responsible for in that building.

Giles Grover: I am very aware of it. I have watched some of the sessions, and I was made aware of it last year by one of the leaseholders at that building. I have looked into this. I have had various conversations with various lawyers. It still just seems bizarre that the manager who has been appointed by the court cannot be the accountable person. I am just a simple man: I do not understand why that cannot happen—why the Government, or the judge, based upon the legislation that is out there, think it is a reasonable or positive outcome for that money to go back to that rogue landlord, shall we say. I do not get it, to be honest.

Q344 Barry Gardiner: Have you come across cases like one that I have in my constituency? It was a co-development between St Modwen and Soucrest, but when the provisions that the Government put in place came into force, they changed to Wembley Central Apartments Ltd. That name was then changed to Wembley Residential Ltd, and they now have their offices at, I think, Cricket Square, Grand Cayman in the Cayman islands. Do you have other examples of the ways in which freeholders are using company law to avoid their obligations under this Act and in fact relocating to jurisdictions outwith the UK?

Giles Grover: Yes. I only have 20 minutes, so I will try to be brief. I could spend all day talking about that. I have had personal experience of that in my building. Our developer sold the freehold out from under us to an offshore freeholder who, one year before the building safety crisis took effect, said they did not want to sell the freehold because they were long-term investors. A year or so later they said, "Okay. We are transferring it to another company. Do you want to buy the freehold off us?" Because they saw—

The Chair: Order. I am afraid that brings us to the end of the allotted time for the Committee to ask questions, and indeed for this afternoon's sitting. I do apologise to the witness, but I thank him very much on behalf of the Committee. The Committee will meet again on Tuesday to begin line-by-line scrutiny of the Bill.

Ordered, That further consideration be now adjourned. *—(Mr Mohindra.)*

3.50 pm

Adjourned till Tuesday 23 January at twenty-five minutes past Nine o'clock .

Written evidence reported to the House

LFRB35 Jones Lang LaSalle (JLL)

LFRB36 Darren Pither

LFRB37 WIQ Residents Association

LFRB38 Residential Freehold Authority (RFA)

LFRB39 Professor Christopher Hodges

LFRB40 Free Leaseholders

LFRB41 Business LDN

LFRB42 Joint submission from Grosvenor Property UK, Cadogan, Church Commissioners for England, Related Argent, Calthorpe Estate, and John Lyon's Charity

LFRB43 PCRA (Park Central Residents Association)

LFRB45 Law Society

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

LEASEHOLD AND FREEHOLD REFORM BILL

Fifth Sitting

Tuesday 23 January 2024

(Morning)

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No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor's Room, House of Commons,

not later than

Saturday 27 January 2024

The Committee consisted of the following Members:

Chairs: Dame Caroline Dinenage, † Clive Efford, Sir Mark Hendrick, Sir Edward Leigh

† Amesbury, Mike *(Weaver Vale)* (Lab)
† Carter, Andy *(Warrington South)* (Con)
† Davison, Dehenna *(Bishop Auckland)* (Con)
† Edwards, Sarah *(Tamworth)* (Lab)
† Everitt, Ben *(Milton Keynes North)* (Con)
† Fuller, Richard *(North East Bedfordshire)* (Con)
† Gardiner, Barry *(Brent North)* (Lab)
† Glindon, Mary *(North Tyneside)* (Lab)
† Hughes, Eddie *(Walsall North)* (Con)
† Levy, Ian *(Blyth Valley)* (Con)
† Maclean, Rachel *(Redditch)* (Con)
† Mohindra, Mr Gagan *(South West Hertfordshire)* (Con)
† Pennycook, Matthew *(Greenwich and Woolwich)* (Lab)
† Rimmer, Ms Marie *(St Helens South and Whiston)* (Lab)
† Rowley, Lee *(Minister for Housing, Planning and Building Safety)*
† Smith, Chloe *(Norwich North)* (Con)
† Strathern, Alistair *(Mid Bedfordshire)* (Lab)

Huw Yardley, Katya Cassidy, *Committee Clerks*

† attended the Committee

Public Bill Committee

Tuesday 23 January 2024

(Morning)

[Clive Efford *in the Chair*]

Leasehold and Freehold Reform Bill

9.25 am

The Chair: Before we begin, I have a few preliminary reminders for the Committee. Please switch electronic devices to silent. No food or drink is permitted during sittings of the Committee, except for the water provided. *Hansard* colleagues would be grateful if Members could email their speaking notes to hansardnotes@parliament.uk or, alternatively, pass their written speaking notes to the *Hansard* colleague in the room.

We will now begin line-by-line consideration of the Bill. The selection list for today's sitting is available in the room and shows how the selected amendments have been grouped for debate. Amendments grouped together are generally on the same or similar issue. Please note that decisions on amendments take place not in the order in which they are debated, but in the order in which they appear on the amendment paper. The selection and grouping list shows the order of debates. Decisions on each amendment are taken when we come to the clause to which the amendment relates. Decisions on new clauses will be taken once we have completed consideration of the Bill's existing clauses. Members wishing to press a grouped amendment or new clause to a Division should indicate when speaking to it that they wish to do so.

Clause 1

Removal of qualifying period before enfranchisement and extension claims

Question proposed, That the clause stand part of the Bill.

The Minister for Housing, Planning and Building Safety (Lee Rowley): It is a pleasure to serve under your chairmanship, Mr Efford. Today, we begin our line-by-line consideration. I first want to note and put on record my thanks to all the witnesses who gave evidence to the Committee last week. It was hugely useful to hear their insights, which will improve the Bill over the coming days and weeks ahead.

I am delighted to bring the Bill to Committee, and I look forward to the debate that will follow. Before we proceed, I quickly draw the Committee's attention to a minor issue regarding the Bill's explanatory notes. Paragraph 18 refers incorrectly to the right

"for an intermediate landlord to reduce ('commute') the rents that they pay"

following statutory lease extensions and ground rent buy-out claims. That is a drafting error as the clauses were not in the Bill when introduced. I have since tabled an amendment to introduce those clauses on intermediate leases, which we will debate shortly. I apologise for that minor drafting error and reassure the Committee that the explanatory notes will be updated to reflect the latest clauses before the Bill enters the other place.

I also want to make a small point in relation to legal language that I will use throughout the session. In existing legislation, leaseholders are referred to as "tenants", which legally, they are. In everyday language, however, we often use the term "leaseholders" to differentiate long leaseholders from tenants holding shorter tenancies or those with less security of tenure. For simplicity, I will use the term "leaseholders". Likewise, I will use the term "landlord" to mean both landlords and freeholders. In many cases, the landlord will be the freeholder, although that is not always the case. Where the provisions concern freeholders, I will use that term rather than "landlord".

I now turn to part 1, which deals with leasehold enfranchisement and lease extension. When people buy a leasehold property, they will want to ensure that they have the long-term security and control they need to make it a home. They may have a short lease and wish to extend it, or they may have concerns about their landlord and wish to buy them out to have full ownership and control of that home.

The current requirement, where a homebuyer has to wait for two years before they can extend their lease or buy their freehold, is an obstacle for leaseholders and results in higher costs, as the price for enfranchising increases year on year. Furthermore, many investors take advantage of a loophole to avoid that requirement, while ordinary homeowners, who may be less familiar with the process, can find themselves in difficulties. There are also inconsistencies in the current law where, in certain circumstances, people can rely on a previous owner's period of ownership to satisfy the requirement whereas others are unable to do so.

Clause 1 seeks to remove that barrier to leaseholders who wish to exercise their enfranchisement rights. It removes the requirement to have owned the lease of a house for at least two years before qualifying to buy their freehold or extend their lease. It also removes the requirement to own the lease of a flat for two years before extending the lease. This gives leaseholders the flexibility to make a claim immediately upon buying a leasehold property, and it will reduce their costs. It also resolves inconsistencies in the current law. The measures will remove an unnecessary restriction for leaseholders. I commend the clause to the Committee.

Matthew Pennycook (Greenwich and Woolwich) (Lab): I thank the Minister for his explanation of clause 1. I add the Opposition's thanks to the witnesses who gave evidence to us last week. It was extremely useful. Before I begin, I would like to declare an interest. My wife is joint chief executive of the Law Commission, whose work we will be debating extensively in the days to come.

It is a pleasure to start line-by-line consideration with you in the Chair, Mr Efford. It is a genuine privilege to serve on a Public Bill Committee comprised of hon. Members who have not only a real interest in the subject matter, but real expertise. It is my sincere wish that we draw on all of it in the days ahead to improve this legislation and, as much as the Government Whip may discourage it, that hon. Members on the Government Benches, including the hon. Members for Walsall North and for Redditch, as former Housing Ministers, take the opportunity to participate actively in our deliberations.

Having not had a suitable chance to put it on the record, I would like to take this opportunity to formally welcome the hon. Member for North East Derbyshire back to his place. He and I disagree politically, often viscerally, when it comes to many, many issues, but he is a hard-working, diligent and thoughtful Minister. I look forward to the robust and, on the whole, constructive debates we will have over the coming sessions.

Before I turn to the detail of clause 1, I want to put some brief general remarks on the record to frame what is to follow. As we made clear on Second Reading, we are fully in support of the principle of the Bill and the intent behind its provisions. The range of measures that the Committee will consider will, without question, provide a degree of relief to leasehold and freehold homeowners in England and Wales, by giving them greater rights, powers and protections over their homes. That is obviously to be welcomed. However, during Second Reading we also expressed our deep regret about the Bill's lack of ambition and bemoaned the implications for leaseholders, who are being routinely gouged by freeholders under the present flawed system.

I want to be as clear as I possibly can with leaseholders who may be following our proceedings as to the Opposition's approach to the Committee stage. While we welcome in principle the provisions contained in the Bill, we do have concerns about the efficacy of several of them, including clause 1. As such, we will seek to probe and rectify their various defects and deficiencies so as to ensure that they truly deliver for leaseholders. We will also engage constructively with the Government in relation to any significant new measures introduced into the Bill, not least the glaring omission of provisions designed to ban the sale of new build leasehold houses. We will introduce a number of specific targeted measures designed to give leaseholders a little more control over their future and strengthen the foundations on which future, bolder reform will be enacted.

What we do not intend to do is attempt to persuade the Government of the benefits of using this Bill to enact all, or even significantly more, of the hundreds of Law Commission recommendations on enfranchisement, right to manage and commonhold, which the Government have chosen not to include in this Bill. The Government had the opportunity to bring forward ambitious legislation and enact all the Law Commission's recommendations from its three reports in 2020, thereby delivering on the promises that successive Ministers have made to leaseholders over the past years. They have made the political choice not to do so. Attempting to radically overhaul this piece of legislation by means of hundreds of amendments required to implement all those recommendations would not only be an onerous, perhaps impossible, undertaking, given its limited nature, but would delay the Bill's passage and, with a general election in the months ahead still a distinct possibility, put it at risk entirely.

We want leaseholders to benefit from the measures in the Bill as soon as possible. We therefore wish to see it, albeit suitably strengthened, out of Committee as quickly as possible to maximise its chances of receiving Royal Assent. Make no mistake, Labour is committed to bringing the current iniquitous leasehold system to an end, overhauling it to the lasting benefit of leaseholders and reinvigorating commonhold to such an extent that it will ultimately become the default and render leasehold obsolete. Leaseholders across the country therefore have our firm commitment to finish the job in due course.

Turning to clause 1 and the rest of part 1, one of the reasons that the Bill can reasonably expect a speedy passage out of Committee is that parts 1 and 2, together with related schedules, implement a subset of Law Commission recommendations that are almost entirely uncontentious. Part 1 of the Bill, as the Minister has said, concerns leasehold enfranchisement and extension.

As I have said, the clauses in this part implement some but not all of the Law Commission's recommendations designed to make it cheaper and easier for leaseholders in houses and flats to extend their lease or acquire their freehold. They include procedural changes as well as substantive ones that extend tenant rights and empower leaseholders by giving them greater control and value. There is in that respect, and as we touched on during the evidence sessions last week, an explicit and very welcome redistributive intent that underpins the legislation.

As the Law Commission exhaustively detailed in its final 2020 report on leasehold enfranchisement, the case for reforming the present enfranchisement regime is incontrovertible. It is not only incredibly complex but inconsistent. As a result, leaseholders face unnecessary litigation, uncertainty and costs when attempting to exercise their rights under it. The law in this area needs to be overhauled and we therefore welcome the objective that underpins each of the provisions in this part.

We wish to probe the Government further on various issues relating to the precise drafting of those provisions, as well as seeking to address the flaws of a limited number. As the Minister made clear, clause 1 removes the two-year qualifying period before enfranchisement and extension claims can proceed in respect of both houses and flats by amending the relevant sections of the Leasehold Reform Act 1967 and the Leasehold Reform, Housing and Urban Development Act 1993, which I will hereafter refer to simply as the 1967 and 1993 Acts.

Clause 1 implements recommendation 29 from the Law Commission's final 2020 report on leasehold enfranchisement. We welcome the clause. A core objective of the Bill is to increase access to enfranchisement by rendering more leaseholders eligible for such rights. By liberalising this and other qualifying criteria, we are confident it will achieve that objective.

As the Committee is no doubt aware, the current two-year ownership requirement was designed primarily to prevent investors benefiting from enfranchisement rights intended for residential leaseholders. Yet it is patently not achieving that objective given the relatively simple workarounds that sophisticated commercial investors can and do take advantage of. Indeed, the requirement can fairly be said to have created a market designed explicitly to facilitate their doing so—a development entirely at odds with the rationale for the two-year ownership requirement. At the same time, that requirement presents a significant barrier to ordinary leaseholders exercising enfranchisement rights and, importantly, leads to rising premiums for many of them as a result of waiting for two years in which capital values may have increased or lease lengths reduced.

Abolishing the requirement for leaseholders to have owned premises for two years prior to exercising enfranchisement rights, so that they have the right to carry out an enfranchisement claim as soon as they acquire their lease, is an entirely sensible reform. It would also resolve the current inconsistency between the position

[Matthew Pennycook]

of trustees in bankruptcy and of personal representatives, and avoid the technical, costly and error-prone workarounds that have been created involving the assignment of a benefit of notice.

Although the clause is entirely uncontentious from our perspective, I do have one question for the Minister: why have the Government chosen to include subsection (2)(c) and, consequential on that reform, subsection (3) in this clause? Subsection (3A) of section 39 of the 1993 Act concerning what happens in the event of the death of a qualifying tenant clearly needs to be overhauled to account for the removal of the two-year qualifying period, but surely the Government wish to ensure that the right of a tenant's personal representative to exercise enfranchisement rights on their behalf in the event of their death is sustained? Will the Minister confirm whether I am right in believing that that is the Government's wish?

If so, given that the right would not appear to be sustained as a result of the drafting of clause 1, is it maintained by means of other provisions in the Bill? If not, surely the Government must accept that the decision to simply omit the relevant subsection (3A) needs to be reconsidered to ensure that the right is maintained in future? The omission may affect only a small number of leaseholders going forward, but it is important that we ensure their personal representatives are conferred the rights that they would have enjoyed had they lived. I look forward to the Minister's response.

Lee Rowley: First, let me echo the remarks of the hon. Member for Greenwich and Woolwich. He said some kind words about me and I would like to say the same about him. He has always been extremely constructive and helpful. We share the aim of trying to improve the legislation and I am grateful to be working with him. I hope we can work in many areas and agree more than we disagree. He was right when he said that this is incredibly complicated. Having tried for the past two months to get into all the details, there may still be areas where I am unable to answer all the questions from hon. and right hon. Members today. I will do my best, but I will write to them if I am unable to answer anything.

I am grateful to the hon. Gentleman for confirming that Labour will support this clause. On his specific point around where leaseholders have sadly passed away and there is a requirement for a personal representative or equivalent, it is not our intention to make that process any more difficult or to change the fundamental ability of people to make decisions about how to dispose or deal with properties that are left in the event of a death. Having spoken to officials and those involved in the drafting of this, my understanding is that the exemptions referred to in subsections (2)(c) and (3) become effectively moot. The removal of the two-year rule preventing a representative from taking action means that at the point they inherit the property—or whatever legal approach is taken to transfer it the estate to a new owner or representative—the problem goes away.

If, for some reason, we have missed something, I would be very happy to take anything from the hon. Member for Greenwich and Woolwich or others, either now or in writing, which I can go away and look at. Our understanding is that this does not need to continue, hence why we have chosen to remove it within the clause.

Matthew Pennycook: I welcome that clarification from the Minister and his indication that it is the Government's firm intent to ensure that personal representatives can exercise enfranchisement rights on behalf of a leaseholder who has died, because of the removal of the two-year rule. I urge the Minister or his officials to look at the precise wording of this clause, because we are worried that—his comments notwithstanding—it may not do this in practice, and there may be some ambiguity. I do, however, welcome the assurance he has given. On that basis, we will not oppose this clause standing part of the Bill.

Lee Rowley: To confirm, I am happy to double-check this, but I hope what I have just indicated stands.

Question put and agreed to.

Clause 1 accordingly ordered to stand part of the Bill.

Clause 2

REMOVAL OF RESTRICTIONS ON REPEATED ENFRANCHISEMENT AND EXTENSION CLAIMS

Question proposed, That the clause stand part of the Bill.

Lee Rowley: Currently, the restrictions placed on leaseholders to make a claim to buy their freehold or extend their lease can be seen as excessively punitive. Leaseholders are prevented from making a claim to buy their freehold or extend their lease for 12 months, when a previous claim has failed even on a minor point. In addition, a claim for a lease extension on a house can be obtained only once, and we seek to remove those unnecessary barriers for leaseholders, which frustrate their ability to buy their freehold or extend their lease.

Clause 2 seeks to address this problem by removing the requirement to wait 12 months to submit a new claim if the previous one has failed. It will also remove the restriction on bringing a further claim where a lease extension has already been obtained for a house. This means that leaseholders will be able to put in a further claim to enfranchise or extend their lease as soon as they have resolved the issues with their failed claim. Leaseholders of houses will not be prevented from making a claim for a lease extension if one has already been obtained, preventing the landlord from being able to regain possession of the property from a leaseholder when the lease eventually comes to an end.

Clause 2 will also remove provisions that give courts powers to prevent new enfranchisement or lease extension claims for five years where a claim has failed, and the leaseholder did not act in good faith or attempted to misrepresent or conceal material facts. These powers are old and surplus to requirements, coming from the 1967 Act, which has been overtaken by developments in the law around civil restraint orders since then. These restraint orders are more flexible, better developed, subject to more rigorous checks, and may be fairer than the existing power. Therefore, the existing law and the Bill can still deal with meritless of abusive enfranchisement claims. The tribunal already has powers to award costs for such unreasonable behaviour. The removal of these

should not change that; it is simply a tidying-up exercise, and a recognition that other parts of the law do this better. These measures will remove barriers to leaseholders being able to take up their right to enfranchise or extend their lease without unnecessary delays.

Matthew Pennycook: I welcome that explanation of the clause, which, as the Minister says, removes various restrictions on repeated enfranchisement and extension claims. It is our understanding that they include the provisions in the 1967 Act and the 1993 Act that prevent tenants from starting new enfranchisement or lease-extension claims within 12 months of an earlier claim failing to complete; the provisions of the 1967 Act that give courts the power to order compensation and prevent new enfranchisement or lease extension claims for five years after a claim has failed; and the provisions of the 1967 Act that prevent tenants from bringing a further lease extension claim where a lease extension has already been obtained under the Act.

9.45 am

We welcome the clause, which enacts part of the Law Commission's first recommendation from its final report on leasehold enfranchisement. In our view, the existing restrictions on leaseholders making fresh enfranchisement or extension claims where an earlier claim in respect of the same premises has been withdrawn or struck out, or has otherwise failed, are not justified. On payment of an appropriate premium, leaseholders should, in principle, be entitled to obtain a new, extended lease as often as they wish and should be allowed to make repeat good-faith enfranchisement claims.

I have two questions for the Minister, both of which relate to bad-faith claims. First, page 13 of the explanatory notes accompanying the Bill makes it clear that subsections (1)(c) and (d) remove restrictions on new claims within five years where a tenant has not acted in good faith or has attempted to misrepresent or conceal material facts. For the record, I would be grateful if the Minister could clarify precisely how those subsections remove restrictions on tenants within the said circumstances, because it is not entirely clear to us from reading the clause. I would also be grateful if the Minister could clarify why the Government believe it is appropriate to remove restrictions on repeat claims where a leaseholder has acted in bad faith. Is it the case, as I suspect, that the provisions in the 1967 Act that restrict repeat claims on those grounds have rarely, if ever, been used? In effect, are the Government just tidying up the statute book in respect of the relevant historical provisions?

Secondly, the Minister will know that the Law Commission proposed that freeholders should have the right to apply to the tribunal for an enfranchisement restraint order, with the purpose of preventing leaseholders from making repeat claims that are entirely without merit or that are, either of themselves or when considered together, frivolous, vexatious or otherwise an abuse of process. The Minister gave an indication in his opening remarks that the Government's view is that the necessary order powers are already there, but I would like him to explain why they did not believe it was appropriate to incorporate into the clause the Law Commission's recommendation to give freeholders the right to seek such an order from the tribunal. Do the Government believe that the likelihood of leaseholders making bad-faith claims of the kind that an ERO would allow the tribunal to prohibit is negligible? If so, what evidence is that belief based on? If the Government accept that some leaseholders may make repeat bad-faith claims, why do they believe there is no need to provide a mechanism by which such behaviour could be prevented? I look forward to the Minister's response.

Lee Rowley: I am grateful to the hon. Gentleman for his comments and, again, for indicating his support for the intent of clause 2. On his question with regard to subsections (1)(c) and (d), I will write to him, given that it is a technical question about the specific description in the legislation. Hopefully, I will be able to provide the comfort he seeks.

As he indicated later in his remarks, we believe there is the ability for vexatious claimants, in whatever sense, to be accommodated by the existing legislation elsewhere, so there is no need to replicate that or to retain something that is very rarely used. That is the reason for removing it.

Finally, on his point about orders from a tribunal and the Law Commission's recommendation, it goes back to the fact that we believe the process that is in place is already mature and very capable of responding to the legitimate points he highlights. Therefore, there is no need to create an additional process in the Bill, but I will write to him to absolutely clarify that point and make sure that we have everything we need.

Matthew Pennycook: I welcome that clarification from the Minister and look forward to any further detail that he might provide to the Committee via written correspondence.

Rachel Maclean (Redditch) (Con): May I ask the Minister to confirm that clause 2(2) refers to schedule 7 to the Bill? In our evidence sessions last week, we heard from certain leaseholders who were concerned that they would not benefit from the provisions if their lease was less than a certain number of years. Paragraph 2(2)(a) of schedule 7 states that a lease will not qualify if

"the unexpired term of the lease is less than 150 years".

There was some debate about that length. Will the Minister address those leaseholders' concern that the period is too long and that there should not be that restriction? Or will he write to me later to address what considerations went into that provision? If we are excluding people from these welcome provisions, perhaps we should seek to otherwise widen the group of people who can benefit from having their leases converted to a peppercorn lease.

Lee Rowley: We will probably talk in detail about the 150-year decision—the Law Commission proposed 250 years—in relation to quite a number of areas later this morning, so I do not want to pre-empt that now. As I will explain later, the Government's intention was that, if a lease is coming up in a reasonably short period of time, it is advantageous to align everything together, as opposed to doing just one thing, because there will be the potential for double costs and the like. I am happy to talk about that more when we get further into line-by-line consideration.

Question put and agreed to.

Clause 2 accordingly ordered to stand part of the Bill.

Clause 3

CHANGE OF NON-RESIDENTIAL LIMIT ON COLLECTIVE ENFRANCHISEMENT CLAIMS

Matthew Pennycook: I beg to move amendment 1, in clause 3, page 2, line 19, at end insert—

"(2) After section 4(5) of the LRHUDA 1993, insert—

'(6) The Secretary of State or the Welsh Ministers may by regulations amend this section to provide for a different description of premises falling within section 3(1) to which this Chapter does not apply.

(7) Regulations may not be made under subsection (6) unless a draft of the regulations has been laid before, and approved by resolution of—

(a) in the case of regulations made by the Secretary of State, both Houses of Parliament;

(b) in the case of regulations made by the Welsh Ministers, Senedd Cymru.'

(3) In section 100 of the LRHUDA 1993—

(a) in subsection (2), after 'making', insert 'provision under section 4(6) or';

(b) in subsection (3), after 'making', insert 'provision under section 4(6) or'."

This amendment would enable the Secretary of State or (in the case of Wales) the Welsh Ministers to change the description of premises which are excluded from collective enfranchisement rights. Such a change would be subject to the affirmative resolution procedure.

The Chair: With this it will be convenient to discuss clause stand part.

Matthew Pennycook: Clause 3 makes changes to the non-residential limit for collective enfranchisement claims. At present, section 4(1) of the 1993 Act excludes from the right to enfranchise buildings in which 25% or more of the internal floor area, excluding common parts, can be occupied or are intended to be occupied for non-residential use. The clause increases the non-residential use percentage to 50%.

We welcome the change, which enacts recommendation 38 of the Law Commission's final report on leasehold enfranchisement and was suggested by, among others, the National Leasehold Campaign. The purpose of the non-residential limit is to confine enfranchisement to predominantly residential blocks, but as the Law Commission determined, the existing 25% limit

"does not achieve that purpose."

There is a significant amount of evidence that it instead regularly prevents leaseholders from undertaking collective freehold acquisitions because a sizeable proportion of buildings fall slightly above it. As the Law Commission's final report puts it,

"the 25% limit provides a significant bar to the ability of leaseholders to undertake a collective freehold acquisition".

The Law Commission further argued that

"the arbitrary nature of the limit makes the bar to enfranchisement a source of considerable frustration for many leaseholders."

Deciding where to draw the line in respect of the level of non-residential use permitted in a building before collective enfranchisement rights cease to be available is inherently difficult. There will always be outlying cases that approach or go beyond an increased limit. However, given that one of the explicit purposes of the Bill is to bring as many leaseholders as possible within the enfranchisement regime and, in respect of the non-residential limit, specifically to prevent developers building around it in order to exclude blocks of flats from enfranchisement rights, an incremental increase to 30%, 35% or even 40% does not, instinctively, feel sufficient.

The issue is inherently subjective, and the Law Commission recognised as much, but if enfranchisement rights should be enjoyed by buildings that are primarily residential in nature, a 50% threshold feels appropriate and fair, because it would ensure that the predominant form of ownership in such buildings remains residential. A 50% non-residential limit is likely to mean that the number of genuine cases that are excluded by it will be small, and it will inevitably reduce gaming by developers, because to exceed the 50% limit a building will have to be genuinely commercial in nature. At least, that is the hope.

We very much hope the clause serves to significantly boost enfranchisement rates and in due course to assist more leaseholders of mixed-use buildings to convert to commonhold. However, our reservation about the clause as drafted is that it provides no flexibility to further amend the non-residential limit. We believe it would be sensible to build in a degree of flexibility so that any future changes to the limit for collective enfranchisement rights do not require primary legislation but can instead be enacted through regulations.

One can imagine a number of scenarios that might lead to the effectiveness or reasonableness of the Government's proposed 50% limit, which the Law Commission accepts is inescapably arbitrary, coming into question. For example, we might find in the years following its implementation that it does not manage to encompass a small but still unacceptable number of leaseholders in buildings that fall slightly above it, and we may wish to quickly take steps to allow them to exercise collective enfranchisement rights. Alternatively, a future Government may decide that they wish to use a criterion other than internal floor area to determine eligibility for such rights—for example, the percentage of the service charge paid by leaseholders. It is our understanding that, in both scenarios, new primary legislation would be required to make changes to the non-residential limit, either to increase the percentage of the internal floor area that can be occupied, or which is intended to be occupied, for non-residential use, or to entirely change the criteria upon which the limit is based. We therefore believe it would be preferable to give the Secretary of State the power, by means of regulations subject to the affirmative procedure, to vary the limit to account for changing circumstances. Amendment 1 would do so.

The amendment would amend clause 3, which itself amends section 4 of the 1993 Act by inserting new subsections into it. It would allow the Secretary of State to amend the whole of section 4 of the 1993 Act in any way they see fit to create a different description of a non-qualifying property. In short, it would hardwire flexibility in respect of the non-residential limit for collective enfranchisement claims into the Bill. We believe it is a sensible and reasonable amendment, and I hope the Minister agrees and makes it clear that the Government are happy to accept it. One lives in hope—I have done more of these Committees than I care to admit, so I know that even if I am right the Minister will not accept the amendment and will bring back a proposal at a later stage, but I hope he accepts the principle.

Before I conclude, I want to raise a separate but related matter to the non-residential limit that this clause makes changes to: how we define a building for the purposes of freehold acquisitions and right to manage claims, which we will debate in due course, and specifically whether buildings need to be structurally detached, with parts vertically divided, in order to be eligible for such rights. As hon. Members will recall, concerns about structural detachment and shared services were raised by several witnesses who gave evidence to the Committee last week. The fear that they highlighted was that the existing rules around structural dependency, particularly for buildings with extensive levels of overhang, such as those that arise when multiple blocks of flats are built over a shared car park, would frustrate many legitimate enfranchisement claims otherwise made possible by clause 3 and other provisions in the Bill that liberalise qualifying criteria and remove obstacles to enfranchisement.

The counter argument would be that rules around structural detachment and their applicability to the non-residential limit are necessary to avoid the creation of so-called flying freeholds and the block management problems that arise in such cases, and that such buildings are eligible for enfranchisement by a single claim if the tenants of the various blocks proceed together. The Law Commission appear to have agreed. It recommended retaining the existing test but making a small tweak that would allow minor deviations from the strict vertical division otherwise required for a part of a building to be separately enfranchisable. Notwithstanding the Law Commission's reasoning, we believe it is important to properly consider whether the structural detachment rules will limit the opportunities for leaseholders to enfranchise using the liberalised qualifying criteria that clause 3 provides for.

Our amendment does not directly probe that issue because it is concerned with providing future flexibility in respect of legal title rather than physical building exclusions, but it is important that this Committee considers the impact of structural detachment rules as they currently operate, and the extent to which they may frustrate the Bill's objective to expand access to enfranchisement. I would therefore be grateful if the Minister can tell us whether the Government have considered whether the rules on structural detachment may indeed frustrate leaseholders in that respect and whether they consider that a problem. If not, and they are convinced that there is good reason for the existing tests to remain in place, will the Minister tell us why they chose not to implement recommendation 33 of the Law Commission's final report on leasehold enfranchisement, which would have provided for a relaxation of the currently strict approach to the 1993 Act's vertical division condition? I look forward to the Minister's response.

10 am

Barry Gardiner (Brent North) (Lab): I rise to support amendment 1. My hon. Friend the Member for Greenwich and Woolwich made an excellent speech in favour of it, and he is right to distinguish between this clause, dealing with enfranchisement, and later clauses on which we will look at the issues from the point of view of right to manage. Given the amount of reference to the Secretary of State in the Bill and that so much is left to him to decide afterwards, it is reasonable to ask the Minister why that has not been applied to this clause—otherwise, it looks as if the Government have considered the matter and ruled out any change in this area, which, as my hon. Friend suggests, is reasonable.

Mike Amesbury (Weaver Vale) (Lab): I, too, rise to support this very generous amendment from my hon. Friend the shadow Minister. It is pragmatic, and it would power up the Secretary of State, whoever that might be, to ensure that leaseholders are able to take control in hopefully larger numbers through extended enfranchisement. I hope the Minister will give the amendment very strong consideration.

Rachel Maclean: May I throw the general issue of collective enfranchisement into the mix? The Minister may wish to come back on it at a later point if it suits him better. Many people in this situation have raised with me the sheer practicalities and difficulties of doing a collective enfranchisement. When people live in a huge block of flats with vast numbers of flats, they do not necessarily know who the other people are and certainly do not have their contact details. That, in and of itself, presents a barrier and an obstacle for some of these claims. We have heard evidence from groups affected by this situation—most notably the Free Leaseholders group, but there are many others—who have made this point repeatedly.

Matthew Pennycook: The hon. Member raises a very pertinent issue. Is she minded to support our new clauses 30 and 31, which deal precisely with it?

Rachel Maclean: The hon. Gentleman is a very persuasive orator in this Committee, as he is in many other fora, and I will definitely listen to those arguments when they are made. We all work in the spirit of improving this Bill. I very much hope that the Government will provide the explanations I have asked for, and specifically on this issue at this point.

Lee Rowley: I thank hon. Members and Friends for their contributions. I will take them in turn. On the amendment, I find myself in the slightly unusual place of arguing against a Henry VIII power, as they are occasionally called and as he referred to them. As indicated, there are a number of Henry VIII powers in the Bill, and I am sure that people will have views on them when we get to them. Our colleagues in the other place often have very strong views on such powers. It is an unusual place to be, but I happily take it up.

I absolutely understand the point that hon. Members have made and the reality of what they are trying to articulate. The fact that we are making a change indicates that there are times when it is proportionate and reasonable to make changes. The reason for the Government's not taking powers in secondary legislation—which I know, joking aside, that hon. Members would accept—is that there is a continuum for drawing or not drawing lines, and we think that this does not necessarily need to be on the line of taking powers in order to do things in secondary legislation, simply because this is a substantial change. It is being actively debated; Members are debating whether it is sufficient and, as my hon. Friend the Member for Redditch asked, precisely how it will work to improve the situation in practice. I think the Government's preference is to keep that discussion in

[Lee Rowley]

primary legislation. We recognise that primary legislation is always more challenging in terms of timelines and space in this place, but it is a sufficiently important change that it should be able to be debated in the way we are doing today.

Eddie Hughes (Walsall North) (Con): I understand that it is appropriate to future-proof legislation and allow for flexibility, but I agree with the Minister that a substantial change has already been made. Proportionately, we are talking about the number of buildings that have already been constructed, and therefore the people that we are helping. I fully appreciate that the shadow Minister is concerned about future developers gaming the system, but in terms of proportion, it is important that we focus our efforts on the buildings that have been built.

Lee Rowley: I am grateful to my hon. Friend for highlighting that. The shadow Minister expressed hope that the Government would agree with some of his amendments at some point. I am afraid that I will have to dash his hope on this one. We understand its purpose, but on the basis that I have articulated, we would prefer to keep this in primary legislation. I hope that the shadow Minister might consider withdrawing the amendment.

On clause 3, as it stands, we have been clear that we want to improve access to collective enfranchisement so that more leaseholders of flats can enjoy the benefit of freehold ownership. Many leaseholders in mixed-use but predominantly residential buildings are currently prevented from buying their freehold, as hon. Members have indicated. Clause 3 amends the 1993 Act to increase that limit from 25% to 50%. This has been consulted on widely and was recommended by the Law Commission. Where residential leaseholders take up the majority of the floor space in a building, it is our view that they should be able to access the long-term security and control that comes with freehold ownership, if they choose to do so.

We recognise that this change impacts freeholders. If the leaseholders choose to buy their freehold, the freeholder stands to lose ownership of individual buildings, and that may fragment ownership of some areas over a longer timeframe. We believe that impact to be justified not only because of the significant benefit to leaseholders but because freeholders will be compensated for that loss. We do not believe, as a principle, that the single contiguous ownership of space is absolutely necessary for buildings to be managed well.

We have also heard arguments from leaseholders that they will be unable to professionally manage mixed-use buildings. Although I understand their point, through, for example, the delegation of a building's management to an agent, that should be overcome. I accept the points made and understand the shadow Minister's point on the difficulty of ensuring that leaseholders can be engaged to the point where they pass the threshold, whatever the number—and all numbers are ultimately arbitrary. As he has indicated, I think the Committee will return to this, but we think the clause, as it stands, is the right approach. Therefore, we resist the amendment and hope that the shadow Minister will withdraw it.

Matthew Pennycook: First, on the Minister's response, I am slightly reassured but not wholly convinced. I would like the opportunity to go away, look carefully at his remarks and consider whether we need to come back to this, and I reserve that right, Mr Efford.

On amendment 1, I am frankly not convinced by the arguments made by the Minister and the hon. Member for Walsall North. We well understand the concerns that they have both drawn attention to. As I have said, it is an inherently subjective decision as to where that threshold is drawn. We also accept that, when it comes to existing buildings, the number of leaseholders who are potentially excluded will be small in number. But we want to avoid a situation where our constituents are coming to us in buildings with a 51% or 52% rate and saying, "We can't collectively enfranchise as you intended. We are frustrated by the powers in the Bill." On the basis of the Minister's argument, we will have to say to them, "You have to wait a good few years for another leasehold Bill—maybe many years based on the history of leasehold reform—for such a change to come forward." It is a continuum; this a substantial change, and we are trying to build some flexibility into that change.

Barry Gardiner: Does my hon. Friend agree that this will probably affect the little people a lot more than the big, because of the likelihood of achieving 50% commercial within a leasehold block? Many of our town and city centres have buildings with commercial below and very few flats above. Therefore, it is much more likely that it will be a group of people—yes, a small group—living in that situation, rather than in the Shard, coming to us complaining.

Matthew Pennycook: My hon. Friend makes a good point: it is not just the number but the type of leaseholder who we are potentially excluding. All we are saying, as I argued in great detail, is that Ministers should have flexibility to change, if there is sufficient evidence to suggest that large numbers are being excluded or—I refer to the gaming point—we see developers building with a 51% area just to escape the threshold. We do not propose that the 50% change; we think it is an appropriate and fair starting point, but surely the Government need some flexibility in this area.

I must say to the Minister that this is the first time I have heard a Government Minister say no to Henry VIII powers, but I am afraid that his argument for saying no to them was, from my point of view, entirely expedient and not particularly well justified. I urge the Government to think again. I am minded, purely because of the way in which the Minister has responded, to push the amendment to a vote. If the Government are flatly refusing to look at the issue, we must make clear that we feel strongly about it.

The Committee divided: Ayes 7, Noes 10.

Division No. 1]

AYES

Amesbury, Mike	Pennycook, Matthew
Edwards, Sarah	Rimmer, Ms Marie
Gardiner, Barry	
Glindon, Mary	Strathern, Alistair

NOES

Carter, Andy	Levy, Ian
Davison, Dehenna	Maclean, Rachel
Everitt, Ben	Mohindra, Mr Gagan
Fuller, Richard	Rowley, Lee
Hughes, Eddie	Smith, rh Chloe

Question accordingly negatived.

Clause 3 accordingly ordered to stand part of the Bill.

Clause 4

ELIGIBILITY FOR ENFRANCHISEMENT AND EXTENSION: SPECIFIC CASES

Question proposed, That the clause stand part of the Bill.

Lee Rowley: Clause 4 introduces schedule 1, which repeals rights that enable landlords to block a lease extension or freehold acquisition claim for a house or flat where the landlord intends to redevelop or reoccupy the property. Where the blockers are used, compensation is only paid to leaseholders in houses, not those in flats. The blockers apply to a minority of leases that have not been extended and are very near to ending.

Although that means that, in practice, rights are rarely used, enfranchising leaseholders should have the opportunity to make their decisions about the need and scope of redevelopment once they own the freehold. Leaseholders with few years remaining on their lease should have the option of extending and securing their tenure. Where a lease is extended, landlords will continue to have statutory break rights that can terminate leases for redevelopment. We will consider break rights in schedule 6 and cover further details about the blockers when we come to consider schedule 1. I commend the clause to the Committee.

Matthew Pennycook: As the Minister has made clear, clause 4 concerns eligibility for enfranchisement and extension in specific cases. It gives effect to schedule 1, which repeals specific limitations on those rights under the 1967 and 1993 Acts. As the Minister has detailed, they include: the right of a landlord to defend a lease extension or collective enfranchisement claim on grounds of redevelopment; the right to defeat a freehold acquisition or lease extension claim for the purposes of retaking possession of the property for personal use; and the limitations that prevent a sublessee from claiming a lease extension if their sub-lease was granted by an intermediate leaseholder out of a lease that had been extended under the relevant Act.

We welcome the clause, which implements, although is not confined to, recommendation 98 of the Law Commission's final report on leasehold enfranchisement. When considering the case for reform in this area, the Law Commission made clear that its proposal could reduce the value of the leaseholder's lease as a result of the transfer of some enfranchisement rights from a leaseholder who has previously extended his or her lease pursuant to the legislation to the leaseholder to whom they had subsequently granted a sub-lease. However, the Law Commission ultimately determined that any such loss of value was overstated. Its reasoning was—assuming that I have understood the relevant technical arguments correctly—that there would be no difference in value between the sum that the intermediate leaseholders could expect to obtain if their lease was acquired in a collective freehold acquisition under the present law and the value of the intermediate leaseholder's interest in the light of its proposal.

10.15 am

This may not be an issue that the Government have deliberated on further in any way—it is extremely technical—but, if the Minister is able and if they did, will he tell us whether they are confident that clause 4 would not reduce the value of the leaseholder's lease as a result of the transfer of some of their enfranchisement rights in accordance with its provisions? In short, do the Government believe that the Law Commission was correct to assert that the potential for any such loss of value is overstated and that, therefore, we can approve clause 4 without any concern?

Lee Rowley: I am grateful to the hon. Gentleman for his contribution. As he indicates, this is—I think by common consent—a rare issue in the first place, not that that diminishes the importance of ensuring that we get it right. It is very complicated, as he has indicated; different leases will have different elements within them and it is impossible to comment on every single case or every single instance, as has been indicated, because of the complexity. I am not aware that there is an indication that there is a general reduction in the value of leases for the very small number that this will cover. I will write to the Committee if what I have just said is incorrect or needs clarification in any way. I hope that, on that basis, we can make progress.

Matthew Pennycook: I welcome that clarification from the Minister and the offer to provide us with further details should they be needed.

Question put and agreed to.

Clause 4 accordingly ordered to stand part of the Bill.

Schedule 1

ELIGIBILITY FOR ENFRANCHISEMENT AND EXTENSION: SPECIFIC CASES

Lee Rowley: I beg to move amendment 57, in schedule 1, page 82, line 16, at end insert—

"Exception to enfranchisement for certified community housing providers

3A (1) The LRA 1967 is amended as follows.

(2) In section 1 (tenants eligible for enfranchisement and extension), after subsection (1B) insert—

'(1C) This Part of this Act does not confer on a tenant a right to acquire the freehold of a house and premises if the landlord under the existing tenancy is a certified community housing provider (see section 4B).'

(3) After section 4A insert—

'4B Meaning of "certified community housing provider'

(1) For the purposes of this Part of this Act, a person is a "certified community housing provider" if the appropriate tribunal has issued a community housing certificate in respect of the person.

(2) A community housing certificate is a certificate that the tribunal has determined that the person—

(a) is a community land trust within the meaning of section 2(7A) of the Leasehold Reform (Ground Rent) Act 2022, or

(b) is of a description, or satisfies conditions, specified for this purpose in regulations made by the Secretary of State.

(3) The tribunal may issue a community housing certificate only in respect of a person that has made an application to the tribunal for the certificate.

(4) The tribunal may cancel a community housing certificate—

(a) on the application of the person in respect of which the certificate is issued, or

(b) on the application of a tenant affected by the certificate, if the tribunal considers that—

(i) the person in respect of which the certificate is issued does not fall within subsection (2)(a) or (b), or

(ii) the certificate was obtained by deception or fraud.

For this purpose a tenant is "affected by" a certificate if, by virtue of section 1(1C), the tenant does not have the right to acquire the freehold because the certificate is issued in respect of their landlord.

(5) The effect of the tribunal cancelling the certificate is that the person is not a certified community housing provider unless the tribunal issues a new community housing certificate.

(6) The Secretary of State may by regulations provide for—

(a) the procedure to be followed in connection with an application for a community housing certificate;

(b) the procedure to be followed for the cancellation of a community housing certificate (including in connection with an application for the cancellation);

(c) any matters to which the tribunal must have regard in deciding whether to issue or cancel a community housing certificate.

(7) The Secretary of State may by regulations make provision about the application of this Part in circumstances where—

(a) a landlord's application for a community housing certificate has not been concluded when a tenant gives notice of their desire to have the freehold of a house and premises under this Part, or

(b) a tenant's claim to have the freehold of a house and premises under this Part has not been concluded when a landlord's application for a community housing certificate is made.

(8) Regulations under subsection (7) may in particular provide for—

(a) the claim for the freehold to be paused or to have no effect;

(b) a time period for the purposes of this Part to be extended in connection with the application;

(c) the landlord to compensate a tenant or reversioner in respect of reasonable costs incurred in connection with a claim to acquire the freehold—

(i) if the tenant ceases to have the right to acquire the freehold because of the issue of a certificate under this section, or

(ii) if the costs are incurred as a result of the claim being suspended because of an application for a certificate under this section;

(d) enforcement by the appropriate tribunal of any of the requirements of the regulations;

(e) the appropriate tribunal to make orders that are supplementary to the issue of a community housing certificate.

(9) Regulations under this section—

(a) may make different provision for different purposes;

(b) are to be made by statutory instrument.

(10) A statutory instrument containing regulations under this section (whether alone or with other provision) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.'

3B (1) The LRHUDA 1993 is amended as follows.

(2) In section 5 (qualifying tenants for enfranchisement), after subsection (2)(a) insert—

'(aa) the immediate landlord under the lease is a certified community housing provider (see section 8B); or'

(3) Before section 9 insert—

'8B Meaning of "certified community housing provider'

(1) For the purposes of this Chapter, a person is a "certified community housing provider" if the appropriate tribunal has issued a community housing certificate in respect of the person.

(2) A community housing certificate is a certificate that the tribunal has determined that the person—

(a) is a community land trust within the meaning of section 2(7A) of the Leasehold Reform (Ground Rent) Act 2022, or

(b) is of a description, or satisfies conditions, specified for this purpose in regulations made by the Secretary of State.

(3) The tribunal may issue a community housing certificate only in respect of a person that has made an application to the tribunal for the certificate.

(4) The tribunal may cancel a community housing certificate—

(a) on the application of the person in respect of which the certificate is issued, or

(b) on the application of a leaseholder affected by the certificate, if the tribunal considers that—

(i) the person in respect of which the certificate is issued does not fall within subsection (2)(a) or (b), or

(ii) the certificate was obtained by deception or fraud.

For this purpose a leaseholder is "affected by" a certificate if, by virtue of section 5(2)(aa), the leaseholder is not a qualifying tenant because the certificate is issued in respect of their immediate landlord.

(5) The effect of the tribunal cancelling the certificate is that the person is not a certified community housing provider unless the tribunal issues a new community housing certificate.

(6) The Secretary of State may by regulations provide for—

(a) the procedure to be followed in connection with an application for a community housing certificate;

(b) the procedure to be followed for the cancellation of a community housing certificate (including in connection with an application for the cancellation);

(c) any matters to which the tribunal must have regard in deciding whether to issue or cancel a community housing certificate.

(7) The Secretary of State may by regulations make provision about the application of this Chapter in circumstances where—

(a) a landlord's application for a community housing certificate has not been concluded when a nominee purchaser gives notice under section 13 of a claim to exercise the right to collective enfranchisement, or

(b) a claim to exercise the right to collective enfranchisement has not been concluded when a landlord's application for a community housing certificate is made.

(8) Regulations under subsection (7) may in particular provide for—

(a) the claim for the freehold to be paused or to have no effect;

(b) a time period for the purposes of this Chapter to be extended in connection with the application;

(c) the landlord to compensate the nominee purchaser, a tenant or a reversioner in respect of reasonable costs incurred in connection with a claim to exercise the right to collective enfranchisement—

(i) if a person ceases to be a participating tenant because of the issue of a certificate under this section (and in this case the compensation may relate to reasonable costs for which the person is liable that are incurred after the person ceases to be a participating tenant),

(ii) if the participating tenants cease to have the right to collective enfranchisement because of the issue of a certificate under this section, or

(iii) if the costs are incurred as a result of the claim being suspended because of an application for a certificate under this section;

(d) enforcement by the appropriate tribunal of any of the requirements of the regulations;

(e) the appropriate tribunal to make orders that are supplementary to the issue of a community housing certificate.'

(4) In section 39(3)(a) (qualifying tenants for extension), before '(5)' insert '(2)(aa), '.

(5) In section 100 (orders and regulations), after subsection (2) insert—

'(2A) But a statutory instrument containing regulations under section 8B (whether alone or with other provision) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.'"

This amendment would provide for an exception to enfranchisement (but not extension) for tenants of certified community housing providers (persons certified as managing land for the benefit of local communities).

The Chair: With this it will be convenient to discuss Government amendments 30 and 32.

Lee Rowley: As we considered regarding clause 4, schedule 1 repeals blockers to enfranchisement claims. The schedule repeals blockers that enable landlords to block claims for lease extensions and freehold acquisitions where the landlord intends to redevelop a property. The rights apply to cases where leases are very near to ending and, again, are rarely used. Compensation is paid to leaseholders only where the blockers are used in houses, not flats.

The schedule also repeals blockers that apply to niche cases, including: a blocker allowing a landlord or their family to reoccupy a house, which now applies to very few leases, due to its criteria; a public authority development blocker that has fallen from use; and a blocker to sub-lease extensions, where they are granted out of a superior extended lease.

The schedule makes consequential amendments that are necessary because of the repeals that I have just described. Where a lease is extended, landlords continue to have statutory break rights, which we will consider in later deliberations, and they may continue to seek voluntary agreements to end a lease. Public landlords may also have access to compulsory purchase orders. I commend that measure to the Committee.

I will now speak to amendment 57 and the consequential amendments 30 and 32. While we want to encourage many more leaseholders to buy their freeholds, there are good reasons for certain properties to be exempt from freehold ownership. For instance, certain community-led developments, providing affordable housing for local people, wish to be exempt from freehold acquisition—that is not their original purpose and it should not become so—so that the homes can remain affordable for the benefit of the community in perpetuity.

These amendments exempt community land trusts, a form of community-led housing, from freehold acquisition, as that model of housing relies on land being held in single ownership to remain as community-led housing. The amendments also provide a power for the Secretary of State to define in regulations further types of community-led housing, should that be necessary in future.

The exemption will only apply to an organisation once it has obtained a certificate from the tribunal that it satisfies the definition of community-led housing. That ensures that the exemption is properly targeted and not misused. An organisation will cease to benefit from the exemption if the certificate is cancelled by the tribunal. That includes where the organisation no longer satisfies the definition of a community-led housing organisation, or where the organisation asks the tribunal to cancel the certificate.

These amendments will protect the benefits of genuine community-led housing schemes from being lost to future generations. I therefore commend them to the Committee.

Finally, I beg to move amendment 58 in my name.

The Chair: Order. Amendment 58 is in the next group. We are debating Government amendments 57, 30 and 32 to schedule 1.

Lee Rowley: My apologies, Mr Efford. I thought that we were debating these as a group. I will come to amendment 58 when we get to that group.

Matthew Pennycook: I rise briefly to speak to these four Government amendments and to make a wider comment on them and the other 116 amendments that have been tabled in the Minister's name over recent days.

Having scrutinised these amendments as carefully as we could in the time available, we are as confident as we can be that none is problematic. Indeed, we very much welcomed the exemption provided for community-led housing.

[Matthew Pennycook]

As confirmed to the Committee by Professor Nick Hopkins, 18 of the 120 Government amendments tabled in Committee implement Law Commission policy that was not in the Bill as introduced and on which Law Commission staff have been involved in instructing parliamentary counsel. The vast majority of the other 102 amendments are merely technical in nature. Providing that the Minister sets out clearly their effect and rationale, as he just has in relation to this group of amendments, we do not intend to detain the Committee over the coming sessions by exploring the finer points of each.

However, I feel I must put on record our intense frustration at the fact that so many detailed Government amendments were tabled just days before commencement of line-by-line scrutiny began. The practice of significantly amending Bills as they progress through the House has become common practice for this Government and in our view it is not acceptable. Other Governments have done it, but it has become the norm under this Government. It impedes hon. Members in effectively scrutinising legislation and increases the likelihood that Acts of Parliament contain errors that subsequently need to be remedied, as happened with the Building Safety Act 2022; as the Minister will know, we have had to pass a number of regulations making technical corrections to that Act.

When it comes to this Bill, the Government have had the Law Commission's recommendations for almost four years and access to Law Commission staff to aid parliamentary counsel with drafting. There really is no excuse for eleventh-hour amendments introducing Law Commission policy or technical amendments designed to clarify, correct mistakes, or ensure consistency across provisions.

Barry Gardiner: Is my hon. Friend as surprised as I was to find that a 133-page Bill has a 102-page amendment paper? As he says, this came late. It is not just Opposition Members who mind; it is hon. Members of all parties who want to adequately scrutinise the Bill. It makes life very difficult to go through detailed amendments, often amending previous legislation—therefore, we have to get that legislation and see what the impact of the changes is—and it impedes the work of Parliament in that respect. The Minister should explain why many of these amendments were tabled so late in the day.

Matthew Pennycook: I completely agree with my hon. Friend. I think I am justified in saying that it is frankly laughable that this has happened. We have an amendment paper that is almost—and may be, in due course—larger than the Bill itself. It reeks of a Government in disarray. Though I know that the Minister has picked up this Bill part-way through its development, I urge him not only to do what he can to ensure that when the Government publish any Bill it is broadly in the format they wish it to proceed in and see passed, but also to table any further amendments to this Bill in good time so that we can give them the level of scrutiny that leaseholders across the country rightfully expect.

Rachel Maclean: I will not detain the Committee for long. In response to those comments from the Opposition, I observe only that when they were last in government—in 2002, if I am correct—they had the opportunity to address the system and rectify the failures that we are now dealing with. It is now left to this Government to do it. On that note, I want to say to my hon. Friend the Minister how important it is that the community-led housing sector is excluded. I would not normally say that about any form of housing, but we have recently strengthened the national planning policy framework to encourage more of that type of housing. We know it is popular and often commands local support, while other types of housing sadly do not, and we need to see more of it built. The sector has had extensive discussions. This is a sensible amendment, which I support.

Lee Rowley: I thank my hon. Friend for confirmation of the importance of community-led housing, which we have spoken about previously. I absolutely agree about its importance.

I will not get into a broader conversation about the processes of government, other than to say that I note the concerns of the hon. Members for Brent North and for Greenwich and Woolwich. The intention is to give the Committee and the House as a whole as much scrutiny as possible. I am sure that the hon. Members will understand that, outside the bounds of the points that they are making, getting proposed legislation ready is often a complicated process—in particular ensuring that it is as correct as it can be. None the less, I have noted their points, but I hope to be grateful for their support for the underlying provision we are debating.

Amendment 57 agreed to.

Lee Rowley: I beg to move amendment 58, in schedule 1, page 82, line 28, at end insert—

"Eligibility of leases of National Trust property for extension

4A For section 32 of the LRA 1967 (saving for National Trust) substitute—

'32 National Trust property

(1) Property is "inalienable National Trust property" for the purposes of this section if an interest in the property is vested inalienably in the National Trust for Places of Historic Interest or Natural Beauty under section 21 of the National Trust Act 1907.

(2) This Part does not prejudice the operation of section 21 of the National Trust Act 1907, and accordingly a tenant does not have the right under this Part to acquire the freehold of inalienable National Trust property.

(3) The right to an extended lease has effect subject to the following provisions of this section only if and to the extent that the existing tenancy demises inalienable National Trust property.

(4) In a case where the existing tenancy is a post-commencement protected National Trust tenancy, the tenant does not have the right to an extended lease.

(5) In a case where the existing tenancy is a pre-commencement protected National Trust tenancy, this Act is to have effect in relation to the right to an extended lease without the amendments made by the Leasehold and Freehold Reform Act 2024 (but without altering the effect of this subsection).

(6) In any other case, the right to an extended lease has effect subject to subsections (7) and (8).

(7) In determining whether the tenant has the right to an extended lease, the following requirements in section 1 do not apply—

(a) any requirement for the tenancy to be at a low rent;

(b) any requirement in section 1(1)(a)(i) or (ii) for the house and premises or the tenancy to be above a certain value.

(8) If the tenant exercises the right to an extended lease, the new tenancy must contain the buy-back term which is prescribed for this purpose in regulations made by the Secretary of State (the "prescribed buy-back term").

(9) A "buy-back term" is a term which gives the National Trust the right to buy the whole or part of the extended lease if—

(a) it is proposed to make a disposal of the extended lease that is of a description specified in that term (which may be a disposal of the whole or a part of the property demised), or

(b) the National Trust exercises a prescribed buy-back term that is contained in a lease which is inferior to the extended lease.

(10) The prescribed buy-back term may, in particular, make provision about—

(a) the procedure where it is proposed to make a disposal that is of a description specified in the term;

(b) the procedure for exercising the right to buy;

(c) the price payable;

(d) the payment of costs incurred in connection with the operation of the term (including requirements for one person to pay costs incurred by another person);

(e) the operation of the term if the National Trust is not a party to the extended lease.

(11) If the National Trust is not the landlord under the extended lease, the National Trust may at any time apply to the appropriate tribunal for an order to secure that the extended lease is varied to contain (if or to the extent that it does not already do so) the prescribed buy-back term; and an order made on such an application may appoint a person who is not party to the extended lease to execute a variation of the lease.

32ZA Section 32: supplementary provision

(1) For the purposes of section 32, the existing tenancy is a "protected National Trust tenancy" if the tenancy is prescribed, or is of a description of tenancies prescribed, in regulations made by the Secretary of State.

(2) Regulations may not provide for a tenancy to be a protected National Trust tenancy unless the tenancy is within case A or case B.

(3) Case A: some or all of the property let under the tenancy is—

(a) property to which the general public has access, or

(b) part of property to which the general public has access (whether or not the general public has access to any property let under the tenancy),

whether the arrangements for public access are managed by the National Trust, the tenant or another person.

(4) Case B: the existing tenancy was granted to—

(a) a former owner,

(b) a relative of a former owner, or

(c) the trustees of a trust whose beneficiaries are or include—

(i) a former owner, or

(ii) a relative of a former owner.

(5) Regulations under section 32 or this section—

(a) may make different provision for different purposes;

(b) are to be made by statutory instrument.

(6) A statutory instrument containing regulations under section 32 or this section is subject to annulment in pursuance of a resolution of either House of Parliament.

(7) In section 32 and this section—

"commencement" means the day on which paragraph 4A of Schedule 1 to the Leasehold and Freehold Reform Act 2024 comes into force;

"disposal" , in relation to an extended lease, includes—

(a) the grant of a sub-lease of property demised by the extended lease;

(b) a change in control of a body (whether or not incorporated) which owns the extended lease;

(c) the surrender of the extended lease;

(d) a disposal (of any kind) for no consideration;

"former owner" , in relation to inalienable National Trust property let under a tenancy, means—

(a) a person who transferred the freehold of the property to the National Trust,

(b) a person who owned the freehold of the property immediately before its transfer to the National Trust by, or at the direction of—

(i) the Commissioners for His Majesty's Revenue and Customs,

(ii) the Commissioners of Inland Revenue, or

(iii) the Treasury,

(c) a person whose executors transferred, or directed the transfer of, the freehold of the property to the National Trust, or

(d) a person who was a beneficiary under a trust whose trustees transferred, or directed the transfer of, the freehold of the property to the National Trust;

"post-commencement protected National Trust tenancy" means a tenancy which—

(a) was granted on or after commencement, unless it was granted under an agreement made before commencement, and

(b) is a protected National Trust tenancy;

"pre-commencement protected National Trust tenancy" means a tenancy which—

(a) was granted—

(i) before commencement, or

(ii) on or after commencement under an agreement made before commencement, and

(b) is a protected National Trust tenancy;

"relative" includes a person who is related by marriage or civil partnership;

"right to an extended lease" means the right under this Part to acquire an extended lease.'

4B For section 95 of the LRHUDA 1993 (saving for National Trust) substitute—

'**95 National Trust property**

(1) Property is "inalienable National Trust property" for the purposes of this section if an interest in the property is vested inalienably in the National Trust for Places of Historic Interest or Natural Beauty under section 21 of the National Trust Act 1907.

(2) Chapter 1 does not prejudice the operation of section 21 of the National Trust Act 1907, and accordingly there is no right under Chapter 1 to acquire an interest in inalienable National Trust property.

(3) The right to a new lease has effect subject to the following provisions of this section only if and to the extent that the existing lease demises inalienable National Trust property.

(4) In a case where the existing lease is a protected National Trust tenancy, the tenant does not have the right to a new lease.

(5) If—

(a) the existing lease is not a protected National Trust Tenancy, and

(b) the tenant exercises the right to a new lease,

the new lease must contain the buy-back term which is prescribed in regulations made by the Secretary of State (the "prescribed buy-back term").

(6) A "buy-back term" is a term which gives the National Trust the right to buy the whole or part of the new lease if—

(a) it is proposed to make a disposal of the new lease that is of a description specified in that term (which may be a disposal of the whole or a part of the property demised), or

(b) the National Trust exercises a prescribed buy-back term that is contained in a lease which is inferior to the extended lease.

(7) The prescribed buy-back term may, in particular, make provision about—

(a) the procedure where it is proposed to make a disposal that is of a description specified in the term;

(b) the procedure for exercising the right to buy;

(c) the price payable;

(d) the payment of costs incurred in connection with the operation of the term (including requirements for one person to pay costs incurred by another person);

(e) the operation of the term if the National Trust is not a party to the new lease.

(8) If the National Trust is not the landlord under the new lease, the National Trust may at any time apply to the appropriate tribunal for an order to secure that the new lease is varied to contain (if or to the extent that it does not already do so) the prescribed buy-back term; and an order made on such an application may appoint a person who is not party to the new lease to execute a variation of the lease.

95A Section 95: supplementary provision

(1) For the purposes of section 95, the existing lease is a "protected National Trust tenancy" if the lease is prescribed, or is of a description of leases prescribed, in regulations made by the Secretary of State.

(2) Regulations may not provide for a lease to be a protected National Trust tenancy unless the lease is within case A or case B.

(3) Case A: some or all of the property let under the lease is—

(a) property to which the general public has access, or

(b) part of property to which the general public has access (whether or not the general public has access to any property let under the lease),

whether the arrangements for public access are managed by the National Trust, the tenant or another person.

(4) Case B: the existing lease was granted to—

(a) a former owner,

(b) a relative of a former owner, or

(c) the trustees of a trust whose beneficiaries are or include—

(i) a former owner, or

(ii) a relative of a former owner.

(5) Regulations under section 95 or this section—

(a) may make different provision for different purposes;

(b) are to be made by statutory instrument.

(6) A statutory instrument containing regulations under section 95 or this section is subject to annulment in pursuance of a resolution of either House of Parliament.

(7) In section 95 and this section—

"disposal" , in relation to a new lease, includes—

(a) the grant of a sub-lease of property demised by the new lease;

(b) a change in control of a body (whether or not incorporated) which owns the new lease;

(c) the surrender of the new lease;

(d) a disposal (of any kind) for no consideration;

"former owner" , in relation to inalienable National Trust property let under a tenancy, means—

(a) a person who transferred the freehold of the property to the National Trust,

(b) a person who owned the freehold of the property immediately before its transfer to the National Trust by, or at the direction of—

(i) the Commissioners for His Majesty's Revenue and Customs,

(ii) the Commissioners of Inland Revenue, or

(iii) the Treasury,

(c) a person whose executors transferred, or directed the transfer of, the freehold of the property to the National Trust, or

(d) a person who was a beneficiary under a trust whose trustees transferred, or directed the transfer of, the freehold of the property to the National Trust;

"relative" includes a person who is related by marriage or civil partnership;

"right to a new lease" means the right under Chapter 2 to a new lease.'"

This amendment would provide for tenants of National Trust properties to have the right to extension, subject to exceptions, and subject to a requirement to grant the National Trust the right to buy back the property in certain circumstances.

Lee Rowley: My enthusiasm for the amendment was such that I started to speak to it earlier, but I am now moving it in the correct place.

The National Trust play a big role in looking after the heritage of the nation. Inalienable National Trust land is held for the benefit of the nation, forever. In order to ensure that that land remains in national ownership for future generations, freehold acquisition is restricted on National Trust land. None the less, the Government want to see National Trust leaseholders' rights improved.

The amendment means that National Trust leaseholders will benefit from the new lease extension rights in line with other leaseholders, so that the 990 years will apply in this instance. The new rights will be subject to a narrow exception for a small number of leases of specified visitor attraction properties and donor leases. That will allow the trust to make bespoke lease agreements when a noteworthy property comes into its ownership—for example, where a property could be opened to the public in whole or in part, or where arrangements have been made with family members when a property has been gifted to the state and the trust itself. Those limited exceptions will be set out in regulations made by the Secretary of State in due course. Those leaseholders will retain their existing lease extension rights where they already have them.

The amendment also makes provision for the National Trust to buy back an extended lease at market value, if the existing leaseholder chooses to dispose of their lease. That will allow the National Trust to manage the long-term use of its inalienable land on behalf of the nation. I commend the amendment to the Committee.

Amendment 58 agreed to.

Schedule 1, as amended, agreed.

Clause 5

Acquisition of intermediate interests in collective enfranchisement

Question proposed, That the clause stand part of the Bill.

Lee Rowley: The clause sets out how intermediate leases and leases of common parts are treated in collective enfranchisement claims for flats. In home ownership, intermediate leases are the middle rungs on a ladder between the freeholder at the top, and the leaseholder with rights at the end. Leases of common parts might cover parts of premises such as stairways.

The clause will introduce proposed new schedule A1 to the 1993 Act. The schedule sets out a series of gateways that require leaseholders to acquire certain interests, but also grants them further choices to reduce premiums. Qualifying leaseholders who participate in a claim must acquire all intermediate leases superior to their leases. They can, however, choose to leave in place the part of an intermediate lease superior to those qualifying leaseholders who are not participating. The intention is that this will help to reduce the premium where not all leaseholders wish to participate.

For example, leaseholders could leave the head lease in place above two out of eight flats, where the two are not participating. Where leaseholders acquire only part of a lease, they still need to acquire the relevant parts of leases above it in the chain to prevent a disrupted management structure.

The schedule sets out that leaseholders do not need to acquire a whole lease of common parts where certain legal tests are met, which will help to reduce premiums. The schedule prevents the acquisition of special cases of intermediate leases in collective enfranchisement. That includes qualifying leaseholders who own the immediately superior intermediate lease and landlords with enfranchisement rights over a flat. Those parts of leases can be retained by the owners to preserve their homes or tenure at the property. The schedule sets out various mechanisms for allowing leases to be left in place. That is done via an existing process called severing, and clause 16(6) gives the tribunal new powers to determine the terms of that.

The schedule preserves the necessary elements of the existing law that prevent ill effects arising from collective enfranchisement. Landlords can continue to require leaseholders to acquire interest, for instance where it would be impossible to maintain the premises. An exception that prevents the acquisition of interest held by public sector landlords continues. I commend the clause to the Committee.

10.30 am

Matthew Pennycook: Clause 5 is extremely technical. It concerns the treatment of intermediate leases during a collective enfranchisement. I beg the Committee's forgiveness for the level of complexity I am about to throw at the Minister; nevertheless, it is important to the leaseholders who stand to be affected. As the Minister said, the clause replaces section 2 of the 1993 Act on to the acquisition of leasehold interest, with a new schedule, A1, that will henceforth govern the acquisition of intermediate interests during a collective enfranchisement process.

New schedule A1 enacts part or all of five recommendations made by the Law Commission in chapter 13 of its 2020 report, and is uncontentious. However, when considering the treatment of intermediate leases and other leasehold interests in that chapter, the Law Commission recommended that a duty be imposed on the landlord dealing with the enfranchisement claim

"to act in good faith and with reasonable skill and care"

toward other landlords involved. Any such landlord should be able to apply for directions from the tribunal about the conduct of the response to the claim. It also recommended corresponding requirements for landlords who are not dealing with the claim to provide all necessary information and assistance to the landlord who is, and to contribute to the non-litigation costs of that landlord.

My reading of schedule A1 is that its effect will be that any settlement reached between a leaseholder and the landlord who is dealing with a claim, and any determination of that claim by the tribunal, will be binding on all other landlords. Assuming that I have interpreted the schedule correctly, can the Minister make clear why it does not appear to implement the duties and requirements that the Law Commission recommended should apply to landlords who are dealing with the claim and landlords who are not, respectively?

Finally, while I appreciate that we will consider the issue of valuation in more detail when we come to consider clauses 9, 10 and 11, I would be grateful if the Minister could also provide some clarification on how the Bill proposes to calculate enfranchisement premiums in instances where there are intermediate leases. Am I right in believing that schedule 2 treats intermediate leases as merged for the purposes of valuation?

On a related matter, the Minister will also be aware that the Law Commission set out the option of generally disregarding the existence of an intermediate lease when determining the premium payable on enfranchisement on the grounds that it would simplify the calculation and create greater fairness between leaseholders and between landlords, as premiums would not differ solely because of the existence or otherwise of one or more intermediate leases. It also recommended that on any individual lease extension claim, the rent payable by an intermediate landlord should be commuted on a pro rata basis.

If I have understood the relevant provisions correctly, neither proposal was incorporated into the Bill as first published. The second of those recommendations appears to be addressed by Government amendments 73 and 95. I would be grateful if the Minister could confirm whether my reading of those amendments is correct in that regard—via correspondence, if he needs to, as I appreciate

[Matthew Pennycook]

that these are extremely technical questions. Broadly, we would like the Minister to expand on his remarks and provide some clarity about the treatment of intermediate leases during collective enfranchisement and the extent to which this part of the Bill as a whole reflects the Law Commission's proposals. I look forward to hearing the Minister's response.

Lee Rowley: My response is short. I will happily write to the hon. Gentleman and to the Committee in due course on the technicalities to ensure that is correct.

Question put and agreed to.

Clause 5 accordingly ordered to stand part of the Bill.

Clause 6

Right to require leaseback by freeholder after collective enfranchisement

Barry Gardiner: I beg to move amendment 127, in clause 6, page 9, line 42, at end insert—

"(3A) Any lease granted to the freeholder under paragraph 7A must contain a provision that any sub-lease created by the freeholder under their leaseback must contain a provision requiring the sub-lessee to contribute to the service charges reasonably incurred by the managing agent directly or indirectly appointed by the nominee purchaser.

(3B) The provision mentioned in subsection (3A) is implied into all pre-existing subordinate leases to a leaseback granted to a freeholder under paragraph 7A."

The Chair: With this it will be convenient to discuss clause stand part.

Barry Gardiner: It is helpful to the Committee that we had the evidence session, because Liam Spender, the lawyer from Velitor Law, spoke directly about this matter.

We welcome leaseback because it is an important part of enabling tenants in commercial, or partly commercial, buildings to enfranchise. However, imagine that a person has just newly enfranchised, and some of the residents in that block have not participated in the enfranchisement process. It has been quite an acrimonious job debating and arguing with the landlord to get the enfranchisement to happen, but they finally have it. However, the landlord, or the former landlord, may not be happy about it. His capacity, now as the tenant, to cause problems is enhanced by the existing lease that those who have not enfranchised have with him. The moneys that need to be collected for the new landlord's service charge do not come directly to them.

The whole point of the clause is to minimise those problems. There should be a condition in the leaseback to make it clear that any sub-lease that the former landlord gives, or retains, must contain a provision to say that the service charge is payable to the new landlord. Otherwise, we have a very torturous process in which those sums, which are required for the servicing of the building, may be delayed by a former landlord who feels aggrieved that he has lost control.

Matthew Pennycook: My hon. Friend raises an interesting point, which has value. However, if he will forgive me, I would like some more time to consider any unintended consequences before I determine whether we could support it. Perhaps we could come back to it at a later stage, but if he is determined to push it I will come up with a position from the Front-Bench team.

Clause 6 inserts into the 1993 Act a new leaseback right for tenants participating in a collective enfranchisement claim, enabling them to require their landlord to take a leaseback of particular flats or units in the building, other than flats let to a participating tenant. We welcome the clause, as my hon. Friend made clear, which implements recommendation 21 of the Law Commission's final report on leasehold enfranchisement.

At present, leasebacks are mandatory in certain circumstances. A landlord can also require leaseholders to grant them a leaseback of any unit not let to a qualifying tenant, or any flat or unit occupied by them and of which they are the qualifying tenant. However, leaseholders do not enjoy the right to require their landlord to take a leaseback with the effect that, in instances where the landlord refuses a request for a leaseback, perhaps because they are deliberately seeking to frustrate the process entirely, the premium payable in an enfranchisement claim includes the value of that interest.

The new leaseback right introduced by the clause will ensure that premiums that leaseholders would otherwise have to pay will be reduced. Collective freehold acquisition will become a possibility for larger numbers of them because a key funding constraint—namely having to pay for the reversionary value of those flats and units as part of their claim—will have been removed, and in many cases, collective freehold acquisition claims will be made considerably more affordable as a result. It will also increase certainty by ensuring that leaseholders have a far more accurate estimate of the costs of a claim at the outset. Finally, it is essential to ensuring that the increase in the non-residential limit from 25% to 50%, which we debated earlier, is of practical benefit to leaseholders. Without a new leaseback right, many leaseholders who would otherwise be interested in collectively enfranchising would be deterred because the cost of purchasing the whole of a building containing up to 50% commercial space would be prohibitive.

I have two questions for the Minister. The first concerns intermediate leases, which we have just considered under the previous clause. As I believe may have been highlighted by some respondents to the Law Commission consultation, there will be circumstances in which a leaseback of some units to the landlord would not reduce the premium by any significant amount, because the majority of the value in the units in question will be held not by the landlord but by an intermediate interest. This obviously raises again the issue of how the Bill treats the calculation of enfranchisement premiums in instances in which there is an intermediate lease. I would be grateful if the Minister could clarify whether the Bill seeks in any way to address the impact that intermediate leases might have on the benefits that leaseholders could otherwise expect to secure as a result of the new leaseback right.

My second question concerns the terms of the leaseback required under the new right. My understanding is that these will be for a term of 999 years at a peppercorn ground rent, as under the current law, but I would be

grateful if the Minister could confirm that that is the case and perhaps provide the Committee with any other important detail about leaseback terms that will apply to them.

Lee Rowley: I will turn first to the amendment from the hon. Member for Brent North. I appreciate the point that he has made, and he articulated it very well. He is rightly concerned that all those who have an interest in a building should need to pay for it. The amendment's intent is to require any leases granted to include a requirement to make contributions to service charges, as he articulated. Our understanding—I have checked, following the introduction of his amendment—is that the existing law should sufficiently cover this and it should be unlikely that intermediate landlords will not ensure that their sub-lessees contribute to the service charges of a property. But I recognise that the hon. Gentleman has a lot of experience, knowledge and background in this area over many years, so if he wants to write to me separately, with examples of where we potentially have not understood the detail of the point that he is making, I will be happy to look at that in more detail.

Matthew Pennycook: I intervene just briefly so that I can put this on the record. One of my slight concerns about the amendment from my hon. Friend the Member for Brent North is that it could complicate pro rata charges for leaseholders. I just wonder whether the Government have given that any thought. In many ways, the amendment is entirely unproblematic, and we support the intention, but there are a couple of concerns, that being one. Is that part of the Government's thinking on my hon. Friend's amendment?

Lee Rowley: I am grateful to the hon. Gentleman for pointing that out. As indicated, this all needs to be considered in the round. Very few things come without trade-offs and without consideration of other implications. One reason why we are not able to support this amendment today is that we do not think that it is necessary. As a result, I hope that the hon. Member for Brent North will not push it to a vote but will withdraw it. If we have missed something, I will be happy to look at that separately. As the hon. Member for Greenwich and Woolwich suggested, this is something that we do not think is necessary in the wider scheme of things, but if there is a thing that we have missed, I will happily take further information on it.

I will now turn to clause 6, which has been discussed already to some extent. The Government want to broaden access to collective enfranchisement, so that more leaseholders can buy their freehold. However, we recognise that increased access will remain theoretical if many leaseholders are unable to afford to buy their freehold. Therefore, this enfranchisement must be cheaper if leaseholders are to gain the benefits of the ownership that is being sought.

Clause 6 introduces a leaseback right for leaseholders that, if they elect to use it as part of a claim, will in some cases significantly reduce the up-front price that they must pay. "Leaseback", as has been indicated, is the term commonly used to refer to an intermediate lease over part of a building that is granted to the outgoing freeholder as part of an enfranchisement claim. This leaseback covers the value of the unit, which is therefore retained by the outgoing freeholder and reduces the cost for leaseholders of buying the freehold. Currently, the outgoing freeholder can require the leaseholders taking forward a collective enfranchisement to grant the freeholder a leaseback of any non-qualifying units in a building. Clause 6 gives leaseholders an equivalent right to require the outgoing freeholder to take a 999-year leaseback, at a peppercorn rate, of any non-participating units in the building as part of the claim.

In mixed-use buildings, the question of affordability is even more acute, as leaseholders must pay for the freehold interest in non-residential parts of the building, which they have no existing financial interest in, as well as their flats, which they already partly own.

10.45 am

As we have discussed, clause 3 will increase the non-residential limit to 50%, allowing collective enfranchisement claims to take place in buildings with more non-residential elements. Leasebacks will therefore be of particular benefit to leaseholders who take advantage of the broader access that clause 3 provides. Subsections (2) to (4) will allow leaseholders to require the freeholder to take a leaseback.

Clause 6(5) will insert new paragraphs 7A and 7B in schedule 9 to the 1993 Act. Paragraph 7A sets out which types of units can be subject to a leaseback and which cannot, and the arrangements for where the freehold title of a unit is split. Leaseholders can require the outgoing freeholders to take a leaseback of their respective parts, but leasebacks must be granted for all parts of the unit overall. This differs from the slightly narrower right for outgoing freeholders, because they cannot insist on a leaseback of a unit if the freehold title is split.

Paragraph 7B sets out the terms of leasebacks where leaseholders require them to be granted. The terms are the same as those that apply when a freeholder requires a leaseback to be granted. These terms are chiefly that the leaseback must be for 999 years at a peppercorn ground rent; I hope that that answers the second question from the hon. Member for Greenwich and Woolwich. Any departure from these terms must be agreed by both parties or directed by the appropriate tribunal. This change will mean that collective enfranchisement is more affordable for leaseholders who wish to buy their freehold. Leaseholders will be less financially constrained by the number of flats that do not qualify or do not wish to participate in a claim, because, if they choose, they will not need to pay for those units.

Those leaseholders in mixed-use buildings that meet the requisite qualifying criteria for collective enfranchisement will no longer be limited by the non-residential element. This change will significantly improve access to collective enfranchisement in a practical sense, allowing more leaseholders real choice over whether they wish to own their freehold.

I think I have dealt with the second question from the hon. Member for Greenwich and Woolwich, which was about 999-year leases and peppercorn rents. I am happy to write to him on the specifics of intermediate leaseholders if that is helpful. I commend the clause to the Committee.

Barry Gardiner: I am grateful to the Minister for his remarks. It is clear that the Government do not feel that the amendment is necessary and that there will not be a problem with the newly enfranchised freeholder being

[Barry Gardiner]

able to obtain the service charge from all the leaseholders. If that is the case, I will be happy to withdraw the amendment.

I would, however, like the Minister to set out in writing to me and the Committee precisely why he believes that there is not a problem. If we still disagree, we can then bring the amendment back on Report and discuss it further. It would be really helpful to be clear about why the Government are confident that problems will not arise. We have made legislation on the basis of optimism before, and unfortunately our experience is that freeholders can often be quite vindictive.

Lee Rowley: I am happy to give the hon. Gentleman that assurance, and I will be happy to write to him.

Barry Gardiner: On that basis, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 6 ordered to stand part of the Bill.

Clause 7

LONGER LEASE EXTENSIONS

Question proposed, That the clause stand part of the Bill.

The Chair: With this it will be convenient to discuss clause 8 stand part.

Lee Rowley: Currently, leaseholders of houses can claim a lease extension of 50 years, and leaseholders of flats can claim an extension of 90 years. Leaseholders of houses can only ever make one lease extension claim; leaseholders of flats will need to claim repeated extensions both within and between generations, with associated costs. Leaseholders often have to worry about the value of their lease falling as the term runs down.

Clause 7 will amend the lease extension term for houses in the 1967 Act, from 50 to 990 years, and for flats in the 1993 Act, from 90 to 990 years. There is no restriction on the number of claims that can be made, although with a 990-year extended term it is envisaged that only one extension will be necessary; 990 years is as long an extension as can be reasonably given while facilitating multiple periods of 90 years to allow for consistency with existing leases and redevelopment breaks.

Increasing to 990 years the term of the statutory lease extension right maximises the benefit to leaseholders and gives leaseholders much greater security in their homes. This is particularly important where leaseholders do not qualify or are not in a position to buy their freehold.

The increase in the extension term will mean that leaseholders do not have to claim repeated extensions, pay associated repeated transaction costs or worry about the value of their property falling as the lease runs down. Leaseholders of flats and houses will be able to obtain a lease extension of 990 years at a peppercorn ground rent, in exchange for a premium determined by the amended valuation scheme set out in clauses 9 to 11.

I turn to clause 8. Currently, a lease extension for a house under the 1967 Act is made without payment of a premium, but in return for a modern ground rent during the period of the extension, where that rent is similar to a market rent. Because we are increasing the extension term to 990 years at a peppercorn rent, landlords will need to be compensated by payment of a premium, as is the case for flats. The clause makes amendments to the 1967 Act to ensure that landlords will be sufficiently compensated when a 990-year lease extension at a peppercorn is granted for a house. A qualifying leaseholder can obtain an extension of 990 years at a peppercorn ground rent in exchange for a premium determined by the amended valuation scheme set out in clauses 9 to 11.

Matthew Pennycook: I will spend some time on the clauses, because they are important.

As the Minister set out, clause 7 changes the lease extension rights given to tenants of houses and tenants of flats by the 1967 and 1993 Acts, respectively, to provide for a 990-year lease extension rather than, as is currently the case, a 50-year extension under the 1967 Act and a 90-year extension under the 1993 Act. Clause 8 works in conjunction with clause 7 to that end, by making consequential amendments to the 1967 Act that are required to set ground rents under such extensions at a peppercorn and ensure that the premium payable is based on the amended valuation scheme set out in clauses 9 to 11, as the Minister made clear.

Taken together, the clauses not only provide for the standard lease extension term to increase to 990 years at a peppercorn rent, but ensure that the rights available to tenants under each of the Acts are made equivalent. This reform, which draws on recommendations 1 and 2 of the Law Commission's final report on leasehold enfranchisement, is long overdue. The right to extend one's lease is important for leaseholders who do not qualify for a right of freehold acquisition or who do enjoy such a right but, for whatever reason, either cannot or do not wish to purchase the freehold. It is particularly important for leaseholders who live in blocks of flats, as the vast majority do in constituencies such as mine, because it is the only enfranchisement right they can exercise when acting alone. However, both the 50-year lease extension available to leaseholders of houses under the 1967 Act and the 90-year extension available to leaseholders of flats under the 1993 Act are too short to provide adequate security of tenure.

The principle of a right to an extension of a considerably longer time is therefore the right one. As the Minister argued, it will particularly help to protect those leaseholders with short remaining lease terms at the point at which the extension is secured, and will avoid the need for a second extension to be sought and secured in short order. We also feel that the choice of a standard 990-year lease is the right one. Once the principle of a very long lease extension has been accepted, the case for taking the additional period as close to 999 years is watertight. A more modest extension, which the Law Commission did consider, would provide only temporary relief and would require many leaseholders to make a second claim in relatively quick succession. The proposed 990-year lease extension right will avoid the need for further lease extension claims in the future, will provide leaseholders with a substantially enhanced interest in their homes and will bring leaseholders extremely close to outright freehold ownership.

It is also right that we legislate to introduce a uniform right applicable and available to both leaseholders of houses and leaseholders of flats, so we support the alignment of the lease extension rights for which the clause provides. There is no justification for maintaining the discrepancy in the law as it stands, where the right to a lease extension for a house is considerably less favourable than the equivalent right to a lease extension for a flat. In sum, we fully support leaseholders who qualify for a lease extension under the 1967 or 1993 Act being given the right, on payment of an appropriate premium, to extend their lease and in so doing to secure a peppercorn rent.

I have five questions for the Minister about these important clauses. The first relates to redevelopment. In recommending that an additional period of 990 years should be added to the remaining term of the existing lease in the cases of both houses and flats, the Law Commission also proposed that redevelopment break rights should be maintained. These are rights accorded to a landlord to terminate a lease that has been extended and to regain possession of the property in order to carry out redevelopment work. The Law Commission recommended that they should be maintained during the last 12 months of the term of the original lease or the last five years of each period of 90 years after the commencement of the extended term.

We fully appreciate that many leaseholders will find the very notion of such break rights problematic, and the Law Commission recognises that maintaining rolling break rights, as under the 1967 Act, would create unnecessary uncertainty. However, difficulties relating to the lifespan of buildings are an issue we have to grapple with, not least because they will become more pressing over time when lease extensions become significantly longer by default. As the Law Commission's recommendation on development break rights has not made it into the Bill, I would be grateful if the Minister explained the Government's determination to omit it. Some would argue that there is a strong case, in a world in which 990-year lease extensions are the default, for the sensible provision of development break rights.

My second question concerns when the rights provided by clauses 7 and 8 will come into effect. The clauses present leaseholders who have recently obtained a lease extension, or who will be compelled to obtain one—for the purposes of moving home or mortgaging, say—before the commencement date, with a real dilemma, because the only way they will benefit from a 990-year extension and a peppercorn ground rent in instances where that is not already the case is by making a further extension claim in short order. The fact that any such leaseholders will have recently extended their lease with, in all likelihood, a peppercorn ground rent will mean that the premium payable will be low, but there will still be a cost.

I would be grateful if the Minister made it clear whether the Government have given any consideration to how to ensure that the premium in such cases is as low as possible, to avoid some leaseholders facing costs that others will not face, simply as a result of the sharp transition from one set of arrangements to another. Better still, could he outline precisely how commencement will operate in respect of the clauses? Will he tell us whether the Government might consider amending the Bill to ensure that the new rights come into force on, or very soon after, Royal Assent, so that they can be enjoyed by leaseholders confronting the need for an extension as quickly as possible?

My third question relates to ground rents. We will explore the issue in considerable detail when we consider clause 21, but I would be grateful if the Minister told us, in relation specifically to lease extensions, how clauses 7 and 8 will operate if the Government's response to the consultation "Modern leasehold: restricting ground rent for existing leases", which closed last week, is, as per the Secretary of State's declared preference, to table amendments to enact option 1, namely capping ground rent at a peppercorn for all existing leases from a given date.

All we want to know is whether the ground rent provisions in clause 8 would be rendered irrelevant. In other words, are they unnecessary? If so, will the Government have to make further amendments to the clause to ensure that, in conjunction with clause 7, it provides only for a 990-year lease extension and does not make changes to ground rent provisions in any way? Presumably they will need to be abolished by further Government amendments that will potentially abolish ground rents for all existing leases.

My fourth question concerns the technical matter of who the competent landlord is for the purpose of lease extensions under the 1993 Act. The provisions within clauses 7 and 8 will mean that even in circumstances where there is a head lease of 999 years at a peppercorn rent, which is a fairly common occurrence, the owner will be entitled to all of the premium. Nevertheless, it is the freeholder, not the head lessee, who will have to handle the claim. That raises the obvious question of why a freeholder should engage with the process at all, given that it will leave them out of pocket.

Schedule 1 to the 1967 Act includes provisions designed to overcome the problem by providing that a long head lessee is the reversioner. Will the Minister tell us why a similar set of provisions is not being introduced to the 1993 Act to provide that a very long head lessee in a block of flats is to be regarded as the competent landlord, not the freeholder? If there is no justification for that omission, might the Government go away and consider whether it is necessary to overcome that problem?

My fifth and final question concerns the Government's commitment to use the Bill to legislate for a ban on new leasehold houses. The Government amendments providing for such a ban have still not been tabled, so we cannot engage with the detail. However, given that it is the Government's stated intention effectively to do away with leasehold houses, I would like to probe the Minister on the reasoning behind providing, by means of clauses 7 and 8, leaseholders in houses with a right to a 990-year lease extension at a peppercorn rent, for which the premium will be the same as if it were a freehold enfranchisement. Is this—I am being generous to the Minister—an example of muddled thinking on the Government's part that might require review? I look forward to hearing the Minister's response.

11 am

Richard Fuller (North East Bedfordshire) (Con): I want to speak briefly in support of the third point made by the shadow Minister, the hon. Member for Greenwich and Woolwich, in which he addressed the interaction of the Bill with the Government's ground rent consultation.

[Richard Fuller]

If I heard him correctly, he was asking the Government at least to be clear as to how those recommendations will affect the Bill. He was asking the Government to be clear on their position; I will not go as far as that, because I think the Government have the discretion to decide when they want to announce that or not.

However, there is another issue that the Minister could perhaps consider: the impact assessment on the valuation, which we, as Members of Parliament, are being asked to address in this Bill. As we heard in the evidence sessions, the current impact assessment may potentially omit a significant amount of value that will be taken into account as part of the ground rent reform. If it is the Government's intention to introduce amendments on that, as the shadow spokesman was asking, it would be useful to have clarity from the Minister on that, but we should also ask the Minister whether an updated impact assessment can be presented to incorporate what the value of those recommendations would be.

Rachel Maclean: I rise briefly to add my support for some of the comments and, most importantly, for the ability of leaseholders to extend their leases. As we know, this is one of the most egregious features of the current system: people buy properties that they then find have short leases, after which they are whacked with massive charges coming out of the blue; they do not understand how those charges are calculated, and they end up having to pay them because they have no choice. They are completely over a barrel. I know that leaseholders will massively welcome this change, which is one of the most important parts of the whole Bill.

Having said that, it is vital that we understand when we will see the Government's response on the ground rent consultation, as my hon. Friend the Member for North East Bedfordshire and the shadow spokesperson, the hon. Member for Greenwich and Woolwich, have said. It will, of course, affect the calculations.

I also want to raise with the Committee the number of people who have sat in front of me and asked, "When will you bring this forward? I don't know whether to extend my lease now or wait another year or for another consultation". It is a huge number of people. I want to make this point to everybody: if we get this right, it will affect a lot of people very beneficially.

Barry Gardiner: I am glad that co-operation is breaking out across the aisle. It seems that this change is one of the really big issues of the Bill. Looking through the Bill, yes, there was disappointment that it does not go far enough and there is no commonhold, but this is a real change. It is something that Members on both sides of the Committee have welcomed, and we heard evidence from our witnesses about just how important it is. It is strange, therefore, that we do not now see the meat of it in the Bill. I will not go so far as to say that it is more than strange, as my hon. Friend the Member for Greenwich and Woolwich suggested, but we do need it.

This provision will liberate a whole group of people who fear what we call the ground rent grazers. They are the ones—the freeholders—who have created a rentier structure over the past 15 years. It did not even exist 25 years ago. What people used to do 25 years ago, when the ground rent was payable, was write a cheque to the freeholder, and the freeholder would bin it. Then, three weeks later, the freeholder would send a lawyer's letter to the tenant, saying that because they had not paid their ground rent on time, they were now being charged £625 for their legal fees in having to chase it, including the £25 ground rent. That is a bad practice that has evolved and the Government need to clamp down on it and get it sorted.

Lee Rowley: I thank hon. Members for their questions and comments, which I will try to address. There is obviously a desire to understand the interaction of the two clauses with the outcome of the consultation that closed last week. We saw to some extent in our deliberations last week, on the first two days in Committee, when we took evidence, that this is a contested area. As a result and notwithstanding the fact that by convention in this place we have the ability to speak freely, I hope the Committee will understand that I will limit my remarks.

I understand the eagerness, enthusiasm and legitimate desire of the Committee to understand the position that we will seek to provide. We will provide that to the Committee, and publicly, as soon as possible. It will not be possible for me to answer all the questions that were asked today. I accept the point made by my hon. Friend the Member for North East Bedfordshire that there is a difference between process and decision, but some elements of the process could be impacted by the decision and it will therefore be difficult to engage in hypotheticals at this stage. However, we will respond to the legitimate points that the Committee has made as soon as we are able to do so.

I agree with the points made by the hon. Member for Greenwich and Woolwich and by my hon. Friend the Member for Redditch about the importance of clarifying how quickly the provisions will come into force. Again, that is a difficult one to answer because we need to get through this process. We have no idea what the other place might or might not do or how quickly the process will go. Although we are all grateful for the confirmation from my Labour colleagues that we are seeking to move this as quickly as possible, it is difficult to be able to answer the question at this stage, but I hope to say more in due course.

On the fourth question posed by the hon. Member for Greenwich and Woolwich, about the competent landlord, my understanding is that we are not changing the law in that regard.

Richard Fuller: I am listening carefully to the Minister and sort of accept what he says, but may I make a couple of points? First, he has talked about how the Bill has to go through the House of Lords, but we are the democratically elected Chamber. The interaction of the two provisions represents substantial transfers in value between different parts of our community—rightly or wrongly. Decisions should correctly be made with the full information by this House. We should not go through a procedure when information is presented in the unelected House, which then comes back to the Commons. With our remit as Back-Bench Members of Parliament, we are very restricted in what we can do to amend that.

Secondly, the Minister talked about how the points about value are hypothetical. That is the case only because the Government have not made a decision. Once they make a decision, those points of value can be forecast. They are no longer hypothetical but judgmental,

so it really is within the Minister's remit to be able to move from hypothetical to his own forecast. Having said that, I fully accept what the Minister has said so far.

Lee Rowley: I am grateful to my hon. Friend for his legitimate points. He is absolutely right that it is important that right hon. and hon. Members have an opportunity to debate at the earliest possible opportunity the complex interaction of what we may or may not choose to do with the consultation. I take his point about hypotheticals. My point was simply that there are a number of different options in the Bill. Some of them are substantially different, as my hon. Friend indicated in some of his questions last week. To go through all the elements of the potential outcomes in all of those different options would be a substantial amount of work and potentially not necessary on the basis that we are likely to choose some rather than all of them. None the less, where I have missed anything out, I will—

Eddie Hughes: The point being made is one of proportion. We are talking about a couple of a billion pounds versus up to £25 billion, £27 billion, which is a significant amount of money for the Government to be considering transferring, as my hon. Friend says, from one party to another. The size of the costs that might be incurred from one party to another makes it important for us to know as soon as possible.

Lee Rowley: I absolutely accept the potential significance of the quantum involved, which is why we all seek to be as clear as we can at the earliest opportunity.

Barry Gardiner: I am conscious that we are talking about the transfer of value as if it were neutral, but leaseholders have been telling us for a long time that this value has been unjustly acquired from them in the first place. The Government seek simply to remediate the position that the law has got itself into. When we consider this, we must understand the injustice that has been perpetrated on people who live in leasehold houses, and have been paying ground rents that have been racked up in an unconscionable way for far too long.

Lee Rowley: The hon. Gentleman is articulating his argument with passion, as he did last week on a similar point in some of the witness sessions. I reconfirm to the Committee that we seek to process the outcome of that consultation as quickly as we are able, and to provide hon. Members and the public with clarity at the earliest opportunity. None the less, while recognising the important interaction of clauses 7 and 8 with the consultation, I hope that underneath there is general consent for clauses 7 and 8. I hope I have covered most of the questions asked. I will write to the Committee in response to the question from the hon. Member for Greenwich and Woolwich about redevelopment, because I need to obtain clarity on that.

Matthew Pennycook: I welcome the Minister's response. He did not address—perhaps he will find time on another occasion—the Government's potential inconsistency in, on the one hand, extending lease extension terms at peppercorn for houses, under the 1967 Act, and, on the other, seeking to ban leasehold houses in their entirety. The Government might want to explore that, to ensure the package as whole is consistent and working as intended. He is welcome to write to me on that point, as well as on redevelopment rights.

I take the Minister's point on the competent landlord. My point was not whether the Bill is fine as drafted; it is the fact that we need to change the 1993Act to account for the set of circumstances I outlined. There is provision in the 1967 Act to cover that problem. As far as we can tell, this Bill does not amend the 1993 Act to account for it. I encourage him to look at that.

On the two substantive issues, there is inherent uncertainty about commencement. Of course, we want the Bill to progress and apply to as many leaseholders as possible. I was trying to stress to the Minister the need to look at the point at which the Bill kicks in. In some Bills, certain provisions come into force at First Reading. We are worried, as the Bill goes through Parliament, about a set of leaseholders being left out of these rights unfairly, given the time we have spent progressing the Law Commission's recommendations. I encourage him to give some thought to that.

On ground rents, I understand entirely that the matter is commercially sensitive. I am not asking for an opinion from the Minister on the consultation, although we do need an indication of the Government's thinking as soon as possible. We also need to understand, as I will come to when we debate clause 21, whether the Government intend to enact any recommendations from that consultation, via this Bill.

What I am looking for is clarity, which he should be able to give us at this stage, on this hypothetical point. If any proposals from that consultation are enacted, clauses 7, 8 and 21 are potentially redundant. We simply need to know whether the Government will further overhaul those clauses, if they take forward any of those recommendations. That is hypothetical, but the Minister should be able to answer. The Government have presumably thought, "Yes: if that scenario occurs and we take forward one of the five options, we will or will not have to revise the Bill." That is the answer that I am simply looking for from the Minister. If he wants to take this opportunity to clarify that, I would welcome it.

Lee Rowley: The hon. Gentleman tempts me to go into hypotheticals. Let me at least dip my toe into that for a moment. Let us take some of the potential outcomes of the consultation discussed today, for example, and the question of whether they potentially will make redundant some of the clauses. In one of the instances, where there is a fear, concern or question, it would still be the case that potentially amendments to clause 8 would need to be introduced, for example, on ground rents, so depending on the scenario it would not make that entirely redundant. I will not go into hypotheticals to their logical and total extent, but I hope that that gives some assurance that consultation has been held and we will bring forward what is appropriate in due course.

Question put and agreed to.

Clause 7 accordingly ordered to stand part of the Bill.

Clause 8 ordered to stand part of the Bill.

Ordered, That further consideration be now adjourned. *—(Mr Mohindra.)*

11.16 am

Adjourned till this day at Two o'clock.

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

LEASEHOLD AND FREEHOLD REFORM BILL

Sixth Sitting

Tuesday 23 January 2024

(Afternoon)

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not later than

Saturday 27 January 2024

The Committee consisted of the following Members:

Chairs: † Dame Caroline Dinenage, Clive Efford, Sir Mark Hendrick, Sir Edward Leigh

Amesbury, Mike *(Weaver Vale)* (Lab)
† Carter, Andy *(Warrington South)* (Con)
Davison, Dehenna *(Bishop Auckland)* (Con)
† Edwards, Sarah *(Tamworth)* (Lab)
† Everitt, Ben *(Milton Keynes North)* (Con)
† Fuller, Richard *(North East Bedfordshire)* (Con)
† Gardiner, Barry *(Brent North)* (Lab)
† Glindon, Mary *(North Tyneside)* (Lab)
† Hughes, Eddie *(Walsall North)* (Con)
† Levy, Ian *(Blyth Valley)* (Con)
† Maclean, Rachel *(Redditch)* (Con)
† Mohindra, Mr Gagan *(South West Hertfordshire)* (Con)
† Pennycook, Matthew *(Greenwich and Woolwich)* (Lab)
† Rimmer, Ms Marie *(St Helens South and Whiston)* (Lab)
† Rowley, Lee *(Minister for Housing, Planning and Building Safety)*
† Smith, Chloe *(Norwich North)* (Con)
† Strathern, Alistair *(Mid Bedfordshire)* (Lab)

Huw Yardley, Katya Cassidy, *Committee Clerks*

† attended the Committee

Public Bill Committee

Tuesday 23 January 2024

(Afternoon)

[Dame Caroline Dinenage *in the Chair*]

Leasehold and Freehold Reform Bill

2 pm

Clause 9

LRA 1967: determining price payable for freehold or lease extension

Question proposed, That the clause stand part of the Bill.

The Chair: With this it will be convenient to discuss the following:

Clauses 10 and 11 stand part.

Government amendments 59, 62 to 65, 67 and 68.

Schedules 2 to 4.

Government amendment 72.

Schedule 5.

The Minister for Housing, Planning and Building Safety (Lee Rowley): This Bill reforms the valuation process for leaseholders when they buy their freehold or extend their lease. It does this by repealing parts of existing legislation and setting out a new valuation scheme that leaseholders and landlords must follow. We are debating a large group of measures, so I am afraid—and I apologise to the Committee in advance—that my comments may be slightly longer than normal, in order to cover all of those.

Clause 9 amends the Leasehold Reform Act 1967, which deals with lease extensions and freehold acquisitions of houses. Subsections (1) to (3) make necessary changes to sections 8 and 9 of the 1967 Act in relation to freehold acquisitions. It mandates the use of clause 11, which sets out the new valuation scheme for calculating the price payable. Subsection (4) applies that to lease extensions for houses. I will shortly come on to that new valuation scheme covered in clause 11, the detail of which is contained in schedule 2. However, these changes introduce the valuation reforms contained in the Bill. I commend clause 9 to the Committee.

Clause 10 makes the necessary changes to the Leasehold Reform, Housing and Urban Development Act 1993, which deals with flats. The clause amends sections 32 and 56, and repeals schedules 6 and 13 of the 1993 Act, which deal with the freehold acquisition of a block of flats and lease extensions of a flat. In a similar way to clause 9, clause 10 mandates the use of clause 11 in determining the price payable for enfranchisement transactions—in relation to flats, rather than houses—and sets out the new valuation scheme for calculating the price payable. I commend clause 10 to the Committee.

Clause 11 provides the basis of the new valuation scheme that must be used to determine the price payable when exercising any of the four enfranchisement rights, which are acquiring the freehold of a house, extending the lease of a house, acquiring the freehold of a block of flats and extending the lease of a flat. The clause sets out that the premium is comprised of two elements: first, the market value, which is to be calculated in accordance with schedule 2; and, secondly, any other compensation, which is to be calculated in accordance with schedule 3.

Schedule 2 details the steps for calculating the price payable for lease extensions and freehold acquisitions. It also contains key reforms to the valuation process, including the removal of marriage value and hope value, capping ground rent at 0.1% of the freehold value in the valuation calculation, and providing the Secretary of State with a power to prescribe two rates used to calculate the premium.

Richard Fuller (North East Bedfordshire) (Con): The Minister just mentioned that schedule 2 eliminates marriage value. He will be aware, from the impact assessment, that there is a financial value associated with marriage value. Can the Minister tell me whether the Government think that marriage value is a real value—that it has intrinsic value—or is it just a number that has no material value at all? Is there something behind what marriage value is, and what is the rationale for eliminating it?

Lee Rowley: That is an interesting philosophical question to debate straight after lunch. The Government recognise that marriage value is utilised in a number of transactions. Therefore, some people in the market—some individuals, some economic actors—must deem that there is some form of additional value by marrying the lease and the freehold up within a shorter period of time. How that works, what exactly that is, and how expansive it is, is for others and for the market to determine, in a traditional and—something that I think we both would support—a wholly capitalist way. However, there does seem to be something to it, hence why we are making some of the reforms that we are making, given the feedback that we have been given.

Richard Fuller: I am grateful to the Minister for his summary, which I think is very accurate. Given that the Government have assessed that there is something real there, and decided that they want to eliminate the marriage value—obviously, a lot of work has gone into the preparation for that—what representations has he received about the legal underpinnings of this particular aspect of the legislation for those from whom that value is being taken?

Lee Rowley: The Government remain confident that the proposals being put forward are compliant with their responsibilities. I have only been in post for a short period of time, and my hon. Friend the Member for Redditch may wish to comment on this. The conversations I have had with the people who—I say this without breaking their confidence, given that some of them might be in camera—have come to me to represent their position have not focused on that as the main issue.

Schedule 2 also sets out how to divide the premium into shares, where multiple landlords are entitled to receive a share—for example, where there are intermediate landlords. We will go through that in further detail when we consider schedules 2 and 3. I commend clause 11 to the Committee.

I now turn to amendment 59, which is in my name. This amendment exempts business tenancies which qualify for enfranchisement rights under the Leasehold Reform Act 1967 from the standard valuation method. It is not our intention for the standard valuation method—especially the rent cap—to apply to any business rent, and this amendment closes off that possibility for a relatively rare type of lease where it might otherwise have existed. I commend this amendment to the Committee.

Turning to amendments 62, 63 and 64, which are in my name. Amendment 62 makes minor technical changes to assumption 1 in schedule 2 so that the clause operates as intended. The change to sub-paragraph 15(2)(a) makes the phrasing clear that the clause is about freehold acquisitions. The change to sub-paragraph 15(2)(b) is a minor and technical correction so that where a lease extension is granted by someone other than the freeholder, such as a head lessee, the assumption of merger with the interest of the person granting the extended lease still takes place for the purposes of the valuation methodology for intermediate leases. Amendments 63 and 64 fix typographical errors, by changing the word "property" to "premises", as the latter is defined.

Turning to amendments 65, 67 and 68 in my name, these make small changes in schedule 2 so that the provision works as it was intended. Amendment 65 clarifies the valuation of the market value of a flat as it is to be used for the purposes of identifying the ground rent cap in the calculation of the term value. Amendment 67 makes a change to ensure that the definition of what is being valued is clear. Amendment 68 clarifies the valuation of the market value of a flat as it is to be used for calculating the reversion.

These amendments are intended to avoid any mis-interpretation of the standard valuation method. Some may mistakenly interpret the schedule as requiring a valuation of a flat as if it were a flying freehold which could cause it to be undervalued. Amendment 68 clarifies the meaning so that what is being valued is the share of the value of the freehold of the whole building and appurtenant property that is attributable to the flat. The amended text will make sure that the standard valuation method is interpreted as we intend it to be. I commend these amendments to the Committee.

Schedule 2 sets out how to apply the new standard methodology when calculating the premium that leaseholders of houses and flats need to pay to extend their lease or acquire their freehold. This includes fundamental reforms to the valuation process, including the removal of marriage value—which we have just discussed—and the capping of ground rent at 0.1% in the valuation calculation. These changes help to fulfil the Government's aim to make it cheaper and easier for leaseholders to extend their lease or buy their freehold. The schedule is extensive and broken into seven parts.

Part 1 introduces schedule 2 and requires that this schedule must be followed when calculating the market value of the premium for lease extensions and freehold acquisitions for houses and flats. It also sets out how to divide the premium into shares where loss is suffered by multiple landlords. Part 1 also makes clear three definitions for the purposes of this schedule: that of "collective enfranchisement", "freehold enfranchisement" and "lease extension".

Part 2 of 7 sets out the basis of the market value for freehold acquisitions and lease extensions. Paragraph 2 does this for freehold acquisitions. It sets out that the market value of the freehold used in calculating the premium is the value of the freehold as if sold on the open market by a willing seller. Paragraph 3 does this for lease extensions. It sets out that the market value of the lease extension used in calculating the premium is the value of the 990-year extended lease, at peppercorn ground rent, as if sold on the open market by a willing seller. Paragraph 4 states that the premium for both acquisitions and extensions is to be determined in accordance with part 3 and on the basis of the assumptions set out in part 4.

Part 3 of schedule 2 sets out that while in general the standard valuation method must be used to determine the value of acquiring a freehold or extending a lease, there are some exceptions. The specific exceptions are set out in paragraphs 6 to 8 and include where the lease has five years or less remaining, where the property is subject to a home finance plan lease and where the lease is a market rack rent lease. For these purposes, a market rack rent lease is where the leaseholder has either paid no premium or a very low price for the lease in return for paying a high rent.

Paragraphs 9 to 11 set out some further detailed exceptions, including where there has been a pre-commencement lease extension of a house for 50 years at a modern ground rent. These paragraphs also explain that the standard valuation method only applies to a relevant flat in collective enfranchisements, where relevant flat excludes, for example, flats with shared ownership leases. Paragraph 12 provides that the standard valuation method can still be used to determine the value of the relevant freehold acquisition or lease extension, even when it is not compulsory to do so. Paragraph 13 makes it clear that the standard valuation method is to be used if either part 3 requires it to be used or where it is used on a voluntary basis in relation to the property being valued.

Part 4 of schedule 2 sets out the assumptions on which the valuation of freehold acquisitions or lease extensions are to be based, whether or not the standard valuation method is being used. Assumption 1 is that intermediate leases and freehold interests are treated as merged for the purposes of valuation where they are acquired in a freehold acquisition or where they are affected by the lease extension claim. The effect of assumption 1 is to simplify the process and lead to savings in process costs and premiums in some cases. This does not apply to intermediate leases that are not acquired. Assumption 2 is that the leaseholder is not, and never will be, in the enfranchisement market, nor will the leasehold and freehold interests by other means be married. The effect of assumption 2 is that no marriage or hope value is payable for either a lease extension or freehold acquisition. This will reduce premiums where leases have 80 years or fewer remaining and remove the cliff edge that leaseholders currently face.

Assumption 3 is that the relevant property is assumed to be in good repair and has not been improved under the current lease. The effect of assumption 3 is to prevent the premium being either decreased in favour of the leaseholder, due to the property being held in disrepair, or increased in favour of the landlord, due to the leaseholder having made improvements. The latter case

[Lee Rowley]

would result in the leaseholders having paid for the improvements twice. In the case of a freehold house acquisition, assumption 3 will only apply to the current lease, removing the ability to chain together multiple long leases.

Assumption 4 is that where leasebacks are taken, their value is deducted from the freehold value, reducing the premium. Other assumptions can still be made when determining the market value, as long as they are consistent with assumptions 3 and 4 as well as the other provisions of schedule 2. The remaining paragraphs cover circumstances where the premium may have to vary, including to account for burdens or benefits on the title, differing terms in extended leases, leases with five years or fewer remaining, and where leaseholders own their immediately superior intermediate lease.

Part 5 sets out the standard valuation method, which is made up of three steps for lease extensions and freehold acquisitions. Combined with the assumptions set out in part 4, the resulting premium for many leaseholders will be lower than it otherwise would have been where they have leases with 80 years or fewer remaining, or high or escalating ground rents. The first step is to determine the term value, which is the capitalised value of the ground rent payable over the term of the lease. In other words, the landlord is compensated with a lump sum, instead of continuing to receive future ground rent for the remainder of the lease term. Part 7 must be used to determine the capitalised value.

In calculating the term value, a ground rent cap will now apply so that the valuation calculation will cap the ground rent at 0.1% of the freehold value. There are two exceptions. The first is where the leaseholder has paid no premium for the lease. The second is where the lease was purchased for a low premium in exchange for a high rent. In step two, the reversion value is determined. The reversion value compensates the landlord for the loss of the reversion at the expiry of the lease in the case of freehold acquisition and for the delayed reversion in the case of a lease extension.

For freehold acquisitions, the reversion value is the market value of the freehold at the expiry of the lease, discounted at the deferment rate. In a collective enfranchisement, this is calculated for each qualifying leaseholder's lease. For lease extensions, the reversion value is the market value of a 990-year lease at peppercorn ground rent on the same terms as the new, extended lease and beginning at the end of the term of the current lease, discounted by the deferment rate.

Step 3 requires that the market value of the property determined by the standard evaluation method is found by adding the term and the reversion values in steps 1 and 2, and in collective acquisitions all the relevant term reversion values subject to any adjustments, as provided for in other parts. Part 5 gives powers to the Secretary of State to specify the deferment rate used to calculate the reversion value and includes a requirement to review the rate every 10 years.

2.15 pm

Richard Fuller: Will the Minister explain why it is right to give the decision on those rates to the Secretary of State?

Lee Rowley: It is ultimately a balance, as we discussed this morning when talking about the fundamentals in clause 3, I think. We believe that it is proportionate to allow the Secretary of State to make a decision here, but I will be clear now and as we go through the Bill that that should be done only on an occasional basis, hence the reference to the 10-year review period.

Richard Fuller: Does the Minister accept that the absence of knowing what will be in the Secretary of State's mind about what rate he or she may set affects the analysis of what is being done economically with the Bill quite significantly? What thought has he given to the legal challenge risks of holding back what is in the Secretary of State's mind about what the rates would be?

Lee Rowley: I am grateful to my hon. Friend for his comments. I accept the point that we need to get as much of that information to members of the Committee, the House and the public as quickly as we are able to do so. I know that he and other Members recognise that we have a process that we need to go through in that period, and I hope that we give enough information about the process and changes, although I accept the interaction that he indicates. My hon. Friend is an experienced Member; it is not my intention in any way, but forgive me if I say anything that he knows.

Obviously we must get through the process of working through the legal risk. It is a very contested area—we can see that already. There have already been indications that people will look at it extremely closely, so it would not surprise me if it was looked at extremely closely in most ways. There are potential legal issues on both sides, in that whatever we come out with, any public policy change often or always creates a group of people who do not like it, and they have an ability through due process and the law to see if there is anything in there that they dislike. I guess this is no different, but equally the Government are cognisant that it creates a challenge in this domain. We must go through the process of having the consultation, which only closed quite recently, and giving enough time for that to be considered and transacted on before we come to a conclusion; otherwise, there is potential legal risk there as well.

Part 6 sets out how a premium determined under parts 1 to 5 should be divided among multiple parties, such as intermediate landlords and freeholders. That creates a saving in process costs for leaseholders, as the work of dividing the premium is picked up by the affected parties. The part specifies that the division is made according to how each person's interest has been devalued or lost by the claim, termed as "loss". It sets a formula that takes the market value, provided for in parts 1 to 5, multiplies it by that person's loss and divides it by the total losses of all the parties. Loss cannot include marriage value or hope value, which we are preventing from forming part of the premium.

Finally, part 7 of seven sets out how to calculate the term value—that is, the capitalised value of the ground rent payable for the remainder of the term of the lease. That is a component of the premium, as explained in part 5, under different rent review clauses. Depending on the lease, the ground rent payable may not be subject to review; or it may be subject to review such that the rent payable after the review is known; or it may be

subject to a review that makes reference to price inflation, for example, or the capital or rental value of the property. Part 7 is entirely technical and sets out the formulae that apply in each case. The inputs into the formulae are the rent payable, the term for which it is payable and the capitalisation rate. In all cases, where the rent payable exceeds 0.1% of the freehold value of the property, the ground rent cap applies, so that the rent payable is treated as if it is only 0.1% of the freehold value. Part 7 gives a power for the Secretary of State to specify the capitalisation rate used to calculate the term value, and includes a requirement to review that rate every 10 years. I commend the schedule to the Committee.

I turn to schedule 3. As stated in debate on clause 11, schedule 3 sets out when, and to whom, "other compensation" must be paid by enfranchising leaseholders. "Other compensation" is a concept in law; it acts as a top-up payment that landlords and other parties can claim if an enfranchisement claim impacts on their interest. The schedule permits other "reasonable" compensation to be paid in two types of cases. Although it continues an existing practice, it works to ensure that the top-up cannot be used to claim for values already covered by the standard valuation method in part 5.

First, other compensation is available where the enfranchisement claim causes a devaluing of property outside the premises subject to the claim. Secondly, other compensation is available where loss is caused to other property not subject to the claim, but only to the extent that it is referable to a person's ownership of any interest in other property. If, for example, a landlord owns an unbroken parade of terraced houses and there is a freehold acquisition of one house, the landlord might claim for other compensation if they can demonstrate that the value of the whole parade has been diminished due to one of the houses enfranchising. The schedule sets out that it does not matter whether the landlord had other options, such as leasebacks, but did not take them. It also sets out definitions, such as the meaning of development value. I commend the schedule to the Committee.

I turn to schedule 4, which defines many of the terms used in schedules 2 and 3 that determine the make-up of an enfranchisement premium. It points to different parts of the schedules to demonstrate the meaning of those terms. For instance, the meanings of "term value" and "reversion value" are as described in schedule 2. I commend the schedule to the Committee.

I turn to amendment 72 in my name, which corrects a typographical error in schedule 5 so that the provision works as intended. As a result of the amendment, Paragraph 7(3)(b) of that schedule will require the tenant, not the competent landlord, to pay into the tribunal the whole price payable. That is a new protection that could be used, for instance, where there are valid concerns about the conduct of a landlord handling the claim on behalf of others. I comment the amendment to the Committee.

Schedule 5 makes necessary consequential amendments that help to plug into existing law the new valuation methodology set out in clause 11 and schedule 2. It makes amendments to support the new valuation process in enfranchisement claims that involve multiple landlords, such as intermediate landlords and freeholders. That includes a fallback power, which enables leaseholders to require the transfer of property or grant of a lease, even if the landlords have not yet settled on how to divide the premium. That would be useful, for instance, if multiple landlords were in dispute with each other and it was threatening to hold up the claim.

The provisions also require the premium to be paid to the landlord handling the claim on behalf of the other landlords. They prevent landlords from requiring leaseholders to pay their share directly, as that would undermine the new valuation process where it involves intermediate leases. However, a new protection has been added that permits an individual landlord to require the whole price to be paid into the tribunal. That could be used, for example, where there are valid concerns about the conduct of a landlord handling the claim on behalf of others. With huge gratitude for allowing me to go through all of that, I commend schedule 5 to the Committee.

Matthew Pennycook (Greenwich and Woolwich) (Lab): The Minister made a commendable effort to explain the various Government amendments and schedules in this part of the Bill. Briefly, for purposes of clarity, let me say that we have a lot to say about valuation, but we will do so when we debate schedule 2.

Rachel Maclean (Redditch) (Con): I add my words of appreciation to those of the shadow Front-Bench spokesman for the Minister's explanation. I want to add one brief point of clarity on marriage value, which was alluded to by my hon. Friend the Member for North East Bedfordshire. It is fair to say that marriage value is seen as one of the outdated, feudal and predatory practices of freeholders. It prevents people who have bought a house or flat in good faith from enjoying their property as we would expect them to do in a free country such as the UK.

I will not detain the Committee, but I recommend that anybody watching these proceedings or interested in the subject reads an absolutely fantastic article on leaseholdknowledge.com. That is a leaseholders' charity that has done a superb and detailed work on this topic. An article by a gentleman called Linz Darlington explains that marriage value is particularly unfair, because people pay not only their own fees, but the freeholder's fees, and there is a concept of hypothetical profit. The whole thing is just a massive racket—I am not qualified to explain it any better than that, so I leave my comments there. Many people have told me that marriage value should go. It is part of an outdated system. Read the article on the website. I commend the Government for bringing forward this very important part of the overall package of reforms.

Richard Fuller: It is a good to see you in the Chair, Dame Caroline. We are blessed on this Committee to have three people who have been Housing Ministers, the great experience and expertise of the hon. Member for Brent North, and the good graces of the shadow Minister, the hon. Member for Greenwich and Woolwich. I was recently speaking about the Bill to my right hon. Friend the Member for Ashford (Damian Green), who pointed out that there were discussions about some of the measures in the Bill when he was the adviser to Sir John Major in No. 10 in the 1990s.

I have none of the expertise or experience of any of the people I have just mentioned, so it is with humility that I rise to make some observations. My first observation,

[Richard Fuller]

which is not specific to the Bill, is that whenever there is a clear consensus between Government and Opposition, problems usually arise subsequently. We have just spoken about 29 pages of schedules and two pages of clauses —31 pages of a 130-page Bill—and I heard one or two sentences from the shadow Minister. *[Interruption.]* Oh, the shadow Minister is coming back in later; good. I am encouraged. I was called to speak straight after my hon. Friend the Member for Redditch, rather than us bouncing between Government and Opposition Members, so I was worried. My first concern was that we were going through a very large proportion of the Bill very quickly. Grouping so much of the Bill together is a choice. It is perfectly within the ambit of the Opposition to say, in the Programming Sub-Committee, "We will do clause 9 stand part, then clauses 10 and clause 11, and then schedule 2 separately," but in the planning done by the Government and Opposition Whips, we decided to put all the provisions together, so that we brush past them very quickly, hoping that no one will notice. I notice a twinkle in the eye of the hon. Member for Brent North.

Barry Gardiner (Brent North) (Lab): Does the hon. Gentleman suspect that the reason why my hon. Friend the Member for Greenwich and Woolwich allowed such a grouping is that we hope that after the next general election, Parliament will be presented with a new Bill that does away with this nonsense altogether?

Richard Fuller: Well, maybe. I am not a mind reader, either of the mind of the shadow spokesperson or the mind of the great British public. They will make their decision at the next election and, I hope, return a Conservative Government for a fifth consecutive term, but that is not the import of my points today.

My first point was that the public should beware when they see such circumstances, not because anything is necessarily wrong, but because it is a leading indication that consensus is overwhelming scrutiny.

Matthew Pennycook: I rise to make two points. The first is that I will speak in great detail about valuation when we come to schedule 2, as I have indicated, because the meat of the Opposition's concern relates to the deferment rate, which we will come to. Secondly, does the hon. Gentleman broadly agree that one of the reasons why this or any Committee would struggle to properly scrutinise this large group of schedules and clauses is that none of us has relevant expertise as professional valuers? One of the reasons why the Levelling Up, Housing and Communities Committee asked to undertake pre-legislative scrutiny of the Bill was precisely that it is so complex in certain areas, this area being a case in point.

Richard Fuller: It is a fair point, but I think we can get our heads around most of it. The general principles in this Bill are no different from those of others. There are some formula there; and when we see a formula such as one over one minus c to the power of n with a deferment rate of theta, we get worried that we do not understand. It takes us back to doing calculus at school. However, we can understand it—though within it there are some important things. The shadow Minister makes a good point, but there are amendments to schedule 2: the Government's, his, and mine. I will make the point—and if I am wrong the Clerks will correct me, through the Chair—that we are debating the overall principle of schedule 2, not just the detail, though it is fair to raise some points about that.

2.30 pm

I will come on to calculations of particular discount rates later, when we debate schedule 2. I thought the Minister gave an excellent answer about the legal challenge and this being a hotly contested area. That is what I want to draw the Committee's attention to. On all sides, whatever our views, we want to ensure that we pass the Bill in a way that most minimises the chances of legal challenge. I want to do that from a Conservative perspective. I believe in property rights, competition, and freedom of choice.

I want to go through some of the issues raised by schedule 2 that we heard about in the evidence sessions, and in written evidence that the Committee received. The first is the recognition that, of necessity, the Bill deals with existing contracts that a buyer and a seller, for want of better phrases, have entered into. We can read into the circumstances in which a contract was undertaken. We have evidence that people did not know what they were getting into, and about the imbalance of power in some circumstances. My question is: what aspects of the buyer-seller contract and the imbalance of power are a particular matter for change? There have been good arguments on that so far. In my view, it is an open question. In dealing with existing contracts that, because of their terms, require certain other actions, have the Government in this Bill struck the right balance between extending freedom of choice and rebalancing rights on the one hand, and transfer of value on the other? I am not entirely sure that they have. Perhaps later we can discuss that a bit more. The first stage of dealing with existing contracts involves the question of whether the exchange of value has been a short-cut for expansion of freedom of choice. I do not know what the answer is, because I am not as smart as some of the people here.

Given that we are dealing with existing contracts, the second point is that a political decision has been made to redistribute. That word seems to have power beyond my intention; it seems perhaps that somehow I regard redistribution as evil. It is not, necessarily, but the point is that this is a political decision, and it involves redistribution. Schedule 2 determines the overall basis for that.

When we make a political decision, it is important to have the facts and figures in front of us. If we do not have them, what we are determining may have unintended consequences, or may overreach our intention. What we may believe is right in principle might in practice turn out to be a horrendous mistake. It is clear that, as a point of principle, people feel that we should make some changes, and I have no qualms about that, but in the absence of full facts and figures, there is a risk that we are making a decision in the context of trying to minimise legal challenge. The Secretary—the Minister, but he should be a Secretary of State—responded to two points about this.

First, there is the issue of the lack of full knowledge. We do not know what discount rate will be applied by the Secretary of State. Anyone who does any evaluation of any business or anything in finance will understand that a huge amount of value sway goes with what discount rate is used. We do not know what it is, so we will not know ultimately what it encompasses.

Secondly, we know from the impact assessment that there is line after line of transfers—not benefits—in the Bill. Colleagues can go to the impact assessment if they wish, and see line after line of transfers that are non-monetised. Frankly, most of these are pretty reasonable and probably minimal, but I do not know—maybe other Committees do and can tell me clearly—what the economic value of each of them was. "Non-monetised" is not the same as having no monetary value. The Committee ought to know whether they are non-monetised because it was too hard to monetise them, or because they were of no monetary value. I do not expect the Minister to respond on each one because, trust me, there are a lot of lines, but this adds to our lack of knowledge about the financial consequences of the political decision to redistribute.

Thirdly, we have a pending—it may now be finished—public consultation on ground rents. The Secretary of State will have the responses to analyse, and he was pretty clear about his intention at the start, which hon. Members mentioned, so I think it is important that that information comes forward. It is a pity that the information is not here right now for us to evaluate in Committee and come to a clear consensus on. The hon. Member for Brent North and I could shake hands across the aisle and agree on it. We do not have the information to reach that conclusion. For those three important reasons, we are a little in the dark when it comes to this political decision to redistribute. Perhaps the Minister can assist me on that.

This is important, because in schedule 2 we are eliminating completely value, which is a real thing. We know that. We are expunging it completely for a political reason. We have inadequate analysis on who that value is being taken. We have good insight into who they might be, but we do not know who they are. It is important to understand that that these are real values—values that have been subject to abuse. That goes to the political underpinning and political imperative for making these changes, which is, as I understand it—again, I am very naive on these issues—that there has been abuse in the system. I have listened to the evidence about the sources of that abuse, and it is clear that the abuses are real. The Government are not acting blindly on the basis of no facts, and the Opposition are supporting them because they see that there are some wrongs to be corrected.

Andy Carter (Warrington South) (Con): Not only have the Government accepted that, but this follows a very detailed investigation by the Competition and Markets Authority, which concluded that there were significant wrongs. It came to my constituency, interviewed my constituents and assessed that there were problems with mis-selling. That is why this is such an important issue for so many people. They put their hard-earned money into what they thought was going to be their property, but discovered that that was not the case.

Richard Fuller: My hon. Friend is absolutely right. That is why we are passing this legislation. I want to be clear about that, because there will be circumstances in freeholder-leaseholder relationships where the performance has been inadequate or poor. There may be circumstances where the performance has been perfectly reasonable.

Matthew Pennycook: In some ways, I am doing the Government's job, but I would just probe the hon. Gentleman on the Government's intention, specifically in relation to value. At least on the basis of my understanding, it is not to right an abuse in the system. It is to remove payments, which are very real for leaseholders, that are based on a hypothetical profit that some would argue should not exist in a fair market. It is not about righting specific wrongs but a systemic wrong in the valuation process, from the Government's point of view.

The hon. Gentleman may take issue with that, perhaps because he does not agree with one of the main objectives of the Bill—to make the enfranchisement process cheaper for leaseholders—or maybe he just takes issue with the fact that we do not know the prescribed figures that the Secretary of State will set, so we do not have a real sense of the values. The clause is attempting to right a systemic wrong as regards marriage value and other components of the existing valuation method. It is not just dealing with specific abuses in the system by bad faith actors.

Richard Fuller: I agree with the shadow Minister. I am not trying to undermine the intentions of the Bill—I agree with them—but I want them to be legally secure, and I want to probe and understand them. He said that these are hypothetical profits, but they are not quite hypothetical. They would only be hypothetical if they were not real, but as we have already heard, they are. They are calculated profits, and it is a matter of how that calculation is determined that is at issue, not whether they are hypothetical or real.

Matthew Pennycook: The hon. Member tempts me to engage in the philosophical debate that the Minister alluded to, and I think it is debatable whether they are real. Let me put it to him like this. If I own a vase, is the value of a second vase increased by the fact that I own the first one? That is what marriage value is doing; it is the hypothetical profit from the joining of the leases. I think it is at least debatable as to whether it is real in the sense that he advances, although it is very real for leaseholders who have to pay it if they seek to enfranchise under the current system.

Richard Fuller: Somebody had to mention the vase.

Eddie Hughes (Walsall North) (Con): Or the cup and saucer?

Richard Fuller: I am just so glad it was not me. The Minister and shadow Minister are far more experienced than I am on this matter, so I am drawing on a much more limited data set than they are. But, to date, I have not heard loud and clear that there is no such thing as marriage value. I have heard that there are questions about how it is calculated and that we do not think it should apply, which is a political point of view. If the

[Richard Fuller]

shadow Minister is trying to say that there is something else he wants, between the issues of calculation and of making a political decision to transfer it, that is interesting to me. I do not think that he has been trying to make that point, and I certainly do not think we have heard that evidenced.

It is a crucial point. The idea that we are expunging values that relate to something real, which is under contract, is a material point in trying to make this legislation bulletproof or, as the Minister rightly says, to ensure that, in a hotly contested area, the Government get it right. In circumstances where there are real values —although perhaps massively overemphasised—where performance has been exemplary or to contract, where there has been no question of the performance required under contract, and, finally, where there has not been price gouging, or this automatic doubling every two years, and the rents have remained the same, what is the reason to apply legislation retrospectively?

2.45 pm

Rachel Maclean: Does my hon. Friend not agree that the concept of ground rent itself is "gouging", to use his word, because it is a payment for nothing? Clearly, the freeholders are receiving payment through service charges and the price of buying and selling a lease. The ground rent is a payment for nothing. Whether it is, in his words, a reasonable one and not gouging but is kept low and so on, still, in my mind and certainly that of many leaseholders, the Competition and Markets Authority, the Government and the analysis, it is a payment for nothing and so, fundamentally, it is wrong and unfair. I wonder what my hon. Friend thinks about that.

Richard Fuller: The former Minister makes an excellent point. She knows much more about this than I do and therefore I am very wary about falling into the trap of answering her question directly. What I will say is that, for the purposes of my speech today, what I think is not important. What is important is this: what will the courts find, and how have we ensured that the Bill is robust in those circumstances? I will say, without answering my hon. Friend's question, that people sometimes sign contracts for things that they do not use or that have no value, but there is an argument that they signed a contract and it had these line items in it. People may sign a contract that gives them access to a swimming pool or gym and they may not use it. I do not mean to be pejorative, because these are very important issues. I am just saying that the principle is that, whether ground rent is real or not, it is still subject to the fact that it was part of a contract that was signed, and that will have weight in any legal challenge to the Bill.

Barry Gardiner *rose—*

Richard Fuller: I do not know whether the hon. Member for Brent North wants to intervene and give me some more knowledge.

Barry Gardiner: The hon. Member's colleague, the hon. Member for Redditch, made a pertinent intervention in relation to ground rent, but I wanted to try to address what philosophical issues he is having with marriage value. Marriage value is an additional element of value created by the combination of two or more assets or interests where the combined value is more than the sum of the separate values. That is why the cup and saucer and the vase analogies are apposite. He seems to me to be seeking to say, "Well, if this exists, if people are actually paying this, it's real; it's not a fiction." Let me set out my understanding of what the Government are trying to do and, indeed, what Parliament has tried to do on many occasions, going back to 1967, after we passed the legislation to right what had happened in the Custins *v.* Hearts of Oak case, where marriage value had been introduced against the will of Parliament. The point is this. If someone is the leaseholder, the person who owns that lease to the home, it is much more important to them than to anybody else in the world that they get the freehold together with it. That is the other vase; that is the saucer that goes with the cup. To them, that is important and it has a value that it does not have for the rest of the world. That is why they are constrained, and that is the constraint that Parliament has repeatedly tried to free people from, because they are not simply a willing seller in a free market with a willing buyer in a free market. This person, as the leaseholder, is a buyer under special measures.

The Chair: Order. May I interrupt you and point out very gently that this is quite a lengthy intervention, Mr Gardiner?

Barry Gardiner: I am happy to be guided by you, Dame Caroline. I think I have made the point and I hope that the hon. Member for North East Bedfordshire will be able to take it on board, because it does go to what I think he would recognise from a free market point of view as the essence of why this is important.

Richard Fuller: Dame Caroline, you were not in Committee when I made a point of order on the hon. Member for Brent North, perhaps inadvisably, but this time I thought his intervention was very helpful, so I would like to commend him. That point is very helpful to my understanding, and I appreciate his building my understanding further. We will have to see.

My purpose in making these points is to look at the possibilities of legal challenge. I am not a lawyer so I am probably one of the first to do that anyway, but the principles behind schedule 2 relate to existing contracts and make a political decision to redistribute value to full or some extent. In Committee, however, we are doing this where we do not have complete financial information about the extent to which we open ourselves to the charge that our decision will have unintended consequences. We are putting a lot of faith in the Government to get that right.

We are dealing with different situations: where, in a relationship between a freeholder and a leaseholder, freeholders are providing poor service or have been price gouging; or where other freeholders have entered into contracts, done all the right things under that contract and behaved in a very excellent way, but we are now retrospectively going to change all their contracts. I want to put on the record some of my concerns about doing so. I understand that the intention of the House as a whole is to move forward, but I am interested in whether the Minister has any comment on that—he does not need to—or has something interesting to add.

Eddie Hughes: It is a pleasure to serve under your chairmanship, Dame Caroline. I was triggered to speak by some of the references to limiting ground rents to 0.1% of the property value, and am feeling nostalgic about my ten-minute rule Bill from June 2019, the Ground Rents (Leasehold Properties) Bill. That is an issue that I have been interested in and concerned about since I got to Parliament.

In my ten-minute rule Bill, I suggested that we limit ground rents to 0.1% of the property value, or £250, depending on which was the higher. In the evidence session, we heard that in some parts of the country, ground rents can very quickly become onerous for existing or prospective mortgage lenders. I want to ensure, however, that we do not let certain elements of our discussion of the clauses of the Bill pass by without celebrating the great things that are going on in it.

To some people, this might be a dry exchange, with some technical data about calculations—as a civil engineer, I love a bit of differential calculus, but it might not be to everyone's liking—but some great stuff is going on in the Bill. We should be enthusiastic about that and celebrating it, because it will genuinely make a difference to the lives of people who are listening. It has also made a great difference to my life, because I feel as if I am seeing my ten-minute rule Bill slowly come back to life in this Committee.

Lee Rowley: It is as if we have all the emotions in an all-encompassing and unexpectedly interesting post-lunch debate. Let me try to summarise as quickly as I can. I am grateful for everyone's contributions.

Turning to the substantive points made by my hon. Friend the Member for North East Bedfordshire, I, like him, start from the principle that if there is consensus, we should look at things in more detail without casting any aspersions on our colleagues on the other side of the aisle. I think there is consensus not because I have suddenly converted to social democracy or socialism—that is absolutely not the case—but because even from different angles we can see that there is a challenge. I will try to argue this a little from Conservative principles for a moment.

I recognise the absolutely reasonable points made by my hon. Friend about the additional information that is needed, which we have talked about on multiple occasions, and I recognise that there are always inherent dangers and unintended consequences in any change, which is why things need to be thought through in the manner in which he indicated. In the limited time I have had experience of this matter, however, I have been convinced that the proposal is proportionate, and that is why I am in Committee today on behalf of the Government.

My hon. Friend rightly made the point about how property rights and contract law are the absolute bedrock of our functioning as a society. In particular as Conservatives—to speak just for those on this side of the aisle for a moment—we seek not to move them around, change them, or amend them on a regular basis, because certainty and clarity are at the heart of a functioning and robust democracy. As Conservatives and from the centre-right, however, we also have a deep aversion to rent-seeking and middlemen, and we have a deep and avowed, if imperfect, commitment to free and more perfect markets.

There is a challenge with all manner of things, whether that is marriage value or the percentage used in ground rent. If we were dealing with a market in widgets, with very low barriers to entry, a plethora of supply, and the ability for people to come in and out on a regular basis, I would potentially draw a different conclusion, but the reality is that the housing market is severely constrained by a number of factors, and it has been for many decades. It is not a perfect market. Therefore, it is proportionate to regulate in the ways we are talking about.

On the point about rent-seeking and middlemen, we must be cautious about legislating via anecdote, which we should not do. We must absolutely do the kind of deep analysis that hon. Members suggested a moment ago that we should. I am led to believe that a lot of what we are seeing with ground rent and other aspects included in the Bill would not have been visible 20, 30 or 40 years ago, because it would not have happened. Effectively, a market has been created—at least in part if not wholly—because, for want of a better phrase and without being pejorative, loopholes have been exploited. That has enabled middlemen to take profit out and distort the market, making it less perfect and meaning we have ended up in the place where we are today.

I absolutely share the caution expressed by my hon. Friend the Member for North East Bedfordshire about making sure the elements are right. We may differ in the end about whether or not the changes are proportionate, but I know we share the ultimate objective that the market should be made perfect. The clauses take us in that direction. It is an absolute requirement from a Conservative perspective to smash middlemen and rent-seekers and make sure that they do not take money from people for no reason. For those reasons, I commend the clauses to the Committee.

Question put and agreed to.

Clause 9 accordingly ordered to stand part of the Bill.

Clauses 10 and 11 ordered to stand part of the Bill.

Schedule 2

Determining and sharing the market value

Amendment made: 59, in schedule 2, page 90, line 28, at end insert—

"Business tenancies

10A (1) This paragraph applies only to—

(a) the transfer of a freehold house under the LRA 1967, or

(b) the grant of an extended lease of a house under the LRA 1967.

(2) The standard valuation method is not compulsory for the property comprised in the current lease if that lease is a tenancy to which Part 2 of the Landlord and Tenant Act 1954 applies (see section 1(1ZC) of the LRA 1967)."*—(Lee Rowley.)*

This amendment would prevent the standard valuation method in Schedule 2 from being compulsory if the current lease is a business tenancy (which benefit from the rights of enfranchisement and extension under the LRA 1967 in the circumstances set out in section 1(1ZC) of the LRA 1967).

Lee Rowley: I beg to move amendment 60, in schedule 2, page 90, line 28, at end insert—

"Acquisition of a freehold house under the LRA 1967: shared ownership leases

[Lee Rowley]

10A (1) This paragraph applies only to the transfer of a freehold house under the LRA 1967.

(2) The standard valuation method is not compulsory for any property comprised in the newly owned premises if it, or any part of it, is demised by a shared ownership lease."

This provides that the standard valuation method is not compulsory for the freehold enfranchisement of a shared ownership lease of a house (which is only possible if the shared ownership lease does not meet the criteria in section 33B of the LRA 1967).

The Chair: With this it will be convenient to discuss the following:

Government amendments 61, 66, 69, and 74.

Lee Rowley: Amendment 60 disapplies the standard valuation method in cases where the freehold of a shared ownership house is being acquired. In general, shared ownership properties are excluded from freehold acquisition rights to prevent the shared ownership stock from being bought out, therefore undermining the policy intention, and because the freehold can be acquired once the shared ownership leaseholder has staircased to 100%. However, some shared ownership properties do qualify for acquisition rights. Generally speaking, where there are restrictions placed on whether and how the shared ownership leaseholder can staircase to 100%, they qualify. The amendment clarifies that the standard valuation method does not have to be used where the freehold of a shared ownership property can be acquired, because the standard method is not built to accommodate acquisitions of shared ownership property.

Amendment 61 is a minor and consequential amendment to paragraph 11(7) of schedule 2, as Government amendment 74 has moved the definition of "shared-ownership lease" from section 38(1) to section 101(1) of the Leasehold Reform, Housing and Urban Development Act 1993. This will allow the provisions of the Bill to operate as intended.

Amendments 66 and 69 concern the valuation of premiums for shared ownership lease extensions. Valuation involves calculating both the value of the term and the reversion in order to calculate the premium to be paid by the leaseholder. Amendment 66 provides that the rent used to calculate the term value in the premium is the rent payable for the leaseholder's share of the property demised by the lease—that is, the ground rent— and not the rent they pay on the landlord's share of the property. Where the rent is not clearly divided as such, it is treated as though it is all paid as rent for the landlord's share.

Amendment 69 provides that when the reversion value is calculated as part of the premium, the full reversion value that would be calculated in the standard method is adjusted to reflect the proportion of the property which is already owned by the shared ownership leaseholder. I commend the amendments to the Committee.

3 pm

Turning to Government amendment 74, we have made it clear that shared ownership leaseholders should benefit from the same statutory rights as other leaseholders to extend their lease by 990 years. A number of Government amendments to schedules 2 and 6 have been introduced to make that possible. They implement Law Commission recommendation 42, although we will create further legislative support for that recommendation with later amendments.

Amendment 74 gives shared ownership leaseholders of both houses and flats the right to a 990-year lease extension, by amending the Leasehold Reform Act 1967 and the Housing and Planning Act 1986, as related to houses, and the Leasehold Reform, Housing and Urban Development Act 1993, as related to flats. Part 1A amends the LRA 1967. It repeals the current exclusion of shared ownership leases from enfranchisement rights and enables statutory lease extensions. However, it continues to exclude shared ownership leases from freehold acquisition rights, and gives powers to the Secretary of State to exclude further types of shared ownership leases from freehold acquisition rights where they are not excluded by this measure. It is important to continue to exclude shared ownership leaseholders from freehold acquisition rights to prevent the shared ownership stock from being bought out, thus undermining policy intent. Shared ownership leaseholders can already acquire the freehold once they have staircased to 100% ownership.

Where the shared ownership provider is the freeholder, they will be able to grant a lease extension to the shared ownership leaseholder. We will introduce further amendments to the Bill at a later stage to deal with situations where the shared ownership provider owns a headlease but is not the freeholder, in order to facilitate extensions by those providers. Even after we have introduced those further amendments, in a small number of cases shared ownership leaseholders may have to claim an extension against a landlord superior to the provider—that is likely to be the freeholder. Where that is the case, and a shared owner claims a lease extension from a landlord superior to the provider, new paragraph 5E allows the landlords to apply to the tribunal for a lease variation so that future staircasing payments made by the shared ownership leaseholder are shared between the provider and freeholder or other landlords to reflect their losses. New paragraph 5F inserts the important definitions of a shared ownership lease, the landlord's share, and the tenant's shar", to give necessary clarity to the lease extension right.

Matthew Pennycook: With apologies for interrupting the Minister when he is providing a commendable explanation of this group of Government amendments, does he agree that although the Bill touches on shared ownership leases in a number of areas, it does not directly address many of the unique challenges that face shared owners? Is there a case for legislating separately to address the various challenges that shared owners face in the round? On this and a number of other issues that arose in the context of the Renters (Reform) Bill, it feels as if there is a good argument for doing so, to ensure that we are directly addressing the challenges that shared owners face.

Lee Rowley: I am grateful to the hon. Gentleman for his question. There is always a case for reform in all areas of public policy. I recognise the importance of getting it right on shared ownership. On both sides of the Committee, we share an objective to make sure that this works as best it can, given that it is giving people the opportunity of capital and a new opportunity to be able to acquire that in a way that is not available to them

through other means that the market offers. In half-answering the question, which is that there are always things that can be done—obviously I cannot anticipate the great fifth Conservative election victory that is coming or what the manifesto and the outcome may be—but I will certainly take on board the hon. Gentleman's comments, so that when that election victory comes we can accommodate his suggestion.

Part 1B amends the Leasehold Reform, Housing and Urban Development Act 1993 to make similar changes for flats. New paragraph 5I repeals the current exclusion, and 5K provides that shared ownership leaseholders are qualifying leaseholders for lease extension rights. New paragraph 5J excludes shared ownership leases from collective acquisition rights and gives a power to the Secretary of State to exclude other shared ownership leases from the same where they are not excluded by this section. New paragraph 5M requires leasebacks to the former freeholder of any shared ownership flats subject to a collective freehold acquisition if the former freeholder is the provider. New paragraph 5N deals with the sharing of staircasing premiums between relevant landlords, exactly as new paragraph 5E does for houses. Finally, new paragraph 5P inserts the necessary definitions, as new paragraph 5F did for houses. I commend the amendment to the Committee.

Richard Fuller: On a point of clarification, Dame Caroline, are we discussing the other amendments in this group?

The Chair: No, we are just speaking to amendments 60, 61, 66, 69, 70 and 74.

Amendment 60 agreed to.

Amendments made: 61, in schedule 2, page 91, line 21, leave out "38(1)" and insert "101(1)".

This amendment is consequential on Amendment 74.

Amendment 62, in schedule 2, page 92, line 15, leave out sub-paragraph (2) and insert—

"(2) Assumption 1: it must be assumed that—

(a) in the case of a freehold enfranchisement, any lease which the claimant is acquiring as part of the enfranchisement is merged with the freehold;

(b) in the case of a lease extension, any lease which is deemed to be surrendered and regranted as part of the lease extension is merged with the interest of the person granting the lease extension."

This amendment would ensure that where an intermediate leaseholder grants a lease extension, the lease which is deemed to be surrendered and regranted as part of that extension is assumed to be merged with the intermediate leaseholder's lease for the purposes of valuation.

Amendment 63, in schedule 2, page 94, line 22, leave out "property" and insert "premises".

This amendment would amend the sub-paragraph to use the correct defined term.

Amendment 64, in schedule 2, page 94, line 24, leave out "that property" and insert "those premises".

This amendment would amend the sub-paragraph to use the correct defined term.

Amendment 65, in schedule 2, page 97, line 14, leave out from second "of" to end of line 21 and insert "the premises being valued.

(4A) The "premises being valued" are the premises that—

(a) are demised by the lease being valued, and

(b) are subject to the standard valuation method.

(4B) The "market value" of the premises being valued is—

(a) in the case of a freehold enfranchisement, or lease extension, under the LRA 1967, the amount which the freehold of the premises being valued could have been expected to realise if it had been sold on the open market with vacant possession by a willing seller at the valuation date;

(b) in the case of a collective enfranchisement or lease extension under the LRHUDA 1993, the share of the relevant freehold market value which is attributable to the premises being valued.

(4C) The "relevant freehold market value" is —

(a) in the case of a collective enfranchisement, the amount which the freehold to be acquired on the collective enfranchisement could have been expected to realise if it had been sold on the open market with vacant possession by a willing seller at the valuation date;

(b) in the case of a lease extension under the LRHUDA 1993, the amount which the freehold of the building and any other land which contain the premises being valued could have been expected to realise if it had been sold on the open market with vacant possession by a willing seller at the valuation date."

This amendment would clarify that where the term value of a lease of a flat and any other property is being valued under Schedule 2, the market value is a share of the freehold value of the premises which contain the flat and other property.

Amendment 66, in schedule 2, page 97, line 33, at end insert—

"(9) If the lease being valued is a shared ownership lease—

(a) the rent that is to be used for the purposes of sub-paragraph (1) and (2) is the rent that is payable under the lease in respect of the tenant's share in the property demised by the lease;

(b) where the lease does not reserve separate rents in respect of the tenant's share in the demised premises and the landlord's share in the property demised by the lease, any rent reserved is to be treated as reserved in respect of the landlord's share."

This provides that, where there is a shared ownership lease, the rent payable in respect of the share owned by the tenant is to be taken into account when determining the term value; and deals with the case where no rent is specifically reserved in respect of the share owned by the tenant.

Amendment 67, in schedule 2, page 97, line 39, leave out "the freehold of".

This amendment is consequential on Amendment 68.

Amendment 68, in schedule 2, page 98, line 7, leave out from first "of" to end of line 10 and insert "the premises being valued is—

(a) in the case of the transfer of a freehold house under the LRA 1967, the amount which the freehold of the premises being valued could have been expected to realise if it had been sold on the open market with vacant possession by a willing seller at the valuation date;

(b) in the case of a collective enfranchisement, the share of the relevant freehold market value which is attributable to the premises being valued.

(3A) The "relevant freehold market value" is the amount which the freehold to be acquired on the collective enfranchisement could have been expected to realise if it had been sold on the open market with vacant possession by a willing seller at the valuation date."—*(Lee Rowley.)*

This amendment would clarify that where the reversion value of a lease of a flat is being valued under Schedule 2 for the purposes of enfranchisement, the market value is a share of the value of the freehold being acquired on the collective enfranchisement.

Matthew Pennycook: I beg to move amendment 2, in schedule 2, page 98, line 25, at end insert—

"(7A) In setting the deferment rate the Secretary of State must have regard to the desirability of encouraging leaseholders to acquire their freehold at the lowest possible cost."

This amendment would ensure that when determining the applicable deferment rate, the Secretary of State would have to have regard to the desirability of encouraging leaseholders to acquire their freehold at the lowest possible cost.

The Chair: With this it will be convenient to discuss the following:

Amendment 146, in schedule 2, page 98, line 25, at end insert—

"(7A) In setting the deferment rate the Secretary of State must have regard to market rates of interest."

This amendment would ensure that when determining the applicable deferment rate, the Secretary of State would have to have regard to market rates of interest.

Amendment 3, in schedule 2, page 99, line 25, at end insert—

"(6A) In setting the deferment rate the Secretary of State must have regard to the desirability of encouraging leaseholders to extend their lease at the lowest possible cost."

This amendment would ensure that when determining the applicable deferment rate, the Secretary of State would have to have regard to the desirability of encouraging leaseholders to extend their lease at the lowest possible cost.

Amendment 147, in schedule 2, page 99, line 25, at end insert—

"(6A) In setting the deferment rate the Secretary of State must have regard to market rates of interest."

This amendment would ensure that when determining the applicable deferment rate, the Secretary of State would have to have regard to market rates of interest.

Amendment 148, in schedule 2, page 105, line 28, at end insert—

"(1A) In determining the applicable capitalisation rate in relation to the right to vary a long lease to replace rent with peppercorn rent, the Secretary of State must have regard to market rates of interest."

Amendment 149, in schedule 2, page 105, line 28, at end insert—

"(1B) In determining the applicable capitalisation rate in relation to the right to vary a long lease to replace rent with peppercorn rent, the Secretary of State must have regard to regional variations in market conditions."

Matthew Pennycook: We have already discussed valuation in some detail, and it is right that we do so. The concerns raised by the hon. Member for North East Bedfordshire are genuine, and it is important that the Committee engages with them and the aim he has in mind to ensure that this is the most robust piece of legislation it can be.

As the Minister has demonstrated, schedule 2 is incredibly technical and complex, so I hope that members of the Committee will forgive me if in advancing my argument I set out once again what some of the provisions do. The Minister has made it clear that clauses 9 and 10 make amendments to the 1967 Act and the 1993 Act respectively to provide that the premium payable to acquire either the freehold or lease extension of either a house or flat must be calculated in accordance with clause 11. That clause provides that the premium payable when exercising any such enfranchisement rights, with the exception of premiums calculated under the preserved section (9)(1) of the 1967 Act, is to be comprised of the market value and any compensation payable. As the Minister said, schedule 3 sets out the circumstances in which other compensation is payable and how the amount is determined. Schedule 2 sets out how the market value is to be determined and, in instances where loss is suffered by certain landlords other than the landlord transferring the freehold or granting the new lease, how it is divided into shares.

The schedules, particularly schedule 2, make a number of significant changes to the two main bases of valuation currently used. First, as we have discussed, they ensure that marriage value—the hypothetical profit arising from the new lease that schedule 13 to the 1993 Act specifies must be shared equally between the parties—and hope value, which is the additional value that may arise from the potential for marriage value to be realised in the future, are no longer to be taken into account in calculating the premium payable. Secondly, aside from in exceptional circumstances, they impose a 0.1% cap on the treatment of ground rents in the valuation calculation, as the Minister detailed. Thirdly, they introduce a new standard valuation method with the aim of making the process simpler, more certain and more predictable.

In principle, we fully support the proposed new process for determining the price payable on enfranchisement or extension. There are the principled arguments in which we have engaged, and there is also the practical argument that the current valuation system has a number of flaws. The Law Commission argued in extensive detail in its 2020 report entitled "Report on options to reduce the price payable" that calculating premiums under the law as it stands is complex; has unpredictable and sometimes arbitrary outcomes; is subject to various inconsistencies and irrationalities inherent in the regime as a whole; and is affected by the artificiality of some of the statutory assumptions that valuers must work with. As I said in response to the hon. Member for North East Bedfordshire, this is not just a case of a couple of bad apples: these are systemic problems with the current valuation method. The result is that it regularly causes real difficulties for leaseholders and landlords engaged in the enfranchisement process.

In overhauling the process, however, it is important that we ensure that the new methodology not only addresses the various problems with the existing law, but reduces premiums for leaseholders across the board. That is an explicit objective of the Bill and—from memory—it is one of the terms of reference that the Government gave to the Law Commission when they asked it to produce its reports, and one that we very much share. It will be one of the tests in any litigation—I am sure litigation is to follow—but we believe it is a proportionate means of achieving a legitimate aim.

One of the most important inputs when it comes to the functioning of the proposed new standard valuation method will be the deferment rate, which I mentioned earlier. As the Committee will know, the deferment rate is the annual discount applied on a compound basis to an anticipated future receipt assessed at current prices, to arrive at its market value at an earlier date. We need not concern ourselves with the complexities of how such a rate is calculated precisely, but given its importance

as an input in freehold acquisition or lease-extension claims, it is important that the Committee grapples with the implications of the Secretary of State being given the power to prescribe both that and the capitalisation rate used to calculate the value of either the freehold reversion or the new 990-year lease, because that is what schedules 2 and 3 provide for.

Proposing to hand Ministers responsibility for setting both those rates is not uncontroversial. Some would argue that it will be detrimental to the interests of leaseholders and freeholders to seek to set fixed rates in legislation. I have had it put to me by several specialist leasehold valuers with considerable experience acting for both leaseholders and freeholders—indeed, Mr Fanshawe who gave evidence to the Committee last week made this point, too—that as a result of the 2007 Cadogan *v.* Sportelli case, rates of 4.75% for houses and 5% for flats are now the accepted starting point in any claim for determining what deferment rate should be applied for leases with at least 20 years to run. Those people would argue that the result is not only that such rates are rarely ever a matter of dispute, but that deviation from them tends to benefit leaseholders.

The problem with setting a fixed deferment rate in legislation, such individuals would argue, is that a one-size-fits-all fixed rate will stop leaseholders from agreeing higher and more favourable deferment rates in circumstances where that is a possibility—for example, in relation to buildings at risk of obsolescence at the expiry of the lease term or where an intermediate leaseholder is involved—and, as such, will leave those leaseholders worse off, because they will be denied the opportunity to acquire their freehold or extend their lease at a fair price. The concern that a fixed rate may prohibit leaseholders from benefiting from more favourable rates in certain circumstances should not be dismissed, given the objective of reducing premiums as well as simplifying the process by which they are calculated.

On balance, however, we believe it is right that the Secretary of State be given the power to set both the capitalisation and the deferment rates used to calculate the price payable on enfranchisement or extension. It may indeed be the case that the Sportelli judgment has produced deferment rates that are broadly adhered to as a starting point in most claims for leases with at least 20 years to run, but there are real problems in relying on 17-year-old case law to maintain generic rates over the long term, not least in terms of vested interests attempting to overturn the relevant judgments and because there is evidence to suggest that the assumptions made about the risk-free rate in that judgment require review. There are also clear benefits in simpler negotiations and reduced litigation to introducing greater certainty as to what the enfranchisement premium will be.

Getting that rate right, however, as well as keeping it under regular review so as to respond quickly to any unintended or adverse consequences that might arise from selecting one, will be key to the effective functioning of the new process. Here we come to the point made by the hon. Member for North East Bedfordshire: as things stand, we do not know what those rates are. As with much of the Bill, we await future regulations to understand the process by which the Secretary of State will determine those rates and what the initial rate that he determines will be.

With that in mind, I would be grateful if the Minister confirmed whether, first, it is the Government's intention, before they introduce the regulations required to bring the new process into force, to undertake a public consultation on precisely how the "applicable deferment rate" under part 5 of schedule 2 should be determined. I would also be grateful if he confirmed that it is the Government's intention to keep the deferment rate under regular review. The relevant paragraphs on pages 98 and 99 only commit the Secretary of State to review the rate or rates every 10 years, which feels a little too infrequent. Would that 10-year stipulation function as a minimum period for review, with Ministers in future free to undertake more frequent reviews if they felt it necessary? If not, we think that a degree of flexibility may be required for more regular assessments of whether the rate is correct.

3.15 pm

Rachel Maclean: I am listening with interest to the shadow Minister's comments. He is making a valid point and advancing a logical argument for the setting of these rates, which we all agree is vital. If it were not to be the case that the Secretary of State had the powers in this legislation to set these rates, what does he think is the best alternative? How would those rates be set?

Matthew Pennycook: I thank the hon. Lady for her intervention. To be very clear, we agree with the Government's proposal that the Secretary of State set the rate. The alternative would be, as Mr Fanshawe put to us in the evidence sessions, that we rely as a starting point on the Sportelli judgment, with its 4.75% and 5% rates respectively, and that leaseholders are free in the process of dispute to argue for more favourable rates on the grounds of particular circumstances being implied. On balance, we think that it is right that the Secretary of State sets the rate. What I am trying to drive at, which I will get to, is that how the Secretary of State sets the rate and what it should be are crucial to the outcomes for leaseholders in terms of the premium payable.

When it comes to the regulations required to bring the new valuation process into force, we obviously recognise that they are the means by which the detailed methodology for setting the applicable deferment rate will be brought forward. However, while it would not be right to pre-empt those regulations in Committee, we believe that the objective underpinning the setting of the deferment rate should be set out in the Bill. While the rate or rates will need to be set at a level that does not unfairly denude freeholders of value, we think it is important that the Bill states clearly that in determining what should be the rate or rates, the Secretary of State must have at the forefront of their mind the need to reduce premiums for leaseholders. Amendments 2 and 3 would ensure that that is the case in relation to both freehold acquisition and lease extensions. While other considerations will clearly need to be taken into account, not least how to ensure that landlords receive adequate compensation to reflect their legitimate property interests, these amendments would oblige Ministers to set a rate or rates with the overriding objective of encouraging leaseholders to acquire their freehold at the lowest possible cost.

That is important because with marriage and hope value abolished and the treatment of ground rents in the valuation calculation capped at peppercorn rates, it

[Matthew Pennycook]

is the deferment rate that will be the primary driver of price to be paid by leaseholders in enfranchisement or extension claims. It is essential that reducing premiums for leaseholders is the determining factor in the process by which such a rate or rates will be set and reviewed, and it must therefore be put on the face of the Bill. On that basis, I hope the Minister will consider accepting both amendments. I look forward to his response.

Richard Fuller: I rise in support of my amendments 146 to 149, which, similarly to the shadow Minister's amendment 2, seek to provide some framework and guidance around, and a better understanding of, how the Secretary of State will determine these very important discount rates. I go back to the point about the importance of trying to give as much clarity as possible about what we are passing into legislation and to avoid unintended consequences. The Minister will be aware that some of the businesses affected may be subject to statutory disclosures. It is very hard to make a formal statutory disclosure if one is not clear what the impact will be. My amendment seeks to provide that.

I want to explain some of the reasons why I have chosen to focus on the issues of market rates and interest, and regional trends. The shadow Minister made some very good points that I am sure the Minister will respond to. It is important to understand that it is always possible for Government to fix market rates and interest, either directly or by the courts, but interest rates do change; the world does change. We can find ourselves adrift on interest rates relatively quickly. The Sportelli judgment, I think, was made at a time when the Bank rate was 4.5%. In that context, the setting of the discount rate did not seem particularly inappropriate. Three years later, the Bank rate went to 0.5% as a consequence of quantitative easing, and stayed like that for seven years. Obviously, it is in the interests of party A for the rate to be set high and in the interests of party B for the rate to be set low, but there is a concern about the rate being fixed without certain guidance.

The shadow Minister has argued that the rate should have regard to the desirability of encouraging leaseholders to acquire their freehold at the lowest possible cost; that fits the imperative that informed the Bill. My view is that we ought to first encourage the Secretary of State to anchor his or her judgment on the market rate of interest—not a specific market rate of interest, but a set of market rates of interest. The reason is that there will be leases of certain terms: five, 10, 15, 30, 50 or 100 years. When someone buys an investment and ties up their money for a longer period of time, they pay a different rate of interest than when they do so for a shorter period of time. It is appropriate for the Government to have regard to that when setting the discount rates. That is why I have tabled this amendment. I am interested to know what the Minister has to say about it.

Amendment 149 is about regional variations in market conditions. The Minister will know that a large part of the Bill relates to London, but not all of it. The way property prices move in Bedfordshire—I see that another Bedfordshire MP, the hon. Member for Mid Bedfordshire, is here—and in other parts of the country is different from London. Market conditions vary. In order to be fair to participants, it is important that the Secretary of State has regard to regional variations. I hope the Minister can provide some encouraging words on market conditions and tying the discount rate to some form of understanding of market interest rates.

Lee Rowley: I am grateful to the hon. Member for Greenwich and Woolwich and my hon. Friend the Member for North East Bedfordshire for their contributions. We effectively have two sets of amendments from different sides of the discussion, which demonstrates both the importance and the challenge of getting this right. Before I turn to their points, the question before the Committee is whether we want to put further constraints or further elements into primary legislation, or are content in principle to allow most of them to be covered by the Secretary of State of the day at the time. The Government's view is that the latter is more proportionate and reasonable. That is why we have come forward with the current proposal. As a result, we will not be accepting the amendments, but I will add a few more comments to try to convince the hon. Gentlemen to withdraw their amendments.

The hon. Member for Greenwich and Woolwich made a number of points on consultation. Although I cannot anticipate or confirm at this stage, I think it is absolutely the case that we would need further discussion and careful consideration of the approach, as I hope we have made clear throughout the debate. On his point about the review every 10 years, the existing judgment has now stood for going on 16 years—I know he knows that, because he has referenced it—and has done so relatively successfully. However, I take his point about tribunals being able to change things. Effectively, this is coming in through a tribunal in the first instance. There is a balance to be struck.

We have put a reference to 10 years in the Bill so that there is a recognition that there would need to be a review—as opposed to an open-ended ability with no indication of when it is used—while being clear that, although it would be for the Government of the day to determine, regular reviews will have potential impacts and potential challenges to the market, and there has to be some form of consistency or clarity in order to give people the confidence to invest and make decisions on an economic basis. The reason we have approached the provision from this angle is both to provide flexibility through the ability to change not being in primary legislation, but also giving guidance that there will be reviews at least every 10 years—albeit not indicating that they should be on a more frequent basis in order not to get into a discussion about whether there is too much movement for consistency and clarity.

My hon. Friend the Member for North East Bedfordshire made a number of important points, particularly with regard to his general point about market conditions and the importance of getting that right, and also that there are regional variations. This is another detailed part of the conversation, which the Government seek to move into another discussion rather than being on the face of the Bill. I recognise that sometimes that is not ideal, but one reason we want to preserve flexibility is to give the Secretary of State of the day the ability to respond to market conditions where necessary.

On the first point that my hon. Friend raised, we have been clear from the outset—when the Government announced the reforms—that rates should be set at market

value to ensure that the amount landlords are compensated reflects their legitimate property interest. It is important that landlords receive sufficient compensation. To his earlier questions about legality, this is an important safeguard to ensure compatibility with various rights-based legislation, which we talk about extensively in this place.

The Secretary of State will set the deferment rate in secondary legislation. We have been engaging, and continue to engage, with the sector to understand its position to ensure that rates are set in a way that is fair to all those whose property rights are changed and interfered with, and fair to leaseholders. Although I cannot give an indication or a guarantee around regionality, I am happy to say that we want to set the levels at market rates, but also with the recognition that many different elements need to be considered, one of which may be regionality. That is why we need to continue this conversation beyond this discussion. The proposition that the Government are now putting to the Committee is to set these elements in primary legislation and to continue the discussions that my hon. Friend and others have asked for through other means that will come forward in due course.

Matthew Pennycook: I welcome that response from the Minister, in particular about the review period. If I have understood him correctly, he is saying that there must be a review every 10 years at a minimum, but there may be ongoing reviews within that time period if necessary—he can correct me if I have misunderstood. That would be welcome. There is a need to keep the rate, whatever it may be ultimately, under more regular review than just once every 10 years. I welcome also the indication he gave that the rate or rates may include some regional variation.

Where I take issue with the Minister's response is the debate about how much we need to prescribe on the face of the Bill. It may be the case that, when the methodology comes forward in regulations, it is an explicit objective of the rate-setting process that premiums for leaseholders are reduced to their lowest possible level, but we have no guarantee, and all hon. Members know the constraints under which we operate when it comes to secondary legislation and our ability to influence and scrutinise instruments. We think it important that this particular objective be put on the face of the Bill, and I will be frank with the Committee about why.

We are worried about a situation where either this Government or a future one are lobbied by vested interests to set a deferment rate that will be punitive for leaseholders—that is, lower than the Sportelli judgment rates. As things stand, that is a distinct possibility. We are not attempting to prescribe the rates; I think that there should be consultation to ensure that Parliament's view can be sustained, have legitimacy and have public backing. As the Minister will know, post-consultation is part of a regular process, as well as what this House attempts.

We are very much minded to say that, when setting the rate, there should be a guiding principle that, yes, it has to balance a number of considerations, but chief among them must be reducing premiums for leaseholders to their lowest possible level. It is explicit in the explanatory notes—and other parts of the Bill make reference to it—that the provision is to drive down costs for leaseholders; it is not set out in this schedule. For that reason, I am minded to press amendment 2 to the vote and also amendment 3, if we were to be successful in securing amendment 2—though it does not look so, from the balance of numbers.

Lee Rowley: I will take 10 seconds to try to convince the hon. Gentleman not to do that, although I might be unsuccessful.

On the ability to set these rates at a greater frequency, it is absolutely the case that "every ten years" is an indication as opposed to a limitation. Although I understand the hon. Gentleman's point about putting things on the face of the Bill—and I fear that my exhortation will not be successful—we cannot save ourselves from each other; there will always be the ability to change things. It would be a strange Government who were elected on the certain propositions that he has indicated. There will always be a way to untangle these things. I understand the point about making things more difficult, but giving the Secretary of State the flexibility to make these decisions is paramount. We will oppose the amendment if he pushes it to a vote.

3.30 pm

Matthew Pennycook: I am afraid the Minister is right in that he has failed to convince me. I fear he may misunderstand the point I am trying to make. It is not that we take issue with the Secretary of State having the flexibility to set the rate; we want instead to make very clear what must be the overriding objective in their mind when doing so, and we do think there is a strong case to put that on the face of the Bill in order to achieve the objectives that the Government have set themselves to make premiums as cheap as possible for leaseholders. For that reason, I will press amendment 2 to a vote.

Question put, That the amendment be made.

The Committee divided: Ayes 6, Noes 9.

Division No. 2]

AYES

Edwards, Sarah	Pennycook, Matthew
Gardiner, Barry	Rimmer, Ms Marie
Glindon, Mary	Strathern, Alistair

NOES

Carter, Andy	Maclean, Rachel
Everitt, Ben	Mohindra, Mr Gagan
Fuller, Richard	Rowley, Lee
Hughes, Eddie	Smith, rh Chloe
Levy, Ian	

Question accordingly negatived.

Amendment made: 69, in schedule 2, page 99, line 19, at end insert—

"(5A) But if the current lease is a shared ownership lease—

(a) the amount determined under step 2 must be multiplied by the tenant's share in the premises being valued, and

(b) the amount so calculated is the "reversion value" of the premises being valued."—*(Lee Rowley.)*

This requires that, in the case of a shared ownership lease, the reversion value is reduced in proportion to the share of the property owned by the tenant.

Lee Rowley: I beg to move amendment 70, in schedule 2, page 101, line 5, at end insert

", or

(c) the person is the landlord under a lease which is varied under paragraph 12A of Schedule 1 to the LRA 1967 or paragraph 12 of Schedule 11 to the LRHUDA 1993 as a result of the lease extension."

This amendment is consequential on Amendment 73.

The Chair: With this it will be convenient to discuss Government amendments 71, 33, 34, 39, 40 and 73.

Lee Rowley: These amendments will address the division between landlords of a lease extension premium following the use of a new right to commute—that is, reduce—their intermediate rents. We intend to introduce the right to commutation as part of amendment 73, when we come to schedule 6.

Amendments 70 and 71 will enable the losses incurred by a landlord affected by the right to commutation to be considered when dividing up the lease extension premium. In simple terms, it will enable the shares of a premium to be adjusted so the commutation is "paid for". I commend the amendments to the Committee.

Amendments 33 and 34 will support the introduction of a commutation. Commutation is a new right that will enable intermediate leaseholders to reduce the rent they pay to superior landlords, such as the freeholder. This will be available when a leaseholder extends their lease at a peppercorn ground rent, which reduces or extinguishes the income received by the landlords, where the landlords are intermediate leaseholders.

In homeownership, intermediate leases are the middle rungs on the ladder. Amendments to clause 14 would permit the tribunal to make determinations and orders in houses regarding the new right of commutation. Amendments 39 and 40 to clause 16 will permit the tribunal to make terminations and orders in flats regarding this new right. The provisions for the function of the new right are introduced by amendment 73 to schedule 6. The amendments implement the Law Commission's enfranchisement report recommendation 100. Amendments 33 and 34 will facilitate the new right by allowing the tribunal to make decisions on any issue related to commutation. That includes the question of how much of the rent an intermediate lease receives is attributable to a specific house or flat where a lease extension is claimed.

The tribunal has powers to address situations where landlords are absent so that commutation can proceed. It can make orders about appointing persons to vary the intermediate leases in accordance with the new commutation provisions, and can order that commutation should proceed where an intermediate leaseholder's notice is determined to have no effect but another landlord was eligible to claim commutation.

As previously discussed, amendments 39 and 40 support the introduction of the new right of commutation. Amendments to clause 16 will permit the tribunal to make determinations and orders in flats regarding commutation. They replicate the same changes for houses made by amendments 33 and 34 to clause 14. The new right of commutation will be introduced by amendment 73 to schedule 6.

Finally, Government amendment 73 will introduce a new right for landlords to commute—that is, reduce—the rent they pay following certain enfranchisement claims. It implements Law Commission recommendation 100. The new right would mean that, when a lease extension happens, landlords can elect to reduce their rent. That would prevent intermediate leases from entering a financial imbalance, which can occur when ground rent income is extinguished but the intermediate leaseholder must still pay a rent to a superior landlord. Such an imbalance may cause companies to wind up and the provision of building management to suffer. That situation would not work and would be to the detriment of leaseholders, landlords and freeholders alike.

When the new right is used, it would reduce the rent in proportion to the reduction in the ground rent related to the house or flat. In return, the superior landlord will be entitled to a share of the premium that the leaseholder has paid for their lease extension. The new right will be available to all landlords up to and including the freeholder in houses, and all landlords up to and including the competent landlord in flats. The right will not be available if a lease extension or a ground rent buy-out claim is not being undertaken. It is also not available if an intermediate lease is not required to pay rent of more than a peppercorn.

Amendment 70 agreed to.

Amendment made: 71, in schedule 2, page 101, line 6, leave out from "is" to end of line 7 and insert "—

(a) where sub-paragraph (1)(a) or (b) applies, the grant of the statutory lease, or

(b) where sub-paragraph (1)(c) applies, the variation of the lease."—*(Lee Rowley.)*

This amendment is consequential on Amendment 73.

Schedule 2, as amended, agreed to.

Schedules 3 and 4 agreed to.

Schedule 5

AMENDMENTS CONSEQUENTIAL ON SECTION 11 AND SCHEDULES 2 TO 4

Amendment made: 72, in schedule 5, page 115, line 27, leave out second "competent landlord" and insert "tenant".—*(Lee Rowley.)*

This amendment would mean that a tenant may be required to pay the price payable into the tribunal.

Schedule 5, as amended, agreed to.

Clause 12

COSTS OF ENFRANCHISEMENT AND EXTENSION UNDER THE LRA 1967

Lee Rowley: I beg to move amendment 29, in clause 12, page 15, line 6, at end insert—

"(8) See also sections 20CA and 20J of the Landlord and Tenant Act 1985, which prevent costs in connection with a claim under this Part being recovered by way of a variable service charge (within the meaning of section 18 of that Act)."

This amendment is consequential on NC7.

The Chair: With this it will be convenient to discuss the following:

Amendment 4, in clause 12, page 16, leave out from line 19 to line 12 on page 17.

This amendment would leave out the proposed new section 19C of the Leasehold Reform Act 1967, and so ensure that leaseholders are not liable to pay their landlord's non-litigation costs in cases where a low value enfranchisement or extension claim is successful.

Clause stand part.

Government amendment 31.

Amendment 5, in clause 13, page 21, leave out from line 26 to line 12 on page 22.

This amendment would leave out the proposed new section 89C of the Leasehold Reform, Housing and Urban Development Act 1993, and so ensure that leaseholders are not liable to pay their landlord's non-litigation costs in cases where a low value enfranchisement or extension claim is successful.

Amendment 128, in clause 13, page 22, leave out lines 13 to 39.

This amendment would leave out the proposed new section 89D of the Leasehold Reform, Housing and Urban Development Act 1993, and so ensure that leaseholders are not liable to pay their landlord's non-litigation costs in cases where a leaseback has been granted under Chapter 1.

Clause 13 stand part.

Government amendments 45, 49 to 51 and 121 to 123.

Government new clause 7—*Restriction on recovery of non-litigation costs of enfranchisement, extension and right to manage*.

This new clause, to be inserted after clause 35, would prevent variable service charges being paid by a tenant for non-litigation costs in connection with enfranchisement, extension and right to manage claims made by other tenants.

Lee Rowley: New clause 7 is a key amendment to close a loophole that landlords could potentially use to recoup process costs from tenants via variable service charges. These are costs to which they are not entitled under the new cost regime. The new clause is supported by a number of consequential amendments.

The new clause will support the new cost regime introduced in the Bill, which, as the Committee will be aware, seeks to prevent landlords from recovering process costs from leaseholders making enfranchisement or right-to-manage claims in the appropriate tribunal. In its current form, the Bill takes active steps to prevent a potential loophole by ensuring that variable service charges cannot be used by landlords as a mechanism to charge leaseholders for their litigation or process costs in connection with any of the aforementioned claims made by leaseholders.

Eddie Hughes: Can the Minister clarify whether the prescribed format would include the application of charges for insurance?

Lee Rowley: I hope to clarify that issue for my hon. Friend in the next few minutes. If I am unable to do so, I will write to him.

New clause 7 seeks to go a step further in blocking the loophole by ensuring that landlords are unable to recoup costs through variable service charges issued to other tenants who are not actively participating in the claim. To be certain that the new clause is effective, we are clarifying that these costs are not defined as relevant costs that a landlord is allowed to include in service charges. We are also giving the appropriate tribunal a new power to order landlords to repay leaseholders in cases in which they have wrongly been charged for such costs.

Although we recognise that it is unlikely that landlords will seek to circumvent the intent of the Bill, it is important that our efforts to remove barriers to leaseholders bringing applications to enfranchise or to exercise the right to manage are not undermined, and that we ensure that the cost regime is watertight and fairer for leaseholders. I reiterate that new clause 7 will have the effect of preventing landlords from using service charges to obtain from leaseholders costs to which they are not entitled. This will be supported by a power for the tribunal to order landlords to repay leaseholders to whom they have incorrectly passed on such costs. I commend the new clause to the Committee.

I turn to the Government's position on the amendments tabled to clauses 12 and 13. Amendments 4 and 5 would remove proposed new section 19C of the Leasehold Reform Act 1967 and proposed new section 89C of the Leasehold Reform, Housing and Urban Development Act 1993, which together would establish an exception to the new general rule that each side will bear its own costs in tribunal proceedings for enfranchisement and lease extension claims for flats and houses respectively. The exception exists to entitle landlords to receive a portion of their process costs from leaseholders in low-value claims—those for which the premium to be paid to the landlord by the leaseholder is less than the process costs.

I should note that I share the worthwhile desire of the hon. Member for Greenwich and Woolwich to make it cheaper for leaseholders to enfranchise or extend their leases. For too long, the balance of power has been weighted too much in favour of landlords. We have introduced changes to the cost regime because we believe that they will make it fairer, and because we wish to remove the risk and uncertainty facing leaseholders bringing such claims. While restoring balance, however, it is important that the new regime is fair for both sides when there are claims of this nature. Rightly, leaseholders have a statutory ability to enfranchise or extend when they like. In low-value claims, it is not fair for landlords to be required to incur a net financial loss at any time that leaseholders wish to exercise their rights. In claims that are not low-value, the landlord will receive sufficient compensation and will be able to use this to cover the costs incurred; in low-value claims, that is not possible, as the premium is less than the process costs.

Part of the reason why leaseholders have been liable to pay their landlord's reasonable process costs is to ensure that landlords are protected from unfairly burdensome costs. They could face these costs at any time. In many cases, landlords have no choice but to pay out, given their duty to honour the statutory rights of leaseholders to enfranchise or extend their lease. The low-value claim cost provisions create protection. They mean that leaseholders will be liable for some of their freeholders' costs, but their exposure to cost will not be excessive. Although it is right that the cost regime changes, we must continue to ensure that there are protections in place both for leaseholders and for landlords. I ask the hon. Member for Greenwich and Woolwich kindly not to press his amendments.

We have been clear that we want to make it cheaper and easier for leaseholders to extend their lease or buy their freehold; that is the whole point of this Bill. Clause 12 will make it cheaper for owners of leasehold houses to exercise their enfranchisement rights. It introduces a new cost regime with a general rule that, in future, both landlords and leaseholders will bear their own process costs during an enfranchisement claim. Process costs could include costs for services such as valuation, conveyancing and other legal costs. This could save a leaseholder thousands of pounds. Leaseholders will no

[Lee Rowley]

longer be deterred from bringing a claim because of the process costs demanded by their landlord, and a leaseholder will no longer face unknown costs from their landlord, making it much simpler to buy their freehold or extend their lease.

3.45 pm

There are some exceptions to the new rules to protect landlords in certain circumstances. Proposed new section 19A(1) lists the exceptions that protect landlords, including where a leaseholder's claim ceases for a reason that does not count as a permitted reason, which we have sought to define clearly, and where a landlord's non-litigation costs exceed the premium payable in low-value cases. Proposed new section 19A(4) confirms the continuing role of the tribunal to make orders on litigation costs. Proposed new section 19E makes it clear that, since there will be no general requirement for leaseholders to pay a landlord's process costs, they will also no longer need to make a security payment.

The legislation also closes a potential loophole by preventing landlords from passing their costs to the enfranchising leaseholder via a service charge or a similar contract. The amounts to which landlords will be entitled under the exceptions will be prescribed in regulations; proposed new sections 19B(3) and 19C(3) provide powers for the Secretary of State and the Welsh Ministers to make such regulations. Together, these measures will level the playing field, making it cheaper for leaseholder owners of houses to extend their lease or buy their freehold, and removing a core barrier deterring leaseholders from enfranchising. I commend clause 12 to the Committee.

I thank the hon. Member for Brent North for tabling amendment 128. The Bill introduces a general new rule that each side will bear its own costs for enfranchisement and lease-extension claims. The hon. Gentleman's amendment would remove proposed new section 89D of the 1993 Act, which would establish an exception to that rule with regard to process costs where a freeholder in a collective enfranchisement claim takes a 990-year leaseback of some property in a building. In such situations, freeholders will receive a portion of their process costs. I share the desire of my hon. Friends and of the hon. Member for Brent North to lower cost, risk and uncertainty for leaseholders, but it is still important that the new regime be fair for both sides. The Government will not be accepting the amendment today.

Process costs will be greater for the landlord in such cases in which there are more complicated transactions overall: a new lease will need to be granted and registered, and new terms will need to be negotiated. Those will add to the freeholder's process costs. In addition, the price or premium payable to the freeholder will still be lower than if the leaseback were not part of a transaction, because the freeholder will be retaining a proprietary interest with a substantive value, which has the effect of reducing the premium.

As I noted in response to the proposition of removing the exception for low-value claims in amendments 4 and 5, it would not be fair for landlords to be required to incur a net financial loss if leaseholders wish to exercise their enfranchisement rights. Although it is right that we reform the cost regime, we must ensure that there are protections in place for both sides. I therefore ask the hon. Member for Brent North not to press his amendment. Having covered the detail of the clauses, I commend them to the Committee.

Finally, in reply to the question of my hon. Friend the Member for Walsall North on insurance, the answer is generally no. There is little reason why insurance should be part of the process. There may be exceptions; if there are, we will write to my hon. Friend to indicate them, but the general answer is no.

Matthew Pennycook: I thank the Minister for his explanation of the Government amendments and for his initial response to my amendments and the amendment tabled by my hon. Friend the Member for Brent North.

We welcome the new costs regime provided for by these provisions. The Minister is absolutely right that, as things stand, there is no balance of power: the playing field is tilted very much in favour of landlords rather than leaseholders. That needs to be addressed. Under the current law, leaseholders are required to pay for certain non-litigation costs incurred by their landlord when responding to an enfranchisement or lease extension claim. That obviously does not reflect normal practice in residential conveyancing, where each party bears their own costs.

The argument for imposing non-litigation costs has always been that in enfranchisement or lease extension claims, a landlord is being forced to sell his or her asset, and that that justifies a departure from the costs arrangements that operate in open market sales of residential property, where any valuations and final price will reflect the fact that each party must pay their own costs. However, when it comes to lease extensions or freehold purchases, a landlord is obviously not simply being compensated for the value of the asset they are being compelled to sell. They are instead securing, through the payable premium, a share of the profit to be made from selling to the leaseholders in question. In addition, as things stand, through capitalised ground rents they are extracting funds from leaseholders over long periods—often decades—prior to securing that profit share for no explicit services in return, a point that the hon. Member for Redditch made.

The valuations of lease extensions and freehold acquisitions under the existing statutory regime rely on prices agreed via an open market transaction, but those valuations do not account for the fact that leaseholders are expected to pay their landlord's non-litigation costs. A landlord in an enfranchisement or extension transaction therefore receives both a price for the asset being sold, which reflects the market rate without non-litigation costs factored in, and their reasonably incurred non-litigation costs on top.

As the Law Commission's 2020 final report on enfranchisement puts it, the effect of the law and current market practice is that

"the landlord is over-compensated for the non-litigation costs that he or she has to incur in order to transfer the interest to the leaseholder."

In addition to the fact that landlords are over-compensated for non-litigation costs, many of those who are better resourced use the fact that such costs are borne by leaseholders as leverage in negotiations on the price of

the lease extension or freehold acquisition, confident that the expense of challenging those costs in tribunal will dissuade many leaseholders from doing so.

The Opposition's view is that freeholders should not receive compensation in respect of non-litigation costs. The fact that a landlord sells his or her asset and receives a share of the profit as a result is not sufficient justification for departing from an arrangement in which reasonable non-litigation costs are factored into the ultimate price. That is not least because the decision to enfranchise or extend a lease is often not discretionary; it is often a requirement brought about by the fact that a lease is due to expire, because the payable premium is rising as the lease shortens or as a result of the decision to move or re-mortgage.

We therefore fully support the intention behind clauses 12 and 13 to provide for a new regime based on the principle that leaseholders are not required to pay the freeholder's non-litigation costs in those circumstances. We note the Law Society's concern that landlords are being asked to bear their own non-litigation costs despite the fact that the proposed standard valuation method provided for by schedule 2, which the Committee has just considered, will lead to payable premiums below full open market value because it caps the capitalisation rate. However—this point touches on one of our previous debates—political decisions set the rules of the game for market competition. In our view, it is simply not the case that there is some kind of inherent market value for premiums that is entirely independent and autonomous of legislation in this area. Every sale of a flat and every lease extension process relating to a flat since 1993 has been undertaken against the backdrop of the 1993 Act, which reduced ground rents to a peppercorn.

The market value for premiums is shaped by the laws this House passes, and it is right in principle that, to achieve the Bill's objectives of making it cheaper and easier for leaseholders in houses and flats to extend their lease or buy their freehold, leaseholders do not pay non-litigation costs in addition to the payment of a premium, as determined by the new method proposed in schedules 2 and 3. It is because we believe that leaseholders should not be liable for these costs as a result of an enfranchisement or lease extension claim on principle, irrespective of the method by which the premium is calculated, that we take issue with the fact that the clause as drafted does not protect all leaseholders from liability for costs incurred.

As the Minister has made clear, the clause entails only a selective extension of rights in this area, because it does not ensure—as the press release that accompanied the publication of the Bill claims it does—that all leaseholders will no longer have to pay their freeholder's costs when making a claim. Instead, by means of proposed new section 19C, it makes exceptions to the general rule whereby the price payable for the freehold or extended lease is below an amount to be prescribed in regulations.

We understand the rationale for the proposed new section, namely that leaseholders should pay a freeholder's non-litigation costs in such circumstances, so that low-value claims do not cost the freeholder money; the Minister has been very clear that the Government believe that that must happen to ensure that the process is fair for both sides. We also appreciate that there are risks in prohibiting a landlord from passing on non-litigation costs to leaseholders in instances in which they would be required to spend more in carrying out the transaction than they received for the asset. The Law Commission highlighted a number of those risks in its final report on enfranchisement, including the incentive created for landlords not to co-operate with a claim, or for them to transfer the low-value freehold into the name of a shell company, then liquidate the company and ensure that the lease becomes bona vacantia.

We are concerned, however, that exempting claims below a certain value will create a different set of practical problems. I hope I can get the Minister to engage with those problems, with a view to convincing him to reconsider. They include costly and time-consuming disputes in cases in which the price payable is close to the level of the non-litigation costs in question for low-value claims, and the potential for landlords to game the new system by arguing for a price payable below the threshold, in order to secure both it and associated non-litigation costs because of the burden of disputing the amount.

We appreciate that the Government have incorporated into the clause the Law Commission's recommended remedy, namely that in low value claims for which the non-litigation costs are higher than the premium payable, the leaseholder would be required to pay the lower of the two values, one of which is to be prescribed by the Secretary of State. However, we believe that it does not entirely remove the potential for significant disputes to arise between leaseholders and freeholders, with leaseholders in a weak position to challenge them because of the cost and time required. We therefore worry that the prescribed sum, at whatever level it is ultimately set, will become the minimum sum payable to enfranchise. We are concerned that the difficulties of challenging a claim to the prescribed sum will deter some leaseholders from initiating the process of extending their lease or from acquiring their freehold altogether.

Taking a step back, we fail to see the logic in the Government's position. On the one hand, they seem to be ignoring the Law Commission's recommendations in relation to costs; they have chosen to provide for a general rule that leaseholders are not required to make a contribution to their landlord's non-litigation costs, but have not chosen to adopt a valuation methodology that seeks to reflect open market value, which was the commission's stated prerequisite for such a rule. On the other hand, they are following strictly the commission's recommendations in respect of low-value claims.

Put simply, we believe that, by means of this Bill, we should take the political decision—it is an explicit political decision—to exempt all leaseholders from paying the costs incurred by landlords in processing enfranchisement or lease extension claims. Amendments 4 and 5 would omit proposed new section 19C of the 1967 Act and proposed new section 89C of the 1993 Act, thereby removing any exception to the general rule that leaseholders are not required to pay the freeholder's non-litigation costs in such circumstances. Having argued my case on the basis of the practicalities, I live in hope that the Minister might reconsider.

Barry Gardiner: Can my hon. Friend clarify whether the proposals in his amendments 4 and 5 would cover my own amendment 128, which deals with the exactly parallel situation in which each side bears its own costs, but in relation to leasebacks?

Matthew Pennycook: I will have to come back to my hon. Friend on that point, but my understanding is that, by deleting the relevant proposed new sections, amendments 4 and 5 would ensure that in all circumstances non-litigation costs will not be chargeable to leaseholders. That was certainly the Opposition's intent in proposing the amendments.

Rachel Maclean: I ask the Minister to clarify a couple of points. It is extremely unusual for me ever to find anything in his comments to disagree with or depart from. If I heard him correctly, however, I think he stated that he thought it was unlikely that landlords would ever seek to circumvent the intent of the Bill. Possibly I took that out of context, but I suggest strongly that, on the contrary, it is extremely likely that landlords will intend or try to circumvent the intent of the Bill, because that is what we have seen from freeholders over decades. That is why we are in the position that we are in.

4 pm

We are obviously starting from the position that we want this to be fair—each side needs to see justice—but, as I think most of us have remarked, there is a massive imbalance of power. The Minister spoke powerfully about how it is not Conservative to promote a market with such imbalances of power and, in such situations, it is incumbent on us as Conservatives, who believe in free markets, to free those leaseholders—those tenants, who have bought those properties in good faith—from under the yoke of the freeholders, who hold all the power and, in particular, the threat of blocking those court actions and tribunal claims.

The difficulties that those leaseholders face are such that they often give up years of their lives to them. These people are just doing normal jobs, already working hard to pay their mortgage on the flat that they thought they had bought and owned, but instead they might have to spend hours, days or years of their life trying to familiarise themselves with incredibly dry, complex bits of legislation that we are grappling with in this Committee with great difficulty, even though we all have a reasonable degree of familiarity with it. Imagine being a flat owner who finds themselves wondering what on earth they are going to do to challenge their freeholder in a court of law. They face the stress and difficulty of mounting a claim, wondering who is going to help them, and fearing that they will be lumbered with all the costs at the end.

I have two specific questions for the Minister. First, is he confident that we have addressed to the best of our ability, with all the information and work that we have done, the statement that—I believe this; I am very cynical—landlords will seek to circumvent what we are doing? They are probably already doing so. Does the Minister feel confident that he, his excellent officials and the whole Department have scrutinised the matter to the best of our ability to prevent that?

Secondly, in the Minister's view, are we addressing the egregious situations that we heard about in some of the evidence sessions in Committee? Groups of leaseholders have taken freeholders to court because of all sorts of spurious and seemingly tiny and insignificant things, and they have found that the freeholders have had the costs awarded to them and they are then seeking to recoup those costs through the service charges of the leaseholders. To me, that seems an absolute violation of justice. We believe in a fair market, but this cannot be one when leaseholders are operating in a dark room—they cannot see the prices, or the other buyers and sellers. It is not a free market in any shape or form. We are inching towards some degree of freedom, but I would welcome some reassurance from the Minister.

Barry Gardiner: Here was me thinking I was going to be helpful to the Minister with my amendment 128, that I was going with the grain of the Bill—its whole point. He was so eloquent, and said that it is absolutely right that each party should bear its own costs, and I was thinking, "Great, we've got one here. They're going to support us", and then he said that he could not accept the amendment. I urge the Minister to consider it again.

I am trying to take out that whole proposed new section 89D, because it is a new class of cost—this whole idea of a leaseback. These are new ways in which landlords will be able to increase the costs of enfranchisement, because they will engage a series of lawyers to review separately every single one of the contracts of the non-enfranchising leaseholders and, indeed, all the individual elements of the commercial premises that they are being forced to take the leaseback off. Those costs will be absolutely enormous, because they will do it on an individual basis. The hon. Member for Redditch spoke eloquently about her cynicism, and I am afraid that it is not cynicism: it is reality. It is an understanding of what is happening in the commercial world out there.

The Minister really needs to look at this again. I understand that he has a commitment not to accept the amendments put forward by my hon. Friend the Member for Greenwich and Woolwich, or, indeed, by me, but I urge him to think again and actually see what that might cost in practice—he can get his officials to look at that—for a large development where, we must remember, only 50% of the residential element may have enfranchised, meaning that 50% may not have; they will be leasebacks. The whole of the commercial element, which could be up to 50% of the development, will also be leasebacks, which will be individuated. The cost of an individual review by a landlord of every single one of those lease contracts will make it impossible for the 50% residential interest to enfranchise. It goes against the grain of the Bill. I urge the Minister to look at that again and come back at a later stage with his own amendments.

Lee Rowley: I will briefly address those points. I understand the broad point made by the hon. Member for Greenwich and Woolwich. If we need to look at specific areas in more detail, I would be happy to receive those from him outside the Committee. We think that the structure will work and is effective. On the point that my hon. Friend the Member for Redditch made a moment ago, officials have spent a significant amount of time trying to make the provisions as watertight as possible. Can I guarantee on absolutely everything that there is no possibility that we have missed something? No. That is why I am happy to take further information from any colleagues on the Committee, but we think that this is a valid prospectus on which to proceed.

My hon. Friend made a point about my potential naivety, although that is not how she described it. I assure her that having dealt with freeholders from a building safety perspective now for 16 months, even

though I have dealt with this sector for only a couple of months, I am under no illusions about the cynicism of part of that sector. Even when we go through legal processes—I know that colleagues in this room have had a great deal of this, particularly those who represent urban areas—and it is absolutely clear and staring us in the face that there are responsibilities and requirements to do things with regard to building safety, it is absolutely extraordinary that some freeholders continue to seek to get around their obligations and must be dragged kicking and screaming to them.

I listened to a rather erroneous and misleading discussion on the "Today" programme this morning where the BBC presenter said, "It is all terrible on building safety. An insufficient amount of progress has been made in terms of building safety a number of years on from the very sad events of Grenfell." It is also the case that a substantial amount of work is going into dragging some of the freeholders to do the things that they are supposed to do in the first place and have the basic humanity to recognise that they need to provide buildings that are safe for people to live in.

I hope that I have assured the Committee that, if nothing else, I am absolutely cognisant of some of the challenges that were indicated by my hon. Friend the Member for Redditch. We hope that the elements that I articulated in my initial comments address some of the egregious situations. One of the reasons why we are tightening covenants is to ensure that there is not a workaround or way around some of the things that we have talked about.

I say to all three hon. Members, including the hon. Member for Brent North, that there is always a balance to be struck, but we are trying to make this as watertight as it can be. Although we cannot accept the amendment, if there is something that we genuinely think we have forgotten or missed, I will happily take further information, separately, and look at it again. We think this provision is okay, but I am always happy to take further information, if it would be helpful.

Matthew Pennycook: I thank the Minister for that response. Before turning to amendments 4 and 5, I have a brief note about the amendment tabled by my hon. Friend the Member for Brent North. It is a very strong idea, and there is a genuine deficiency in the law. If he is minded to press it to a vote, I would certainly support him. He may want to return to it at another date.

On amendments 4 and 5, perhaps I have misunderstood the Minister. We are not trying to make the argument that the Government have forgotten to include something in the Bill or that there is something missing; the point is that the exemption that they are providing for low-value claims will cause problems. I have taken on board what the Minister said about the Government's position being that the exemption is essential to ensure that the new process is fair, but we are very concerned that the prescribed sum that the Secretary of State will bring forward will become the de facto minimum amount payable for those low-value claims. Because of the problems challenging that, I think that leaseholders will be deterred from taking this process forward. That is the best-case scenario.

The worst-case scenario—I fear that this is the more likely scenario, for the reasons outlined by my hon. Friend the Member for Brent North and the hon. Member for Redditch in relation to the behaviour of some freeholders—is that it will become a recipe for litigation and gaming of the low-value exemption in ways that will be detrimental to leaseholders. With that in mind, I am minded to press amendment 4 to a vote and, if that is successful, amendment 5 as well.

Barry Gardiner: There is a word in the clause that the Minister should pay very specific attention to. Line 29 of proposed new section 89D states that

"'non-litigation costs' means costs that are or could be incurred by a freeholder"—

I stress "could". If the Minister is minded to look at this again, he should ask his officials to do some calculations about what the costs could be. I recognise the figures and have no wish to detain the Committee by pressing this to a vote. I am happy to support my hon. Friend in pressing amendment 4 to a vote, but if the Minister can give me an assurance that he will ask his officials to do that homework, I will not press the amendment.

Lee Rowley: We are certainly happy to write to the hon. Member to articulate the position in more detail and to seek to reassure him on some of the points that he has made.

Amendment 29 agreed to.

Amendment made: 30, in clause 12, page 15, line 14, at end insert—

"(za) the claim ceasing to have effect under regulations under section 4B (landlord certified as community housing provider);"—*(Lee Rowley.)*

This amendment is consequential on Amendment 57.

Amendment proposed: 4, Clause 12, page 16, leave out from line 19 to line 12 on page 17.—*(Matthew Pennycook.)*

This amendment would leave out the proposed new section 19C of the Leasehold Reform Act 1967, and so ensure that leaseholders are not liable to pay their landlord's non-litigation costs in cases where a low value enfranchisement or extension claim is successful.

Question put, *That the amendment be made.*

The Committee divided: Ayes 6, Noes 8.

Division No. 3]

AYES

Edwards, Sarah	Pennycook, Matthew
Gardiner, Barry	Rimmer, Ms Marie
Glindon, Mary	Strathern, Alistair

NOES

Carter, Andy	Maclean, Rachel
Everitt, Ben	Mohindra, Mr Gagan
Fuller, Richard	Rowley, Lee
Levy, Ian	Smith, rh Chloe

Question accordingly negatived.

Clause 12, as amended, ordered to stand part of the Bill.

Clause 13

COSTS OF ENFRANCHISEMENT AND EXTENSION UNDER THE LRHUDA 1993

4.15 pm

Amendments made: 31, in clause 13, page 20, line 12, at end insert—

"(12) See also sections 20CA and 20J of the Landlord and Tenant Act 1985, which prevent costs in connection with a claim under Chapter 1 or 2 being recovered by way of a variable service charge (within the meaning of section 18 of that Act)."

This amendment is consequential on NC7.

Amendment 32: in clause 13, page 20, line 20, at end insert—

"(za) the claim ceasing to have effect under regulations under section 8B (landlord certified as community housing provider);". *—(Lee Rowley.)*

This amendment is consequential on Amendment 57.

Clause 13, as amended, ordered to stand part of the Bill.

Clause 14

Replacement of sections 20 and 21 of the LRA 1967

Amendments made: 33, in clause 14, page 26, line 12, at end insert—

"(ha) any matter arising under paragraph 12A of Schedule 1 (reduction of rent under intermediate leases on grant of an extended lease), including what rent under an intermediate lease is apportioned to the house and premises;"

This amendment is consequential on Amendment 73.

Amendment 34, in clause 14, page 26, line 41, at end insert—

"(5A) In relation to paragraph 12A of Schedule 1—

(a) if the landlord under a qualifying intermediate lease cannot be found or their identity cannot be ascertained, the appropriate tribunal may make such order as it thinks fit, including—

(i) an order dispensing with the requirement to give notice under paragraph 12A(3) of Schedule 1 to that landlord, or

(ii) an order that such a notice has effect and has been properly served even though it has not been served on that landlord;

(b) the appropriate tribunal may make an order appointing a person to vary a lease in accordance with paragraph 12A of Schedule 1 on behalf of the landlord or tenant;

(c) if the appropriate tribunal makes a determination that a notice under paragraph 12A(3) of Schedule 1 was of no effect, it may—

(i) determine whether another landlord or tenant could have given such a notice, and

(ii) if it determines that they could have done so, order that paragraph 12A of Schedule 1 is to apply as if they had done so.

(5B) The variation of a lease on behalf of a party in consequence of an order under subsection (5A)(b) has the same force and effect (for all purposes) as if it had been executed by that party." *—(Lee Rowley.)*

This would give the tribunal jurisdiction to deal with cases where landlords cannot be found or identified, to appoint a person to execute a variation of a lease (eg. if a party to the lease is absent or unco-operative), and to enable the Schedule to continue to apply if the notice given was of no effect.

Lee Rowley: I beg to move amendment 35, in clause 14, page 27, line 15, at end insert—

"21ZA Jurisdiction for other proceedings

(1) This section applies to proceedings—

(a) relating to the performance or discharge of obligations arising out of a tenant's notice of their desire to have the freehold or an extended lease under this Part, and

(b) for which jurisdiction has not otherwise been conferred under or by virtue of this Part.

(2) Jurisdiction is conferred on the appropriate tribunal for proceedings to which this section applies.

(3) But jurisdiction is instead conferred on the court where a purpose of the proceedings is to obtain a remedy that could not be granted by the appropriate tribunal but could be granted by the court.

(4) If, in proceedings before the court to which this section applies, it appears to the court that—

(a) the remedy (or remedies) sought could be granted by the appropriate tribunal, it must by order transfer the proceedings to the appropriate tribunal;

(b) a remedy sought could be granted by the appropriate tribunal and another remedy sought could only be granted by the court, it may by order transfer the proceedings to the appropriate tribunal insofar as the proceedings relate to the remedy that could be granted by the appropriate tribunal.

(5) Following a transfer of proceedings under subsection (4)(b)—

(a) the court may dispose of all or any remaining proceedings pending the determination of the transferred proceedings by the appropriate tribunal,

(b) the appropriate tribunal may determine the transferred proceedings, and

(c) when the appropriate tribunal has done so, the court may give effect to the determination in an order of the court.

(6) Rules of court may prescribe the procedure to be followed in a court in connection with or in consequence of a transfer under this section.

(7) A reference in this Part to the jurisdiction conferred on the appropriate tribunal or the court includes that conferred by this section.

(8) This section does not prevent the bringing of proceedings in a court other than the county court where the claim is for damages or pecuniary compensation only."

This amendment moves the provision that would have been inserted into the 1967 Act as section 21C. It also includes a new subsection (8) to clarify the effect of the new section.

The Chair: With this it will be convenient to discuss the following:

Government amendments 36 to 38.

Clause stand part.

Clause 15 stand part.

Government amendments 41 and 42.

Clauses 16 and 17 stand part.

Government amendment 43.

Clause 18 stand part.

Lee Rowley: These are minor technical amendments to support the changes that we are introducing—to the jurisdiction of the county court and the property chamber of the first-tier tribunal respectively—to simplify dispute resolution so that leasehold enfranchisement and right to manage cases sit all in one place and in the hands of experts. Amendments 35 and 38 work together to amend and replace a new section to be added to the 1967 Act, which lays out the jurisdiction of the court and the tribunal in relation to particular matters. This section will move to earlier in the Act, as following sections will rely on this provision, and so it is clearer for it to be featured earlier.

Amendment 36 changes the 1967 Act to clarify the jurisdictional boundaries of the county court and the tribunal. Specifically, it clarifies that a party cannot

go to the court for an order for compliance with enfranchisement obligations unless their application is linked to other proceedings in that court, and for which the court has jurisdiction. It increases conciseness and clarity.

Amendment 37 is consequential on the amendments that I have set out and serves to ensure that both the Bill and the 1967 Act continue to make sense. These are minor and technical amendments, as opposed to material policy changes. I hope that they will not be contentious and commend them to the Committee.

Turning to clause 14, we have been clear repeatedly today that we want to make it cheaper and easier for people to extend their lease or buy their freehold. However, it is equally important that people can effectively seek redress or launch challenges where needed. Clause 14 will move all enfranchisement disputes to the tribunal so that these matters are dealt with in one place. That will not only make the system simpler to understand but save leaseholders money. They are less likely to need legal advice just to understand the process, and it reduces cases where money is wasted because challenges are launched incorrectly.

On top of that, the new system will ensure that these complex matters are dealt with by those with the right experience, knowledge and expertise at the tribunal that is best equipped to handle these matters. The clause also gives the tribunal important new powers so that it can effectively deal with disputes in its new, expanded jurisdiction. These include requiring parties to comply with duties under the Act, such as payment of compensation to a leaseholder, appointing someone to complete a conveyance, or ordering leaseholders to pay the price due to extend their lease or acquire the freehold. Taken together, these measures simplify and strengthen the system for dispute resolution, and I commend clause 14 to the Committee.

Turning to clause 15, currently some disputes that arise during the enfranchisement process for leasehold houses can be resolved in the first-tier tribunal in England and the leasehold valuation tribunal in Wales, but others must be resolved in the court, which creates a complex situation and causes confusion and additional costs for all parties involved.

The clause addresses that problem by transferring the jurisdiction for dealing with specific matters from the courts to the tribunal. This will result in the majority of enfranchisement disputes for leasehold houses being dealt with and resolved solely by the experienced tribunal. The clause will also allow for payments that would normally be paid into court, such as the premium payable when there is a missing landlord, to be paid into the tribunal. That will mean that the process for resolving enfranchisement disputes for leasehold houses will be easier to navigate and reduce the number of claims that need to go to the courts and the tribunal, which will save time and legal costs. The measures will ensure that the process for resolving disputes is simpler, quicker and cheaper.

Amendments 41 and 42 are also minor technical amendments that support the changes we are introducing. Amendment 41 to clause 16 changes the 1993 Act to clarify the jurisdictional boundaries of the county court and tribunal. Specifically, the amendment clarifies that a party cannot go to the court for an order for compliance with enfranchisement obligations unless their application is linked to other proceedings in the court where the court has jurisdiction. Amendment 42 is consequential on amendment 41. It ensures that both the Bill and the 1993 Act continue to make sense.

Clause 16 makes changes very similar to those made by clause 14, but in relation to the Leasehold Reform, Housing and Urban Development Act 1993, which applies to flats rather than houses. The clause will move a number of matters from the county court to the tribunal so that they are all dealt with in one place. The costs rules in the tribunal, where each side bears their own costs, are also favourable to leaseholders in many cases, while in the county court the loser pays the other party's litigation costs. The tribunal has the knowledge and experience to deal with those matters best. The clause gives the tribunal the powers it needs to deal with disputes in its new jurisdiction, such as apportioning rent in some cases and requiring parties to comply with the requirements of the amended Leasehold Reform, Housing and Urban Development Act.

Clause 17 addresses jurisdiction for disputes during the enfranchisement process for leasehold flats. It does this in a similar way to clause 15, which relates to leasehold houses. As is the case for houses, some disputes that arise during the enfranchisement process for leasehold flats can be resolved in the tribunal, but others must go to court. The clause will address that problem by transferring the jurisdiction to the tribunal. It will also allow for payments that would normally be paid into court to be paid into the tribunal.

Amendment 43 is another minor technical amendment to support the changes that we are introducing to the jurisdiction of the county court and first-tier tribunal. It simplifies dispute resolution and places things in one place, in the hands of experts. The amendment works together with amendments 35 and 38 to amend and replace a proposed new section to be added to the 1967 Act, which lays out the jurisdiction of the court and tribunal in relation to particular matters. The proposed new section will be moved to earlier in the Act, because following sections rely on it. Again, it is a minor and technical change.

Finally, I turn to clause 18. The current division of power to deal with enfranchisement disputes between different courts and the tribunal creates complexity. Furthermore, High Court cases are much more expensive than the tribunals. Leaseholders often have more limited resources than landlords, and landlords may use the threat of going to the High Court in future as a tactic to place pressure on leaseholders. The clause complements clauses 14 to 17, which shift jurisdiction for most enfranchisement matters to the first-tier tribunal and the leasehold valuation tribunal in Wales.

Clause 18 prevents parties from using the High Court as an alternative forum to the tribunals for determining enfranchisement matters in the first instance, but it does not prevent a party from appealing a decision of the tribunals or affect the jurisdiction of the High Court to consider judicial review claims in respect of the tribunals. The tribunals have the skills and expertise to deal with all aspects of an enfranchisement dispute, including complex questions of valuation, and they are well placed to take over enfranchisement claims. The measure should help to reduce costs and inconvenience, and ensure that disputes are handled by judges with specialist knowledge.

Matthew Pennycook: We take no issue with any of the Government amendments in the group. I rise to speak briefly in relation to clauses 14 to 17, which, as the Minister has said, concern the jurisdiction of the county court and tribunals.

The current law divides the responsibility for resolving enfranchisement disputes between the county court and the tribunal, but there is considerable evidence that this creates complexity, can cause confusion and additional expense for the parties, and creates discrepancies due to the differing powers of the county court and of the tribunal to order one party to pay the other's litigation costs. The workaround that has been attempted—namely, the increased deployment of tribunal judges as county court judges and vice versa—has not overcome the inherent tensions regarding the division of power in this area.

As the Minister has said, clauses 14 to 17 variously amend both the 1967 and 1993 Acts to transfer jurisdiction from the county court to the first-tier tribunal for a number of matters and provide the FTT with the necessary additional powers to exercise its expanded jurisdiction. We welcome these sensible clauses, which enact recommendation 82 of the Law Commission's final report on leasehold enfranchisement. Although it is our hope that a number of measures in the Bill will have the effect of reducing the frequency with which disputes arise during enfranchisement claims, a great many still will. It is sensible to give a single body responsibility for them, and for that body to be the FTT, given its skills and expertise.

We welcome these clauses, but I want to probe the Minister on the issue of the first-tier tribunal's ability to deal with all enfranchisement disputes. The tribunal's present caseload is not unduly onerous, but, following the end of the pandemic, it has reported a gradual increase in its leasehold management work—in particular, challenges relating to service charge costs—as well as more applications for rent repayment orders. In addition, it now has responsibility for resolving the vast majority of disputes arising from the Building Safety Act 2022, including those concerning remediation orders and remediation contribution orders under part 5 of that Act.

The Government are proposing to increase the tribunal's workload through the changes that they are making through the Renters (Reform) Bill, which is still making its way through the House. In particular, the new statutory procedure for increases of rent that that Bill provides for, with an expanded right for tenants to challenge, is likely to see the level of market rent referrals that the tribunal deals with rise. Now the Government are proposing, through this Bill, that the tribunal also be given responsibility for resolving all enfranchisement disputes. As I said, although we welcome the proposal to do so, the obvious risk of enacting this combination of further and expanded jurisdictions for the tribunal, in the absence of additional funding, judges and court staff, is that it will result in backlogs.

We therefore seek reassurances from the Minister that the Government are thinking seriously about how they will ensure that the first-tier tribunal will be adequately resourced to effectively and efficiently discharge all its new and proposed responsibilities, including in relation to this Bill. Could he tell us what additional resources the Government are proposing to allocate to the property tribunal, and what initiatives are being considered to ensure that it has the relevant skills and capacity to guarantee that it can do that?

Lee Rowley: I welcome the support from the Opposition. As the hon. Gentleman also indicates, these are sensible approaches to take. He is right to highlight his very valid point about capacity within the first-tier tribunal; I am glad that we agree on the principle. He is absolutely right that there is a practicality element, should it survive the continuation of the processes in both this House and the other House. It would be subject to a justice impact test, which, as I understand it, includes a review of capacity, and it would be considered at that point, should it progress through to legislation.

Matthew Pennycook: I welcome those reassurances from the Minister.

Amendment 35 agreed to.

Amendments made: 36, in clause 14, page 27, line 27, leave out subsections (3) and (4) and insert—

"(3) An application may not be made under subsection (1) to the court unless the application relates to proceedings in respect of which the court has jurisdiction under or by virtue of any provision of this Part (including section 21ZA)."

This amendment provides that applications under section 21A of the 1967 Act may be made to the county court only if the court is dealing with related proceedings under the 1967 Act.

Amendment 37, in clause 14, page 28, line 5, leave out subsection (7).

This amendment is consequential on Amendment 36.

Amendment 38, in clause 14, page 29, line 8, leave out from beginning to end of line 41.—*(Lee Rowley.)*

This amendment removes provision that is reproduced by Amendment 35.

Clause 14, as amended, ordered to stand part of the Bill.

Clause 15 ordered to stand part of the Bill.

Clause 16

AMENDMENT OF PART 1 OF THE LRHUDA 1993

Amendments made: 39, in clause 16, page 32, line 43, at end insert—

"(ha) any matter arising under paragraph 12 of Schedule 11 (reduction of rent under intermediate leases on grant of a new lease), including what rent under an intermediate lease is apportioned to the flat;".

This amendment is consequential on Amendment 73.

Amendment 40, in clause 16, page 33, line 26, at end insert—

"(5A) In relation to paragraph 12 of Schedule 11—

(a) if the landlord under a qualifying intermediate lease cannot be found or their identity cannot be ascertained, the appropriate tribunal may make such order as it thinks fit, including—

(i) an order dispensing with the requirement to give notice under paragraph 12(3) of Schedule 11 to that landlord, or

(ii) an order that such a notice has effect and has been property served even though it has not been served on that landlord;

(b) make an order appointing a person to vary a lease in accordance with paragraph 12 of Schedule 11 on behalf of the landlord or tenant;

(c) if the appropriate tribunal makes a determination that a notice under paragraph 12(3) of Schedule 11 was of no effect, it may—

(i) determine whether another landlord or tenant could have given such a notice, and

(ii) if it determines that they could have done so, order that paragraph 12 of Schedule 11 is to apply as if they had done so.

(5B) The variation of a lease on behalf of a party in consequence of an order under subsection (5A)(b) has the same force and effect (for all purposes) as if it had been executed by that party."

This would give the tribunal jurisdiction to deal with cases where landlords cannot be found or identified, to appoint a person to execute a variation of a lease (eg. if a party to the lease is absent or unco-operative), and to enable the Schedule to continue to apply if the notice given was of no effect.

Amendment 41, in clause 16, page 34, line 36, leave out from beginning to end of line 2 on page 35 and insert—

"(3) An application may not be made under subsection (1) to the court unless the application relates to proceedings in respect of which the court has jurisdiction under or by virtue of any provision of Chapter 1, 2 or 7 (including section 91A)."

This amendment provides that applications under section 92 of the 1993 Act may be made to the county court only if the court is dealing with related proceedings under the 1993 Act.

Amendment 42, in clause 16, page 35, line 17, leave out subsection (7).—*(Lee Rowley.)*

This amendment is consequential on Amendment 41.

Clause 16, as amended, ordered to stand part of the Bill.

Clause 17 ordered to stand part of the Bill.

Clause 18

No first-instance applications to the High Court in tribunal matters

4.30 pm

Amendment made: 43, in clause 18, page 37, line 28, leave out "section 21C" and insert "section 21ZA".—*(Lee Rowley.)*

This amendment is consequential on Amendments 35 and 38.

Clause 18, as amended, ordered to stand part of the Bill.

Clause 19

Miscellaneous amendments

Question proposed, That the clause stand part of the Bill.

The Chair: With this it will be convenient to discuss schedule 6.

Lee Rowley: Clause 19 brings schedule 6 into effect, including a series of amendments that follow on from the introduction of 990-year lease extensions and statutory break rights where 990-year lease extensions occur. Those rights allow a landlord to end an extended lease at limited windows of opportunity so that they may redevelop, such as to enable the continued good use of land where a building is beyond its useable lifespan. The schedule removes defunct rules regarding staying on in properties after a lease extended by 990 years expires, and includes a definition of a shared ownership lease.

Schedule 6 assists with the introduction of 990-year lease extensions. The schedule removes provisions that prevent sub-leaseholders from having various statutory rights to security of tenure when their lease ends. The provisions are no longer relevant as we are expanding lease extension rights for sub-leaseholders. It is also unlikely buildings would still be standing in 990 years' time—much as we would like many of them to be—and that reduces the relevance of what happens when such a lease ends.

The schedule accommodates 990-year lease extensions by adjusting the limited windows in which statutory break rights can be used by landlords to redevelop a property. In houses and flats, the rights will be available in the last 12 months of the original lease term and the last five years of each subsequent 90-year period of a 990-year lease extension.

We understand and recognise the strong concerns leaseholders have about the use of break rights by landlords. It is likely, however, that a building will not outlast the term of a 990-year extended lease. Break rights will therefore be necessary, by logic, to enable the continued good use of land over long periods of time. They can only be used where a landlord obtains a court order, and compensation must be paid to leaseholders. We hope we have made a necessary balance between enabling longer lease extensions and addressing the practicality of the lifespan of buildings.

The schedule also repeals redundant provisions on estate management schemes, which the law no longer permits to be approved. An estate management scheme allowed a landlord to retain some management control over properties, amenities and common areas where the freehold has been sold to leaseholders. The schedule inserts a new definition of "shared ownership lease" for enfranchisement law. The definition is required for the exclusion of shared ownership leaseholds from freehold acquisition rights. It will also be required for upcoming amendments, by which we will give lease extension rights to shared owners and shared ownership providers in respect of their intermediate leases.

Existing provisions on right to enfranchise companies are also repealed. The provisions were never commenced but would have set new requirements for who can be the nominee purchaser in a collective enfranchisement. The provisions have been identified as problematic and burdensome for leaseholders, and it is therefore appropriate to repeal them.

Question put and agreed to.

Clause 19 accordingly ordered to stand part of the Bill.

Schedule 6

Leasehold enfranchisement and extension: miscellaneous amendments

Amendments made: 73, in schedule 6, page 117, line 39, at end insert—

"Reduction of rent under intermediate leases

5A In Schedule 1 to the LRA 1967 (enfranchisement and extension by sub-tenants), after paragraph 12 insert—

'12A(1) This paragraph applies if at the relevant time (see section 37(1)(d))—

(a) relevant rent is payable under the tenancy in possession,

(b) that relevant rent is more than a peppercorn rent, and

(c) there are one or more qualifying intermediate leases.

(2) For the purposes of this paragraph a lease is a "qualifying intermediate lease" if—

(a) the lease demises the whole or a part of the house and premises,

(b) the lease is immediately superior to—

(i) the tenancy in possession, or

(ii) one or more other leases that are themselves qualifying intermediate leases,

(c) relevant rent is payable under the lease, and

(d) that relevant rent is more than a peppercorn rent.

(3) The landlord or the tenant under a qualifying intermediate lease may, by giving notice to the reversioner and other landlords before the grant of the lease under section 14, require the rent payable under the qualifying intermediate lease to be reduced in accordance with sub-paragraphs (6) to (8).

(4) If—

(a) under sub-paragraph (3) the rent under a lease is required to be reduced in accordance with this paragraph, and

(b) that lease is superior to one or more other qualifying intermediate leases,

the rent payable under the other qualifying intermediate lease or leases is also to be reduced in accordance with sub-paragraphs (6) to (8).

(5) The landlord and tenant under a qualifying intermediate lease must vary the lease—

(a) to give effect to a reduction of the rent in accordance with sub-paragraphs (6) to (8); and

(b) to remove any terms of the lease which provide for an increase in the rent, or part of the rent, so reduced.

(6) If the whole of the rent under a qualifying intermediate lease is relevant rent, the rent under that lease is to be reduced to a peppercorn rent.

(7) If only part of the rent under a qualifying intermediate lease is relevant rent—

(a) that part of the rent is to be reduced to zero, and

(b) the total rent is to be reduced accordingly.

(8) But the amount of the reduction in a person's rental liabilities as tenant is limited to the amount of the reduction in the person's rental income as landlord; and here—

(a) "reduction in a person's rental liabilities as tenant" means the reduction in accordance with sub-paragraph (6) or (7) of the rent payable by the person as tenant under the qualifying intermediate lease;

(b) "reduction in that person's rental income as landlord" means the amount (or total amount) of the relevant reduction (or reductions) in rent payable to that person as landlord of one or more other reduced rent leases.

(9) In this paragraph—

"reduced rent lease" means—

(a) the tenancy in possession, or

(b) a qualifying intermediate lease;

"relevant reduction" means—

(a) in relation to the tenancy in possession, a reduction resulting from that tenancy being substituted by the tenancy at a peppercorn rent granted under section 14;

(b) in relation to a qualifying intermediate lease, a reduction resulting from this paragraph.

"relevant rent" means rent that has been, or would properly be, apportioned to the whole or a part of the house and premises'.

5B In Schedule 11 to the LRHUDA 1993 (procedure where competent landlord is not tenant's immediate landlord), after paragraph 11 insert—

'PART 3

REDUCTION OF RENT UNDER INTERMEDIATE LEASES

12 (1) This paragraph applies if at the relevant date—

(a) relevant rent is payable under the existing lease,

(b) that relevant rent is more than a peppercorn rent, and

(c) there are one or more qualifying intermediate leases.

(2) For the purposes of this paragraph a lease is a "qualifying intermediate lease" if—

(a) the lease demises the whole or a part of the relevant flat,

(b) the lease is immediately superior to—

(i) the existing lease, or

(ii) one or more other leases that are themselves qualifying intermediate leases,

(c) relevant rent is payable under the lease, and

(d) that relevant rent is more than a peppercorn rent;

but a lease is not a qualifying intermediate lease if it is superior to the lease whose landlord is the competent landlord.

(3) The landlord or the tenant under a qualifying intermediate lease may, by giving notice to the competent landlord and other landlords before the grant of the lease under section 56, require the rent payable under the qualifying intermediate lease to be reduced in accordance with sub-paragraphs (6) to (8).

(4) If—

(a) under sub-paragraph (3) the rent under a lease is required to be reduced in accordance with this paragraph, and

(b) that lease is superior to one or more other qualifying intermediate leases,

the rent payable under the other qualifying intermediate lease or leases is also to be reduced in accordance with sub-paragraphs (6) to (8).

(5) The landlord and tenant under a qualifying intermediate lease must vary the lease—

(a) to give effect to a reduction of the rent in accordance with sub-paragraphs (6) to (8); and

(b) to remove any terms of the lease which provide for an increase in the rent, or part of the rent, so reduced.

(6) If the whole of the rent under a qualifying intermediate lease is relevant rent, the rent under that lease is to be reduced to a peppercorn rent.

(7) If only part of the rent under a qualifying intermediate lease is relevant rent—

(a) that part of the rent is to be reduced to zero, and

(b) the total rent is to be reduced accordingly.

(8) But the amount of the reduction in a person's rental liabilities as tenant is limited to the amount of the reduction in the person's rental income as landlord; and here—

(a) "reduction in a person's rental liabilities as tenant" means the reduction in accordance with sub-paragraph (6) or (7) of the rent payable by the person as tenant under the qualifying intermediate lease;

(b) 'reduction in that person's rental income as landlord' means the amount (or total amount) of the relevant reduction (or reductions) in rent payable to that person as landlord of one or more other reduced rent leases.

(9) In this paragraph—

"reduced rent lease" means—

(a) the existing lease, or

(b) a qualifying intermediate lease;

"relevant flat" means the flat and any garage, outhouse, garden, yard and appurtenances that are to be demised by the lease granted under section 56;

"relevant reduction" means—

(a) in relation to the existing lease, a reduction resulting from that lease being substituted by the lease at a peppercorn rent granted under section 56;

(b) in relation to a qualifying intermediate lease, a reduction resulting from this paragraph.

"relevant rent" means rent that has been, or would properly be, apportioned to the whole or a part of the relevant flat.'"

This would provide for rent under superior leases to be reduced where a lease is extended under the LRA 1967 or LRHUDA 1993 (at a peppercorn rent).

Amendment 74, in schedule 6, page 118, leave out lines 1 to 22 and insert—

"PART 1A

SHARED OWNERSHIP LEASES AND THE LRA 1967 ETC

Amendment of the LRA 1967

5A The LRA 1967 is amended in accordance with paragraphs 5B to 5F.

Repeal of exclusions of shared ownership leases from Part 1 of the LRA 1967

5B (1) In section 1 (tenants entitled to enfranchisement or extension), omit subsection (1A).

(2) In section 3(2) (tenancies deemed to be long tenancies), omit the words from '(other than' to 'this Act)'.

(3) Omit section 33A and Schedule 4A (exclusion of certain shared ownership leases).

Rateable value limits and low rent tests not to apply to shared ownership leases

5C In section 1 (tenants entitled to enfranchisement or extension), after subsection (6) insert—

'(6A) In determining whether a tenant under a tenancy which is a shared ownership lease has the right to acquire a freehold or extended lease under this Part, the following requirements of this section do not apply—

(a) any requirement for the tenancy to be at a low rent;

(b) any requirement in subsection (1)(a)(i) or (ii) for the house and premises or the tenancy to be above a certain value.'

No right of enfranchisement for certain shared ownership leases

5D Before section 36 insert—

'33B Shared ownership leases which provide for 100% acquisition etc

(1) A notice of a person's desire to have the freehold of a house and premises under this Part is of no effect if, at the relevant time, the tenancy—

(a) is a shared ownership lease, and

(b) meets conditions A to D.

(2) But conditions C and D do not need to be met if the shared ownership lease is of a description prescribed for this purpose in regulations made by the Secretary of State.

(3) Condition A: the tenancy allows for the tenant to increase the tenant's share in the demised premises by increments of 25% or less (whether or not the tenancy also provides for increments of more than 25%).

(4) Condition B: the tenancy provides—

(a) for the price payable for an increase in the tenant's share in the demised premises to be proportionate to the market value of the premises at the time the share is to be increased, and

(b) if the tenant's share is increased, for the rent payable by the tenant in respect of the landlord's share in the demised premises to be reduced by an amount reflecting the increase in the tenant's share.

(5) Condition C: the tenancy allows for the tenant's share in the demised premises to reach 100%.

(6) Condition D: if and when the tenant's share of the demised premises is 100%, the tenancy—

(a) allows for the tenant to acquire the freehold of the premises (if the landlord has the freehold), or

(b) provides that the terms of the lease which make the lease a shared ownership lease cease to have effect (if the landlord does not have the freehold),

without the payment of any further consideration.

(7) Regulations under this section are to be made by statutory instrument.

(8) A statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of either House of Parliament.

(9) In this section 'demised premises' means the premises demised under the shared ownership lease.'

Inclusion of terms for sharing staircasing payments

5E In Schedule 1 (enfranchisement and extension by sub-tenants), after paragraph 12A insert—

'12B(1) This paragraph applies if—

(a) at the relevant time—

(i) the tenancy in possession is a shared ownership lease (the "original shared ownership lease"), and

(ii) the tenant's share of the dwelling is less than 100%, and

(b) the landlord who grants the new tenancy (the "new shared ownership lease") is not the immediate landlord under the original shared ownership lease.

(2) At any time after the grant of the new shared ownership lease—

(a) the immediate landlord under the new shared ownership lease, or

(b) the landlord under any relevant intermediate lease,

may apply to the appropriate tribunal for an order making provision to secure that each relevant intermediate lease is varied to include (if or to the extent that it does not already do so) a payment sharing term.

(3) A "payment sharing term" is a term under which staircasing payments are to be shared between—

(a) the immediate landlord under the new shared ownership lease, and

(b) each landlord under a relevant intermediate lease,

in a way which fairly and reasonably reflects staircasing losses that are incurred after the variation of the lease to include this term.

(4) An order under this paragraph may include—

(a) an order relating to a relevant intermediate lease not specified in the application;

(b) an order appointing a person who is not party to a relevant intermediate lease to execute a variation of the lease.

(5) A lease is a "relevant intermediate lease" if—

(a) the lease demises some or all of the shared ownership premises, and

(b) the lease is intermediate between—

(i) the new shared ownership lease, and

(ii) the interest of the landlord who granted the new shared ownership lease.

(6) In this paragraph—

"shared ownership premises" means the premises demised by the new shared ownership lease;

"staircasing loss", in relation to a staircasing payment, means the loss that a landlord incurs because of the increase in the tenant's share in the shared ownership premises to which the staircasing payment relates;

"staircasing payment" means a payment made by the tenant under the new shared ownership lease to their immediate landlord in consideration of an increase in the tenant's share in the shared ownership premises.'

Meaning of "shared ownership lease"

5F (1) In section 37(1) (interpretation of Part 1)—

(a) after paragraph (b) insert—

'(bza) "landlord's share", in relation to a shared ownership lease, means the share in the premises demised by the lease which is not comprised in the tenant's share;';

(b) after paragraph (d) insert—

'(da) "shared ownership lease" means a lease of premises—

(i) granted on payment of a premium calculated by reference to a percentage of the value of the premises or of the cost of providing them, or

(ii) under which the tenant (or the tenant's personal representatives) will or may be entitled to a sum calculated by reference, directly or indirectly, to the value of the premises;

(db) "tenant's share", in relation to a shared ownership lease, means the tenant's initial share in the premises demised by the lease, plus any additional share or shares in those demised premises which the tenant has acquired;'.

Amendment of the Housing and Planning Act 1986

5G (1) Schedule 4 to the Housing and Planning Act 1986 is amended as follows.

(2) Omit paragraphs 3 to 6 (amendments of the LRA 1967 relating to shared ownership leases).

(3) In paragraph 11—

(a) in sub-paragraph (1), after 'this Schedule' insert '(other than the amendment made by paragraph 7)';

(b) omit sub-paragraph (2) (saving of section 140 of the Housing Act 1980, which excludes certain shared ownership leases from Part 1 of the LRA 1967).

Part 1B

Shared ownership leases and the LRHUDA 1993

Amendment of the LRHUDA 1993

5H The LRHUDA 1993 is amended in accordance with this Part of this Schedule.

Repeal of special provision for shared ownership leases in definition of "long lease"

5I In section 7 (definition of 'long lease')—

(a) at the end of subsection (1)(c) insert 'or';

(b) omit subsection (1)(d);

(c) in subsection (7), omit the definitions of 'shared ownership lease' and 'total share'.

No right to collective enfranchisement for certain shared ownership leases

5J (1) In section 5 (qualifying tenants), after subsection (2)(c) insert 'or

(d) the lease is an excluded shared ownership lease (see section 5A);'.

(2) After section 5 insert—

'5A Excluded shared ownership leases

(1) For the purposes of this Chapter a lease is an 'excluded shared ownership lease' if it—

(a) is a shared ownership lease, and

(b) meets conditions A to D.

(2) But conditions C and D do not need to be met if the shared ownership lease is of a description prescribed for this purpose in regulations made by the Secretary of State.

(3) Condition A: the lease allows for the tenant to increase the tenant's share in the demised premises by increments of 25% or less (whether or not the lease also provides for increments of more than 25%).

(4) Condition B: the lease provides—

(a) for the price payable for an increase in the tenant's share in the demised premises to be proportionate to the market value of the premises at the time the share is to be increased, and

(b) if the tenant's share is increased, for the rent payable by the tenant in respect of the landlord's share in the demised premises to be reduced by an amount reflecting the increase in the tenant's share.

(5) Condition C: the lease allows for the tenant's share in the demised premises to reach 100%.

(6) Condition D: if and when the tenant's share in the demised premises is 100%, the tenancy provides that the terms of the lease which make the lease a shared ownership lease cease to have effect, without the payment of any further consideration.

(7) In this section 'demised premises' means the premises demised under the shared ownership lease."

(3) In section 38(1) (interpretation of Chapter 1 of Part 1), after the definition of "conveyance" insert—

'"excluded shared ownership lease" has the meaning given in section 5A;'.

Tenant under shared ownership lease to have right to new lease

5K In section 39(3)(a) (definition of qualifying tenant: application of section 5), after 'subsections' insert '(2)(d),'.

Consequential amendment

5L In section 77(2)(b) (qualifying tenants for audit rights), for 'that section' substitute 'section 101'.

Collective enfranchisement: mandatory leaseback

5M In Schedule 9 to the LRHUDA 1993 (grant of leases back to the former freeholder),

after paragraph 3 insert—

'*Flats etc let under shared ownership leases*

3A (1) This paragraph applies where immediately before the appropriate time—

(a) any flat falling within sub-paragraph (2) is let under an excluded shared ownership lease (and accordingly the tenant is not a qualifying tenant of the flat), and

(b) the landlord under the lease is the freeholder.

(2) A flat falls within this sub-paragraph if—

(a) the freehold of the whole of it is owned by the same person, and

(b) it is contained in the specified premises.

(3) Where this paragraph applies, the nominee purchaser shall grant to the freeholder (that is to say, the landlord under the shared ownership lease) a lease of the flat in accordance with section 36 and paragraph 4 below.

(4) In this paragraph any reference to a flat includes a reference to a unit (other than a flat) which is used as a dwelling.'

Inclusion of terms for sharing staircasing payments

5N In Schedule 11 (procedure where competent landlord is not tenant's immediate landlord), after paragraph 10 insert—

'10A(1) This paragraph applies if—

(a) at the relevant date—

(i) the existing lease is a shared ownership lease (the "original shared ownership lease"), and

(ii) the tenant's share of the dwelling is less than 100%, and

(b) the landlord who grants the new tenancy (the "new shared ownership lease") is not the immediate landlord under the original shared ownership lease.

(2) At any time after the grant of the new shared ownership lease—

(a) the immediate landlord under the new shared ownership lease, or

(b) the landlord under any relevant intermediate lease,

may apply to the appropriate tribunal for an order making provision to secure that each relevant intermediate lease is varied to include (if or to the extent that it does not already do so) a payment sharing term.

(3) A "payment sharing term" is a term under which staircasing payments are to be shared between—

(a) the immediate landlord under the new shared ownership lease, and

(b) each landlord under a relevant intermediate lease,

in a way which fairly and reasonably reflects staircasing losses that are incurred after the variation of the lease to include this term.

(4) An order under this paragraph may include—

(a) an order relating to a relevant intermediate lease not specified in the application;

(b) an order appointing a person who is not party to a relevant intermediate lease to execute a variation of the lease.

(5) A lease is a "relevant intermediate lease" if—

(a) the lease demises some or all of the shared ownership premises, and

(b) the lease is intermediate between—

(i) the new shared ownership lease, and

(ii) the interest of the landlord who granted the new shared ownership lease.

(6) In this paragraph—

"shared ownership premises" means the premises demised by the new shared ownership lease;

"staircasing loss", in relation to a staircasing payment, means the loss that a landlord incurs because of the increase in the tenant's share in the shared ownership premises to which the staircasing payment relates;

"staircasing payment" means a payment made by the tenant under the new shared ownership lease to their immediate landlord in consideration of an increase in the tenant's share in the shared ownership premises.'

Meaning of "shared ownership lease"

5P (1) In section 101(1) (general interpretation of Part 1)—

(a) after the definition of 'interest' insert—

'"landlord's interest" in relation to a shared ownership lease, means the share in the premises demised by the lease which is not comprised in the tenant's share;'

(b) after the entry relating to 'lease' and 'tenancy' insert—

'"shared ownership lease" means a lease of premises—

(a) granted on payment of a premium calculated by reference to a percentage of the value of the premises or of the cost of providing them, or

(b) under which the tenant (or the tenant's personal representatives) will or may be entitled to a sum calculated by reference, directly or indirectly, to the value of the premises;

"tenant's share", in relation to a shared ownership lease, means the tenant's initial share in the premises demised by the lease, plus any additional share or shares in those demised premises which the tenant has acquired;'.—*(Lee Rowley.)*

This adds provision about the treatment of shared ownership leases under the LRA 1967 and LRHUDA 1993.

Schedule 6 agreed to.

Clause 20

LRA 1967: PRESERVATION OF EXISTING LAW FOR CERTAIN ENFRANCHISEMENTS

Question proposed, That the clause stand part of the Bill.

Lee Rowley: Clause 20 preserves the right of leaseholders to acquire the freehold of a house using the Leasehold Reform Act 1967 as it existed prior to amendment by the Bill. This will be applicable only where the property

[Lee Rowley]

would be valued using the valuation basis for calculating premiums under section 9(1) of the unamended 1967 Act. Claims made under the section 9(1) valuation basis will remain as a separate freehold acquisition right, independent of the new reforms. Leaseholders who do not qualify for a section 9(1) claim will still benefit from our wider reforms, which will make it cheaper and easier for existing leaseholders in houses and flats to extend their lease or buy their freehold. I commend the clause to the Committee.

Question put and agreed to.

Clause 20 accordingly ordered to stand part of the Bill.

Clause 21

Right to vary long lease to replace rent with peppercorn rent

Lee Rowley: I beg to move amendment 44, in clause 21, page 38, line 16, leave out

"a peppercorn rent is payable"

and substitute

"the whole or part of the rent payable becomes and will remain a peppercorn rent".

This amendment corresponds to the change to paragraph 1(1) of Schedule 7 which would be made by Amendment 75.

The Chair: With this it will be convenient to discuss the following:

Government amendment 75.

Clause stand part.

Lee Rowley: The ground rent buy-out right was recommended by the Law Commission and enables leaseholders to buy out their ground rent without extending their lease. As the buy-out is subject to the 0.1% freehold value cap, with some exceptions, the right will be especially useful for leaseholders with high or escalating rents. The right is introduced by clause 21, which introduces schedule 7, where the right is detailed. Ground rent buy-out claims can be brought by the leaseholder serving a rent variation notice on the landlord for the lease to be varied on payment of a premium, so that the rent payable is a peppercorn. The ground rent buy-out amendments, which stand in my name, mostly simplify and clarify the provisions in schedule 7.

Amendments 44 and 75 concern the nature of, and right to, a ground rent buy-out. Amendment 44 would amend clause 21, and amendment 75 would make a similar amendment to the first paragraph of schedule 7. Both have the intention of better describing the nature of the right, and I commend the amendments to the Committee.

I turn now to clause 21 itself. As I have explained, leaseholders with very long remaining leases may want to buy out their ground rent without having to extend their lease. For some leaseholders, adding further years to an already long lease might be considered unnecessary or involve additional costs. The buy-out will be useful to those leaseholders with high or escalating ground rents who find themselves in difficulty when trying to sell or remortgage their property. There is currently no statutory right for buying out ground rent without extending a lease, and a voluntary buy-out, if it could be negotiated, would not benefit from the cap. A new right for leaseholders to buy out their ground rent is therefore necessary.

Clause 21 brings schedule 7 into effect. Schedule 7 makes provision for a new right to buy out the ground rent under a lease with a remaining term of 150 years or more. As we discussed this morning, 150 years was chosen as the threshold for this right so that the term remaining is long enough for the leaseholder to be unlikely to want to extend the lease. A lower minimum term would create a risk that poorly advised leaseholders might buy out the ground rent when an extension is in their interest, only to find that they need to extend later and have to pay for two sets of transaction costs.

On the payment of a premium to the landlord, the lease is varied so that the future ground rent payable is a peppercorn. The buy-out premium is subject to a 0.1% freehold value cap, so any future ground rent payable that exceeds 0.1% of the freehold value of the property is treated in the calculation of the premium as if it is only 0.1% of the freehold value. This ensures that high or escalating ground rents, such as those that were articulated in the Committee's discussions last week, do not make the premium unaffordable for leaseholders. As such, the ground rent buy-out right will be especially useful for leaseholders with long terms remaining who have high or escalating ground rents. I commend the clause to the Committee.

Matthew Pennycook: For the purposes of anyone following our proceedings, there are several issues that we wish to raise in relation to clause 21 and schedule 7, but we will do so when we come specifically to debate schedule 7, which, as the Minister said, is where the right is detailed.

Rachel Maclean: If it is the case that I can speak to schedule 7 at a later time, I will defer my comments till then.

Lee Rowley: I look forward to hearing colleagues' comments in due course.

Amendment 44 agreed to.

Clause 21, as amended, ordered to stand part of the Bill.

Ordered, That further consideration be now adjourned. *—(Mr Mohindra.)*

4.40 pm

Adjourned till Thursday 25 January at half-past Eleven o'clock.

Written evidence reported to the House

LFRB47 Just Group

LFRB48 Bowlwonder Ltd

LFRB49 Residential Freehold Association

LFRB50 PDC Law

LFRB51 Stephen Desmond

LFRB52 Alan Mattey Group

LFRB53 Professor Nick Hopkins, Commissioner for Property, Family and Trust Law, The Law Commission (supplementary)

LFRB54 Church Commissioners for England

LFRB55 CMS Cameron McKenna Nabarro Olswang LLP

LFRB56 Timothy Martin BSc (Hons) MRICS & RICS Registered Valuer on behalf of Marr-Johnson & Stevens LLP, Chartered Surveyors

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

LEASEHOLD AND FREEHOLD REFORM BILL

Seventh Sitting

Thursday 25 January 2024

(Morning)

CONTENTS

No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor's Room, House of Commons,

not later than

Monday 29 January 2024

The Committee consisted of the following Members:

Chairs: Dame Caroline Dinenage, † Clive Efford, Sir Mark Hendrick, Sir Edward Leigh

† Amesbury, Mike *(Weaver Vale)* (Lab)
Carter, Andy *(Warrington South)* (Con)
† Davison, Dehenna *(Bishop Auckland)* (Con)
Edwards, Sarah *(Tamworth)* (Lab)
† Everitt, Ben *(Milton Keynes North)* (Con)
† Fuller, Richard *(North East Bedfordshire)* (Con)
† Gardiner, Barry *(Brent North)* (Lab)
† Glindon, Mary *(North Tyneside)* (Lab)
† Hughes, Eddie *(Walsall North)* (Con)
Levy, Ian *(Blyth Valley)* (Con)
† Maclean, Rachel *(Redditch)* (Con)
† Mohindra, Mr Gagan *(South West Hertfordshire)* (Con)
† Pennycook, Matthew *(Greenwich and Woolwich)* (Lab)
Rimmer, Ms Marie *(St Helens South and Whiston)* (Lab)
† Rowley, Lee *(Minister for Housing, Planning and Building Safety)*
† Smith, Chloe *(Norwich North)* (Con)
† Strathern, Alistair *(Mid Bedfordshire)* (Lab)

Huw Yardley, Katya Cassidy, *Committee Clerks*

† attended the Committee

Public Bill Committee

Thursday 25 January 2024

(Morning)

[Clive Efford *in the Chair*]

Leasehold and Freehold Reform Bill

Schedule 7

Right to vary lease to replace rent with peppercorn rent

11.30 am

Amendment made: 75, in schedule 7, page 118, line 35, leave out from "have" to end of line 4 on page 119 and insert—

"any obligation under the lease to pay rent varied so that the whole or part of the rent payable becomes and will remain a peppercorn rent".—*(Lee Rowley.)*

This amendment ensures that the nature of the right conferred by Schedule 7 is better described by paragraph 1(1).

Matthew Pennycook (Greenwich and Woolwich) (Lab): I beg to move amendment 6, in schedule 7, page 119, line 12, leave out sub-sub-paragraph (a).

This amendment would ensure that all leaseholders, not just those with residential leases of 150 years or over, have the right to vary their lease to replace rent with peppercorn rent.

The Chair: With this it will be convenient to discuss Government amendments 76 to 78.

Matthew Pennycook: It is a pleasure to continue our line-by-line consideration of the Bill with you in the Chair, Mr Efford. For the sake of probity, I declare once again that my wife is the joint chief executive of the Law Commission, whose reports on leasehold and commonhold reform I will continue to cite throughout my remarks.

Part 2 of the Bill makes changes to other rights of long leaseholders. Four of its five clauses are concerned with improving the right to manage, but as we touched on briefly at the end of the Committee's previous sitting, clause 21, which brings schedule 7 to the Bill into effect, makes provision for a new enfranchisement right to buy out the ground rent and vary it permanently to replace the relevant part of the rent with a peppercorn rent, without having to extend the lease.

We welcome the intent of the schedule. The reform will ensure that leaseholders can enjoy reduced premiums and secure nominal ground rent ownership of their properties without the need to go through the challenge and expense of repeated lease extensions. In the Law Commission's final report on enfranchisement rights, it considered in great detail whether there should be a range of lease extension rights in order to provide greater flexibility than is currently afforded to leaseholders as a result of the provisions in the Leasehold Reform, Housing and Urban Development Act 1993 that require them simultaneously to extend the terms of their lease and to extinguish their ground rent.

The rationale for providing greater flexibility in this area is that in allowing leaseholders to choose either only to extend their lease or only to extinguish their ground rent, leaseholders could avoid paying the landlord the value of the remainder of the original terms and the deferral of the reversion, with the result that premiums would be reduced accordingly.

While taking into account the clear benefits that greater flexibility would provide for in terms of reduced premiums, the Law Commission, in its reports, clearly wrestled with whether it was sensible to recommend a more nuanced approach to lease extension rights. It did so, because of the complexity that the availability of different lease extension options would inevitably create, and the corresponding opportunities that such complexity would present to unscrupulous landlords who might seek to take advantage of those leaseholders unable to access costly professional advice about the best choice to make from the available options.

Without doubt, allowing for choices other than a uniform right to a fixed additional term at a nominal ground rent will make the statutory right to a lease extension more complicated. I will return shortly to the implications of clause 21 and the schedule in that regard. However, on the principle of allowing for greater choice, the Law Commission ultimately decided that despite the increased complexity that it would engender, leaseholders who have a lease with a long remaining term should, on payment of a premium, be entitled to extinguish the ground rent payable under the lease without extending the terms of it.

The commission felt, rightly in our view, that that right is likely to be utilised mainly by those with relatively long leases who are subject to onerous ground rent provisions, or those with relatively long leases and ground rents that are not definitionally onerous but still entail, for a variety of reasons, a significant present or future financial burden. In such cases, even if the premium payable is not significantly reduced, the prescribed capitalisation rates provided for by schedule 2 to the Bill should make valuations simpler and enable the change to be made by means of a simple deed of variation, rather than a deed of surrender and regrant, as required to extend the terms of a lease now.

The schedule implements the Law Commission's recommendation for that right to extinguish the ground rent only. As I have made clear, we support it. We have, however, moved the amendment, which would delete the Government's proposed 150-year threshold, to press the Minister on the reason or reasons for which the Government have decided to confer that right only on leaseholders with leases with an unexpired term of more than 150 years.

To be clear, we understand fully the argument made by those who believe that the right to extinguish a ground rent without extending a lease should only be conferred on those with sufficiently long leases—namely, that the premium for the reversion increases significantly as the unexpired period of the lease reduces, and leaseholders with leases below a certain threshold should therefore be, in a sense, compelled to peppercorn their ground rent and to extend at the same time by means of the reduced premiums that clauses 7 and 8 of the Bill should enable.

However, what constitutes a sufficiently long lease for the purposes of conferring this new right is ultimately a matter of judgment. The Law Commission recommended

that the threshold should be set at 250 years on the basis that the reversion is of negligible value at that lease length. The Government chose not to accept that recommendation and instead are proposing a threshold of 150 years. The Minister may provide us with a different answer in due course, but we assume the reason they did so is simply that this will make the new right to extinguish a ground rent available to many more leaseholders.

However, if that is the case, it obviously follows that setting a threshold of, say, 125 years or even 100 years would make it available to even more of them. The argument against doing so is that leaseholders with leases below a certain threshold should be, in effect, compelled to extend their lease at the same time as peppercorning their rent because not doing so would, in many cases, disadvantage them.

However, that obviously raises more fundamental questions, such as whether it should be up to leaseholders to navigate the wider range of options that will be made available to them if and when this Bill receives Royal Assent, and whether the fact that some leaseholders with relatively short leases may either advertently or inadvertently disadvantage themselves by extinguishing without extending their lease should mean that everyone below the 150-year threshold is prohibited from enjoying the new right introduced by the schedule.

Even assuming one believes it is the role of Government to set a long-lease threshold, it is not entirely clear to us why the Government have alighted on 150 years given that there could be all sorts of reasons why someone with a lease shorter than such a term might want to only buy out their rent, including simply that they are unable to afford the premium required to secure a 990-year lease. As such, we would like the Minister to justify in some detail, if he could, why the Government alighted on a 150-year threshold as opposed to either the Law Commission's proposal of 250 years or a lower threshold that would give many more leaseholders the right to extinguish their ground rent. We would like to ask him to consider whether, as we believe on balance, there is a strong case for simply deleting the 150-year threshold entirely, given that the "remaining years" test that applies is inherently arbitrary. I hope the Minister will give amendment 6 serious consideration, and I look forward to his thoughts on it.

While we are considering this schedule, I also want to probe the Minister again on the Government's intentions in respect of the recently closed consultation on restricting ground rent for all existing leases, and specifically how any proposals arising from that consultation will interact with this schedule given that it provides a right to peppercorn ground rents in existing leases. As I made clear when we briefly considered this matter in relation to clauses 7 and 8, I am obviously not asking the Minister to provide this Committee with an advanced indication of what the Government's formal response to that consultation will be. However, we remain of the view that this Committee needs to know, if the Government ultimately do choose to enact any of the five options for intervention that were consulted upon, what the implications are for the provisions that are currently in the Bill that we are being asked to approve today.

On Second Reading, the Secretary of State was quite clear that at the conclusion of the consultation, the Government would

"legislate on the basis of that set of responses in order to ensure that ground rents are reduced, and can only be levied in a justifiable way."—[*Official Report*, 11 December 2023; Vol. 742, c. 659.]

As members of the Committee will know, he was also open with the Levelling Up, Housing and Communities Committee prior to Second Reading about the fact that his favoured approach would be a peppercorn rent—in other words, option 1 from the consultation. I am conscious that many people across the country who bear leaseholders no ill will whatever have invested, almost uniformly on advice and in good faith, in freehold funds. I have constituents who have invested, for example, in time investments and other such funds that have invested in freehold properties. However, I personally share the Secretary of State's preference not least because, while ground rents exist even at relatively low levels, they will be a major impediment to the widespread adoption of commonhold.

There is a more fundamental issue with ground rents that we need to grapple with. As we have discussed already, over the past two decades, the consequence of the kind of investment we have seen is a system increasingly focused on generating assets by gouging leaseholders through ground rents that are, in historical terms, high to start with and that escalate over the terms of the lease. Leaseholders who worked hard to purchase their own homes and did so in good faith are being asked to pay ever more money for no clear service in return and many are experiencing considerable financial distress and difficulties selling their property, all to sustain the income streams of third-party investors.

Unregulated ground rents of this nature in existing leases cannot be justified. Although we do not discount the risks involved in any of the five options outlined in the consultation, Labour is clear that the Government must act to protect leaseholders from ground rent exploitation and that they should be courageous in determining which of the consultation proposals should be enacted.

All that said, we obviously cannot pre-empt the consultation in question. What is important for the purposes of considering schedule 7, and clause 21, is that we get a clear answer from the Minister as to what the potential implications of any response would be for leaseholders. Specifically, will the schedule have to be revisited should the Government ultimately choose to enact one of the five options in the consultation? Are we correct in assuming that clause 21 and the schedule will have to be overhauled, if not removed from the Bill entirely, in that scenario? If not, how will the Government ensure that the various measures are aligned? It is a hypothetical question, as I am sure the Minister will indicate, but it is entirely reasonable, given that we are being asked to approve the inclusion of the schedule in the Bill. On our reading of the ground rent consultation, the schedule could entirely change the implications; indeed, it may well have to be removed entirely to ensure that the Bill is consistent. On that basis, I hope the Minister will give us a bit more detail. He gave us some on Tuesday, but we need a little more detail on that point.

The Minister for Housing, Planning and Building Safety (Lee Rowley): I am grateful for the comments from the hon. Member for Greenwich and Woolwich, and for his amendment. I will say a few words in general before turning to some of his specific questions.

[Lee Rowley]

As he indicated, the ground rent buy-out right enables leaseholders with very long leases to buy out their ground rent on payment of a premium, without having to extend their lease. A leaseholder with a very long lease who does not need an extension may want to buy out the ground rent without extending the lease, but others may wish to do it in a different way.

I appreciate the hon. Member's points about the amendment, and I understand why he is seeking to extend the right to vary one's lease to as many leaseholders as possible, so I will try to answer some of his questions. Inevitably, as he indicated, there is essentially an arbitrary decision to take on any number, because moving it up or down would change the provision slightly and incrementally each time, so there is an element of having to put a finger on the scale. As he said, the right is an implementation of the Law Commission's recommendation 3(2), which suggested that it should be available for leaseholders with 250 years remaining, but the Government have indicated that they want to set the term at 150 years. The reason given by the Law Commission for making this right available only to those with very long leases, which the Government support, is to limit it to leaseholders who are unlikely to be interested in, or do not need, a lease extension.

Making the right available to all leaseholders, irrespective of their term remaining, would mean that leaseholders who will need a lease extension at some point might opt first to buy out only the ground rent, but would need to extend their lease in due course. That would potentially disadvantage leaseholders in two ways. First, as the term on the lease runs down, the price on the lease extension accelerates. Secondly, a leaseholder who buys out their ground rent first and later extends the lease will pay two sets of transaction costs. It is entirely legitimate to say, "That is the choice of individuals," and I have some sympathy with that argument. On balance, however, the Government recognise that there is a series of things within leasehold law that are permissible but not necessarily advantageous for some groups and sectors. By moving further in this regard, we might inadvertently create another one, which future iterations of Ministers and shadow Ministers might debate removing.

I should make it clear—the hon. Member knows this—that it is not the case that leaseholders with fewer than 150 years remaining do not have the right to buy out their ground rent: they buy out their ground rent when they extend their lease or buy the freehold, and that buy-out will also be subject to the cap. However, the right to buy out the ground rent without extending the lease is for leaseholders with 150 years or more remaining, for the reasons I have given.

Turning to some of the hon. Member's specific points, the ultimate number is a matter of judgment, and we determined that setting the term at 150 years would offer the right to an incrementally larger group of people. We think that is a reasonable place to be. I accept that others may choose a different number, but that is the number we are proposing in the substantive part of the Bill. I also appreciate his point about the outcome of the consultation being the missing piece of the jigsaw puzzle at the moment.

I will not go through my multiple previous caveats around that, because he acknowledged at least one of them. Recognising that I will not be able to answer all of this, it may be that—subject to the outcome of the consultation—changes are needed. I cannot, however, pre-empt that, and we will have to cross that bridge when we came to it. I realise that is not the ideal place to be, but given that we all share the aim of trying to move this as quickly as possible, I hope it is an acceptable position to move forward from. We can return to it in due course should we need to.

11.45 am

I will now deal with amendments 76 to 78, which concern the nature of and right to a ground rent buy-out. Amendment 76 provides for the right to a ground rent buy-out to be available only where there is a right to an extended lease. Amendment 78 is consequential on amendment 76. Amendment 77 provides for the right to a ground rent buy-out of a house to also be available where there is no right to a lease extension only because either the low rent test or the low rateable value test is not met.

The Chair: I call Matthew Pennycook—

Rachel Maclean (Redditch) (Con) *rose*—

The Chair: Oh, I beg your pardon. I did not catch you out of the corner of my eye. I call Rachel Maclean.

Rachel Maclean: I apologise, Mr Efford. I was not quick enough on my feet. Thank you for calling me, and it is a pleasure to serve under your chairmanship.

I thank the Minister for his comprehensive answer to the shadow Minister's questions. My point is somewhat in the same vein, and I am very much thinking of the witnesses we had from the National Leasehold Campaign, who talked about this point in quite a bit of detail. Their concern was about having to pay to buy out the ground rent. Of course, there are a number of elements, factors and variables dependent and contingent on the outcome of the consultation. There are people who might be watching this thinking, "Well, when will I actually know how much it is going to cost me?" A year can go by and they may tip over that threshold. Can the Minister give a bit of clarification to those leaseholders who have been trapped for so long and want to see some light at the end of the tunnel? What signpost can he give on when this right will apply to them and how much they will have to pay if they want to exercise their individual right to have their ground rent reduced to a peppercorn?

Lee Rowley: I am grateful to my hon. Friend for raising that point. She is absolutely right that this matter is important to a number of people, and that it is important that we provide the greatest transparency at the earliest opportunity. I hope she will forgive me for not being able to answer her very valid question directly. We are dependent on an appropriate and detailed review of the consultation, which is necessary—for some of the reasons we talked about on Tuesday—given its importance to a number of parts of the sector and others. We need to allow that to conclude, hopefully as swiftly as possible, and then we need to get it through this place and our colleagues in the other place, who can often slow us down. Hopefully, that will happen as soon as possible.

Matthew Pennycook: I thank the Minister for his response. Let me just deal initially with the three Government amendments, with which we take no issue. On the ground rent consultation, I will not labour the point, because I get the sense we will not get any further information out of the Minister. It is always easier to say this from the Opposition side of the Committee, but it would have been logical to have had the ground rent consultation well in advance of the Bill, as then we could have had a Bill with all the elements properly integrated. It is not like the Government did not have enough time. I think that the previous Secretary of State, the right hon. Member for Newark (Robert Jenrick), announced the second part of the two-part seminal legislation back in 2019, so the Government have had time—but that is where we are. By the sound of what the Minister is saying, we will have to significantly overhaul many clauses in the Bill if the Government do decide to enact one of the five proposals.

On amendment 6, I do not find the Minister's argument convincing. The Law Commission recommended a 250-year threshold. The Government have clearly determined that they need not follow that recommendation to the letter, although they have implemented the principle of it. They have chosen to put their finger on the scale, as the Minister said, at a different threshold. I think trying to put one's finger on the scale on this particular issue is likely to cause more problems than it solves. I hope the Government might think again about cutting the Gordian knot entirely.

The most common forms of lease are 90, 99 and 125 years. Leaseholders with the most common forms of lease will not be able to enjoy this right. The Government are in effect saying to them, "You must buy out under clauses 7 and 8—your lease extension and your ground rent at the same time." From what the Minister said, it sounds like the Government think that is right because some leaseholders might disadvantage themselves by trying to exercise only the right in schedule 7. There is a case for giving those leaseholders the freedom to exercise their own judgment on that point—I am surprised the Minister has not agreed with it. A lot of leaseholders will be watching our proceedings who have leases of, say, 120 years and simply do not have the funds available to exercise their right to extend the lease and buy up the ground rent under clauses 7 and 8. This will therefore completely lock leaseholders with shorter leases out of extinguishing their ground rent provisions. We think that is inherently unfair.

Barry Gardiner (Brent North) (Lab): Does my hon. Friend share my view that the Minister is a reasonable gentleman? *[Laughter.]* I know it may be specific to us and not widely shared. My hon. Friend having made such an eloquent case, the Minister may go away, reconsider this, speak to his officials, and perhaps, once the consultation has concluded, be able to come back with a different answer.

Matthew Pennycook: I thank my hon. Friend for that intervention, which tempts me to give a number of responses. As I am feeling generous this morning, I will say that I do think the Minister is a reasonable individual —far more reasonable in Committee than he is in the main Chamber—and I suspect that he agrees with me about the 150-year threshold. To encourage him to go away and think further, I think we will press amendment 6 to a vote.

Richard Fuller (North East Bedfordshire) (Con): I want to take up the point the hon. Gentleman made about the timing of the ground rent review and the implications for subsequent change in the Bill. Has the Opposition looked at what the potential legal liability might be if we move forward with this Bill without clarity on what happens on ground rent, particularly as this is retrospective legislation, and whether there is a potential liability for the taxpayer if that co-ordination does not work effectively?

Matthew Pennycook: We have had access to the advice and opinion of a number of organisations and individuals, which have probably been sent to the whole Committee. We have also sought to engage the opinions of many relevant experts in this area. The honest answer is that we do not know. I think the Minister himself would say openly that there is a sliding scale of risk with each of those options. I fully expect any of those options, if they are introduced, to result in litigation against the Government that seeks to take the matter to Strasbourg under the relevant rules. That has to be factored in. The Secretary of State and the Minister will be getting the relevant advice. That is why I encourage the Minister to be courageous in the option they ultimately choose. We want to strike the right balance by addressing the problem as it exists for leaseholders—that is very clear—but ensuring that whatever option comes forward can stick and is defensible. That is a conversation we will have over the coming weeks and months, because this issue is going to rumble on for some time to come.

Question put, That the amendment be made.

The Committee divided: Ayes 5, Noes 8.

Division No. 4]

AYES

Amesbury, Mike	Pennycook, Matthew
Gardiner, Barry	
Glindon, Mary	Strathern, Alistair

NOES

Davison, Dehenna	Maclean, Rachel
Everitt, Ben	Mohindra, Mr Gagan
Fuller, Richard	Rowley, Lee
Hughes, Eddie	Smith, rh Chloe

Question accordingly negatived.

Amendments made: 76, in schedule 7, page 119, line 20, leave out "the freehold or".

This amendment provides for the right to reduce the rent of a house to be available only where there is right to an extended lease under the Leasehold Reform Act 1967.

Amendment 77, in schedule 7, page 119, line 22, leave out from "only" to "a" in line 25 and insert

"by virtue of—

(i) section 1(1)(a)(i) or (ii), (5) or (6) of that Act (requirements relating to rateable value etc),

(ii) section 1(1)(aa) of that Act (requirement relating to lease at a low rent), or

(iii)".

This amendment provides for the right to reduce the rent of a house to also be available where there is no right to acquire an extended lease because the rateable value of the house is not low.

Amendment 78, in schedule 7, page 119, line 38, leave out "the freehold or".—*(Lee Rowley.)*

This amendment is consequential on Amendment 76.

Lee Rowley: I beg to move amendment 79, in schedule 7, page 120, line 3, leave out from "to" to end of line 4 and insert

"—

(a) the landlord under the qualifying lease, and

(b) any other party to the qualifying lease."

This amendment expands the range of persons to whom a rent variation notice must be given to include persons who are party to the lease (but are not a landlord).

The Chair: With this it will be convenient to discuss Government amendments 80 to 88, 99 and 100, 102 to 104, 106, 118 and 120.

Lee Rowley: These amendments mostly simplify and clarify the provisions in schedule 7.

Amendment 79 will expand the range of persons to whom a rent variation notice must be given, which should now include persons who are part of the lease but not landlords. Amendment 80 applies where a tenant is bringing a lease extension or a freehold acquisition claim. It sets out that the tenant cannot bring a ground buy-out claim while the preceding claim is still in play, because they do not need one and their ground rent will be bought out by the other enfranchisement claim.

Amendment 81 provides that a variation notice must specify the proposed premium and any variations to the lease consequential on the rent. Amendment 82 provides, first, that where a leaseholder has a ground rent buy-out claim and sells their lease, they may pass on the claim to the buyer, and secondly that where a ground rent buy-out claim has been brought and a landlord sells the reversion, the claim is binding on the purchasing landlord.

Amendment 83 applies where a rent variation notice and collective enfranchisement notice, where the leaseholder is not participating, are coincident on the same premises, irrespective of which was served first. It provides that the rent variation notice is suspended while the collective enfranchisement notice is current. It also provides that the landlord must inform the leaseholder of its suspension and must likewise inform the leaseholder if that suspension is later lifted because the enfranchisement claim has ceased to have effect. Amendment 84 provides that the landlord must specify an address at which notices can be given.

Amendment 85 makes technical amendments to remove unnecessary wording. Amendment 86 provides that the landlord must respond to the proposed premium and any variation to the lease consequential on the reduction of the rent in a variation notice in the counter-notice.

Amendment 87 makes technical amendments to remove unnecessary wording. Amendment 88 makes provision for the landlord or leaseholder to apply to the tribunal to determine the case where the landlord does not admit the leaseholder's right to a peppercorn rent or disputes the rent to which it applies, consequential variations or the proposed premium.

Amendments 99, 100, 102 and 103 all make minor clarifications concerning circumstances when a variation notice ceases to have effect. Amendment 104 removes a provision for reviving suspended claims.

Amendment 106 provides for commutation following a ground rent buy-out, and the obligations and rights of superior landlords. It also provides for the sharing of copies of rent variation notices among landlords, and the application of superior landlords to the tribunal. A landlord in receipt of a rent variation notice must share a copy with anyone they believe to be a superior landlord and is liable for damages for any loss suffered by others should they fail to do so. Likewise, a superior landlord in receipt of a copy must share it with anyone else they believe to be a superior landlord, with the same consequences where there may be non-compliance. Amendments 118 and 120 are consequential on amendment 104. I commend the amendments to the Committee.

Amendment 79 agreed to.

Amendments made: 80, in schedule 7, page 120, line 5, leave out from "notice" to end of line 7 and insert

"is of no effect if it is given at a time when—

(a) a lease extension notice,

(b) a lease enfranchisement notice, or

(c) another rent variation notice,

which relates to the qualifying lease has effect.

(2A) Paragraph 3A makes provision about the suspension of a rent variation notice."

This provides that a rent variation notice may not be given if another such notice is already in effect; and changes the provision dealing with cases where there is a current claim for collective enfranchisement under the LRHUDA 1993.

Amendment 81, in schedule 7, page 120, line 15, at end insert—

"(4A) A rent variation notice must also specify—

(a) the premium which the tenant is proposing to pay for the rent reduction, and

(b) any other variations which need to be made to the lease in consequence of the reduction of the rent in accordance with this Schedule."

This requires a rent variation notice to specify the tenant's proposals for the premium payable for the reduction in rent and for consequential changes to the lease (eg. relating to rent reviews in the lease).

Amendment 82, in schedule 7, page 120, line 20, leave out sub-paragraphs (6) to (8) and insert—

"(6) Where a rent variation notice is given, the rights and obligations of the tenant are assignable with, but are not capable of subsisting apart from, the qualifying lease or that lease so far as it demises qualifying property (see paragraph 2(5) and (6)); and, if the qualifying lease or that lease so far as it demises qualifying property is assigned—

(a) with the benefit of the notice, any reference in this Schedule to the tenant is to be construed as a reference to the assignee;

(b) without the benefit of the notice, the notice is to be deemed to have been withdrawn by the tenant as at the date of the assignment.

(7) If a rent variation notice is the subject of a registration or notice of the kind mentioned in sub-paragraph (5), the notice is binding on—

(a) any successor in title to the whole or part of the landlord's interest under the qualifying lease, and

(b) any person holding any interest granted out of the landlord's interest;

and any reference in this Schedule to the landlord is to be construed accordingly."

This deals with the effect on a rent variation notice of an assignment of the lease or the reversion.

Amendment 83, in schedule 7, page 120, line 41, at end insert—

"*Suspension of rent variation notices*

3A (1) This paragraph applies if conditions A and B are met.

(2) Condition A is met if—

(a) a rent variation notice is current at the time when a collective enfranchisement notice is given, or

(b) a collective enfranchisement notice is current at the time when a rent variation notice is given.

(3) Condition B is met if—

(a) the rent variation notice relates to premises to which the claim for collective enfranchisement relates, and

(b) the tenant under the lease to which the rent variation notice relates is not a participating tenant in relation to the claim for collective enfranchisement.

(4) The operation of the rent variation notice is suspended during the currency of the claim for collective enfranchisement; and so long as it is so suspended no further notice may be given, and no application may be made, under this Schedule with a view to resisting or giving effect to the tenant's claim for a peppercorn rent.

(5) Where the operation of the rent variation notice is suspended by virtue of this paragraph, the landlord must, not later than the end of the relevant response period, give the tenant a notice informing the tenant of—

(a) the suspension, and

(b) the date on which the collective enfranchisement notice was given, and

(c) the name and address of the nominee purchaser for the time being appointed in relation to the claim for collective enfranchisement.

(6) The landlord must give that notice—

(a) as soon as is reasonably practicable, if a rent variation notice is current when a collective enfranchisement notice is given; or

(b) before the end of the period for responding specified in the rent variation notice in accordance with paragraph 4(7), if a collective enfranchisement notice is current when a rent variation notice is given.

(7) Where, as a result of the claim for collective enfranchisement ceasing to be current, the operation of the rent variation notice ceases to be suspended by virtue of this paragraph—

(a) the landlord must, as soon as possible after becoming aware of the circumstances by virtue of which the claim for collective enfranchisement has ceased to be current, give the tenant a notice informing the tenant that the operation of the rent variation notice is no longer suspended as from the date when the claim for collective enfranchisement ceased to be current;

(b) any time period for performing any action under this Schedule (including the response period) which was running when the rent variation was suspended begins to run again, for its full duration, from and including the date when the claim for collective enfranchisement ceased to be current.

(8) In this paragraph—

"claim for collective enfranchisement" means the claim to which the collective enfranchisement notice relates;

"collective enfranchisement notice" means a notice under section 13 of the LRHUDA 1993 (notice of claim to exercise right to collective enfranchisement)."

This provides for a rent variation notice to be suspended at any time when a claim for collective enfranchisement is current, and the tenant is not participating in the collective enfranchisement.

Amendment 84, in schedule 7, page 121, line 9, at end insert

"and which also specifies an address in England and Wales at which notices may be given to the landlord under this Schedule."

This requires a counter-notice to specify an address for service for the landlord.

Amendment 85, in schedule 7, page 121, line 13, leave out "qualifying".

This is a technical amendment which removes unnecessary wording.

Amendment 86, in schedule 7, page 121, line 19, at end insert

"and must also give the landlord's response to the proposed premium, and any other consequential variations to the lease, specified in the rent variation notice in accordance with paragraph 3(4A)."

This requires the landlord to respond to the tenant's proposals for the premium and consequential changes to the lease (see Amendment 81).

Amendment 87, in schedule 7, page 121, line 29, leave out "qualifying".

This is a technical amendment which removes unnecessary wording.

Amendment 88, in schedule 7, page 121, line 36, leave out paragraphs 5 and 6 and insert—

"*Application to appropriate tribunal where claim or terms not agreed*

5 (1) This paragraph applies if the landlord is given a rent variation notice by the tenant.

(2) If the landlord gives the tenant a counter-notice before the end of the response period which disputes—

(a) that the tenant had the right to a peppercorn rent,

(b) that the right applies to the rent in respect of which it is claimed,

(c) the amount of the premium which the tenant is proposing to pay, or

(d) the consequential variations of the lease proposed by the tenant,

the landlord or tenant may apply to the appropriate tribunal to determine the matters in dispute.

(3) Any application under sub-paragraph (2) must be made before the end of the period of 6 months beginning with the day after the day on which the counter-notice is given.

(4) If the landlord does not give the tenant a counter-notice before the end of the response period, the tenant may apply to the appropriate tribunal to determine—

(a) whether the tenant has the right to a peppercorn rent,

(b) what rent that right applies in respect of,

(c) the amount of the premium which the tenant is to pay, or

(d) the variations of the lease that are to be made.

(5) Any application under sub-paragraph (4) must be made before the end of the period of 6 months beginning with the day after the last day of the response period."—*(Lee Rowley.)*

This provides for the Tribunal to have jurisdiction where the tenant's claim for a peppercorn rent or the terms of lease variation are not agreed by the landlord.

Lee Rowley: I beg to move amendment 89, in schedule 7, page 123, line 12, after "tenant" insert

", and any other party to the qualifying lease,".

This requires any third parties to a lease to join in variation of the lease to reduce the rent payable.

The Chair: With this it will be convenient to discuss Government amendments 90 to 94.

Lee Rowley: Again, these amendments mostly simplify and clarify the provisions in schedule 7.

Amendment 89 will require the new third parties referred to in amendment 79 to join in any variation of a lease. Amendment 90 removes reference to, and therefore the existence of, a payment period within which the leaseholder must pay the ground rent buy-out premium to the landlord after a rent variation notice has become enforceable.

Amendment 91 provides that a rent variation notice becomes enforceable once all aspects have been agreed or determined by the tribunal. Amendment 92 is consequential on amendment 91 and provides for a better description of the required rent variation.

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Amendment 93 provides for three exceptions to the standard valuation method in ground rent buy-outs: market rack rent leases; leases of houses that have already been extended under the old law; and business tenancies. In all cases, the premium will reflect the landlord's right to receive rent for the remainder of the lease and not be subject to the cap, since it is not our intention to cap the rent in these cases. Amendment 94 removes the definition of "payment period", which is consistent with amendment 90. I commend the amendments to the Committee.

Amendment 89 agreed to.

Amendments made: 90, in schedule 7, page 123, line 13, leave out

"before the end of the payment period".

This removes the separate period for payment of the premium for the rent reduction.

Amendment 91, in schedule 7, page 123, line 16, leave out from "when" to end of line 29 and insert

"the landlord admits or the appropriate tribunal determines—

(a) that the tenant has the right to a peppercorn rent, and

(b) all the terms on which the lease is to be varied, including what premium is payable."

This provides for a rent variation notice to be enforceable from the time when it is settled that there is a right to a peppercorn rent and the terms of the variation are settled (whether by agreement or by the Tribunal).

Amendment 92, in schedule 7, page 123, line 30, leave out from "is" to end of line 34 and insert

"the variation of the lease as admitted by the landlord or determined by the appropriate tribunal (see sub-paragraph (3)(b))."

This provides for the rent variation to be in accordance with the terms that are settled (whether by agreement or by the Tribunal).

Amendment 93, in schedule 7, page 123, line 35, after "is" insert

"the value of the right to receive rent over the remaining term of the qualifying lease.

(5A) Except in the case of a lease falling within paragraph 8, 10 or 10A of Schedule 2 (market rack rent lease, lease already renewed under the LRA 1967 or business tenancy), that value is".

This amendment would mean that, if a lease is at a market rack rent or has already been renewed under the LRA 1967, the premium payable for a rent reduction would be the value of the right to receive that rent for the rest of the term, and that value would not be calculated using paragraph 22 of Schedule 2.

Amendment 94, in schedule 7, page 123, leave out lines 38 to 40.—*(Lee Rowley.)*

This is consequential on Amendment 90.

Lee Rowley: I beg to move amendment 95, in schedule 7, page 123, line 43, at end insert—

"*Reduction of rent under intermediate leases*

7A (1) This paragraph applies if, at the time when a rent variation notice is given, there are one or more qualifying intermediate leases.

(2) For the purposes of this paragraph a lease is a 'qualifying intermediate lease' if—

(a) the lease demises the whole or a part of the property to which the rent variation notice relates,

(b) the lease is immediately superior to—

(i) the lease to which the rent variation notice relates, or

(ii) one or more other leases that are themselves qualifying intermediate leases,

(c) relevant rent is payable under the lease, and

(d) that relevant rent is more than a peppercorn rent.

(3) The landlord or the tenant under a qualifying intermediate lease may, by giving notice to the relevant landlord or landlords before the variation of lease to which the rent variation notice relates, require the rent payable under the qualifying intermediate lease to be reduced in accordance with sub-paragraphs (6) to (8).

(4) If—

(a) under sub-paragraph (3) the rent under a lease is required to be reduced in accordance with this paragraph, and

(b) that lease is superior to one or more other qualifying intermediate leases,

the rent payable under the other qualifying intermediate lease or leases is also to be reduced in accordance with sub-paragraphs (6) to (8).

(5) The landlord and tenant under a qualifying intermediate lease must vary the lease—

(a) to give effect to a reduction of the rent in accordance with sub-paragraphs (6) to (8), and

(b) to remove any terms of the lease which provide for an increase in the rent, or part of the rent, so reduced.

(6) If the whole of the rent under a qualifying intermediate lease is relevant rent, the rent under that lease is to be reduced to a peppercorn rent.

(7) If only part of the rent under a qualifying intermediate lease is relevant rent—

(a) that part of the rent is to be reduced to zero, and

(b) the total rent is to be reduced accordingly.

(8) But the amount of the reduction in a person's rental liabilities as tenant is limited to the amount of the reduction in the person's rental income as landlord; and here—

(a) 'reduction in a person's rental liabilities as tenant' means the reduction in accordance with sub-paragraph (6) or (7) of the rent payable by the person as tenant under the qualifying intermediate lease;

(b) 'reduction in that person's rental income as landlord' means the amount (or total amount) of the relevant reduction (or reductions) in rent payable to that person as landlord of one or more other reduced rent leases.

(9) In this paragraph—

'reduced rent lease' means—

(a) the lease to which the rent variation notice relates, or

(b) a qualifying intermediate lease;

'relevant landlord' means—

(a) the landlord under the qualifying lease, and

(b) any superior landlord who must be given a copy of the rent variation notice in accordance with paragraph 9D or 9E;

'relevant reduction' means—

(a) in relation to the lease to which the rent variation notice relates, a reduction resulting from that tenancy being varied in accordance with the other provisions of this Schedule;

(b) in relation to a qualifying intermediate lease, a reduction resulting from this paragraph.

'relevant rent' means rent that has been, or would properly be, apportioned to the whole or a part of the property to which the rent variation notice relates."

This provides for rent to be reduced (commuted) under leases that are superior to the lease in respect of which a rent variation notice is given under Schedule 7 .

Like amendment 106, amendment 95 provides for commutation following a ground rent buy-out, and the obligations and rights of superior landlords. Amendment 95 provides for commutation for ground rent buy-out and the provision is identical to the commutation provision for lease extensions.

As we have discussed, commutation is the process by which a reduction in the rent of the inferior occupational lease—in this case, by a ground rent buy-out—triggers a reduction in the rent of intermediate leases sitting between the most inferior lease and the freehold. The amendment provides that, if commuted, the relevant rent payable by a tenant of an intermediate lease will be reduced to a peppercorn, but the reduction in rent payable by a tenant of such an intermediate lease must not exceed the reduction in the rent they receive as a landlord of an intermediate lease. I commend the amendment to the Committee.

Amendment 95 agreed to.

Lee Rowley: I beg to move amendment 96, in schedule 7, page 124, line 9, at end insert—

"(2A) An order under this paragraph may appoint a person to execute the variation of the lease on behalf of a party to the variation; and a variation executed in consequence of such an order has the same force and effect (for all purposes) as if it had been executed by that party."

This authorises the Tribunal to appoint a person a execute the variation of a lease on behalf a party (eg. if they are absent or unco-operative).

The Chair: With this it will be convenient to discuss Government amendments 97 and 98.

Lee Rowley: Again, these amendments mostly simplify and clarify the provisions in schedule 7.

Amendment 97 provides that in the event that there is a failure to vary the lease in response to an enforceable variation notice, an application made to the tribunal for enforcement must be made within four months of the date that that notice became enforceable. Amendment 96 provides that the tribunal may appoint a person to vary the lease on the landlord's behalf.

Amendment 98 provides that where the tribunal is satisfied that the landlord is missing and that the leaseholder has the right to a peppercorn rent, it may make an order to vary the lease and appoint someone to vary the lease on the landlord's behalf. I commend the amendments to the Committee.

Amendment 96 agreed to.

Amendments made: 97, in schedule 7, page 124, line 11, leave out from first "of" to end of line 12 and insert

"four months beginning with the day on which the rent variation notice becomes enforceable (within the meaning of paragraph 7)."

This changes the period within which an application under paragraph 8 may be made.

Amendment 98, in schedule 7, page 124, line 12, at end insert—

"*Missing landlord or third party*

8A (1) On an application made by the tenant under a qualifying lease, the appropriate tribunal may make a determination that the landlord under, or another party to, a qualifying lease cannot be found or their identity cannot be ascertained.

(2) The following provisions of this paragraph apply if the appropriate tribunal makes such determination.

(3) The appropriate tribunal may make such order as it thinks fit including—

(a) an order dispensing with the requirement to give notice under paragraph 3 to that landlord or other party, or

(b) an order that such a notice has effect and has been properly served even though it has not been served on that landlord or other party.

(4) If the appropriate tribunal is satisfied that the tenant has the right to a peppercorn rent, the tribunal make such order as it thinks fit with respect to the variation of the qualifying lease to give effect to that right.

(5) An order under sub-paragraph (4) may appoint a person to execute the variation of the lease on behalf of a party to the variation; and a variation executed in consequence of such an order has the same force and effect (for all purposes) as if it had been executed by that party.

(6) Before making a determination or order under this paragraph, the appropriate tribunal may require the tenant to take such further steps by way of advertisement or otherwise as the court thinks proper for the purpose of tracing the person in question.

(7) If, after an application is made under this paragraph and before the lease is varied to give effect to the right to a peppercorn rent, the landlord or other party is traced—

(a) no further proceedings shall be taken with a view to a lease being varied in accordance with this paragraph,

(b) the rights and obligations of all parties shall be determined as if the tenant had, at the date of the application, duly given the rent variation notice, and

(c) the appropriate tribunal may give such directions as it thinks fit as to the steps to be taken for giving effect to the right to a peppercorn rent, including directions modifying or dispensing with any of the requirements of this Schedule or any regulations."

This enables the Tribunal to deal with the situation where the landlord or third party to a lease cannot be found or identified.

Amendment 99, in schedule 7, page 124, line 15, after "landlord" insert

", before the lease is varied in pursuance of the rent variation notice,".

This clarifies that a notice of withdrawal can only be given before the lease is varied.

Amendment 100, in schedule 7, page 124, line 17, leave out from "is" to end of line 17 and insert

"varied in accordance with the notice".—*(Lee Rowley .)*

This provides that rent variation notice ceases to have effect when the lease is varied in accordance with the notice.

Lee Rowley: I beg to move amendment 101, in schedule 7, page 124, line 19, leave out paragraph (c) and insert—

"(c) a lease enfranchisement notice or lease extension notice which relates to the qualifying lease is given;".

This is consequential on Amendment 119.

The Chair: With this it will be convenient to discuss Government amendments 117 and 119.

Lee Rowley: Again, these amendments mostly simplify and clarify the provisions in schedule 7.

Amendment 101 provides that where a leaseholder has made a ground rent buy-out claim but, before the claim is settled, later makes an extension or acquisition claim, the ground rent buy-out claim ceases to have effect. Amendment 117 provides that the regulatory powers given to the Secretary of State by paragraph 12 are subject to the negative procedure.

Amendment 119 will insert a definition of "lease enfranchisement notice" as a notice for a freehold acquisition for a house or collective enfranchisement for a flat, and a definition of "lease extension notice" as a notice for a lease extension for a house or flat. Those definitions support amendments 80, 101 and 83. I commend the amendments to the Committee.

Amendment 101 agreed to .

Amendments made: 102, in schedule 7, page 124, line 21, leave out paragraph (d) and insert—

"(d) any order setting aside the notice is made by the appropriate tribunal or a court;".

This is a technical amendment to correct the reference to kind of order that would be made.

Amendment 103, in schedule 7, page 124, line 22, at end insert—

"(da) the appropriate tribunal determines on an application under paragraph 5 that the tenant does not have the right to a peppercorn rent;

(db) the period of six months mentioned in paragraph 5(3) or (5) ends, where the application mentioned there could be made, but is not made before the end of that period;

(dc) the period of four months mentioned in paragraph 8(3) ends, where the application mentioned there could be made, but is not made before the end of that period;".

This sets out additional circumstances in which a rent variation notice ceases to have effect.

Amendment 104, in schedule 7, page 124, line 28, leave out from "effect," to end of line 16 on page 125 and insert

"except for any obligation arising under any provision of the LRA 1967 or the LRHUDA 1993 that applies by virtue of paragraph 11."—*(Lee Rowley.)*

This clarifies which obligations continue after a rent variation notice ceases to have effect.

Lee Rowley: I beg to move amendment 105, in schedule 7, page 125, line 16, at end insert—

"*Tenant's liability for costs*

9A (1) A tenant is not liable for any costs incurred by any other person as a result of the tenant's exercise of the right to a peppercorn rent, except as referred to in—

(a) sub-paragraph (4),

(b) paragraph 9B (liability where claim ceases to have effect), and

(c) paragraph 9C (liability where tenant obtains the variation of the lease).

(2) A former tenant is not liable for any costs incurred by any other person as a result of the former tenant's claim to the right to a peppercorn rent, except as referred to in sub-paragraphs (4) and (5).

(3) A lease, transfer, contract or other arrangement is accordingly of no effect to the extent it would provide to the contrary.

(4) A tenant or former tenant is liable for costs incurred by another person in connection with proceedings before a court or tribunal if—

(a) the court or tribunal has power under this Schedule or another enactment to order that the tenant or former tenant pay those costs, and

(b) the court or tribunal makes such an order.

(5) A former tenant is liable for costs incurred by a successor in title to the extent agreed between the former tenant and that successor in title.

(6) In this paragraph and paragraphs 9B and 9C—

"claim" includes an invalid claim;

"former tenant" means a person who was a tenant making a claim to the right to a peppercorn rent, but is no longer a tenant.

Liability for costs: failed claims

9B (1) A tenant is liable to the landlord for a prescribed amount in respect of non-litigation costs if the tenant's claim ceases to have effect by virtue of paragraph 9(1), unless it ceases to have effect by virtue of—

(a) paragraph 9(1)(b), or

(b) paragraph 9(1)(e) because of the application of section 55 of the LRHUDA 1993.

(2) For the purposes of this paragraph—

(a) "prescribed" means prescribed by, or determined in accordance with, regulations made—

(i) in relation to England, by the Secretary of State;

(ii) in relation to Wales, by the Welsh Ministers;

(b) "non-litigation costs" are costs that are or could be incurred by a landlord as a result of a claim under this Schedule other than in connection with proceedings before a court or tribunal;

(c) where a claim ceases to have effect by virtue of a person who was a tenant assigning their lease without assigning the claim under paragraph 3(6), "tenant" includes that person.

(3) A statutory instrument containing regulations under this paragraph is subject to the negative procedure.

Liability for costs: successful claims

9C (1) A tenant is liable to the landlord for the amount referred to in subsection (2) if—

(a) the tenant makes a claim to the right to a peppercorn rent,

(b) the rent is reduced in consequence of the claim,

(c) the premium payable by the tenant for the variation of the lease is less than a prescribed amount,

(d) the landlord incurs costs as a result of the claim,

(e) the costs are incurred other than in connection with proceedings before a court or tribunal,

(f) the costs incurred by the landlord are reasonable, and

(g) the costs are more than the premium payable.

(2) The amount is the difference between—

(a) the premium payable by the tenant, and

(b) the costs incurred by the landlord, or, if those costs exceed a prescribed amount, that prescribed amount.

(3) In this paragraph "prescribed" means prescribed by, or determined in accordance with, regulations made—

(a) in relation to England, by the Secretary of State;

(b) in relation to Wales, by the Welsh Ministers.

(4) A statutory instrument containing regulations under this paragraph is subject to the negative procedure."

This provides for a tenant's liability for costs incurred by other persons in connection with a claim for a peppercorn rent .

This amendment applies the reformed cost regime to ground rent buy-out claims. The amendment makes cost provisions for the ground rent buy-out right. These match the cost provisions for lease extensions for houses and flats. There is a general no-costs rule, but a tenant may be liable for fixed costs if their claim fails, and may be liable for a fixed amount of costs, which would be charged by reducing the value of the premium, if the ground rent buy-out claim is a prescribed low-value claim. A tenant cannot be required to give security for costs. I commend the amendment to the Committee.

Amendment 105 agreed to.

Amendment made: 106, in schedule 7, page 125, line 16, at end insert—

"*Duty of landlord to give copies of the rent variation notice to superior landlords*

9D (1) This paragraph applies if the landlord is given a rent variation notice by the tenant.

(2) The landlord must give a copy of the rent variation notice to any person whom the landlord believes is a superior landlord.

(3) But that duty does not apply if the landlord has been notified under paragraph 9E(5)(b) that a copy of the rent variation notice has been given to that person.

(4) The landlord must comply with that duty as soon as reasonably practicable after—

(a) being given the rent variation notice, or

(b) forming the belief that a person is a superior landlord (if that is after the rent variation notice was given).

(5) If the landlord gives a copy of the rent variation notice to a person under sub-paragraph (2), the landlord must, together with the copy, give that person the names of—

(a) all of the persons to whom the landlord has given a copy of the notice under this paragraph, and

(b) any other persons that the landlord is aware have been given a copy of the notice.

(6) If the landlord fails to comply with a duty in this paragraph, the landlord is liable in damages for any loss suffered by any other person as a result of the failure.

Duty of superior landlord to give copies of the rent variation notice to other superior landlords

9E (1) This paragraph applies if a superior landlord is given a copy of a rent variation notice under paragraph 9D or this paragraph.

(2) The superior landlord (the "forwarding landlord") must give a copy of the rent variation notice to any person whom the forwarding landlord believes is a superior landlord.

(3) But that duty does not apply if the forwarding landlord has been notified under paragraph 9D or this paragraph that a copy of the rent variation notice has been given to that person.

(4) The forwarding landlord must comply with that duty as soon as reasonably practicable after—

(a) being given the copy of the rent variation notice, or

(b) forming the belief that a person is a superior landlord (if that is after the copy of the rent variation notice was given).

(5) If the forwarding landlord gives a copy of the rent variation notice to a person under sub-paragraph (2), the forwarding landlord—

(a) must, together with the copy, give that person the names of—

(i) all of the persons to whom the forwarding landlord has given a copy of the notice under this paragraph, and

(ii) any other persons that the forwarding landlord is aware have been given a copy of the notice;

(b) must notify the landlord that the forwarding landlord has given the copy to that person.

(6) If the forwarding landlord fails to comply with a duty in this paragraph, the forwarding landlord is liable in damages for any loss suffered by any other person as a result of the failure."—*(Lee Rowley.)*

This requires notice of a claim for a peppercorn rent to be given to superior landlords.

Lee Rowley: I beg to move amendment 107, in schedule 7, page 125, line 18, leave out paragraph 10.

This is consequential on Amendment 109.

The Chair: With this it will be convenient to discuss Government amendments 108 to 116.

Lee Rowley: These amendments concern the provisions of the Leasehold Reform, Housing and Urban Development Act 1993 as they apply to the right. Previously, provisions applying to ground rent buy-out claims on houses and flats were in separate paragraphs of the schedule: paragraphs 10 and 11, respectively. Amendment 109 amends paragraph 11 so that the provisions therein apply to claims on both houses and flats. Consequently, amendment 108 will change the title of paragraph 11 accordingly, and amendment 107 will remove paragraph 10.

Amendments 114 and 116 will amend the provisions of the 1993 Act that apply to the ground rent buy-out right, so that the provisions are properly carried across. Amendments 113 and 112 make a provision in relation to mortgages that applies to lease extensions under the 1993 Act, so that it applies appropriately to ground rent buy-out claims.

Amendment 115 will add a provision for dealing with inaccurate rent variation notices, to the effect that small inaccuracies do not invalidate the claim. Amendment 110 will require the leaseholder to pay off arrears of rent or service charges prior to a ground rent buy-out. Amendment 111 will ensure that the provisions in amendment 110 refer correctly to the ground rent buy-out premium. I commend the amendments to the Committee.

Amendment 107 agreed to .

Amendments made: 108, in schedule 7, page 127, leave out line 1 and insert

"Provisions of the LRHUDA 1993 that apply for the purposes of this Schedule".

This is consequential on Amendment 109.

Amendment 109, in schedule 7, page 127, line 4, leave out from first "Schedule" to end of line 5 and insert

"(whether in its application to a house or flat)".

This provides for paragraph 11 to apply to all claims under Schedule 7, not just to claims where the qualifying lease is of a flat (and so it means that paragraph 10 is longer needed).

Amendment 110, in schedule 7, page 127, line 19, first column, leave out "and (4)" and insert "(a) and (c)".

This alters the provision in section 56 of the LRHUDA 1993 which is applied to Schedule 7.

[Lee Rowley]

Amendment 111, in schedule 7, page 127, second column, leave out line 19 and insert

"The reference to any premium and other amounts payable by virtue of Schedule 13 has effect as a reference to the required premium payable under paragraph 7 of this Schedule".

This modifies the wording of section 56 of the LRHUDA 1993 in its application to Schedule 7.

Amendment 112, in schedule 7, page 127, line 24, first column, leave out

"(1), (2), (5), (6) and (7)"

and insert ", except for subsection (4)".

This alters the provision in section 58 of the LRHUDA 1993 which is applied to Schedule 7.

Amendment 113, in schedule 7, page 127, line 24, second column, insert

"A reference to the new lease has effect as a reference to the deed of variation of the lease".

This modifies the wording of section 58 of the LRHUDA 1993 in its application to Schedule 7.

Amendment 114, in schedule 7, page 127, leave out lines 28 to 31.

This removes provision of the LRHUDA 1993 which no longer needs to apply to Schedule 7.

Amendment 115, in schedule 7, page 128, line 10, at end insert—

"Schedule 12, paragraph 9
(inaccurate notices)"

This adds further provision of the LRHUDA 1993 which is to apply to Schedule 7.

Amendment 116, in schedule 7, page 128, line 21, at end insert—

"Property which the tenant is, or is not, entitled to have demised under a new lease	Property in respect of which the tenant has, or does not have, the right to a peppercorn rent under this Schedule
The premium payable for the new lease	The required premium payable under paragraph 7 of this Schedule
A notice under section 42 to claim the right to a new lease	A rent variation notice"

This provides for the modification of additional terminology used in the LRHUDA 1993 in its application to Schedule 7.

Amendment 117, in schedule 7, page 129, line 13, at end insert—

"(4A) Regulations under this paragraph are subject to the negative procedure."

This makes regulations under paragraph 12 subject to the negative procedure (see clause 62(4)).

Amendment 118, in schedule 7, page 129, line 18, leave out paragraph (d).

This is consequential on Amendment 104.

Amendment 119, in schedule 7, page 129, leave out lines 29 to 37 and insert—

"'lease enfranchisement notice' means a notice under—

(a) section 8 of the LRA 1967 (notice of desire to acquire freehold of house), or

(b) section 13 of the LRHUDA 1993 (notice of claim to exercise right to collective enfranchisement);

and a lease enfranchisement notice under section 13 of the LRHUDA 1993 relates to the qualifying lease if the tenant under the lease is one of the participating tenants in relation to the claim under the notice;

'lease extension notice' means a notice under—

(a) section 14 of the LRA 1967 (notice of desire to extend lease of house), or

(b) section 42 of the LRHUDA 1993 (notice of claim to exercise right to acquire new lease of flat);".

This provides for separate definitions of "lease enfranchisement notice" and "lease extension notice" (instead of a single definition of both terms).

Amendment 120, in schedule 7, page 129, leave out line 39.—*(Lee Rowley.)*

This is consequential on Amendment 104.

Question proposed, That the schedule, as amended, be the Seventh schedule to the Bill.

Lee Rowley: Schedule 7 will confer on leaseholders a right to buy out their ground rent without extending their lease. As the premium payable will be subject to the 0.1% cap on ground rent, this measure will be especially helpful for leaseholders with high or escalating rents. Paragraph 2 sets out that leaseholders who qualify for a lease extension will have this right as long as their remaining term is at least 150 years. Community housing leases and home finance plan leases are excluded, as they were from the Leasehold Reform (Ground Rent) Act 2022. Leaseholders may not qualify for lease extensions because they have a lease of Crown land, or because they do not satisfy the low rent test in the Leasehold Reform Act 1967. Such leaseholders will qualify for the new buy-out right.

Paragraphs 3 to 7 set out procedural arrangements for leaseholders and their landlords. They provide that the right is exercised by serving a rent variation notice on the landlord, including time limits for responses and arrangements for either party to apply to the tribunal if they so wish. The premium payable is the same as the term portion of the lease extension premium set out in schedule 2, and is subject to the ground rent cap. It is the capitalised value of the rent payable for the remainder of the lease.

Paragraph 8 provides that where the lease is not varied to provide that the future rent is a peppercorn rent, the leaseholder or landlord can apply to the tribunal. The tribunal shall decide whether it should be varied and, if it should, can appoint a person to execute the variation in place of the landlord. Paragraph 9 sets out the circumstances in which a rent variation notice ceases to have effect. A claim can be revived if it ceased to have effect due to a later extension or acquisition claim, where the later claim ceases to have effect.

Paragraph 10 sets out details of how the schedule applies in relation to the lease of a house; paragraph 11 does the same in relation to the lease of a flat. Finally, paragraph 12 gives various enabling powers to the Secretary of State, including giving effect to the rights, making provisions about notices and amending the details of how the schedule applies to the lease of a house or a flat.

Question put and agreed to.

Schedule 7, as amended, accordingly agreed to.

Clause 22

Change of non-residential limit on right to manage claims

Barry Gardiner: I beg to move amendment 129, in clause 22, page 38, line 21, leave out "50%" and insert "75%".

This amendment would allow leaseholders with a higher proportion of commercial or non-residential space in their building to claim the Right to Manage.

The Chair: With this it will be convenient to discuss clause stand part.

Barry Gardiner: First of all, let me say what this is not about: it is not about enfranchisement. It is quite simply about the right to manage. I say that because a few days ago, a journalist got this entirely wrong. We welcome the change to 50%. The amendment would allow leaseholders with a higher proportion of commercial or non-residential space in their building to claim the right to manage. It is not about shared services or the percentage of the leaseholders who can be contacted; it is about square footage.

I welcome the proposed increase from 25% to 50%, but as we heard in the witness sessions, the Law Commission was originally asked by the Government to remove the 25% rule on the right to manage completely on the basis that leaseholders who are paying a service charge should have control over the areas for which they are being charged. This would leave the management of the commercial premises absolutely unchanged. It was taken out by the Law Commission, which actually wanted to be more restrictive than the Government, who had said that it could be 100%. On its reason for that, it said, "There could be, at the top of the Shard, 30 residential properties. This could have the perverse result of them taking control of a much larger area." It used that special example to illustrate why it felt that 100% was not appropriate. The Government had suggested that we go a lot further, but the Law Commission said, "There are special cases, so let's row back on this." But then the Government came back with 50%.

Let us take the advice of the Law Commission and accept that 100% is not the right figure. I propose that we go to 75% and use that as the basis, because it would avoid that unique case that the Law Commission put forward. It would achieve what I think was the Government's original intention of allowing more people in that situation the right to manage.

12.15 pm

Lee Rowley: I am grateful to the hon. Member for tabling the amendment. He is correct that, as with many of these instances, there are balances to be struck. While I will argue for a different balance from the one he outlined, I accept, understand and acknowledge that a number of different cases can be made in this discussion.

As the hon. Member indicated, the Bill already includes a provision to increase the limit from 25% to 50%, following the Law Commission's extensive investigation. We believe that the increase to 50% seeks to strike a proportionate balance. He made a valid point about issues in a minority of cases, and we will not use extreme cases as a reason. However, there is the potential—this is why we have landed on 50%—to unfairly prejudice the interests of landlords and commercial tenants, for example, where a minority of leaseholders take over the management of a building that is predominantly commercial.

As I said, I recognise that there is a balance to be struck, but on the basis of the progress that is being made, which I am grateful to the hon. Member for acknowledging, 50% is where the Government would prefer to land, and that is what we are proposing.

Barry Gardiner: If the Minister casts his mind forward to the next two amendments, which seek to give the Secretary of State the authority to determine the limit, and should the Minister indicate that, in the future, the Secretary of State would almost certainly not determine it to be less than 50%—as the Government have already proposed—then I just might be persuaded to withdraw my amendment.

Lee Rowley: I am grateful to the hon. Gentleman for his comments. We are sticking with what we have suggested, but I hope he will consider withdrawing his amendment none the less. I will just say a few words on our reasons for sticking with what propose in clause 22. We have been clear that we want to improve access to right to manage—I think that view is shared across the House—and we accept that the current limit of 25% of floor space is not proportionate. Therefore, through this clause, we are seeking to increase the non-residential limit from 25% to 50%, as has been discussed. That replicates clause 3 on collective enfranchisement, recognising that this is not a debate about collective enfranchisement on a specific clause.

For the reasons that we have outlined, 50% is the place where the Government have landed, and where we feel is most proportionate. We hope that it will mean that more leaseholders in mixed-used buildings can take over the management responsibilities of their properties. I commend the clause to the Committee, and I hope that the hon. Gentleman will consider withdrawing his amendment.

Barry Gardiner: I am grateful to the Minister for his response; he is courteous, as ever. I just point out that the all-party group on leasehold and commonhold reform, co-chaired by the Father of the House, the hon. Member for Worthing West (Sir Peter Bottomley), also made the recommendation that the Government look again at this issue. I am prepared to throw my weight behind amendments 26 and 27, so I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn .

Matthew Pennycook: I beg to move amendment 26, in clause 22, page 38, line 21, at end insert—

"(b) after paragraph 1(4) insert—

'(5) The Secretary of State or the Welsh Ministers may by regulations amend this paragraph to provide for a different description of premises falling within section 72(1) to which this Chapter does not apply.'"

This amendment would enable the Secretary of State or (in the case of Wales) the Welsh Ministers to change the description of premises which are excluded from the right to manage. By virtue of Amendment 27, such a change would be subject to the affirmative resolution procedure.

The Chair: With this it will be convenient to discuss amendment 27, in clause 22, page 38, line 21, at end insert—

"(2) In section 178 of the CLRA 2002—

(a) in subsection (4), after '171', insert ', paragraph 1(5) of Schedule 6';

(b) after subsection (5), insert—

'(6) Regulations shall not be made by the Welsh Ministers under paragraph 1(5) of Schedule 6 unless a draft of the instrument has been laid before and approved by resolution of Senedd Cymru.'"

See explanatory statement to Amendment 26.

Matthew Pennycook: I rise to speak to the amendments in my name and that of my hon. Friend the Member for Weaver Vale. I do so making almost entirely the same argument as that made by my hon. Friend the Member for Brent North. *[Interruption.]* No, I am hoping for a very different response from the Minister to it.

As was made clear in a previous debate, this clause operates in precisely the way that clause 3 does in relation to collective enfranchisement claims: by making changes to the non-residential limit to the right to manage—and we welcome it. The clause will enact recommendation 7 of the Law Commission's final report on exercising that right.

Although I take the point made by my hon. Friend the Member for Brent North about the use of extreme outlier cases to undermine an argument, we accept the Law Commission's broad argument that abolishing the non-residential limit entirely could cause problems in a number of cases for certain landlords and commercial tenants. But as the Law Commission very clearly concluded, the current limit is

"an unwarranted impediment to the RTM, given that it can prevent premises which are mostly residential from qualifying."

We think it is right that the Bill seeks to increase that limit, and we hope that doing so will bring a greater number and variety—that is important—of premises into the right to manage and therefore help to boost the number of leaseholders who decide to take over the management function of their buildings.

As with the non-residential limit for collective enfranchisement claims, the threshold is inherently arbitrary, but we feel—here my hon. Friend is absolutely right—that we need to address the fact that 50% will leave large numbers of leaseholders shut out from the right to manage. He made the case for a 75% threshold, and I think that has a lot of merit. We sought to be slightly less prescriptive; instead, much in the way that we argued for powers to be put in the Bill for Ministers to further amend the non-residential limit for collective enfranchisement, we propose to give a degree of flexibility to the non-residential limit on right to manage claims, so that any future changes to increase it—and only to increase it—do not require primary legislation.

We want to be slightly more flexible, or less prescriptive, than my hon. Friend for the following reasons. First, we can imagine a range of scenarios in which we would need to look at the 50% threshold in terms of internal floor space. We also think, as with collective enfranchisement claims, that a future Government may wish to look at the entire criteria afresh—I am thinking of cases of the right to manage, for example, where we might consider whether there are better metrics for determining the residential nature of a building. It is notable that, although the Law Commission ultimately recommended retaining the use of floor space as the metric, it explored in great detail a comparison between the values of the residential and non-residential parts as a way into this. A future Government may therefore wish to look at the criteria afresh, so we sought to give the Secretary of State that power.

We think that that is entirely sensible, as we did when we argued for earlier amendments. It would be by regulation subject to the affirmative procedure, to give this House the chance to give any change due scrutiny, but we think it is a sensible principle to build some flexibility into the Bill.

I expect the Minister will resist the amendment, for the reasons that he previously resisted a similar amendment on collective enfranchisement. I will therefore probably not press the amendment to a vote. However, I think we will have to come back to the issue later, because on both collective enfranchisement and right to manage, the Government are being somewhat stubborn in saying that the 50% sticks and that future primary legislation, which could be many years away, is the only way to look at it afresh. I hope that the Minister will give the amendment serious thought.

Lee Rowley: I am grateful for the comments and questions from the hon. Members for Greenwich and Woolwich and for Brent North. As they anticipated —I may be becoming too conventional—I will resist the amendment. Again, this is about where primary legislation stops and secondary legislation begins, and the Opposition are right to test us on that. It is perfectly legitimate for people to take different views on where that starts and stops, and we know that our colleagues in the other place caution us, where we can be cautioned, not to take too many Henry VIII powers. We are undertaking a self-denying ordinance to not take an additional Henry VIII power today, on the basis that this is of sufficient magnitude, albeit recognising the challenges that have been outlined, that it should be in the Bill and be clear, and that any appropriate changes should come through similar processes. For that reason, although I understand the rationale for it, and I am always happy to listen to the underlying points, the Government will not support the amendment.

Matthew Pennycook: I will not labour the point, but I put on record that I look forward to the Minister standing up at some future point in what remains of his tenure and arguing for the absolute necessity of a Henry VIII power in one or other respect. It will come, but obviously not on this occasion. As I said, we will have to come back to this matter, but we will reflect on how best to do so. On that basis, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 22 ordered to stand part of the Bill.

Clause 23

COSTS OF RIGHT TO MANAGE CLAIMS

Amendment made: 45, in clause 23, page 39, line 30, at end insert—

"(8) See also sections 20CA and 20J of the Landlord and Tenant Act 1985, which prevent costs in connection with a claim under this Chapter being recovered by way of a variable service charge (within the meaning of section 18 of that Act).".—*(Lee Rowley.)*

This amendment is consequential on NC7 .

Matthew Pennycook: I beg to move amendment 7, in clause 23, page 39, leave out from line 31 to line 32 on page 40.

This amendment would leave out the proposed new section 87B of the Commonhold and Leasehold Reform Act 2002 and so ensure that RTM companies cannot incur costs in instances where claims cease.

The Chair: With this it will be convenient to discuss clause stand part.

Matthew Pennycook: Clause 23 replaces the existing costs regimes for RTM claims under the Commonhold and Leasehold Reform Act 2002. The new regime is established in proposed new sections 87A and 87B.

Proposed new section 87A sets out the general rule that RTM companies and RTM company members are not liable for the costs incurred by another person because of an RTM claim. Proposed new section 87B allows the tribunal to order an RTM company to pay the reasonable costs of specified people that arise from an RTM claim notice being withdrawn or ceasing to have effect and the RTM company has acted unreasonably.

We welcome the intent behind new section 87A. At present, the RTM company is liable for the reasonable non-litigation costs that are incurred by a landlord in consequence of an RTM claim notice. Safe in the knowledge that the cost of the process is always recoverable from the RTM company, landlords are at present incentivised to conduct an overscrupulous analysis of the claim with a view to finding minor and inconsequential defects, in an attempt to disrupt the claim. That happens on far too many occasions.

If a claim is disputed and the tribunal decides that the RTM company is not entitled to acquire the RTM, the RTM company is liable to pay the landlord's reasonable costs, but the same rule does not apply if the landlord unsuccessfully challenges the claim. Landlords can therefore dispute claims safe in the knowledge that doing so is a one-way bet.

In instances where a landlord is obliged to pay litigation costs following a successful claim, they can and do frequently recover the moneys from leaseholders either through the service charge or as an administration charge under the leases. It is not that common, but in such shortfall scenarios the leaseholders end up paying, even if they are successful in the tribunal.

Given that RTM companies are almost always undercapitalised, have no assets and cannot collect service charges before the RTM is acquired, these costs, which cannot be limited or predicted and can have significant implications for large or complex developments, are often met by individual leaseholders, with any challenges to their reasonableness entailing all the burden and risk of going to the tribunal. By entailing unknown and potentially significant costs liability for which they are jointly and severally liable, the present costs regimes clearly act as a deterrent to leaseholders pursuing the RTM and participating in an RTM claim.

In our view, landlords can bear these costs, and by providing for a general rule that they do so, the clause will make the RTM procedure simpler, more accessible and less foreboding. It is for that reason that the Law Commission recommended significant changes to the allocation of costs incurred during acquisition of the right to manage, and in relation to disputes. The clause draws upon five of its proposals.

The Law Commission did recommend, however, that an exception ought to be made where an RTM claim has been withdrawn or otherwise ceased early and the RTM company has acted unreasonably in bringing the RTM claim. In such cases, it recommends that the landlord should be able to apply to the tribunal for any reasonable costs that it has incurred in consequence of the RTM claim, down to the time that the claim ceased. They did so

"to address the risk of landlords potentially having to bear the cost of responding to unreasonable or vexatious claims issued by leaseholders which are subsequently withdrawn."

Proposed new section 87B enacts that proposal. While the Law Commission made clear that it expected that the tribunal would apply the test in question narrowly, we are concerned about its inclusion for two reasons. First, there is a principled argument that leaseholders should not be put at risk of having to pay costs simply for exercising statutory rights—in this case, the right to seek to acquire and exercise rights in relation to the management of premises in which one has a leasehold interest.

The first-tier tribunal already has the power under rule 13(1)(a) to punish unreasonable behaviour by making the parties' legal or other representative pay to the other party any costs incurred as a result of improper, unreasonable or negligent acts or omissions. As such, we would ask why we need a new statutory provision to create yet further scenarios where leaseholders might have to pay.

Secondly, we are concerned that unscrupulous landlords will use the rights provided for by new section 87B as a means of recovering costs from RTM companies that act reasonably and in good faith, and by implication that it will discourage RTM companies from initiating a claim because of the financial risk it still entails for individual participating leaseholders. Put simply, we fear that new section 87B will incentivise scrupulous landlords to fight claims on the basis that they are defective in the hope of recovering costs by means of it. Amendment 7 leaves out proposed new section 87B of the 2002 Act, thereby ensuring that all leaseholders are protected from costs for RTM claims. I hope the Minister will consider accepting that.

12.30 pm

Lee Rowley: I thank the shadow Minister for the amendment. Again, while I understand and acknowledge the underlying intent behind it, and share his inclination to reduce the cost for leaseholders to exercise the rights to form a company and bring a claim, we will not accept the amendment today for reasons that I will explain. It is perfectly clear that, and I think we will all accept this across the Committee, up until now the situation has been balanced in favour of landlords, who have been able to recover their process costs from leaseholders at times. The Bill will change that, as has been acknowledged, and will significantly broaden the cases in which each party will be required to bear their own costs. However, it is important that we take steps to protect landlords from unfair costs.

On amendment 7, the Government judge that it would be unfair if a landlord were required to meet their own process costs where a right to manage claim is withdrawn or ceases to have effect as a direct result of unreasonable conduct from the RTM company. The power for the tribunal to order payment of costs for such ceased claims also includes protections for leaseholders. The landlord will not be entitled to costs automatically and it will be necessary to make an application to the tribunal for an order to that effect. If the tribunal does not consider that costs should be payable, it can decline to make an order. I note that the shadow Minister acknowledged that in his initial remarks.

[Lee Rowley]

In aggregate, and with that in mind, my and the Government's view is that, while the cost regime must change, if the amendment were passed, it would expose freeholders to the risk of facing burdensome and unfair costs. I ask the shadow Minister, if he is willing, to withdraw the amendment.

Turning to clause 23 itself, as has been indicated, leaseholders bringing forward a right to manage claim currently face unknown and potentially significant costs. That is because, under current rules, they must meet reasonable costs of a landlord as well as their own costs, and the costs of others often run into thousands of pounds. Those costs—also known as non-litigation costs—include professional services, surveyors, accountants and insurers from which a landlord may incur costs as a result of the claim. Clause 23 seeks to help by removing the requirement for right to manage companies and their leaseholder members to contribute towards those non-litigation costs, meaning that both parties to a claim will bear their own. It does so by replacing the existing cost regime in the 2002 Act.

A requirement that landlords should bear their costs means that they have an incentive to keep costs down, which hopefully reduces some of the issues that the shadow Minister highlighted, and to process claims quickly because they will not be able to pass those costs on to leaseholders bringing forward the claim, potentially reducing the overall cost for both landlords and leaseholders. To protect landlords from frivolous right to manage claims, the clause includes an exception, so landlords can claim costs where the claim has been withdrawn, abandoned, struck out or otherwise ceases, or where a RTM company has acted unreasonably. Under those circumstances, as has been outlined, the landlords can apply to a tribunal.

To reduce existing obstructions to the process, the clause amends the 2002 Act to ensure that a person complying with the duty to provide information cannot withhold supplying a copy of a document to a right to manage company on the basis that they are waiting to receive a reasonable fee. However, the right to manage company will still be liable for reasonable cost of a person complying with that duty.

The clause also removes the current one-way cost shifting rule for litigant costs, which means that only landlords can currently claim the litigation costs from the RTM company, if they are successful. It is only fair that parties to litigation should bear their own costs, and that is the change that has been made.

Finally, the clause prevents landlords from passing costs on to leaseholders via the service charge. We believe that, in aggregate, these measures will reduce uncertainty in making a right to management claim by making sure that each side to a claim bears their own costs. I commend the clause to the Committee.

Alistair Strathern (Mid Bedfordshire) (Lab): I rise briefly to support the comments from my hon. Friend the Member for Greenwich and Woolwich. Although I welcome much of the Minister's message about removing some of the deterrents to taking on the right to manage on estates, having spoken to a number of residents and campaigners in my constituency, I know that if the clause is not removed it will continue to be a real deterrent and to expose them to a risk of significant financial liability that they would be poorly placed to take on. I know the Minister has already set out that he is unwilling to support the amendment today, but I hope that the Government will reflect on whether they might be willing to come back to the point to ensure there is no unnecessary deterrent to leaseholders in obtaining the right to manage effectively.

Matthew Pennycook: I thank the Minister for his response. There are two differences of opinion, the first of which is on the principled point of whether it is right that leaseholders should be charged for exercising their statutory right. We lean quite strongly towards the argument that they should not be, in principle.

The more pertinent argument for me is the second point I made, which, in all fairness, I do not think the Minister addressed. Let us be clear: in many respects, the Bill forces the Government to judge the right balance to strike between the interests of leaseholders and landlords. In coming to that view, the Bill has to account for the possibility that it creates quite perverse incentives, and I do not think it does that here or in a number of other places. This is one example of where that might happen. If a landlord wants to frustrate, disrupt or stop an RTM claim, the way in which the Government have implemented the exception to the general rule will incentivise them to fight the claim on the basis that they can try and convince the adjudicating party that the claim is defective, in the hope of recovering costs. A leaseholder exploring whether to take forward a claim is then faced with the risk of significant liabilities, as mentioned by my hon. Friend the Member for Mid Bedfordshire.

That will deter a huge number of leaseholders from exercising the right. Landlords will know it and fight more claims because they know that the deterrent effect of the exception to the general rule will be quite powerful in a number of cases. We argue quite strongly that we should just end the process costs for leaseholders as a matter of principle. That will incentivise many more groups of leaseholders to seek to acquire the right to manage. For that reason, we are minded to press the amendment to a Division.

Question put, That the amendment be made.

The Committee divided: Ayes 5, Noes 8.

Division No. 5]

AYES

Amesbury, Mike	Pennycook, Matthew
Gardiner, Barry	
Glindon, Mary	Strathern, Alistair

NOES

Davison, Dehenna	Maclean, Rachel
Everitt, Ben	Mohindra, Mr Gagan
Fuller, Richard	Rowley, Lee
Hughes, Eddie	Smith, rh Chloe

Question accordingly negatived.

Clause 23, as amended, ordered to stand part of the Bill.

Clause 24

COMPLIANCE WITH OBLIGATIONS ARISING UNDER CHAPTER 1 OF PART 2 OF THE CLRA 2002

Question proposed, That the clause stand part of the Bill.

Lee Rowley: The tribunal needs the power to order compliance with obligations under the Commonhold and Leasehold Reform Act 2002. Clause 24 amends section 107(1) of that Act to enable the tribunal to make an order requiring a person who has failed to comply with the requirement on them to address that failure and comply with the requirement within the time set out in the order. The clause also provides that where an order other than an order to pay money has been made by the appropriate tribunal, a person may apply to the county court for the enforcement of the order, or the tribunal may transfer proceedings to the county court for the enforcement of the order. If the tribunal makes an order for compliance, it will be enforceable by the county court in the same way as if it were an order of the county court itself. The clause also inserts a signpost to a general provision in the 2002 Act about the enforcement of tribunal decisions and to provisions in the Tribunals, Courts and Enforcement Act 2007 about the enforcement of an order to pay a sum of money. The measures will allow the appropriate tribunal and courts to exercise their proper enforcement function. I commend the clause to the Committee.

Question put and agreed to.

Clause 24 accordingly ordered to stand part of the Bill.

Clause 25

No first-instance applications to the High Court in tribunal matters

Question proposed, That the clause stand part of the Bill.

Lee Rowley: Clause 25 complements clause 24 by removing the risk that the change of jurisdiction for right to manage disputes to the tribunal will be circumvented through applications being brought in the High Court instead in the first instance. The clause prevents such applications being brought in the High Court. The tribunal already has exclusive jurisdiction over proceedings, and it is well placed to take over proceedings concerning the compliance with the right to manage provisions in the 2002 Act in the same way that they do for the acquisition of the right to manage. The clause does not prevent an appeal of the decision of the tribunal to the High Court or the jurisdiction of the High Court to consider judicial review claims. The measure will make the determination of disputes clearer, help to reduce costs and ensure that disputes are handled by judges with specialist knowledge. I commend the clause to the Committee.

Question put and agreed to.

Clause 25 accordingly ordered to stand part of the Bill.

Clause 26

Extension of regulation to fixed service charges

Matthew Pennycook: I beg to move amendment 10, in clause 26, page 42, leave out lines 12 and 13.

This amendment would ensure that the statutory test of reasonableness would apply to fixed service charges.

In considering part 3 of the Bill, we move away from provisions that draw on recommendations made by the Law Commission across its leasehold enfranchisement and right to manage reports from 2020 and instead turn to other Government proposals on the regulation of leasehold. The first five clauses in this part concern service charges in residential leases. The Government's stated objective in including the clauses in the Bill is to improve the consumer rights of leaseholders by requiring freeholders or managing agents acting on their behalf to issue service charge demands and annual reports in a standardised format and a more transparent manner so that leaseholders can more easily assess—and, in theory, challenge—any unreasonable or erroneous charges.

We very much welcome the intent of the clauses. While much of the detail will await the statutory instruments required to bring them into force, the clauses have the potential to improve tangibly what is without doubt one of the most contentious and, for leaseholders, injurious aspects of the feudal leasehold tenure. My office receives scores of complaints, literally on a weekly basis, from leaseholders in my constituency who believe that when it comes to the setting of their service charges, they have been subjected to unreasonable costs; costs artificially inflated as a result of outright error, such as the duplication of charges for the same service; large periodic increases that are rarely justified; or abusive practices, such as the deliberate misuse of funds. Even when leaseholders do not believe that there is a specific problem with their service charge amounts, my experience talking to many thousands of them over the years in Greenwich and Woolwich is that most nevertheless feel that they are not particularly aware of or informed about what their charges are spent on or what their future liabilities might be.

That may well be a trend that is particularly prevalent in constituencies such as my own that contain a significant number of new-build leasehold flats, but my team and I increasingly find—as I am sure other hon. Members find in their own caseloads—that a sizeable proportion of the work we do involves simply demanding from freeholders and managing agents, on behalf of leaseholders pushed to the financial brink, a detailed breakdown of service charge costs. We are then frequently required to assist individual leaseholders or informal groupings of them in probing the relevant freeholder or managing agent on the justification for individual charges, and more often than not we expose discrepancies or charges levied for services that are not provided as a result.

Given that a Member of Parliament is involved in those cases, most freeholders, head lessees or managing agents will, in such circumstances, ensure that the aggrieved leaseholders are reimbursed, thus avoiding the need for them—*[Interruption.]* My hon. Friend the Member for Brent North laughs, but we have had success on occasion, once the relevant error is exposed. In those circumstances, it avoids the need for the leaseholders in question to take the matter to tribunal, with the detrimental implications that the current cost regime entails. However, many—perhaps most—do not, instead relying on the barriers that leaseholders face in going to tribunal to ensure that the unjustified costs are still paid and not challenged. I would wager that, in the scenario that I just set out, I am not alone among Members of the House in dealing with service charge disputes of that kind on a regular basis. To my mind, that is a clear indication that the current service charge regime is woefully failing to adequately serve leaseholders or protect their interests. The Opposition take the view that there is a cast-iron case for making changes to the regime, with a view to ensuring that service charges are levied in a more appropriate, transparent and fair way.

12.45 pm

Although we welcome clauses 26 to 30 in principle, they will introduce a further degree of complexity into what is already a somewhat byzantine regime. Given that the Government are not proposing to repeal and replace the entire service charge regime with a consolidated and codified set of regulatory provisions that apply to all services and works, we think it is important to ensure that the new provisions are entirely consistent with those in the various Acts that underpin the existing regime, particularly the Landlord and Tenant Acts 1985 and 1987. They will improve its functioning in practice, and the various amendments we have tabled to these clauses seek to achieve that aim.

Clause 26 makes a number of technical amendments to the 1985 Act to extend part of the existing regulatory framework to cover fixed service charges. To the best of my knowledge, there is no formal definition of what a fixed service charge is, but these can be understood as charges that apply at the start of a 12-month accounting period, that are set by the tenancy or lease, and that are not based on the actual cost of the service provided and incurred by the landlord, as is the case with variable service charges. Such charges can be extremely burdensome. The 2015 case of Arnold *v.* Britton, for example, involved a provision that increased the service charges by a fixed compound amount each year, with the result that leaseholders of some fairly modest holiday chalets on the Gower peninsular became liable, on the basis of the freeholder's interpretation of the relevant provisions, for fixed annual service charges, rising to over £1 million by the year 2072.

We take no issue with the clause, save for the fact that subsections (3), (4) and (5) amend various provisions of the 1985 Act to ensure that certain obligations remain applicable only to variable service charges, not fixed service charges. As such, various protections in the 1985 Act will continue to apply to variable service charges alone. Although some remedies are extended to the small number of leaseholders with fixed service charges under the Landlord and Tenant Act 1987, we struggle to understand why, in bringing fixed service charges within part of the existing regulatory framework, the Government have decided to exempt them from numerous protections under the 1985 Act.

Amendment 10 is an attempt to probe the Government's decision to exempt fixed service charges from the test of reasonableness. Fixed service charges can and do include all sorts of unreasonable costs, and it strikes us as wrong that leaseholders who are obliged to pay them—not least those living in for-profit retirement developments without care, where this is a particularly prevalent arrangement—will not have the ability to challenge such costs if they feel that they are unreasonable. We are also concerned that exempting fixed service charges from the test of reasonableness may incentivise unscrupulous freeholders to create more of them, rather than relying on variable service charges, which are made more transparent by the other changes made in this part of the Bill. Amendment 10 would delete subsection (4)(a) to ensure that the test of reasonableness applies to fixed service charges, so that leaseholders subject to them are afforded greater protection. I hope the Minister will give it serious consideration.

Lee Rowley: I thank the hon. Member for his amendment. Even though I will not be accepting it today, it raises an important question and he is right to allow us to debate it. We absolutely recognise that leaseholders who pay fixed service charges do not have the same rights of challenge as leaseholders who pay variable service charges—that is accepted and understood—but it is also the case that there are good reasons for that.

As the hon. Member indicated, the main sectors where fixed charges exist are the retirement and social housing sectors, where households are often on limited and fixed incomes, as I do not need to explain to the Committee. Leaseholders, especially those on low incomes, who pay a fixed service charge have certainty about that charge, whereas those who pay variable service charges do not. Landlords benefit from not having to consider tribunal applications but, in return, they should have a clear imperative to provide value for money.

If we were to grant the right to challenge fixed service charges in a similar way to how variable service charges can be challenged, there would be some operational and practical challenges, which is one of the reasons why we will not agree to the amendment today. For example, if landlords underestimate costs in one year, but overestimate them in another, is it feasible and reasonable to be able to challenge the reasonableness only in the year in which the costs are overestimated? Should a reciprocal ability to challenge or to recover the balance of an underestimated cost in a year, on the basis that it would be reasonable to do so, not be proposed? Landlords might move away from employing fixed service charges and switch to variable service charges, which could have unintended consequences.

Fundamentally, I share the hon. Gentleman's view that there are challenges in all parts of service charges, and so there will be challenges within fixed service charges. The whole point of other elements of the Bill is to provide transparency and visibility of the reasoning for charges being made. For the reasons I have outlined, we are not of the view that this extension should be made for fixed charges.

Eddie Hughes (Walsall North) (Con): I want to pick up on the shadow Minister's point about ambiguity. There is no definition of what exactly would constitute a fixed charge, so there is the opportunity for flexibility or the law of unintended consequences. Given the lack of opportunity for subsequent challenge, a landlord might choose to move a charge from one column to the other. When the Minister said he would not accept the amendment today, did he mean he would give this point some further consideration in the future, or was he just being polite?

Lee Rowley: I am grateful to my hon. Friend for his question. Notwithstanding the tone of my responses, given the Committee's interest I will happily write to it to make sure there is clarity on that point. I hope that, as a general and broad macro point, my comment still stands.

Barry Gardiner: The Minister has yet again confirmed his reputation for being reasonable. Can I probe him on the point about reasonableness? Many leaseholders complain that there is an amount in their service charges, which they may think is either reasonable or unreasonable, for a particular service, but when they enquire about the service provider, they find that it is in fact their landlord

under another name. They then pay not only the cost of that arm's length contractor providing the service, but a 15% service charge on top of it. Many people would feel that this is another rentier practice that landlords are using. I appreciate that the issue does not relate specifically to amendment 10, but I would very much like to get the Minister's thoughts about the reasonableness of that practice on record.

Lee Rowley: I am grateful to the hon. Gentleman for raising that point. He articulates another example of good law being used in a way that is, in my view—without talking about individual incidents—both unintended and inappropriate. I am not a lawyer, and do not seek or have any desire to be one, but as I understand it, there is a concept of reasonableness within the legal domain based on an Act from a number of years ago. Hopefully that helps to answer part of his question, at least from a structural perspective. On the variable service charge side, without talking about individual instances, that kind of instance is a clear example of where those impacted would be able to go through the process of challenging it, which I think would be very sensible. If I were a leaseholder, I might be very tempted to do that, unless the charge could be justified in a different way. On the fixed service charge side, although I accept that there is the potential for these kinds of challenges, conceptually that needs to be balanced with the fact that when the contract was entered, an agreement was made to consent to that amount, for whatever reason—good or otherwise. That is why we are pursuing this. However, I take the hon. Gentleman's broader point.

Rachel Maclean: This discussion goes to the heart of some practices and problems that leaseholders have experienced across the sector. On behalf of the many retirement leaseholders, mentioned by the shadow Minister, the hon. Member for Greenwich and Woolwich, I will make a point and ask for reassurance from the Minister.

What we are talking about with this amendment is different from the ground rent issue. Ground rent is a payment for nothing—nothing is being provided—whereas something is being provided for service charges. There is a service, so there is a need for a charge; that is perfectly legitimate. As Conservatives, we do not dispute the fact that there should be financial recompense for services. However, we find ourselves with a problem, the law of unintended consequences and the drivers of business models.

I would welcome if the Minister could touch on this in his response, but my fear is that if ground rents are removed and business models need to adjust to make recompense for that, the natural behaviour of unethical operators in the retirement sector and possibly elsewhere—some are unethical and do not think about the people who bought properties in good faith—will surely be to seek to load their charges, their profit and loss, back on to the service charge in some way. I am not close enough to existing contracts to know whether they will be able to do that with a fixed charge, so the discussion might be better suited to when we talk about the variable charge. The Minister can help me on that.

The broad point stands, however, in the case of someone dealing with the estate of a loved one, perhaps someone who has passed on, is in care, is suffering from dementia or otherwise does not have the capacity to deal with all this—the Minister will be familiar with such cases. They might be stuck with a property that they cannot sell, and that often applies in such cases when service charges are racking up in a way that is difficult for people to get a handle on—

Barry Gardiner: I agree with all the points that the hon. Lady is making. I wonder whether she is aware of the report by Hamptons last year, which said that service charges had increased by 50% over the past five years. That is an indication of just how much of the gouging she is talking about is going on. Furthermore, leaseholders paid a staggering £7.6 billion in service charges last year. Of course, much of that is for the proper renovation of the property, but it seems an extraordinary amount. In fact, 10 years ago, Which? estimated that leaseholders were being overcharged by £700 million.

Rachel Maclean: I thank the hon. Gentleman for bringing those figures to the attention of the Committee. I am familiar with them, as are others. *[Interruption.]* I do not wish to detain the Committee any longer—I can see the Whip making that plain to me. I will leave my remarks there, perhaps to continue at a later point, but the Minister may wish to respond in detail.

Lee Rowley: I, too, do not wish to challenge the patience of my colleague the Whip. There will be people who have existing fixed charges; that should not change. There will also be people who have choices about whether to enter into new fixed charges, whether absolute or indexed to some extent. For an inappropriate attempt to do something with variable service charges, there will be the ability to apply to tribunals. I hope that we are closing off all the options that would allow the kind of instances mentioned.

Matthew Pennycook: I will be brief, so as to dispose of the amendment.

I appreciate what the Minister said. He provided some useful clarity. In particular, he highlighted the practical challenges in addressing this matter, and the potential for landlords possibly moving away from fixed charges and into variable. I think that there is a corresponding risk the other way. I appreciate and take on board what he said about the certainty of the charge.

I think the Minister alluded to the point that I am trying to make, which is that residents should have value for money, and they do not always get it on each occasion. We have deliberately not sought to apply all the protections that apply to variable service charges, but focused on the test of reasonableness. With the help of two former Housing Ministers, I think I had an indication from the Minister that he will do this, but I would appreciate it if the Government went away to satisfy themselves that the protections are in place for that category of leaseholder. On that basis, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Ordered, That further consideration be now adjourned. *—(Mr Mohindra.)*

12.59 pm

Adjourned till this day at Two o'clock.

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

LEASEHOLD AND FREEHOLD REFORM BILL

Eighth Sitting

Thursday 25 January 2024

(Afternoon)

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not later than

Monday 29 January 2024

The Committee consisted of the following Members:

Chairs: Dame Caroline Dinenage, † Clive Efford, Sir Mark Hendrick, Sir Edward Leigh

† Amesbury, Mike *(Weaver Vale)* (Lab)
Carter, Andy *(Warrington South)* (Con)
† Davison, Dehenna *(Bishop Auckland)* (Con)
Edwards, Sarah *(Tamworth)* (Lab)
† Everitt, Ben *(Milton Keynes North)* (Con)
† Fuller, Richard *(North East Bedfordshire)* (Con)
† Gardiner, Barry *(Brent North)* (Lab)
† Glindon, Mary *(North Tyneside)* (Lab)
† Hughes, Eddie *(Walsall North)* (Con)
Levy, Ian *(Blyth Valley)* (Con)
† Maclean, Rachel *(Redditch)* (Con)
† Mohindra, Mr Gagan *(South West Hertfordshire)* (Con)
† Pennycook, Matthew *(Greenwich and Woolwich)* (Lab)
Rimmer, Ms Marie *(St Helens South and Whiston)* (Lab)
† Rowley, Lee *(Minister for Housing, Planning and Building Safety)*
† Smith, Chloe *(Norwich North)* (Con)
† Strathern, Alistair *(Mid Bedfordshire)* (Lab)

Huw Yardley, Katya Cassidy, *Committee Clerks*

† attended the Committee

Public Bill Committee

Thursday 25 January 2024

(Afternoon)

[Clive Efford *in the Chair*]

Leasehold and Freehold Reform Bill

Clause 26

Extension of regulation to fixed service charges

2 pm

The Minister for Housing, Planning and Building Safety (Lee Rowley): I beg to move amendment 46, in clause 26, page 42, line 19, leave out ", and subsection (2)".

This amendment is consequential on NC6.

The Chair: With this it will be convenient to discuss the following:

Clause stand part.

Government new clause 6—*Notice of future service charge demands.*

Lee Rowley: The amendment is consequential on Government new clause 6, which introduces a requirement for landlords to provide a future demand notice under section 20B of the Landlord and Tenant Act 1985 if the landlord has incurred costs and cannot issue a demand for those costs within 18 months. The new clause makes it clear that a future demand notice applies only in respect of variable service charges; as a result, there is no longer a need to include the reference to section 20B(2) in clause 26, which otherwise seeks to provide clarity on what measures apply to all service charges and what measures apply only to variable service charges. I commend the new clause to the Committee.

I turn to clause 26. It is important that all leaseholders have access to appropriate information on what they are paying for and the condition of their building. That will help them to determine whether their landlord is providing an adequate service or whether they are being overcharged. Many landlords already provide a good service; however, some do not, and that must change. The existing regime is geared up to protect leaseholders who pay variable service charges. There are some leaseholders who pay fixed service charges, and those leaseholders do not enjoy the same protections. Leaseholders who pay fixed charges have a right to receive a good-quality service, which means having a better understanding of how their funds are being used, as well as having access to key information on matters that are important to them, as we discussed before we adjourned.

Clause 26 extends part of the regulatory framework on the provision of information to cover leaseholders who pay fixed service charges. Subsection (2) amends section 18 of the Landlord and Tenant Act 1985 to create separate definitions of "service charge" and "variable service charge". That enables the Government to provide clarity on which provisions in the 1985 Act apply only to variable service charges. Subsections (3) and (4) amend the 1985 Act to ensure that parts of the regulatory regime continue to apply only to leaseholders who pay variable service charges—that includes, for example, the ability to challenge the reasonableness of the service charge under section 19 of the Act. The measure will ensure that leaseholders paying fixed service charges are entitled to receive information of relevance to them. I commend the clause to the Committee.

I return to Government new clause 6. When section 20 major works are undertaken, landlords may require a leaseholder to pay for costs up front or pass on costs to the leaseholder once the work has been carried out. Where leaseholders are charged after work is completed, the leaseholder must be issued with a demand for payment within 18 months of the costs having been incurred or, alternatively, be notified in writing within the 18-month period that they will be liable to pay the costs in the future. Failure to meet one of those two conditions will mean that leaseholders are not liable.

There is no prescribed form or content of a notice under section 20B(2) of the Landlord and Tenant Act 1985, which has led to confusion regarding the meaning and effect of the section, and much case law has followed. It has also left leaseholders with uncertainty on whether they will be required to contribute, the amount of their contribution and when the demand for payment could be served; the new clause seeks to provide clarity on all of those. New clause 6 introduces new subsections (3) to (9) into section 20B of the 1985 Act, which will require landlords to specify the amount of costs incurred, the leaseholder's expected contribution and the date by which the demand will be served. The intention is to give leaseholders certainty on costs that have been incurred by the landlord, their own individual liability and when they are likely to receive the demand.

The changes to subsections (2) and (3) require landlords to issue a future demand notice when they will be passing costs through the service charge more than 18 months after the costs have been incurred. Subsection (3) defines "future demand notice" as a notice in writing that relevant costs have been incurred, and that the leaseholder is required to contribute towards the cost by payment of a variable service charge. Subsection (4) sets out that the Secretary of State and Welsh Ministers can, by regulations, specify the form of the notice, the information to be included in it and the manner in which the future demand notice must be given to the leaseholder. Subsection (5) details that regulations by the Secretary of State and Welsh Ministers may specify that information to be included in the future demand notice should include an estimate of the costs incurred; an amount that the leaseholder is expected to contribute to those costs; and a date on or before which it is expected that the service charge will be demanded. We will work with landlords, managing agents and leaseholders to set out what a future demand notice may contain, to ensure that regulations require the right level of information.

Subsection (6) sets out that regulations may provide for a relevant rule to apply where the leaseholder has been given a future demand notice and the demand for payment is served more than 18 months after costs were incurred. Subsection (7) sets out the relevant rules and the leaseholder's liability to pay the service charge where a future demand notice contains estimated costs, an expected contribution or an expected demand date.

Subsection (8) also allows the landlord to extend the expected demand date in cases specified by regulations. That might be because of unexpected delays in completing the work, for example. The measures seek to provide leaseholders with more certainty on costs. I commend the new clause to the Committee.

Amendment 46 agreed to.

Clause 26, as amended, ordered to stand part of the Bill.

Clause 27

SERVICE CHARGE DEMANDS

Matthew Pennycook (Greenwich and Woolwich) (Lab): I beg to move amendment 11, in clause 27, page 43, leave out line 12.

This amendment would remove provision for the appropriate authority to exempt certain categories of landlord from the requirements relating to service charge demands set out in subsection (1) of the clause.

Clause 27 replaces provisions in the 1985 Act with a new provision that imposes a simple requirement on landlords to demand payment of a service charge using a specified form, rather than, as is presently the case, in accordance with the terms under the lease in question—or, in the absence of any such provisions, in any manner that suits them. We very much welcome the clause, which should ensure that service charge demands and annual reports are provided to leaseholders in a standardised format. If it works well, the clause is likely to have the most widespread practical impact of any provision in the Bill, given that many hundreds of thousands of service charge demands each year will have to be in a prescribed form.

The clause will also ensure, by means of inserting proposed new section 21C into the 1985 Act, that where the demand for service charge payments is not in the specified form, containing the specified information and provided to the leaseholder in the specified manner, the lease provisions relating to late or non-payment do not apply to the charge in question, and there is no obligation to pay until they are met. There is also a new sanction for non-compliance, which we will consider in due course. The effectiveness of the provisions in the clause will ultimately rely on enforcement, but new section 21C should ensure that the majority of freeholders and managing agents comply with the requirement to issue a service charge in the standardised form.

We do, however, have two concerns about aspects of the clause. Amendment 11 addresses the first of those concerns, which relates to exemptions from the requirements being introduced. New section 21C(3) confers powers, by regulations subject to the negative procedure, on the appropriate authority to exempt certain landlords. We have reservations about the inclusion of such powers, because they could be used to exempt entire categories of landlords from the requirements set out in subsection (1), and thereby deny large numbers of leaseholders the benefits that they would otherwise secure as a result of their application. Amendment 11 simply deletes subsection (3)(a) to remove the power to provide exemptions from subsection (1) for certain types of landlords. We hope the Minister will consider accepting it. If not, we would be grateful for some clarity on what kind of landlords the Government believe might need to be legitimately exempted from the relevant requirements, and some reassurance that the power will be used sparingly and in an extremely limited manner.

Lee Rowley: I thank the shadow Minister for his amendment. We will resist it for reasons that I will give, and I hope I can reassure him to the extent that he does not seek to push it to a vote. I am happy to give at least one instance of a good reason for exempting landlords now or in future: there are cases where it may be too costly or disproportionate to expect a landlord to provide this degree of information, or where doing so is unnecessary. An example that I was not aware of before I was told is a freeholder of two flats who resides in one of them; that is known as a Tyneside or criss-cross lease, which became common in the north-east of England in the 19th century. Given the limited number of people who live in there, and the reason for that structure, we would deem it unnecessary to provide this form, hence the ability to exempt.

However, to address the hon. Gentleman's key point, notwithstanding individual exemptions, I am happy to place on record that once we have consulted, understood people's views, taken on the broad range of views about this, and potentially found other things like criss-cross leases, we would expect any list to be very small indeed. We share the clear hope that the power will be used only where it is absolutely necessary, and certainly not to the extent that the hon. Gentleman fears. I hope that, on that basis, he may consider withdrawing his amendment.

Matthew Pennycook: I thank the Minister for that response. I was also unaware of criss-cross or Tyneside leases, although the Opposition Whip, my hon. Friend the Member for North Tyneside, indicated to me during the Minister's remarks that she used to live in one, so she will have some familiarity with them. On the basis of the Minister's response, and given the reassurances that he has provided, I am happy to withdraw the amendment. It is our hope that the measure will apply to very limited categories of landlord, and I think that the Minister indicated as much, so very few leaseholds will be exempt from the requirements. On that basis, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Lee Rowley: I beg to move amendment 47, in clause 27, page 43, line 24, after "1987" insert "('the LTA 1987')"

This amendment and Amendment 54 align references to the Landlord and Tenant Act 1987 with other references to Acts.

The Chair: With this it will be convenient to discuss Government amendments 54 and 124.

Lee Rowley: Amendments 47 and 54 are required because of new clause 9, which amends the Landlord and Tenant Act 1987. They ensure that references to the Landlord and Tenant Act 1987 are aligned with other references to Acts, by adopting the abbreviated reference. Amendment 124 is consequential on amendments 47 and 54; it aligns references to the Landlord and Tenant Act 1987 with other references to Acts in the Bill. I commend these amendments to the Committee.

Amendment 47 agreed to.

Matthew Pennycook: I beg to move amendment 12, in clause 27, page 43, line 38, at end insert—

"(c) in section 48 (notification by landlord of address for service of notices), after subsection (3) insert—

'(3A) Subsections (2) and (3) do not apply in relation to a written demand for payment of a service charge if section 21C of the Landlord and Tenant Act 1985 requires the demand to include information which subsection (1) also requires to be provided to the tenant.'"

This amendment would ensure consistency between the information requirements provided for by Clause 27 and specific contractual requirements set out in leases.

Amendment 12 addresses our second concern with clause 27, which relates to consistency between it and existing contractual requirements. This issue came to our attention purely as a result of written evidence—actually, to be precise, I think it was as a result of a blog post—from Mark Loveday of Tanfield Chambers. He drew attention to the fact that the amended provisions in this clause are likely to supplement, rather than replace, contractual requirements in some existing leases about the form of demands for payment. There is therefore potentially a risk of confusion and duplication. Mr Loveday also highlighted the overlap between provisions in the 1987 Act relating to the information to be furnished to tenants, and the fact that clause 23(4) does not disapply the information requirements of section 48 of the 1987 Act.

I throw my hands up: this is far from my most elegantly drafted amendment. It is simply an attempt to probe the Government on the consistency between the information requirements provided for by this clause and provisions in 1987 Act relating to specific contractual requirements set out in leases. I look forward to hearing the Minister's thoughts on the amendment, and on the general need to ensure complete consistency between the measures being introduced by clauses 26 to 30 and those in the 1985 and 1987 Acts that set out the main limitations on variable service charges in residential leases.

Lee Rowley: I thank the hon. Gentleman for his amendment. The advice that I have received is that the amendment is unnecessary. Sections 47 and 48 of the 1987 Act already prescribe that landlords must give details of their name, and an address in England or Wales where they can be served with notices, when making a demand for rent or other sums, including service charges. Clause 27(4) provides clarity on the fact that if there is an overlap between information required under proposed new section 21C of the LTA 1985 and the obligations under the 1987 Act, proposed new section 21C takes precedence. For example, if the new standardised service charge demand form requires a landlord to give the same information as is provided under sections 47 and 48 of the 1987 Act, proposed new section 21C would take precedence, and failure to provide the information would be dealt with by the provisions of the proposed new section.

Critically, the new standardised demand form will not restrict the amount of information that must be provided with a demand. Landlords will be able to provide additional information on the demand form if they wish. That may include any information set out in the lease. Unless we have missed something, we believe that, for that reason, the amendment is unnecessary, and request that it be withdrawn.

2.15 pm

Barry Gardiner (Brent North) (Lab): I think the Minister referred to section 47 of the Landlord and Tenant Act 1987. Is he entirely confident that that is effective? I have a case in my constituency, in Wembley Central Apartments. The co-developers have sold on and on, and the owner is now in the Cayman Islands. The UK address to which one can apply is that of the managing agents, Fidum, but Fidum says, "We have asked our principals, and they say that they have asked their principals," and it goes all the way to the Cayman Islands, and one gets nothing back. The leaseholders have been desperately trying to access the information for months. They have served the correct notice to the correct address in the UK, but they still cannot get the information that they require.

Lee Rowley: I recognise that in some instance it is an incredibly frustrating process to go through. As I know the hon. Gentleman will appreciate, this is a pretty technical element of policy. The assurances that I have received from officials and experts involved is that the legislation should cover those bases. There will always be challenges around finding people and going through operational processes. There will be challenges in finding people who do not want to be found easily, but ultimately the law is clear that they need to be found. From that perspective, I think that the law is sufficient. We do not think anything has been missed, but if something has, we will happily receive further correspondence and consider it.

Matthew Pennycook: I will be brief. My hon. Friend the Member for Brent North raises an interesting point. Can the Minister—if not now, then perhaps in writing—expand on whether, where a landlord has not complied with the relevant requirements, proposed new section 21C means that the provisions relating to late or non-payment do not apply? Does it provide that level of protection? The hope is that it does.

On the general point, I welcome the clarification and assurances that the Minister has provided. On that basis, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Question proposed, That the clause, as amended, stand part of the Bill.

Lee Rowley: Service charge demands are one of the most important ways in which leaseholders receive information from their landlord, as we have been discussing. Under current arrangements, landlords are required to issue any service charge demand in accordance with the terms of the lease, or otherwise in a manner that suits them. That has led to variable practice in the sector, which has often been to the detriment of the leaseholder, who then gets confused about what they are paying for and has to spend time chasing the landlord for more information.

Proposed new section 21C enables the Secretary of State and Welsh Ministers to prescribe a standard form and the information that it should contain. We will work closely with leaseholders, landlords and managing agents to ensure that we prescribe both the right information and the right level of detail. Proposed new section 21C(2) makes it clear that a failure to provide information in the new standard format will mean that the leaseholder does not have to pay the charge until the failure is remedied, and any provisions in the lease for non-payment will not apply. The Secretary of State will also have the power to create any exemptions if our work with stakeholders demonstrates that there is a good case for any landlord being excluded, either now or in the future.

Clause 27(2) omits existing legislation relating to obtaining information on a summary of costs, as well as other unimplemented legislation surrounding service charge demands. Those measures will be superseded by the provisions we are implementing in part 3 of the Bill, so it is not necessary to retain them. That measure, alongside others, should ensure that landlords provide relevant information to leaseholders, and I commend the clause to the Committee.

Question put and agreed to.

Clause 27, as amended, accordingly ordered to stand part of the Bill.

Clause 28

ACCOUNTS AND ANNUAL REPORTS

Barry Gardiner: I beg to move amendment 130, in clause 28, page 44, line 17, at end insert—

"(iii) a statement of all transactions relating to any sinking fund or reserve fund."

This amendment would require the written statement of account which the landlord will be required to provide to a tenant to include a statement of all transactions relating to any sinking fund or reserve fund in which their monies are held.

This amendment would require the written statement of account, which the landlord will be required to provide to a tenant, to include a statement of all transactions relating to any sinking or reserve fund in which their moneys are held. Sinking or reserve funds in England and Wales contain literally millions of pounds. Even the smallest block of flats will have a fund of tens of thousands of pounds, yet leaseholders find that they cannot get information about what is happening with it. A landlord may be raiding it to meet their cash-flow problems, in the hope—which is not always fulfilled—of putting the money back later. If millions of pounds is held in a reserve account, leaseholders want to know what interest they may be earning on those funds or whether it is being quietly siphoned off by the landlord.

The amendment would require the written statement of account, which the landlord will be required to provide to a tenant, to include a statement of all transactions relating to any sinking or reserve fund in which their moneys are held. As colleagues will remember from the evidence session that we had before we started our line-by-line scrutiny of the Bill, Martin Boyd of LEASE—the Leasehold Advisory Service—and Andrew Bulmer of The Property Institute said that this provision was really important to include; indeed, it is now part of their voluntary code. They pointed out that it was originally included in the Commonhold and Leasehold Reform Act 2002 but was never brought into force.

The provision is particularly dear to me because it is what started my campaigning for leasehold reform 26 years ago. A group of leaseholders in Mountaire Court came to me and explained that they had each paid £23,000 to their landlord, who was the head leaseholder. They lived in a block of 30 flats, so the total was well over £600,000. They said that the head leaseholder had gone into liquidation and that their money had gone. At that point, the freeholder came to them and said that they were prepared to do some of the work. The leaseholders had been arguing that the work should be done. The freeholder then came to them and said, "Yes, we'll do the roof and the windows, but we need you to pay us £6,000 each to do that," in addition to the £23,000 they had already incurred. They came to me and asked, "What guarantee do we have that our moneys are not going to be filched away in the same way as the original funds?"

I tracked back through Companies House—I think there were 156 different companies, which were ultimately registered, through Daejan Holdings, to Freshwater—to find out that the head leaseholder, who had gone into liquidation, had signed form 397, which allowed Freshwater to take any moneys that were left with the head leaseholder. All that money had gone back to Freshwater, and there was no way of accounting for it. The debate that I held with the then Minister at that time started the campaign. He said, "This is outrageous. These moneys should be held in some sort of escrow account." They were not, however, and the leaseholders had no access to what was happening. It is important that there is real accountability for reserve funds, because at the moment it is being held blind from the people who are paying the money.

Lee Rowley: I am grateful to the hon. Member for his amendment. When I was a councillor in a location not too far away from him a number of years ago, I had similar experiences with the challenges of sinking funds, so I completely appreciate the point he makes. The amendment would prescribe that landlords provide specific information to leaseholders. I agree that they should have access to relevant information. My pushback is merely about where we put this as opposed to what we do, subject to consultation. I am very sympathetic to many of the points he made.

Clause 28(2) does give the appropriate authority the power to prescribe other matters that should be included as part of a written statement of account. We need a consultation to give relevant parties the ability to debate and discuss that and give their views. We must ensure that it is proportionate and cost-effective, but once we have gone through that consultation, I think there is a strong case for ensuring that there is sufficient information as he has outlined to some extent.

Barry Gardiner: I am grateful to the Minister for what he has said, but the strongest protection would be to have it on the face of the Bill. Even when it was on the face of the 2002 Act, the Government never brought it into force. So this is not something we have not had previously. It is right there in legislation for a leaseholder to have access to this information, but we have never brought it in. What the Minister is suggesting is actually a regressive step, taking leaseholders further away by saying, "We'll do it through secondary legislation now."

I really do think it is important to have this on the face of the Bill. We know how Committees work. I know the Minister cannot accept the amendment now, but I would ask him to go away and come back on Report. If he comes back with his own amendment to achieve the objective, I will be delighted.

Rachel Maclean (Redditch) (Con): Will the hon. Gentleman give way?

The Chair: Order. I am not surprised the hon. Lady has mistaken that intervention for a speech. It was a very long intervention—

Eddie Hughes (Walsall North) (Con): It's like those leases he keeps talking about; they just keep rolling round.

Barry Gardiner: Oh yes, I was intervening.

Lee Rowley: Thank you, Mr Efford. Would my hon. Friend the Member for Redditch like to intervene on me?

Rachel Maclean: I thank my hon. Friend the Minister. Perhaps he would like to ask whether, given his extensive history and detailed knowledge on the subject, the hon. Member for Brent North knows why those provisions were not brought in following the 2002 Act. Or perhaps the Minister would like to update us if he has that knowledge for the Committee.

Lee Rowley: Sadly, I confess to not having that knowledge from back when I was at university; I probably was not studying the right things. I appreciate the point from my hon. Friend the Member for Redditch that there has been an opportunity for this to be implemented under Governments of both parties and it has not been done. I am always happy to listen to the hon. Member for Brent North, and I do appreciate the point he is making. It is this Government's intention to move forward with this, albeit through secondary legislation, which I know he has concerns about. I am happy to put that on the record on the assumption and hope, at least on the Conservative side, that we are in government when this happens. I hope he will not press his amendment.

Barry Gardiner: I will press the amendment to a vote because I think it is important that we have it on the record.

2.30 pm

Question put, That the amendment be made.

The Committee divided: Ayes 5, Noes 7.

Division No. 6]

AYES

Amesbury, Mike	Pennycook, Matthew
Gardiner, Barry	
Glindon, Mary	Strathern, Alistair

NOES

Davison, Dehenna	Mohindra, Mr Gagan
Fuller, Richard	Rowley, Lee
Hughes, Eddie	
Maclean, Rachel	Smith, rh Chloe

Question accordingly negatived.

Barry Gardiner (Brent North) (Lab): I beg to move amendment 131, in clause 28, page 44, line 34, at end insert—

"(4A) Any of the contributing tenants, or the sole contributing tenant, may withhold payment of a service charge if the tenant has reasonable grounds for believing that the payee has failed to comply with the duty imposed by subsections (1) to (4); and any provisions of the tenancy relating to non-payment or late payment of service charges do not have effect in relation to any period for which a service charge is withheld in accordance with this subsection."

This amendment would enable leaseholders to withhold service charge payments where the landlord has failed to comply with the obligation to provide a written statement of account in the specified form and manner within the six month period from the end of the financial year.

The Chair: With this it will be convenient to discuss the following:

Amendment 13, in clause 28, page 45, line 4, at end insert—

"(8) Where a landlord of any such premises fails to comply with the terms implied into a lease by subsection (2), any rent, service charge or administration charge otherwise due from the tenant to the landlord shall be treated for all purposes as not being due from the tenant to the landlord at any time before the landlord does comply with those subsections."

This amendment would require courts and tribunals to treat the landlord's compliance with the implied term requirement for annual accounts and certification as a condition precedent to the lessee's obligation to pay their service charges.

Amendment 14, in clause 28, page 45, line 40, at end insert—

"(9) Where a landlord fails to comply with subsection (1), any rent, service charge or administration charge otherwise due from the tenant to the landlord shall be treated for all purposes as not being due from the tenant to the landlord at any time before the landlord does comply with that subsection."

This amendment would require courts and tribunals to treat the landlord's compliance with the implied term requirement for annual accounts and certification as a condition precedent to the lessee's obligation to pay their service charges.

Barry Gardiner: Amendment 131 would enable leaseholders to withhold service charge payments where the landlord has failed to comply with their obligation to provide a written statement of account in the specified form and manner within the six-month period from the end of the financial year that is specified in the legislation. Arguably, it is more important for leaseholders that the accounts are presented in time than that they are presented in a specific form. I welcome what the Government have done to make sure that accounts are presented in a specific form, but the real crux of the matter is: are they presented in time? The amendment would enable leaseholders to have redress if they were not.

We heard in the evidence sessions of that huge imbalance of power in the leasehold system. Given that the Government already accept the principle of leaseholders withholding service charge moneys where they have not been demanded by a landlord in the right way, surely we should rebalance that imbalance of power in the landlord-tenant relationship in leasehold by permitting them to withhold service charges when they are not forthcoming within that allotted time. I believe that policy was also in the 2002 Act, but again, as with the provisions on sinking funds, it was not brought into force.

I also welcome amendments 13 and 14. Certainly, the former achieves something similar—maybe even better. If the Minister were able to give me an assurance that he were willing to accept amendment 13, tabled by my hon. Friend the Member for Greenwich and Woolwich, I might even be persuaded to withdraw amendment 131.

Matthew Pennycook: I rise to speak to speak to amendments 13 and 14. As I think my hon. Friend the Member for Brent North just touched upon, clause 28 inserts new sections 21D and 21E into the 1985 Act to

create a new requirement for a written statement of account to be provided by landlords within six months of the end of the 12-month accounting period for which variable service charges apply. It also places an obligation on landlords to provide an annual report to leaseholders. We welcome the clause, as did my hon. Friend the Member for Brent North, for the reasons discussed in the evidence sessions last week. The 2002 attempt to mandate a form of regular service charge accounts and statements was ultimately unsuccessful, with the replacement section 21 of the 1985 Act never brought into force. As a result, service charge processes remain unstandardised.

A staggering range of different procedures are being used across the country. Some leases specify the form that annual budgets and accounts must take, while others do not. Some require certification by the freeholder, managing agent, management company, accountant or auditor, while others do not. Some prescribe deadlines by which budgets or accounts must be produced and make adherence to those conditions a precedent to liability to pay a service charge, while others do not.

Clause 28 clearly seeks to overhaul this fragmented patchwork of arrangements by introducing the new section 21D, making annual accounts and certification by a qualified accountant a mandatory requirement and, through new section 21E, introducing a statutory duty to provide leaseholders with an annual report about their service charges. By introducing the mandatory requirements that it does, new section 21D(2) implies a term into leases of dwellings with variable service charge provisions.

In our view, the decision to imply terms raises a number of questions and concerns. First, do the implied terms of new section 21D replace any equivalent existing provisions in the lease? If not, landlords and managers will potentially be forced to prepare two sets of accounts: one under the existing terms of the lease and the other under the new implied terms in section 21D. Secondly, why are no express sanctions for non-compliance included in new section 21D? That point was raised by Amanda Gourlay in the Committee evidence sessions.

Given that the implied terms are not covered by the enforcement provisions in new section 25A—provided for by clause 30—surely it is not the Government's intention to require leaseholders to apply for specific performance through the courts when it comes to this matter. Thirdly, despite the clause including no right to recover implied costs, there is a risk that some landlords will nevertheless seek to recover the extra costs of complying with these requirements through service charges. Can we be sure that leaseholders will not find themselves picking up the bill for complying with the new mandatory requirements? I would welcome the Minister's response to each of those questions and concerns, in writing if he is not able to address each in detail today—they are very specific and technical.

Perhaps the more significant question that arises from the decision to imply terms by means of new section 21D is whether the landlord's compliance with those terms will be treated by the courts and the tribunal as a condition precedent to the lessee's obligation to pay their service charges. We believe it is important that it is made clear in the Bill that compliance with the implied terms in question is a condition precedent to the lessee's obligation to pay their service charges and that, by implication, leaseholders are not required to pay if the landlord does not comply with the implied terms. Amendments 13 and 14 would have that effect, with the same desired outcomes as the welcome amendment 131, in the name of my hon. Friend the Member for Brent North, but without the tribunal potentially having to arrive at a judgment on the state of mind of the leaseholder who is withholding their charge. I hope the Minister will accept those amendments as a means of providing the necessary clarification.

Lee Rowley: I thank the hon. Members for Brent North and for Greenwich and Woolwich for their amendments.

Amendment 131, in the name of the hon. Member for Brent North, seeks to enable leaseholders to withhold payment of their service charges when accounts are not provided within six months. I absolutely agree with the sentiment that information must be provided in a timely manner, and that there have to be consequences for not doing so. However, the question is whether withholding the service charge is a proportionate and effective means of doing so; the effective question is whether the risk of doing so creates unintended consequences. For example, were a leaseholder to withhold payments in circumstances where it is found that section 21D had been complied with, that may render the leaseholder liable to pay their landlord's litigation costs, depending on the terms of the lease. Withholding payments also creates consequences for other leaseholders and may eventually mean that works are not carried out. I recognise that that is not the intention or the point that the hon. Gentleman is making, but in the portion that we are looking at, it is important that we consider all potential unintended consequences.

Services of certified accounts will, for most landlords, be a necessary step for a landlord to identify whether they have spent more than estimated during the accounting period and, where the costs incurred during that period are more than was estimated, the landlord will wish to serve a further demand to recover the shortfall. It is in the landlord's interest to do that, but I recognise that not all landlords act in a completely rational way or a way that necessarily follows logic. Should a landlord, however, fail to issue a demand for costs within 18 months of those costs having been incurred, then through new clause 6, the leaseholder would not be liable to contribute towards those costs at all.

I realise that that answer will probably not address every part of the concern expressed by the hon. Member for Brent North; it is the same as when I applied that logic to the amendment in the name of the hon. Member for Greenwich and Woolwich. However, I hope it demonstrates both that we are clear that it should be done—that there is a logic, an incentive and a rationale for it to be done—and that there is ultimately a cliff at the end of it, a cut-off point in the event that they do not do it. I hope that provides some assurances; I will see whether that is enough to tempt the hon. Member for Brent North to withdraw his amendment.

Barry Gardiner: I appreciate what the Minister has said about that cliff edge of 18 months. We have talked about cynicism in this Committee before, but let me tell the Minister what I believe may happen. I think a landlord who is withholding information will decide that they can now do so with impunity for 17 months and

[Barry Gardiner]

28 days, and then they will serve the required information up on a plate. The provision is almost tempting them to do that. If the Minister is going to rely on that, rather than looking at the question again in further detail, I urge him to reduce that timeframe substantially. I will not put a figure on it—I do not say that it should be 12 months, or nine months—but it should be reduced substantially. However, I am very happy to withdraw my amendment in favour of amendment 13.

The Chair: That was an intervention; I will come back to you.

Lee Rowley: I am grateful to the hon. Gentleman for his comments in that regard. To save time, the same logic applies from our perspective to amendments 13 and 14, and I hope that at least in part reassures him—I will wait to hear his comments, but I encourage him to withdraw his amendment if it does.

Barry Gardiner: I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Matthew Pennycook: Mr Efford, may I respond to the Minister's comments on amendment 13?

The Chair: No, you have missed that chance, I am afraid. We are in the votes.

Matthew Pennycook: In that case, I will press the amendment to a vote without justifying it.

Amendment proposed: 13, in clause 28, page 45, line 4, at end insert—

> "(8) Where a landlord of any such premises fails to comply with the terms implied into a lease by subsection (2), any rent, service charge or administration charge otherwise due from the tenant to the landlord shall be treated for all purposes as not being due from the tenant to the landlord at any time before the landlord does comply with those subsections."—*(Matthew Pennycook.)*

This amendment would require courts and tribunals to treat the landlord's compliance with the implied term requirement for annual accounts and certification as a condition precedent to the lessee's obligation to pay their service charges.

Question put, That the amendment be made.

The Committee divided: Ayes 5, Noes 7.

Division No. 7]

AYES

Amesbury, Mike	Pennycook, Matthew
Gardiner, Barry	
Glindon, Mary	Strathern, Alistair

NOES

Davison, Dehenna	Mohindra, Mr Gagan
Fuller, Richard	Rowley, Lee
Hughes, Eddie	
Maclean, Rachel	Smith, rh Chloe

Question accordingly negatived.

Question proposed, That the clause stand part of the Bill.

Lee Rowley: We have already talked about this, but in summary, most landlords are required under the terms of the lease to provide leaseholders with a written statement of accounts. Where leaseholders feel they have not been provided with sufficient information, they may ask for a written summary of costs for the past accounting period or, if the accounts have not been made up, for the period of 12 months ending with the date of the request.

We know that the current arrangements, as we have just discussed, do not provide adequate statutory protection. Although many landlords provide their leaseholders with sufficient information, others fail to do so. Subsection (2) of clause 28 introduces two new measures to address that. Proposed new section 21D of the 1987 Act implies into leases a new requirement for landlords who charge variable service charges and manage blocks of four or more dwellings. The threshold reflects existing arrangements for the preparation of a summary of costs. We are placing an obligation on such landlords to provide a written statement of account to leaseholders within six months of the end of the 12-month accounting period. This statement must be certified by a qualified accountant.

Matthew Pennycook: The Minister provides me with the opportunity to get my justification in, but, without going through it, he can answer the question that underpinned amendments 13 and 14 by simply telling me whether the decision to imply terms, as new section 21D does, means that a landlord's compliance with them is to be treated as a condition precedent to the lessee's obligation to pay their service charges.

Lee Rowley: I am grateful to the shadow Minister for his question, and, because of its specifical legal and technical nature, I will write to him. I know that members of the Committee may wish to seek assurances about the word "arising", which was referenced in evidence last week. I am happy to give the assurance that we will consult accountants on to how to present these service charge accounts, which I hope will mean that there is a process to ensure that any necessary clarification of particular terminology will be clear to those who operate within it.

2.45 pm

Rachel Maclean: In the same evidence session, we also heard Amanda Gourlay's concern about the nature of the accounts being mandated, and she said that it is not something that she would recognise as a set of accounts because it does not have a balance sheet or expenditure. I think the Minister said that a chartered accountant will have to sign off on them. Can he reassure members of the Committee that that will address the concern raised with us by Amanda?

Lee Rowley: I thank my hon. Friend for her question. Yes, that is my understanding, and, as part of the response in writing, we will clarify that.

To conclude, new section 21E places an obligation on landlords to provide an annual report in respect of service charges and other matters likely to be of interest to the leaseholder arising in that period.

Barry Gardiner: Could the Minister clarify a point for me? Obviously, there are different forms of accounts, such as short-form accounts and audited accounts.

In what he is proposing, as I understand it, there is no compulsion to have an audit of the service charges shown in those accounts. The certified accounts happened in blocks already, but they are pretty meaningless because the freeholder appoints the accountants and tells them what form they want them in. Surely the key is having not just the accounts but the service charges audited as proper.

Lee Rowley: I am going to include that in my written response, too, because I know that the specifics of the definition of audit are quite different from other aspects of this question. My understanding is that we will prescribe in secondary legislation what needs to be provided. Given that an accountant will be a part of that, they will have to ensure that the audit conforms to their usual codes of practice. I will write on the specifics to ensure that I have given sufficient information.

Richard Fuller: As the Minister is contemplating what he will put in his letter, including a response to the hon. Member for Brent North, could I gently remind him that auditing is an expensive procedure? There will be a number of instances where these accounts might fall short of what would be required under existing Companies House legislation. There are some metrics and things out there that the Government could use, but he should bear in the mind the cost of auditing.

Lee Rowley: My hon. Friend is absolutely right. One of the reasons why I want to write is that I want to ensure that the specific elements and substantive parts of the concept of audit are represented to the Committee in the most accurate way. We have to strike a balance by ensuring that sufficient information is made available for decisions to be made, but equally we cannot create a process that is so involved, for what I am sure are very good reasons, that it would be disproportionate, and then create a whole heap of new consequences on the other side, which is what we are trying to avoid.

To conclude, new section 21E places an obligation on landlords to provide an annual report. For service charges, that report must be provided within one month of starting a 12-month accounting period, although it can be provided earlier if it is expedient to do so. Both new sections allow the Secretary of State, as we have already discussed, and Welsh Ministers to prescribe the detailed content in secondary legislation. We will work closely with interested parties when we come to do that. Subsections (3) and (4) make consequential changes to the definition of "qualified accountant" under sections 28 and 39 of the 1985 Act to reflect these new sections. I commend the clause to the Committee.

Question put and agreed to.

Clause 28 accordingly ordered to stand part of the Bill.

Clause 29

Right to obtain information on request

Matthew Pennycook: I beg to move amendment 15, in clause 29, page 46, line 19, at end insert—

"(3) Information specified for the purposes of section (1) must include accruals and prepayments and digital copies of service charge accounts."

This amendment would ensure that regulations made by the appropriate authority must provide tenants with the right to accruals and prepayments and digital copies of service charge accounts.

As things stand, leaseholders only enjoy the right to request a summary of relevant costs and inspect supporting documentation in relation to such a summary. Barring a disclosure order made during tribunal proceedings, there are few direct means for leaseholders to secure relevant information. Clause 29 makes a series of changes to the 1985 Act to provide for a new stand-alone right for leaseholders to request information from their landlord, and we welcome it.

Precisely what such a right will entail will largely be set out in regulations that will presumably not only specify the relevant categories of information that can be requested and obtained, but the relevant timelines for compliance. We take no issue in principle with the detail being brought forward by statutory instrument—for obvious reasons—but we have tabled amendment 15 to ensure that the information that ultimately can be lawfully requested by leaseholders under clause 29 includes accruals and prepayments, as well as digital copies of service charge accounts.

We feel that statutory access to accruals and prepayments is vital because they are prepared on a true and fair basis and are necessary to understand most service charge accounts. The case for ensuring that service charge account information can be accessed by leaseholders in a digital format is, we hope, self-evident. I hope the Minister will consider accepting the amendment or, if he feels that he cannot, will at least provide the Committee with robust assurances that the relevant regulations will in due course specifically include accruals and prepayments and digital copies of accounts in the categories of information that can be requested.

Lee Rowley: I do not seek to detain the Committee, and I hope the hon. Gentleman will accept my short response. I am not disregarding the substantive points of the amendment, but some of them we have discussed before. I accept that this is an important area and we have to get it right. We must make sure that the information prescribed in the process works and is comprehensive enough for people to get a true understanding of what is going on and proportionate enough to make it meaningful and not incur unnecessary costs. I agree with the hon. Member that leaseholders should have access to the relevant financial information and that that information should be clearly understood and articulated so that people can derive decisions and comfort from it.

The Government prefer that the detail is prescribed in secondary legislation and are committed to consulting. It is fair to say that the details will be key parts of a discussion about the feasibility of inclusion in the final decision when it is made.

Matthew Pennycook: I welcome that response from the Minister. On that basis, I am happy to beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Matthew Pennycook: I beg to move amendment 16, in clause 29, page 48, leave out lines 1 to 8 and insert—

"(4) P may not charge R any sum in excess of the prescribed amount in respect of the costs incurred by P in doing anything required under section 21F or this section.

(5) The prescribed amount means an amount specified in regulations by the appropriate authority; and such regulations may prescribe different amounts for different activities.

(6) If P is a landlord, P may not charge the tenant for the costs of allowing the tenant access to premises to inspect information (but may charge for the making of copies)."

This amendment would make the appropriate authority (i.e. the Secretary of State or the Welsh Ministers) responsible for setting a prescribed amount for the costs of providing information to leaseholders. That prescribed amount would be the maximum amount that freeholders and managing agents employed by them could seek to recover through a service charge.

The Chair: With this it will be convenient to discuss the following:

Amendment 132, in clause 29, page 48, leave out lines 1 and 2.

This amendment would prevent a landlord from recovering the costs of complying with the requirements to provide information imposed by new sections 21F and 21G.

Amendment 133, in clause 29, page 48, line 3, leave out "But,".

This amendment is consequential on Amendment 132.

Matthew Pennycook: Arguably of more importance in ensuring that clause 29 is beneficial to leaseholders than the type of information that they will henceforth have the right to request and what form it is shared in is the need to protect them from excessive charges levied for providing that information. As it stands, subsection (4) of new section 21G of the Landlord and Tenant Act 1985 would allow person P to charge person R for the costs of doing anything required under new section 21F or this new section, while subsection (6) renders those costs relevant for the purposes of a variable service charge. In other words, new section 21F includes an implied right for landlords to recover the costs of supplying the relevant categories of information to leaseholders through the service charges, with penalties for non-compliance under clause 30.

We obviously do not take issue with the right to recover reasonable costs of complying with the mandatory requirements introduced by the clause, but there is an obvious risk, given everything we know about how some landlords in the market operate, that some will charge excessive fees for supplying that information. We have tabled amendment 16 to give the Secretary of State the power, just as the Bill provides for in other respects, to set prescribed amounts with a view to ensuring that leaseholders are not subject to unreasonable costs should they feel they need to request certain categories of information. I hope the Minister can understand the very simple point that the amendment is driving at and will consider accepting it.

Lee Rowley: I am grateful to the hon. Gentleman for moving amendment 16. He does not deny that landlords will incur a cost for answering information requests. The level of cost will vary, depending on the volume of information, the complexity, the period, the timeline and a number of other factors. There may be difficulties in obtaining all that information. Landlords may also incur a cost in chasing other people who hold the information required to answer a leaseholder's request, notwithstanding our earlier conversations about the reasonableness of the costs for talking to other parties.

Given the variety of different scenarios, we start from a place in which it is very difficult to set a cap that would not create another unintended consequence somewhere else. None the less, I note the hon. Gentleman's concern and am happy to confirm that we are listening very carefully on this matter, but I hope he might consider withdrawing the amendment.

Barry Gardiner: Amendments 132 and 133 would prevent a landlord from recovering the cost of complying with a requirement to provide information imposed by new sections 21F and 21G of the 1985 Act, which is very much in line with what my hon. Friend the Member for Greenwich and Woolwich said.

Given that the Government are rightly focusing on reducing costs to leaseholders, these amendments would ensure that a landlord cannot charge leaseholders for giving them information about their home and their charges. We do not charge voters or taxpayers for complying with freedom of information requests, so I am not clear why there should be a distinction here. Many requests and information transfers will now be made electronically. The days when people had to go to the office to pull out hordes of receipts are, I hope, a thing of the past. These requests and transfers should not involve a great deal of expense.

Again, I do not want the Minister to think I am a cynical chap, because I am not, but I know what will happen. There will be the same hierarchies that we talked about earlier. Landlords will create arm's length companies to hold this information in tiers and categories, and they will charge for providing information at each level. That is what they do. We have to understand that it is not a mistake or one bad apple. Many landlords adopt this practice as a way of securing revenue. Painful though it is to admit that our fellow citizens do this sort of thing to each other, they do. We are passing this legislation to try to protect people.

Lee Rowley: I will not detain the Committee, because my response will be similar to the one I gave to the hon. Member for Greenwich and Woolwich.

We accept the broad point made by the hon. Member for Brent North but, for the reasons I outlined previously, we think it would be difficult to do this. There is at least an argument that proportionality has to be considered. However, I am happy to confirm that we are listening very carefully. On that basis, I hope the hon. Member for Greenwich and Woolwich may be willing to withdraw amendment 16.

Matthew Pennycook: I appreciate what the Minister has said, both about the variety of circumstances that need to be covered and about the difficulties with imposing a flat cap. I take on board what he said about the Government listening carefully.

I am minded to press the amendment to a vote purely to indicate how strongly we feel about this issue. The thrust of the five provisions is, "Let's increase transparency and let's increase the enforcement measures," all ultimately to ensure that leaseholders have a better ability to bear down on unreasonable costs, and it is of great concern to us that while we are trying to do that, we are opening up other routes whereby unscrupulous landlords can start to introduce unreasonable costs in relation to the very things that we are trying to clamp down on. We will press the amendment to a vote simply to put on the record our concern in respect of leaseholders needing some protection—even if it is not a flat cap—from unreasonable costs being passed on through this mechanism.

Question put, That the amendment be made.

The Committee divided: Ayes 5, Noes 7.
Division No. 8]

AYES

Amesbury, Mike	Pennycook, Matthew
Gardiner, Barry	
Glindon, Mary	Strathern, Alistair

NOES

Davison, Dehenna	Mohindra, Mr Gagan
Fuller, Richard	Rowley, Lee
Hughes, Eddie	
Maclean, Rachel	Smith, rh Chloe

Question accordingly negatived.

The Chair: Mr Gardiner, is it your intention to press amendment 132 to a vote?

Barry Gardiner: Mr Efford, it is the definition of insanity to do the same thing over and over again, expecting a different result. Therefore I am happy not to press amendments 132 and 133.

3 pm

Question proposed, That the clause stand part of the Bill.

Lee Rowley: As I outlined in relation to clause 28, the Government accept that the current arrangements do not provide adequate statutory protection. In addition to the measures set out in clauses 26 to 28 to drive up transparency, clause 29 introduces new provisions to enable leaseholders to request information from their landlord or a third party who holds relevant information. Subsection (2) introduces proposed new section 21F of the Landlord and Tenant Act 1985, which sets out provisions that enable leaseholders to receive information on request. That information may relate to

"service charges, or…services, repairs, maintenance, improvements, insurance, or management of dwellings."

One example might be a stock condition report for the building. Landlords will be obliged to provide information that they have in their possession, and where they need to ask another person for it, that person is required to do the same.

Proposed new section 21G provides further details on information requests under section 21F. It allows a leaseholder to request that they inspect a document and make and remove a copy of the information. Section 21G also provides that landlords may not charge the leaseholder for providing facilities for access, although they can charge for the making of copies. Alternatively, the landlord can pass the reasonable costs of any inspection through the service charge. This section allows the Secretary of State and Welsh Ministers to specify the time period for providing such information, circumstances in which that period may be extended and how the information is to be provided.

Proposed new section 21H provides that where the lease is assigned, the obligation to provide the information requested under section 21F must still be complied with. However, the person obliged to provide the information is not required to provide the same information in respect of the same dwelling more than once.

Question put and agreed to.

Clause 29 accordingly ordered to stand part of the Bill.

Clause 30

ENFORCEMENT OF DUTIES RELATING TO SERVICE CHARGES

Matthew Pennycook: I beg to move amendment 19, in clause 30, page 49, line 15, leave out "damages" and insert "penalties".

This amendment, together with Amendments 20 to 25, would make clear that the sum to be paid to the tenant in circumstances where a landlord failed to comply with duties relating to service charges is a punishment rather than a recompense for loss to the leaseholder thus ensuring it is not necessary to provide proof of financial loss. See also Amendments 17 and 18.

The Chair: With this it will be convenient to discuss the following:

Amendment 20, in clause 30, page 49, line 27, leave out "damages" and insert "penalties".

See explanatory statement to Amendment 19.

Amendment 21, in clause 30, page 49, line 30, leave out "Damages" and insert "Penalties".

See explanatory statement to Amendment 19.

Amendment 22, in clause 30, page 49, line 34, leave out "damages" and insert "penalties".

See explanatory statement to Amendment 19.

Amendment 23, in clause 30, page 49, line 39, leave out "damages" and insert "penalties".

See explanatory statement to Amendment 19.

Amendment 24, in clause 30, page 49, line 41, leave out "damages" and insert "penalties".

See explanatory statement to Amendment 19.

Amendment 25, in clause 30, page 50, line 2, leave out "damages" and insert "penalties".

See explanatory statement to Amendment 19.

Amendment 134, in clause 30, page 49, line 29, at end insert—

"(4A) An order under subsection (2)(c) or (4)(c) may include an order that the landlord remedy any breach revealed by the application in respect of any other leaseholder.

(4B) Where the tribunal makes on order under subsection (4A), the tribunal may make an order that the landlord, or (as the case may be) D, pay damages to any other leaseholder in respect of whom a breach revealed by the application must be remedied."

This amendment would enable a tribunal to order the remedy of a breach in respect of, and damages to be paid to, a leaseholder affected by a breach revealed by the application to the tribunal, even if that leaseholder is not a party to the litigation.

Matthew Pennycook: Clause 30 substitutes existing section 25 of the 1985 Act, which includes penal provisions dealing with any failure to comply with the relevant provisions, with proposed new section 25A, which decriminalises the sanctions and applies a new enforcement regime. The new enforcement regime will allow a tenant to apply to the appropriate tribunal in instances in which their landlord did not demand a service charge payment in accordance with section 21C under clause 27, failed to provide a report in accordance with section 21E under clause 28, or failed to provide information in accordance with sections 21F and 21G under clause 29. The tribunal will have the power to issue an order that

[Matthew Pennycook]

the landlord comply with the relevant provision within 14 days and that they pay a fine of up to £5,000 to the applicant, or other consequential orders.

We welcome the new enforcement regime, but we have three main concerns about how it will operate in practice. With amendments 19 to 25, we seek to address the first of those concerns, which is our fear that the use throughout clause 30 of the term "damages" may imply that leaseholders are required to provide proof of financial loss for the tribunal to order that the landlord pay a fine for failing to comply with one or more of the modified requirements introduced in clauses 27 to 29. The risk that the tribunal takes that view, and thus stipulates that proof of financial prejudice is required, is real, as we have seen with the reforms made to section 20 of the 1985 Act. We tabled this group of amendments to encourage the Government to consider replacing "damages" throughout the clause with "penalties" to make it explicit that an order for failing to comply with requirements under sections 21C, 21E, 21F or 21G of the 1985 Act requires no proof of financial loss on the part of leaseholders. I look forward to hearing the Minister's thoughts.

Lee Rowley: I thank the hon. Gentleman for amendments 19 to 25, with which, as he indicated, he seeks to adds clarity that any sums paid to the leaseholder where there is a failure to comply are a punishment rather than a recompense for loss. As the Committee is aware, clause 30 will replace the existing and ineffective enforcement measures for failure to provide information with new, more effective and more proportionate measures. That includes allowing the leaseholder to make an application to the appropriate tribunal in cases where landlords have failed to provide the necessary service charge information.

It is the Government's view that the tribunal is the appropriate body to handle such disputes and to determine whether the landlord has failed in their duties, and whether subsequently they are required to pay damages to the leaseholder. In reaching its decision and ordering that damages be paid, the tribunal need only be satisfied on the balance of probabilities that the landlord breached the relevant section. If a financial penalty were applied, the appropriate tribunal would need to be satisfied beyond reasonable doubt that the landlord had breached the relevant section.

While I understand the hon. Gentleman's point on the use of the term "damages", I am advised that its use does not mean that evidence of financial loss is required. Therefore, in aggregate, we consider that financially recompensing the affected leaseholder by way of the payment of damages is both a suitable incentive for the leaseholder to bring the application and a suitable deterrent for landlords, while aligning with the tribunal's powers.

Richard Fuller: The Minister speaks quickly and is knowledgeable about this matter; I just want to put it into everyday speak that the rest of us can understand. I think that the intention behind the Opposition's amendment is to be clear that there is a difference between penalties and damages. They do not want the burden of proof to be on leaseholders, in this case, and there is tremendous merit to that. Whatever we put into law has to be accessible to people. I think the Minister said that if we change the word from "damages" to "penalties", that would raise the hurdle. Can he assure us of his objection to the proposed amendment in everyday speak,? As the Bill is drafted, the hurdle will be lower, and there will be no burden of proof on the leaseholder for the penalties/damages to take effect.

Lee Rowley: As best as I understand it, the situation is exactly as my hon. Friend describes. The threshold is lower, and therefore the provisions are more proportionate, and evidence of financial loss is not required. On that basis, I hope that the hon. Member for Greenwich and Woolwich will withdraw the amendment. I will come to amendment 134 in due course.

Barry Gardiner: Amendment 134 would enable a tribunal to order the remedy of a breach in respect of, and damages to be paid to, a leaseholder affected by a breach revealed by an application to the tribunal, even if the leaseholder is not party to the application. Let me explain why that is appropriate. In an estate in my constituency, Chamberlayne Avenue and Edison Drive, FirstPort was the estate manager. It failed in the case that went to the leasehold tribunal, which was brought by one member of the estate. The tribunal quite correctly found in favour of the leaseholders. However, everybody else on the estate was equally affected, and they are now all having to bring a separate tribunal case against FirstPort in order to receive the same benefits and relief. It seems to me that where that is the case, it would make sense for the tribunal to be able to instruct the landlord that where there has been a failure affecting all the leaseholders, they should remedy that breach to all the leaseholders, not just the one who brought the case, if there are damages.

I was heartily gratified by the explanation that the Minister and the hon. Member for North East Bedfordshire gave about "damages" not being the legalistic sense of damages, because I was beginning to worry that the second part of my amendment might fall foul of exactly what my hon. Friend the Member for Greenwich and Woolwich said. However, if we want to free up and speed up the tribunal system, that would be one way of doing so that would afford great relief to the very many people trapped in that situation.

Lee Rowley: I thank the hon. Gentleman for his amendment, which he has just outlined. The Government are sympathetic to the intention of the amendment. It is not that we do not understand the point that he has made or the point that he articulated in relation to Chamberlayne Avenue; where freeholders behave badly, it should apply across the board, and that is the kernel of the point he makes. The challenge—and I am sorry to be difficult about it—is that, as I know the hon. Gentleman will appreciate, there is a potential ramification to asking a tribunal to make a read-across from one case to every other one. Even though it is highly likely that it will apply to all or almost all of those cases, there is the difficulty of creating the link that makes the assumption that it must apply. For that reason, we do not think we can accept the amendment, although I am sympathetic to the point made by the hon. Gentleman.

Barry Gardiner: I am grateful to the Minister, because it is really good to know that he will consider those points further. Let me therefore make a suggestion:

if the tribunal were given powers through secondary legislation on estate cases where the matter is remedying something about the estate that applies equally to everybody, it should be obvious to the tribunal that anybody living on that estate is equally affected.

Let me give an example. If the managing agent, FirstPort, says that it has mended a fence, and it has charged everybody for mending that fence, but it is found that it did not mend the fence and it was not its fence to mend—this is the actual case. Everybody on the estate received those charges, and everybody on that estate was due therefore to be compensated for them. That will happen in some cases, but I accept what the Minister says. Would it make sense to consider giving the tribunal the power to instruct the managing agent to remedy the breach for any of those similarly affected, such that, if they did not, there was an additional penalty when that case was brought to the subsequent tribunal to prove that they were affected?

Lee Rowley: I am happy to ask the Department to look into that in further detail. I have no personal understanding of whether that would be possible or reasonable and proportionate and not have a series of other consequences, but it is reasonable to look into it further.

Matthew Pennycook: Briefly, I welcome what the Minister said on the issue of damages versus penalties. It could be another word than "penalty", but I hope the point that the amendment tried to make was understood. I am not certain, because I, like him, do not have expertise in the area, whether "damages" could be misinterpreted by a tribunal, notwithstanding what he said. I encourage the Minister to go away and ensure that the reassurance he has given—it is on the record and can be referred to, which is helpful—is understood and cannot be misinterpreted. I think we share the same end: this must be punishment rather than recompense, and leaseholders cannot be expected to provide proof of financial loss. If, as the Minister has indicated, that is the shared intention, I am happy to ask leave to withdraw the amendment, but I hope he will go away and reassure himself further that the tribunal can have no confusion on that point. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

3.15 pm

Matthew Pennycook: I beg to move amendment 17, in clause 30, page 49, line 30, leave out "£5,000" and insert "£30,000".

This amendment would raise the cap on penalties under this section (see explanatory statement to Amendment 19) for a failure to comply with duties relating to service charges to £30,000.

The Chair: With this it will be convenient to discuss the following:

Amendment 142, in clause 30, page 49, line 30, leave out "£5,000" and insert "£50,000".

This amendment would increase from £5,000 to £50,000 the maximum amount of damages which may be awarded for a failure on the part of a landlord to comply with the obligations imposed by new sections 21C (service charge demands), 21E (annual reports), or 21F or 21G (right to obtain information on request) of the Landlord and Tenant Act 1985.

Amendment 18, in clause 30, page 49, line 30, at end insert—

"(6) Penalties under this section must be at least £1,000."

This amendment would insert a floor on penalties under this section (see explanatory statement to Amendment 19) of £1,000.

Matthew Pennycook: Amendments 17 and 18 address our remaining main two concerns about the clause. The first concern, to which we will return when we consider penalties in relation to part 4 of the Bill, is that we are not convinced that a penalty cap of £5,000 is a sufficient deterrent against non-compliance with the requirements in question. For many—not all, but many—landlords, a penalty of £5,000 will be very easily absorbed. The degree to which the sanctions in proposed new section 25A to the Landlord and Tenant Act 1985 bite would obviously be improved if the penalty cap of £5,000 applied to all leaseholders partaking in any given application, rather than them having to share an amount up to £5,000 between them. My reading of proposed new section 25A(5) is that the fine would apply to each person making an application on grounds that the landlord has failed to comply with a relevant requirement, but I would be grateful if the Minister would clarify that point. Is it a single fine, or is it a fine that would apply to each leaseholder involved?

However, even if a fine of up to £5,000 could be awarded to multiple leaseholders, we still question whether it is sufficient—I think that is a point that is worthy of debate. Labour is minded to believe a more appropriate threshold for penalties paid under proposed new section 25A—I remind the Committee that penalties are awarded at the discretion of the tribunal, so they are not automatic—would be £30,000, thereby aligning penalties in the Bill with other leasehold law, such as financial penalties for breach of section 3(1) of the Leasehold Reform (Ground Rent) Act 2022. Amendment 17 proposes such a cap, although we would certainly consider an even higher limit, such as the £50,000 proposed by the hon. Member for North East Bedfordshire.

Secondly, Labour thinks that the functioning of the new enforcement regime would be improved by specifying a floor on penalties in the Bill. In making clear that non-compliance with the relevant requirements will always elicit a fine, landlords will be incentivised to comply. Amendment 18 proposes that penalties under this section must be at least £1,000, with the implication that the tribunal would determine what award to make between the range of £1,000 and £30,000 for each breach. I look forward to the Minister's response to each amendment.

Richard Fuller: I am tempted to frame page 25 of today's amendment paper, because it includes the shadow Minister's amendment 17, which would increase the penalties from £5,000 to £30,000, and my amendment 142, which would increase them from £5,000 to £50,000. I thought it was usually the Conservative party that is pro-business and tries to keep costs on business low, but then I recalled that these penalties apply to people doing something wrong, and of course the Labour party is always soft on criminals.

Seriously, though, the shadow Minister and I have a clear intent, which I am sure is shared by the Minister. A lot of the measures in this part of the Bill are trying desperately to unpick complicated things and rebalance them in favour of people who own their own home but do not run a large business, or people with small financial

[Richard Fuller]

interests, where there are 30 or 40 of them against one person with a significant financial interest that covers all those people. In trying to rebalance things here, we all want to ensure that these measures are as effective as possible and that there is enough encouragement to ensure that the good practice the Government want to see can be done effectively.

The concern that I share with the shadow Minister is that the current levels of penalties just look like a cost of doing business. *[Interruption.]* Indeed! The hon. Member for Brent North has just slapped himself on the wrist, which is probably how many businesses will see it.

Can I gird the Minister's loins and encourage him to take up his shield and his sword of righteousness in defence of individual leaseholders and say, "This amount is too low. We shall change the legislation. This party and this Government stand to make the intent of what we will do to truly bite on those who are doing wrong"?

Lee Rowley: I am grateful to my hon. Friend the Member for North East Bedfordshire and the hon. Member for Greenwich and Woolwich for tabling their amendments. I share their basic conceptual desire, and that of other Committee members, for people or organisations that have done the wrong things to be held to account. There should be penalties that recognise that they have done the wrong thing. The challenge is always going to be where we draw the line.

I recognise that there are multiple parts of the menu on offer. Notwithstanding the very valid points that have been made, it is important not to lose sight of the fact that the Government are doubling the number from £2,500 to £5,000. Individual right hon. and hon. Members will take different views throughout this process and beyond on whether that is proportionate or whether it should be higher or lower. We think we have struck a proportionate balance.

I will add to the record, for consideration, the importance of the potential for unintended consequences. The response will quite rightly be that it will ultimately be for the tribunal to determine how much to apportion and how to use any changed option. There is a scenario in which the potential penalty on the freeholder, or the party being taken to the tribunal, becomes so great and the hazard becomes so visible that the freeholder starts to oppose it with even more objections, difficulties and the like.

I am making quite a nuanced argument, and Members may feel that I am overthinking this, but we have to be cautious not inadvertently to create a process that emboldens freeholders to fight even harder because of the potential hazard and because they feel that they may be exposed to a fine larger than would be reasonable and proportionate. However, I take the point about the challenge of setting the penalty in the right place. The Government's view is that the increase from £2,500 to £5,000 is a step forward. That is what we are proposing to this Committee. As a result, we will resist the amendments.

Matthew Pennycook: To clarify whether my reading of proposed new section 25A(5) of the Landlord and Tenant Act 1985 is right, is the penalty a single amount that is shared, or an amount per challenge? This is important.

Lee Rowley: I apologise for not covering that point; I intended to do so. It is £5,000 per challenge. There is the ability to bring forward multiple challenges. Should that be the case, similar amounts of damages may be awarded.

Richard Fuller: Sorry, I am such a pedant, but "per challenge" could relate to person A making the challenge that report x was not done on time, and then person B making the challenge that report x was not done on time. Do those two challenges count as two separate challenges because they are brought by two different people, although they are for the same objection, or as one challenge because they are for the same objection, although they are presented by two different people?

Lee Rowley: They are two separate challenges. If a challenge goes to the tribunal and it is deemed that a penalty should apply, for whatever reason or whatever poor behaviour, and a penalty of up to £5,000 is apportioned, and then another person makes the same claim about exactly the same instance, one would logically expect the tribunal to allocate the same penalty. Multiple challenges get multiple fines.

Barry Gardiner: Could the Minister elaborate on something? Where a group of leaseholders brings the challenge—let us say that 30 leaseholders in the block all club together and bring the challenge—is it one challenge that pays one set of £5,000, or is it 30 challenges that pay £5,000 each? Otherwise, we risk leaseholders bringing one challenge and then everybody thinking, "Okay, if I've got to, I will now do it," and making the same challenge over and over again, clogging up the tribunals. That is not what we want. If they all come together and make that application, surely they should all get the damages that the tribunal feels is proportionate.

Lee Rowley: The hon. Gentleman is making a number of important points. As it is currently structured, one challenge of n people gets up to £5,000; if it is multiple challenges of one person or n people within challenge 2, challenge 3 or challenge 4, that would be £5,000. As it is structured at the moment, one challenge equals £5,000, irrespective of the number of people within that challenge.

Barry Gardiner: Does the Minister appreciate that that could lead to a situation in which we are multiplying challenges unnecessarily?

Lee Rowley: I absolutely appreciate the point that has been made. There is a balance to be struck here. Obviously we will need to go through the justice impact test, or whatever it is called, to check the volume of challenges that would potentially come into the tribunals system as a result of the changes in the Bill. Again, it is about trying to balance those very challenging concepts, making sure that there is a penalty—it is important to recognise that the penalty is doubling—but also that people have the ability to choose to do things or not do things. I know that members of this Committee will have different views about how to structure that balance.

The Chair: Order. We are getting a bit conversational in the exchanges we are having. Can Members make either interventions or speeches, please? It is difficult to follow what is going on up here.

Matthew Pennycook: The Minister's response was quite disappointing. I think he has made it clear that it is per challenge per group, so what is the incentive for a large group of leaseholders to press the dispute if the potential amount of the share that they are going to get is £100, or even £50? It might be a low amount. *[Interruption.]* No, it could be. It is a share of the challenge; if there are 100 leaseholders in the challenge, they get a maximum of £5,000 to share between them unless they make multiple challenges. That is my reading of what the Minister has just said.

Richard Fuller: Bearing in mind that this is an intervention—

The Chair: It is, so let it be short.

Richard Fuller: I think the shadow Minister is mixing two things up when he says that people get a share. The issue here is about changing the behaviour of the person who is doing wrong, not "I'm going to get this much money out of it." The incentive is for the person who is doing wrong. Does the shadow Minister agree with the point made by the hon. Member for Brent North about clogging up the system: why would 150 people put one challenge in when they could put 150 challenges in?

Matthew Pennycook: I take the point, and I understand what the hon. Gentleman is driving at: there is the very real risk of clogging up the system with multiple challenges if leaseholders are sophisticated enough to understand the provisions of the clause and work out that the best thing they can do is submit multiple challenges. I do not think that most will. There is therefore a detrimental impact on the incentives for leaseholders to try to dispute these matters.

Coming back to the fundamental point of whether this will change the behaviour of landlords when it comes to compliance, though, I think the hon. Gentleman is right: the figure of £5,000 is too low. I have had this debate so many times with Government Ministers. We had it on the Renters (Reform) Bill: the maximum that local authorities can charge for certain breaches of that Bill is £5,000. Most landlords will take that as a risk of doing business.

Barry Gardiner: An operational cost.

Matthew Pennycook: It is operational. It can be absorbed on the rare occasion that it will be charged, so we think that amount should be higher. Ultimately, as the hon. Member for North East Bedfordshire said, we have to make clear that we are very serious about the sanctions in this new section biting appropriately. For that reason, although I am not going to push the amendment to a vote at this stage, it is a matter that we might have to come back to. It applies to part 4 of the Bill—to residential freeholders—equally, and it is important that we get it right and convince the Government to look at this matter again. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

3.30 pm

Lee Rowley: I beg to move amendment 48, in clause 30, page 50, line 14, leave out subsections (4) and (5).

This amendment is consequential on Amendment 123.

The Chair: With this it will be convenient to discuss clause stand part.

Lee Rowley: Amendment 48 is consequential on amendment 123, which we discussed in our debate on part 2. Amendment 123 ensures that the Bill is clear for the reader by grouping a set of related amendments that are consequential to section 26 of the Landlord and Tenant Act 1985, which clarifies that the provisions of amendment 29 do not apply to tenants of public authorities.

Clause 30 will introduce new, more effective and more proportionate enforcement measures to replace existing ineffective measures. Subsection (2) will repeal the existing enforcement provisions under section 25 of the 1985 Act, which allow a local housing authority or leaseholder to bring proceedings against the landlord in the magistrates court. This measure proved an ineffective deterrent and has hardly been used.

Subsection (3) will insert a new section 25A into the 1985 Act. It sets out routes to redress. Proposed new section 25A(2) sets out measures for situations in which landlords have failed to provide the information required to be included within the annual report or have failed to provide the service charge demand form in the prescribed format. When those circumstances apply, the leaseholder may make an application to the appropriate tribunal. The tribunal may order that the landlord must serve a demand for payment using the correct form under section 21C or provide a report in accordance with section 21E within 14 days of the order having been made. It can also order that the landlord pay damages to the leaseholder.

Proposed new section 25A(3) sets out measures for where the landlord has failed to provide information on request. In such circumstances, the leaseholder may make an application to the appropriate tribunal. The tribunal may order that the information is provided within 14 days, or that the landlord pays damages to the leaseholder, or both.

Proposed new section 25A(5) provides that the damages payable to leaseholders must not exceed the £5,000 figure that we have just debated. Proposed new section 25A(6) will confer powers on the Secretary of State and Welsh Ministers to amend this amount to reflect changes in the value of money, if they consider it expedient to do so. Proposed new sections 25A(7) to (10) contain measures to ensure that landlords cannot pass through service charge demands that they have been ordered to pay nor draw on service charge moneys held in trust and hence seek to reclaim their losses. I commend the clause to the Committee.

Amendment 48 agreed to.

Clause 30, as amended, ordered to stand part of the Bill.

Clause 31

Limitation on ability of landlord to charge insurance costs

Amendment made: 49, in clause 31, page 50, line 24, leave out from beginning to "insert" in line 25 and insert "After section 20F of the LTA 1985".—*(Lee Rowley.)*

This amendment is consequential on Amendment 51.

Barry Gardiner: I beg to move amendment 151, in clause 31, page 50, line 32, leave out from beginning to end of line 32 and insert—

"(a) exceed the net rate charged by the insurance underwriter for the insurance cover, and"

This amendment would define an excluded insurance cost as any cost in excess of the actual charge made by the underwriter for placing the risk, where such cost is not a permitted insurance payment.

The Chair: With this it will be convenient to discuss the following:

Amendment 135, in clause 31, page 50, line 34, at end insert—

"(2A) Costs for insurance are also 'excluded insurance costs' where—

(a) a recognised tenants' association has not been provided in advance with three quotations from reputable insurance companies or brokers, or

(b) the recognised tenants' association has not had the opportunity to submit a further quotation (in addition to the quotations required by paragraph (a)), which the landlord must consider prior to placing the insurance."

This amendment would require a landlord to provide a recognised tenants' association with three insurance quotes before placing the insurance, and provide an opportunity for a recognised tenants' association to submit an alternative quotation.

Amendment 152, in clause 31, page 50, line 35, leave out from beginning to end of line 6 on page 51.

This amendment, to leave out subsection (3) of the proposed new section 20G of the Landlord and Tenant Act 1985, is consequential on Amendment 151.

Amendment 153, in clause 31, page 51, line 18, at end insert—

"(5A) The regulations must specify a broker's reasonable remuneration at market rates as a permitted insurance payment.

(5B) The regulations must exclude any payment which arises, directly or indirectly, from any breach of trust, fiduciary obligation or failure to act in the best interests of the tenant."

This amendment would require "permitted insurance payment" to include payment of a reasonable sum to a broker at market rates for placing the cover, and to exclude any payments which have arisen from wrongdoing.

Amendment 137, in clause 31, page 52, line 24, leave out third "the" and insert "a reasonable".

This amendment would ensure that the costs which a landlord can recover from tenants in making "permitted insurance payments" are reasonable.

Clause stand part.

Amendment 154, in clause 32, page 51, line 3, leave out "Sub-paragraph (2) applies" and insert

"Sub-paragraphs (1A) and (2) apply".

This is a paving amendment for Amendment 155.

Amendment 155, in clause 32, page 53, line 5, at end insert—

"(1A) Within six weeks of the insurance being effected, the insurer, or, where the insurance has been arranged by a broker, the broker, must provide all tenants with a written copy of the contract of insurance."

This amendment would ensure that tenants are provided with the contract of insurance which covers their building.

Amendment 136, in clause 32, page 53, line 12, at end insert—

"(2A) Regulations under sub-paragraph (2) must specify the contract of insurance containing the full extent of the protection afforded by the insurance, and the associated costs."

This amendment would require a landlord to provide a tenant with the contract of insurance containing the full extent of the protection afforded by the insurance, and the associated costs.

Amendment 156, in clause 32, page 53, line 22, leave out from beginning to the end of line 23.

This amendment, to remove sub-paragraph (7) of new paragraph 1A of the Schedule to the LTA 1985, would remove the landlord's right to charge tenants for providing them with information about insurance.

Amendment 157, in clause 32, page 54, line 20, leave out from beginning to the end of line 21.

This amendment, to remove sub-paragraph (7) of new paragraph 1B of the Schedule to the LTA 1985, would remove the right of a person required to provide information about insurance from charging for providing that information.

Amendment 138, in clause 32, page 54, line 21, after "the" insert "reasonable".

This amendment would ensure that the costs payable by a landlord for information requested by him from another person, under paragraph 1A(2)(a), are reasonable.

Clause 32 stand part.

New clause 41—*Building insurance and section 39 of the Financial Services and Markets Act 2000*—

"A landlord may not manage or arrange insurance for their building under the protections of section 39 of the Financial Services and Markets Act 2000."

This new clause precludes a landlord from operating as an appointed representative under the licence of Broker, where the landlord has no such licence themselves.

Barry Gardiner: Gosh, that is quite a mouthful of a group! I draw the attention of the Committee in the first instance to amendments 151 to 153. I welcome the fact that the intention behind the Bill is to improve the situation with regard to insurance charges; I make it clear to the Minister that I do recognise that. Together, however, those amendments would prevent the Bill from excluding different descriptions of the type of costs that are excluded. Amendment 151 would change the definition of the actual cost that is permitted to a much tighter one, namely that which the underwriter has charged. Amendment 153 would add that the reasonable brokerage that the broker is charging the client, who is the landlord, is recoverable at prevailing market rates.

There is also the issue of fiduciary duty. Fiduciary duty and breach of trust are important, because the leaseholder on whose behalf the insurance is being arranged by the landlord has an insurable interest in the property. That means that the landlord, in affecting the insurance, is doing so not only on his own behalf but on behalf of the leaseholders; otherwise, the leaseholders would not be paying for it. The landlord is technically an agent of the leaseholder, and the law of agency in common law is specific about the duties of an agent to their principal. In particular, they may not do anything against their principal's interest, as that would be a breach of trust. That means that should a landlord do anything improper to increase his own revenues against the leaseholder's interest, he would be guilty of a breach of trust, and the leaseholder would and should be able to recover under common law and have a remedy for it.

Together, the amendments would provide a tight circumscription of what should be permitted as the recoverable costs when placing insurance, but of course I have left wiggle room for the Secretary of State, who is still able to specify in the secondary legislation anything that he or she thinks reasonable, so it is not a straitjacket. I hope that the Minister will understand that this gives much greater clarity to the notion of permissible insurance costs and much greater clarity, which I think is what he seeks in the Bill, to that which properly ought to be

excluded. I have not constrained it so greatly that secondary legislation could not come into force to make something else permissible.

Amendment 135 would require a landlord to provide a recognised tenants association with three insurance quotations before placing the insurance, and to provide an opportunity for a recognised tenants association to submit an alternative quotation. In its multi-occupancy buildings insurance investigation, the Financial Conduct Authority found evidence of at least £80 million in insurance kickbacks going to landlords and their managing agents paid for by leaseholders. The amendment would bolster the rights of a recognised tenants association, which successive Governments have supported and sought to protect. Although it would not give the RTAs the power to place the insurance policy, it would help them to close the informational asymmetry with the landlord and pressure them to get a competitive deal by submitting their own quote.

I point out to the Minister that where capital works are being done under a section 20, that is exactly the procedure that would be in operation. The landlord would provide quotations, and the RTA would have the opportunity to submit its own quotation for the work to be done. It seems to me that introducing that same procedure for insurance would be extremely helpful.

Amendment 137 would ensure that the costs that a landlord can now recover from tenants in making permitted insurance payments are reasonable. Although the reasonableness of the cost of buildings insurance can be difficult to prove, especially in a market where brokers are often loth to quote to anyone who cannot place the insurance, the reasonableness test for service charges is the last line of defence for many. I do not think that the insurance scheme in the Bill can fail to make reference to the reasonableness of the permitted insurance payments. The Minister may well say that that will be prescribed in secondary legislation, but I seek to probe him on the point.

Amendment 136 is an important amendment that would require the landlord to provide a tenant with a contract of insurance containing the full extent of the protections afforded by the assurance and the associated costs. In the Bill, we have gone to great lengths to ensure that the leaseholder, as the assured, is able to access information from the landlord, but we heard in the evidence submitted to us by the witnesses in the evidence sessions that there should be a shortcut. The FCA rules already state that, if approached, an insurance company has to provide the information, although we then found out that the landlord did not have to tell leaseholders who the insurance company was; and we know about the difficulties in securing information from a landlord.

Would it not make sense to the Minister to have amendment 136 on the face of the Bill? This information is in the schedule of insurance. The underwriters want to know, "What is it I'm insuring?" They know exactly which units are in that block and exactly what is going on in that block. Therefore, they have the information to do it directly. It seems to me that the amendment would be a far more efficacious way of achieving the objective that the Minister has rightly set out in giving powers to acquire the information from the landlord; it would be far easier and far cheaper simply to say that the insurer has to do it.

Amendment 138 would ensure that the costs payable by a landlord for information requested by him from another person are reasonable. I am sorry that that was a lot, but it is a big grouping. Absolutely at the heart of the issue are amendments 151 to 153 and, ultimately, new clause 41, but we do not get to that until later, I understand.

The Chair: Order. We are debating new clause 41 now.

Barry Gardiner: Fine. In that case, let me speak to new clause 41, which

"precludes a landlord from operating as an appointed representative under the licence of broker, where the landlord has no such licence themselves."

The whole point of this new clause, which goes to that issue of fiduciary duty and agency, is that at the moment, landlords can operate under the licence of a broker to provide brokerage services. If we were to take away that capacity from them by passing new clause 41, we would then have circumscribed the way in which a landlord would be able to game the system, because they would not be able to operate under the protections that the Financial Services and Markets Act 2000 affords them, operating under somebody's licence when they themselves do not have those qualifications.

I am unsure whether this is a proper interest to declare, but I am an associate of the Chartered Insurance Institute. That was many, many years ago; I am not practising now, but I have mentioned it just in case. I think that landlords are getting away with murder by operating in this way, and it would be good to close that loophole to bring it all very tightly together. I appreciate that amendments 151 to 153 and new clause 41 have to be seen as a unit, but they really do give the Minister the opportunity to do what I think he is attempting to do through the Bill, but in a tighter and more effective way.

3.45 pm

Matthew Pennycook: I will be fairly brief, because my hon. Friend covered a lot of detail. He is right to do so, because these are important clauses. We welcome the intent behind them, and we think they have the potential to address a very serious problem that has plagued leaseholders across the country for many years. Not just those in buildings with fire safety defects who have seen their insurance premiums soar in the aftermath of the Grenfell fire, but across the board, we are seeing leaseholders face unreasonable and in many cases extortionate buildings insurance commissions that the property managing agent, landlords and freeholders have charged through the service charge. We discussed this in our evidence sessions last week. The Financial Conduct Authority's report of September last year on the subject of insurance for multi-occupancy buildings found evidence of high commission rates and poor practice, which were "not consistent" with driving fair value to the customer.

The FCA also found—I put this question to one of the witnesses in our evidence sessions, because I find it quite staggering—that the mean absolute value of commissions more than doubled between 2016 and 2021 for managing agents and freeholders of buildings with fire safety defects. Put simply, in far too many instances, managing agents, landlords and freeholders have been gouging leaseholders in this area with impunity. In practice, the effectiveness of this clause will hinge almost entirely on whether the definition of "excluded

[Matthew Pennycook]

insurance costs" is sufficiently tightly drawn, and how we define "permitted insurance payments" for the purposes of specifying what payments can be charged.

I appreciate fully that the Minister will be bringing the necessary detail forward through regulations and we will scrutinise them very carefully when that happens. My right hon. Friend—sorry, just hon. Friend, but it is only a matter of time—the Member for Brent North is right to try to strengthen the clauses, because although the permitted insurance payments must be attributable to a permitted insurance, there is nothing on the face of the Bill to ensure that they or the cost of providing information in relation to them is reasonable to the leaseholders. As far as we understand the clause, there is no guarantee that leaseholders will be able to transparently scrutinise quotes or the agreed contract. We fully support my hon. Friend's amendments 151 to 153, 157, and particularly new clause 41, which attempt to address some of these omissions and deficiencies. I hope the Minister will give them due consideration.

Specifically on my hon. Friend's amendment 136, clause 32 introduces a new duty to provide specified insurance information to leaseholders. Again, it will be for regulations to fill out the detail about how the new duty will operate in practice, but I would like to briefly probe the Minister on it. During our evidence session with Matt Brewis of the Financial Conduct Authority, it became clear that although the FCA's new rules mandate that a contract of insurance must be provided by an insurer or broker to the freeholder, and although the leaseholder will be able to write to the insurer to request a copy of the contract, there is nothing that we can see in either the FCA's rules or the Bill as drafted that will permit a leaseholder to know who that insurer is in the first place. I would like to press the Minister, as my hon. Friend has, to confirm that the Government's intentions when regulations are made under this clause is for the specified information to include a copy of the contract with the relevant insurer.

While we are considering these two clauses, I would like to take the opportunity to raise a separate concern, which I do not believe is covered by my hon. Friend's amendments, in relation to proposed new section 20H of the Landlord and Tenant Act 1985, as provided by clause 31 of this Bill. This proposed new section would introduce a new right to claim where excluded insurance costs are charged. Again, this has the potential to provide leaseholders with effective means of redress, but its efficacy depends on how it is implemented. I would be grateful if the Minister could confirm that there is no specific requirement for any damages awarded under this proposed new section to credit the service charge accounts of leaseholders not party to the claim, or any service charge fund generally. It stands to reason that if one has been affected—and this follows from the debate we had on a previous clause—the rest of the leaseholders in the building will be too. If so, could the Minister look at how the regime operates to ensure that all leaseholders that have paid excluded costs are reimbursed in the same manner as the claimant?

Lee Rowley: I turn first to amendment 151, in the name of the hon. Member for Brent North. As someone who has held the building safety portfolio in my Department for the past 16 months, one of my greatest frustrations is that we have not yet made the progress that I would like to see, and that I am sure we would all like to see, with regards to insurance for buildings that have been affected by cladding, having made good progress on lending and other areas.

I think we have made some progress, and the willingness of a number of brokers to come together and voluntarily cap what they are willing to take is a step forward; I would like to see other brokers doing the same. I would also like to see an industry-led solution to be brought forward for those with the greatest exposures at the earliest possible opportunity. That is something I outline to the Association of British Insurers, and other insurers, on a very regular basis—with varying degrees of frustration and emphasis. I hope we will see movement on that in the very near future.

That is a broad discussion about a more specific issue—I will turn shortly to the amendments we are currently debating—although I hope that highlights my interest in this area and my desire to get this right not just for people with remediation and cladding issues, but for the broader community of leaseholders in general. On that basis, I hope that both the hon. Members for Brent North and for Greenwich and Woolwich will appreciate that we have similar ambitions in making sure that transparency in this area is as effective as it can possibly be, and that we ensure the appropriate outcome so as to improve things from where they are at the moment.

I turn to the amendments, specifically amendment 151. We believe that clause 31, which inserts proposed new section 20G into the Landlord and Tenant Act 1985, already achieves the intent behind the amendment by providing powers that allow the appropriate authority to specify the permitted insurance costs that can be passed through the service charge to leaseholders.

From discussions held with the insurance sector itself, and with the FCA, we know that the value chain is a complicated one. Some buildings rely heavily on the reinsurance market—we have seen that increasingly with remediation issues—using a broker for access, and some do not. Some place insurance with numerous insurers splitting the risk, whereas others only use one—the hon. Member for Brent North may know this from his previous engagement with the industry.

Clause 31 is designed to constrain unreasonable costs in all scenarios by defining a payment and allowing us to then separate these costs as either permitted or excluded. Although I understand the intent of the hon. Member for Brent North, the Government's concern about amendment 151 is that in seeking to tighten the provisions, it may have pulled the strings a little too tightly and become too narrowly focused on certain elements. I hope the hon. Gentleman will consider withdrawing his amendment as a consequence.

Again, although I have great sympathy for the sentiment behind amendment 135, I hope the transparency provisions already in the Bill will help in this regard. Once implemented, they intend to enable leaseholders to have access to details of the policy and the total amount of remuneration being taken on their building's insurance placements. This can be used for a legal challenge if costs have not been reasonably incurred. Our concern with the amendment is the potential for delays in the placement of insurance, which could result in a lapse in cover to the material

risks of the building. There also may be instances—although I hope it would be a minor number of cases—where three quotes cannot be obtained, as much as that is possibly unlikely to occur.

We seek to focus the legislation on ensuring that those buildings have insurance that works, with a balance that is appropriate and supported by regulatory changes brought in by the FCA. On the basis of that explanation, I hope the hon. Member for Brent North will withdraw his amendment.

I will address amendments 152 and 153 together. Again, we have are similar ambitions, aspirations and intent, but again, there is a question of narrowness through the amendments, and our view remains that clause 31 will allow full scrutiny of what is to be a permitted insurance payment. The intention is for that to be both through consultation and then subsequently set out in regulations through the affirmative procedure, which will allow hon. Members to debate measures and highlight if there is a better way of doing it. I hope that, with those reassurances, the hon. Member for Brent North may be willing to withdraw the amendments.

Amendment 137 seeks to introduce a reasonable test to permitted buildings insurance costs. At the heart of clause 31 is the need for any costs passed on to leaseholders relating to the placement or management of buildings insurance to be fair and transparent. That is the whole point of it. Section 19 of the Landlord and Tenant Act 1985 already requires for those costs to have been reasonably incurred and for a reasonable service to have been provided. We have obviously seen a whole heap of bad behaviour in this sector; I accept that that is the case. Within the sector, there is ubiquitous use of commissions with poor or no underlying connection to the work undertaken, and I hope that some of the progress made through the Bill will hopefully reduce that.

I do not believe that the amendment would sufficiently protect leaseholders. We seek very clear requirements in the secondary legislation for how permitted insurance fees will be calculated, and that their reasonableness be included in that. We will consult on the measures in due course, and I hope that, with those reassurances, the hon. Member for Brent North will withdraw his amendment.

I turn to clauses 31 and 32, which address insurance, before turning to some further Opposition amendments. Several actors in the procurement of buildings insurance each seek to make a profit in return for their role in supplying insurance, whether they be brokers, managing agents or landlords, who can all take commissions, and that all adds to the overall cost.

Currently, as we have discussed, leaseholders do not have to be made aware of these commissions, and that can hinder the ability of leaseholders to challenge unfair costs. Inflated premiums can be paid through the service charge because there is a lack of transparency and knowledge about what is happening. Clause 31 seeks to ban the placer of insurance on residential leasehold properties from receiving any form of commission that is passed on to leaseholders as a cost, and instead uses a transparent handling fee that must be proportionate to the value of the work done.

Proposed new section 20G provides that excluded insurance costs cannot be charged and enables the Secretary of State and Welsh Ministers to prescribe a permitted insurance payment, which will be the only payment that can be charged. The detail of calculating the fee is to be set out in affirmative secondary legislation, and we will work with stakeholders across the industry and in this place to support that.

Proposed new section 20H sets out what happens should the ban be breached. There is an ability to apply to the tribunal in England and the leasehold valuation tribunal in Wales. It also removes the presumption that leaseholders have to pay their landlord's legal costs when challenging poor practices, as we talked about earlier. If the tribunal determines that the legislation has not been complied with, damages can be paid. That will be a minimum of the commission taken or the unlawful insurance handling fee, but it will not exceed three times the level of the commission or fee.

Proposed new section 20I outlines the right of the landlord to obtain a permitted insurance payment. The section clarifies how all costs for placing and managing insurance incurred by the landlord must then be charged to the leaseholder. Transparency reforms in the Bill will require the placer of insurance to disclose information about the decision-making processes when purchasing buildings insurance on behalf of leaseholders.

Amendments 154 and 155, tabled by the hon. Member for Brent North, seek to stipulate how the insurance contract is to be provided to leaseholders. We have been working already with the FCA on that area, and it has already produced a number of reports and changed its regulations. The changes allow leaseholders to receive their policy documents and information about the charges within their overall premium. Those changes are important to ensure that the relevant information is available, but they do not remove the necessity for the landlord to supply that information as the placer of the insurance. The amendments tabled by the hon. Member for Brent North remove the focus on the landlord's responsibility to undertake that activity. Clause 32 is designed to complement the work of the FCA and to provide the powers necessary to ensure that landlords supply the information that will enable leaseholders to scrutinise. With those assurances, I hope that the hon. Member will not press the amendments to a vote.

4 pm

Amendment 136 requires a buildings insurance policy be provided to the leaseholders to whom it relates. This is an important issue, which the hon. Member was right to raise both last week and today. I am happy to confirm to him that it is the intention that the insurance contract will be required to be shared and that that detail will be provided in secondary legislation. On that basis, I hope that he will have the comfort he needs not to press the amendment.

Amendments 156 and 157 seek to remove leaseholders' ability to be charged for the provision of insurance information. Obviously, there is again an interaction here with what the FCA has been doing. The changes that the FCA has made allow leaseholders to receive their policy documents and information about the overall premium. The hon. Member's amendments would remove the ability for reasonable compensation to be provided for supplying information. As we have discussed many times both today and previously, the Government's view is that costs that are reasonably incurred should be borne by leaseholders. Not allowing such costs to be

transparently recovered would be logically problematic and may lead to further attempts to transfer money in other ways, which we would not want.

Barry Gardiner: I am grateful to the Minister for the way in which he is engaging with the issue and for the points he has made. Given that it would be possible to relay the insurance contract electronically, will it be possible for secondary legislation to stipulate that any additional layers of complexity would be outwith the permitted costs? The Minister will see that I keep coming back to that theme, because unfortunately landlords add additional layers of complexity. We need to be sure that, where it is possible to do something simply, it is not permissible to recover the cost of doing it not simply, if I can put it that way.

Lee Rowley: The hon. Gentleman raises an important point. I will not try to solutionise in Committee, given the inherent dangers doing so from the Government Front Bench. We have committed to consulting, and there will be lots of experts and interested parties who will want to engage in that. As the hon. Gentleman suggests, transfers of data in an electronic form do not necessarily involve a substantial amount of time or effort, albeit that the provision and creation of the data in the first place may do. Those are exactly the kinds of things that we will want to talk about as part of the consultation, as and when it comes. On that basis, I hope that the hon. Member will consider not pressing amendments 156 and 157.

Amendment 138 seeks to require that charges made of parties where they request information from the landlord are reasonable, and I agree with the sentiment. Reasonableness is already required through section 19 of the Landlord and Tenant Act 1985. As I indicated in relation to amendment 137, reasonableness is not in itself a guarantee that costs will be constrained and proportionate, especially where the test is reliant on the assessment of normal behaviour across the sector. The Government would seek to deal with this area in secondary legislation, to ensure that the priorities of transparency and proportionality are in place. On that basis, I hope that the hon. Member will consider not pressing his amendment.

Before I conclude, I have two further points. Clause 32 confirms the importance of the intention of transparency, which is behind the Bill. The clause places a duty on landlords and managing agents that compels them to proactively provide information on building insurance to leaseholders. That should help leaseholders to better understand what they are paying for, and give them information they need to scrutinise that and take appropriate action, should that be necessary. The required information will be specified in the regulations, but it is anticipated that it should detail the insurance policy that is purchased, including a summary of the cover such as the risks insured, excess costs, premium costs and any remuneration received by the insurance broker. We also anticipate that it will include details of all alternative quotes obtained from the market and any possible conflicts of interest that arose during the procurement process.

Subsection (2) will insert new paragraph 1A into the schedule to the 1985 Act to allow leaseholders to request further information from landlords or managing agents. This could include full contractual documentation and policy wording, as well as the declaration of technical information that may have shaped the eventual premium price. We hope that giving leaseholders this improved information will allow them to challenge the reasonableness of their policy costs, if required. We expect that it will change landlord behaviour by making sure they are more price conscious, as it will be clearer that their movements are being watched. This will ensure that they do not try to pull a fast one on their leaseholders when it comes to insurance.

New paragraph 1B imposes a duty on third parties to provide landlords with any specified information requested within the specified period. Under paragraph 1A landlords will be obliged to provide information that is in their possession, and under paragraph 1B, where a landlord needs to ask another person for that information, that other person will also be required to provide the information within the specified timescales. Again, those timescales will be detailed in secondary legislation.

Clause 32 places requirements on landlords for how the handling fee that will replace insurance commissions will be disclosed to leaseholders. Again, this seeks to ensure greater transparency and allow more scrutiny where the charges are unreasonable.

Under paragraph 1C of the schedule to the 1985 Act, a leaseholder may make an application to the appropriate tribunal if their landlord fails to comply with the requirements under paragraphs 1A and 1B. I commend the clause to the Committee.

Finally, new clause 41 would preclude landlords from undertaking regulated insurance activity on behalf of a broker. Although I understand the sentiment behind this new clause, I hope the hon. Member for Brent North will recognise that the underlying point behind clauses 31 and 32, on which I hope we all agree, is transparency and fairness. These clauses will require the disclosure of fees charged for any work, as I have just indicated. We will prescribe what is a permitted cost that can be collected through the service charge, which should ensure that commissions that bear no connection to the work undertaken will not be permitted. It should also ensure that key documentation is provided.

Barry Gardiner: The Minister said that all the costs of the broker will have to be disclosed, which is absolutely right. However, where the landlord is operating under the provisions of the Financial Services and Markets Act 2000, he or she would be indistinguishable from that brokerage company and, therefore, the leaseholder will not be able to ascertain what was done by the broker and what was done by the landlord operating under the licence of the broker. What will be revealed is simply "the brokerage." Unless we can unravel that, we will never get to the issue of kickbacks. As we saw with the Canary Riverside case before Christmas, those kickbacks can be frighteningly large—£1.6 million for one block. The disaggregation of what is the landlord qua broker and what is the broker qua broker is really important.

Lee Rowley: I will try to reassure the hon. Gentleman. I think we both agree on the intention behind full transparency and clarity, so that things are not being hidden in the "value chain," to use a terrible expression from my previous life.

The secondary legislation for clause 31 will seek to define the permitted insurance costs, and we will consult specifically on issues around regulated insurance activity.

I hope that secondary legislation will cover some of the hon. Gentleman's points and allow him, and others with concerns, to make their case. We can then determine how best to approach it.

With that, I hope the hon. Gentleman will consider withdrawing his amendment.

Barry Gardiner: There is good news and bad news, Mr Efford. The good news is that I am content to withdraw amendments 135, 137, 154, 155, 136, 156, 157 and 138, but I wish to press amendments 151, 152, 153 and 157 to a vote.

Question put, That the amendment be made.

The Committee divided: Ayes 5, Noes 8.

Division No. 9]

AYES

Amesbury, Mike	Pennycook, Matthew
Gardiner, Barry	
Glindon, Mary	Strathern, Alistair

NOES

Davison, Dehenna	Maclean, Rachel
Everitt, Ben	Mohindra, Mr Gagan
Fuller, Richard	Rowley, Lee
Hughes, Eddie	Smith, rh Chloe

Question accordingly negatived.

Amendment proposed: 152, in clause 31, page 50, line 35, leave out from beginning to end of line 6 on page 51.—*(Barry Gardiner.)*

This amendment, to leave out subsection (3) of the proposed new section 20G of the Landlord and Tenant Act 1985, is consequential on Amendment 151.

The Committee divided: Ayes 5, Noes 8.

Division No. 10]

AYES

Amesbury, Mike	Pennycook, Matthew
Gardiner, Barry	
Glindon, Mary	Strathern, Alistair

NOES

Davison, Dehenna	Maclean, Rachel
Everitt, Ben	Mohindra, Mr Gagan
Fuller, Richard	Rowley, Lee
Hughes, Eddie	Smith, rh Chloe

Question accordingly negatived.

Amendment proposed: 153, in clause 31, page 51, line 18, at end insert—

"(5A) The regulations must specify a broker's reasonable remuneration at market rates as a permitted insurance payment.

(5B) The regulations must exclude any payment which arises, directly or indirectly, from any breach of trust, fiduciary obligation or failure to act in the best interests of the tenant."—*(Barry Gardiner.)*

This amendment would require "permitted insurance payment" to include payment of a reasonable sum to a broker at market rates for placing the cover, and to exclude any payments which have arisen from wrongdoing.

The Committee divided: Ayes 5, Noes 8.

Division No. 11]

AYES

Amesbury, Mike	Pennycook, Matthew
Gardiner, Barry	
Glindon, Mary	Strathern, Alistair

NOES

Davison, Dehenna	Maclean, Rachel
Everitt, Ben	Mohindra, Mr Gagan
Fuller, Richard	Rowley, Lee
Hughes, Eddie	Smith, rh Chloe

Question accordingly negatived.

Amendments made: 50, in clause 31, page 51, line 36, leave out "A" and insert "For the purposes of this section, a".

This amendment is consequential on NC7.

Amendment 51, in clause 31, page 52, line 33, leave out subsection (3).—*(Lee Rowley.)*

This amendment is consequential on Amendment 123

Clause 31, as amended, ordered to stand part of the Bill.

Clause 32

Duty to provide information about insurance to tenants

Amendment proposed: 157, in clause 32, page 54, line 20, leave out from beginning to the end of line 21.—*(Barry Gardiner.)*

This amendment, to remove sub-paragraph (7) of new paragraph 1B of the Schedule to the LTA 1985, would remove the right of a person required to provide information about insurance from charging for providing that information.

Question put, That the amendment be made.

The Committee divided: Ayes 5, Noes 8.

Division No. 12]

AYES

Amesbury, Mike	Pennycook, Matthew
Gardiner, Barry	
Glindon, Mary	Strathern, Alistair

NOES

Davison, Dehenna	Maclean, Rachel
Everitt, Ben	Mohindra, Mr Gagan
Fuller, Richard	Rowley, Lee
Hughes, Eddie	Smith, rh Chloe

Question accordingly negatived.

Clause 32 ordered to stand part of the Bill.

Clause 33

Duty of landlords to publish administration charge schedules

4.15 pm

Question proposed, That the clause stand part of the Bill.

Lee Rowley: We know that there is currently a lack of transparency around administration charges and that leaseholders can face high administration charges. Administration charges must be reasonable, but this can be difficult to determine due to the lack of clarity surrounding them. As a result, leaseholders are often reluctant to challenge the reasonableness of administration charges at the appropriate tribunal.

Clause 33 inserts new paragraph 4A into schedule 11 to the Commonhold and Leasehold Reform Act 2002. It will require landlords to publish an administration charge schedule. A revised schedule must also be published if a landlord revises the administration charges. The Secretary of State and Welsh Ministers will be able to prescribe the form and content of the schedule, and how it is to be provided to a leaseholder, in regulations. If a landlord has not complied with the provision of publishing an administration charge schedule, a leaseholder may make an application to the appropriate tribunal. The tribunal may order that the landlord provide an administration schedule within 14 days and pay damages of up to £1,000 to the leaseholder. This measure seeks to increase transparency, and I commend the clause to the Committee.

Matthew Pennycook: As the Minister has just made clear, clause 33 amends the 2002 Act to create a new duty on landlords to publish administration charge schedules. We welcome it but, as with clauses 31 and 32, the effective functioning of the new requirement will depend on details such as the form and content of the schedule and how it should be published, all of which is to be set out in future regulations.

I have two specific questions for the Minister. The first largely mirrors my concern about the provisions in clause 31 relating to damages. If a tenant claims damages as a result of a breach of the requirements in new paragraph 4A of the 2002 Act, is it not likely that other tenants will have been similarly affected by the failure to publish an administration charge schedule? If it is the case that the damage provisions relate only to the claimant, will the Minister look at how the regime operates to ensure that all leaseholders who may have paid costs, other than in accordance with new paragraph 4A of the 2002 Act, are reimbursed in the same manner? It is a recurring theme, but it is worth putting on the record that it applies to clause 33 as well.

Secondly, along with other measures in the Bill that add new provisions for when a leaseholder is liable to pay a charge—in this instance, where an administration charge has been levied that has not appeared for the required period on a published administration charge schedule—how do the Government intend to make leaseholders aware of their new rights in this respect and in various other places throughout the Bill? Will he consider mandating that freeholders must furnish all leaseholders with an updated "how to lease" guide?

Lee Rowley: I am grateful to the hon. Gentleman for his questions. I will write to him on the answers or the process by which he can get them.

Question put and agreed to.

Clause 33 accordingly ordered to stand part of the Bill.

Clause 34

LIMITS ON RIGHTS OF LANDLORDS TO CLAIM LITIGATION COSTS FROM TENANTS

Question proposed, That the clause stand part of the Bill.

The Chair: With this it will be convenient to discuss the following:

Clause 35 stand part.

New clause 3—*Prohibition on landlords claiming litigation costs from tenants—*

(1) Any term of a long lease of a dwelling which provides a right for a landlord to demand litigation costs from a leaseholder (whether as a service charge, administration charge or otherwise) is of no effect.

(2) The Secretary of State may, by regulations, specify classes of landlord to which or prescribed circumstances in which subsection (1) does not apply.

(3) In this section—

"administration charge" has the meaning given by Schedule 11 of the Commonhold and Leasehold Reform Act 2022;

"dwelling" means a building or part of a building occupied or intended to be occupied as a separate dwelling, together with any yard, garden, or outhouses and appurtenances belonging to it or usually enjoyed with it;

"long lease" has the meaning given by sections 76 and 77 of the Commonhold and Leasehold Reform Act 2002;

"service charge" has the meaning given by section 18 of the Landlord and Tenant Act 1985;

"landlord" has the meaning given by section 30 of the Landlord and Tenant Act 1985.

This new clause would prohibit landlords from claiming litigation costs from tenants other than under limited circumstances determined by the Secretary of State.

Lee Rowley: We know that leaseholders can be deterred from challenging costs, or the services that their landlord provides, at court or tribunal for fear that they will also be charged their landlord's legal costs. The ability of the landlord to charge litigation costs will depend on whether the lease allows for that. That can mean that leaseholders have to pay litigation costs even if they win. Currently, the onus is on leaseholders to make an application to the relevant court or tribunal to limit their liability to pay those costs.

Clause 34 seeks to flip that presumption, and instead requires landlords to apply to the relevant court or tribunal for permission to recover their litigation costs from leaseholders, whether as an administration charge or through the service charge. It does that by inserting proposed new section 20CA into the Landlord and Tenant Act 1985 relating to litigation costs passed through the service charge, and inserting proposed new paragraph 5B into the Commonhold and Leasehold Reform Act 2002 regarding litigation costs recovered as an administration charge.

In the future, a landlord's litigation costs will not be payable by a leaseholder unless the landlord has successfully applied to the relevant court or tribunal for an order. The relevant court or tribunal may make such order where it considers it just and equitable in the circumstances. We have also taken a power to set out matters that the relevant court or tribunal must consider when making an order on an application. We will carefully consider the detail of these matters with stakeholders, including the tribunal.

Where the landlord is applying to pass on their litigation costs through the service charge, they will be required to specify each individual leaseholder they are seeking to recover their costs from. We have sought to further protect leaseholders by ensuring that a lease, contract or other arrangement has no legal effect if it seeks to disapply this legislation. These measures will prevent leaseholders from being charged unjust litigation costs by their landlord, and will remove barriers to leaseholders holding their landlord to account. I commend the clause to the Committee.

On clause 35, at the moment landlords can charge the costs of a legal dispute to leaseholders. This is an imbalance, as landlords are in a better position to seek legal representation and are more frequently represented than leaseholders at hearings. We understand that there is no other area of law where the parties start from such an unequal position. Clause 35 gives leaseholders a new right to apply to the relevant court or tribunal to claim their litigation costs from their landlord. It does that by implying a term into all leases, ensuring greater balance between landlords and leaseholders with regard to litigation costs. On a leaseholder's application, the relevant court or tribunal may make such an order if it considers it just and equitable in the circumstances. We have also taken a power to set out matters in regulations that the relevant court or tribunal must take into account when making an order.

Clause 35 also makes it clear that any costs that a landlord is ordered to pay to a leaseholder are considered to be litigation costs incurred by the landlord. As such, if the landlord wants to recover such costs through the service charge or as an administration charge, they will need to apply to the court or tribunal under clause 34.

In addition, we have taken a power to describe which "relevant proceedings" will be subject to the leaseholder's right to seek their costs. This is to help align the leaseholder's rights with the right to costs that landlords currently enjoy. We have further protected the leaseholder's right to recover litigation costs by ensuring that a lease, contract or other arrangement has no legal effect if it disapplies this legislation. I commend the clause to the Committee.

New clause 3 seeks to disapply terms in a lease that allow a landlord to recover their legal costs from leaseholders. It also allows exceptions for certain types of landlord to be set out by the Secretary of State in regulations. Currently, landlords are able to recover their litigation costs from leaseholders, and we absolutely agree that unjust litigation costs should not be incurred.

There may, however, be legitimate cases where a landlord may need to seek their litigation costs from a leaseholder—for example, where a leaseholder has breached their lease in a way that is affecting the other residents in the building, or where non-payment of a charge is limiting the upkeep or repair of the building. In these cases, where landlords have exhausted other means of addressing the dispute, we would want them to feel able to address such issues and be able to recover their litigation costs, if that is justified. That is why we have included measures in the Bill to rebalance the system, but we do not necessarily believe that we should go further at this time. We hope that the Bill takes a proportionate approach. I hope that I have reassured the hon. Member for Greenwich and Woolwich that we are committed to ensuring a fair approach, and that he will withdraw the new clause.

Matthew Pennycook: I must disappoint the Minister, because what he says does not reassure me. I rise to oppose clause 34 standing part of the Bill, and to argue in favour of new clause 3. As he has made clear, clause 34 amends the Landlord and Tenant Act 1985 and the Commonhold and Leasehold Reform Act 2002, with a view to limiting but not abolishing the right of landlords to claim litigation costs from tenants. Although the property chamber tribunal does not generally tend to shift the legal costs of the winning party on to the losing claimant, on various occasions landlords have been able to rely on contractual rights to recover costs against leasees. When that occurs, it is in essence a form of one-way cost shifting, and it is inherently unfair to the affected leasees. Previous attempts have been made expressly to limit these cost recovery provisions, notably by means of schedule 11 to the Commonhold and Leasehold Reform Act 2002, but despite those provisions, and the issue coming before the higher courts on several occasions, the ability of a landlord to recover costs incurred in litigating disputes persists.

We support the aim of scrapping the presumption that leaseholders will pay their freeholders' legal costs when they have challenged poor practice, as outlined in the explanatory notes to the Bill, and we believe that, apart from in a limited number of circumstances, landlords should be prohibited from claiming litigation costs from leaseholders. As I have said, clause 34 does not prohibit landlords from claiming litigation costs from tenants; instead, it merely limits their ability to do so.

The clause allows landlords in certain, at present undefined, circumstances to apply to the relevant court or tribunal for an order to pass their legal costs on to leaseholders as an administration charge, or on to all leaseholders, irrespective of whether they participated in any given legal action, through the service charge. It may be that the matters that the relevant court or tribunal can take into account when determining whether to make an order on an application for costs will be defined in such a way as to protect the vast majority of leaseholders from unjust, one-way cost shifting, but to allow for cost recovery in circumstances where it is essential—for example, when the landlord is a company controlled by the leaseholders that needs to recover its reasonable legal costs via the service charge or risk going bust. However, as we consider the clause today, we have no certainty whatsoever about that, because the matters that the relevant court or tribunal can account for, as well as the application process, will be set out in regulations to come.

Even if we had certainty about what the Government will tell courts and tribunals that they can consider in determining whether to make an order, we fear that clause 34 is an invitation to litigate. Yes, regulations will prescribe the relevant matters that can be taken into account, but given the multiple Court of Appeal cases and numerous upper tribunal cases on what "in connection with" means, we will almost certainly see disputes arising about what costs are incurred "in connection with" legal proceedings, and whether they are compatible. The risk is that the outcomes of any such cases could erode the general presumption against leaseholders paying their freeholders' legal costs that the clause attempts to enact.

We believe that it would be more prudent to implement, by means of the new clause, a general prohibition on landlords claiming litigation costs from leaseholders,

[Matthew Pennycook]

and then clearly to identify a limited number of exceptions to that general rule through regulations. As I have said, such exceptions might include cases in which the landlord is a leasehold-owned company, or in which the costs are, in the opinion of the tribunal, reasonably incurred for the benefit of the leaseholders or the proper management of the building. That would cover the example that the Minister used. Amendment 8, which would simply delete clause 34, and new clause 3 would provide for that approach by leaving out clause 34 and replacing it with a new clause that provides for a general prohibition on claiming legal costs from tenants, and for a power to specify classes of landlord who will be exempted from it.

I appreciate that this is a complex argument about the best means to achieve an agreed end, but we think that clause 34 requires further thought, and urge the Government to give serious consideration to the issues raised by amendment 8 and new clause 3. As I said, the Government's approach is a recipe for freeholder litigation, and it might mean far more leaseholders than we are comfortable with bearing the legal costs of their landlords.

Rachel Maclean: I place on record my concerns about the Government's approach to this issue, based on my experience in the Minister's role, and having listened carefully to representations made, particularly by members of the all-party parliamentary group on leasehold and commonhold reform and a gentleman called Liam Spender, who detailed his experiences at the hands of FirstPort. That was an absolutely horrific, heartbreaking and shocking abuse of a decent, honourable and hard-working person buying a flat. He described it as being treated like a "lab rat" in a laboratory maze. I will not forget the testimony that he and many others gave.

4.30 pm

Were I ever to be tempted not to follow the Whip's advice to vote with the Government, it would be at this precise juncture, and I have spent seven years in Parliament. I feel uncomfortable about what is in the clause. Having seen the behaviour of some predatory organisations, and the way that they treat the decent men and women of our country, I could not in good conscience vote with the Government at this point, unless I hear strong words from the Minister, and something to reassure me that the measure will deal with such shocking situations.

We all have doubts about the balance of power, and we recognise that landlords should be able to protect their interests, if they are decent and behave well. At this point, however, I want to hear something from the Minister to reassure me.

Lee Rowley: My hon. Friend has a huge amount of expertise and knowledge in this area. I am grateful to her for all her work in preparing for our discussion today. I am very happy to talk to her in more detail on this subject. She is absolutely right to articulate that progress must be made, and we must ensure that the correct balance is struck. I know that she will appreciate that there is a balance to strike, rather than there being movement in only one direction, but I appreciate the points that she made. I am happy to talk to her further outside the Committee, and I hope to provide her with the assurances that she seeks.

Matthew Pennycook: I thought that the Minister would provide a fuller response to our intention to remove the clause and introduce new clause 3. The hon. Member for Redditch is right to be concerned about the clause as drafted—I commend her for raising the issue. The spirit of the Committee has not been particularly party political, but I will give her the opportunity to break the Whip, because we feel strongly about the issue. Lots of leaseholders will find that they still bear legal costs because of the way in which the Government have approached this issue; it is a recipe for litigation. There is a much more sensible way to achieve the end that I think we all want: a general prohibition with a very limited number of exceptions, which could set out clearly in the Bill. We oppose the clause standing part, and will potentially move the new clause in due course.

Question put, That the clause stand part of the Bill.

The Committee divided: Ayes 8, Noes 5.

Division No. 13]

AYES

Davison, Dehenna	Maclean, Rachel
Everitt, Ben	Mohindra, Mr Gagan
Fuller, Richard	Rowley, Lee
Hughes, Eddie	Smith, rh Chloe

NOES

Amesbury, Mike	Pennycook, Matthew
Gardiner, Barry	
Glindon, Mary	Strathern, Alistair

Question accordingly agreed to.

Clause 34 ordered to stand part of the Bill.

Clause 35 ordered to stand part of the Bill.

Clause 36

REGULATIONS UNDER THE LTA 1985: PROCEDURE AND APPROPRIATE AUTHORITY

Question proposed, That the clause stand part of the Bill.

Lee Rowley: Clause 36 sets out general provisions that apply to regulation-making powers under the Landlord and Tenant Act 1985. Subsection (2) introduces a new section 37A, which sets out the procedure applicable to statutory instruments. It provides clarity on what is meant by regulations that are subject to the negative procedure and those that are subject to the affirmative procedure. Subsection (3) inserts a new definition of "appropriate authority" into section 38A of the 1985 Act. That defines the Secretary of State as being the appropriate authority in England, and Welsh Ministers the appropriate authority in Wales. I commend the clause to the Committee.

Question put and agreed to.

Clause 36 accordingly ordered to stand part of the Bill.

Clause 37

PART 3: CONSEQUENTIAL AMENDMENTS

Question proposed, That the clause stand part of the Bill.

The Chair: With this it will be convenient to discuss the following:

Government amendments 125 and 126.

Schedule 8.

Government new clause 8—*Appointment of manager: power to vary or discharge orders.*

Lee Rowley: Clause 37 introduces schedule 8, which concerns a number of consequential amendments to the 1985 Act and other Acts of Parliament arising from the provisions of part 3 of the Bill. We will address those consequential amendments when we come to schedule 1, and I commend the clause to the Committee.

Government amendment 125 is a consequential amendment on new clause 8, which ensures that the tribunal has the ability to vary or discharge orders it makes under leasehold legislation on its own as well as on request. Government amendment 126 clarifies that a repeal of a section in the Housing (Wales) Act 2014 is to be done in both the English and Welsh language texts of the Act. I commend those amendments to the Committee.

Schedule 8, as introduced by clause 37, sets out the consequential amendments arising from the provisions of part 3 of the Bill. Part 1 of the schedule sets out the specific consequential amendments to the 1985 Act to take account of the changes in clause 36. In many cases, it makes changes to the regulation-making powers to confirm that the Secretary of State has powers to make regulations in England, and that Welsh counterparts do in Wales. It also clarifies which regulation-making provisions in the Act are subject to the negative procedure or the affirmative procedure. Part 2 of the schedule sets out consequential amendments to other Acts of Parliament to reflect the new measures introduced by part 3 and the omission of existing measures. The schedule seeks to provide clarity on regulation-making powers and to ensure that other Acts of Parliament reflect the new measures provided in part 3 of the Bill. I commend the schedule to the Committee.

Turning to new clause 8, sections 21 to 24 of the Landlord and Tenant Act 1987 provide a remedy for leaseholders in circumstances where there is significant management failure. Under current arrangements, leaseholders may apply to the first-tier tribunal to ask it to make an order to appoint a manager, who will be responsible for carrying out functions specified in the order rather than by the landlord or an agent acting on their behalf. The manager will be accountable to the tribunal, but once an order has been issued, the tribunal may only vary or cancel it if an interested party asks it do so. The current arrangements are, in the Government's view, too restrictive and limit the tribunal's authority to act if there is already an existing order in place.

New clause 8 makes a minor amendment to section 24 of the 1987 Act and gives the tribunal the ability to take action on its own as well as on request. That means that, where there is a possible overlap between orders, the tribunal can amend an existing order, if necessary, of its own accord. The discretion to amend an order will be constrained. The tribunal must be satisfied that, in all cases, any variation or discharge is just and convenient, and would not result in the recurrence of the same problems that led to the order being made in the first place. I commend new clause 8 to the Committee.

Question put and agreed to.

Clause 37 accordingly ordered to stand part of the Bill.

Schedule 8

Part 3: Consequential Amendments

Amendments made: 121, in schedule 8, page 132, line 9, at end insert—

"13A The LTA 1985 is amended in accordance with paragraphs 14 to 14B."

This amendment is consequential on Amendment 123.

Amendment 122, in schedule 8, page 132, line 10, leave out "of the LTA 1985".

This amendment is consequential on Amendment 121.

Amendment 123, in schedule 8, page 132, line 18, at end insert—

"14A In section 26 (exception for tenants of certain public authorities)—

(a) in subsection (1)—

(i) for the words from 'Sections 18 to 25' to 'do not apply' substitute 'Sections 18 to 25A do not apply';

(ii) for ', in which case sections 18 to 24 apply but section 25 (offence of failure to comply) does not' substitute '(but see subsection (1A));

(b) after subsection (1) insert—

'(1A) The following sections do not apply to a service charge payable by a tenant under a long tenancy of a landlord referred to in subsection (1)—

(a) section 20H (right to claim where excluded insurance costs charged);

(b) section 20K (right to claim where costs charged in breach of section 20J);

(c) section 25A (enforcement of duties relating to service charges).'

14B In section 27 (exception for rent registered and not entered as variable), for the words from

'Sections 18 to 25' to 'do not apply' substitute 'Sections 18 to 25A do not apply'".

This amendment would consolidate the consequential amendments to section 26 of the Landlord and Tenant Act 1985 required by virtue of clauses 30 and 31 and NC7 into a single paragraph of Schedule 8.

Amendment 124, in schedule 8, page 132, line 21, leave out "Landlord and Tenant Act" and insert "LTA".

This amendment is consequential on Amendments 47 and 54.

Amendment 125, in schedule 8, page 132, line 35, at end insert—

"(ca) in section 160 (third parties with management responsibilities), omit subsection (4)(d);".

This amendment is consequential on NC8.

Amendment 126, in schedule 8, page 133, line 22, after "(anaw 7)," insert

"in the English language text and in the Welsh language text,".—*(Lee Rowley.)*

This amendment would clarify that section 128 of the Housing (Wales) Act 2014 is to be repealed in both the English and Welsh language texts of that Act.

Schedule 8, as amended, agreed to.

Clause 38

APPLICATION OF PART 3 TO EXISTING LEASES

Question proposed, That the clause stand part of the Bill.

Lee Rowley: Clause 38 makes clear that the new provisions introduced by this part of the Bill extend to leases entered into before the date the section comes into force. This provides clarity that the provisions in part 3 apply to existing, as well as new, leaseholders, but only from the date the relevant section comes into force. I commend the clause to the Committee.

Question put and agreed to.

Clause 38 accordingly ordered to stand part of the Bill.

Clause 39

MEANING OF "ESTATE MANAGEMENT" ETC

Lee Rowley: I beg to move amendment 52, clause 39, page 66, line 8, at end insert—

"(e) a charge payable by a unit-holder of a commonhold unit to meet the expenses of a commonhold association.

(9A) For the purposes of subsection (9)(e)—

(a) "unit-holder", "commonhold unit" and "commonhold association" have the same meaning as in Part 1 of the CLRA 2002 (see section 1(3) of that Act);

(b) the expenses of a commonhold association include the building safety expenses of the association (within the meaning given in section 38A of the CLRA 2002)."

This amendment would exclude charges in respect of the expenses of a commonhold association from the definition of "estate management charge" for the purposes of Part 4.

The Chair: With this it will be convenient to discuss clause stand part.

Lee Rowley: Amendment 52 amends clause 39(9) of the Bill to clarify that any payment by a commonhold unit owner to a commonhold association is not to be regarded as an estate management charge. It is a clarificatory amendment to ensure that sums payable to a commonhold association that provides services to the common parts that it owns are not covered by part 4 of the Bill.

Turning to clause stand part, part 4 of the Bill creates a new regulatory framework to protect homeowners living on those estates where services are managed privately rather than by local authority. We know that that has been a growing trend and that homeowners on those estates have very few rights in that regard. We are determined to change that and empower homeowners to hold estate management companies to account on how they spend money and on the quality of the services they provide.

Clause 39 sets out key definitions that have effect for part 4 of the Bill. They have been drafted with the intention of providing clarity on what is and is not being regulated, and to avoid creating loopholes. For example, subsection (2) defines what is meant by estate management; subsection (3) defines an estate manager; subsection (6) defines a relevant obligation; subsections (8) and (9) define what is meant by and what is excluded from the definition of an estate management charge; and subsection (10) defines relevant costs. In aggregate, this clause helps to provide the key definitions for measures and will inform the regulatory framework in part 4, which we will discuss in due course.

Amendment 52 agreed to.

Clause 39, as amended, ordered to stand part of the Bill.

Clause 40

ESTATE MANAGEMENT CHARGES: GENERAL LIMITATIONS

Question proposed, That the clause stand part of the Bill.

Lee Rowley: Clause 40 sets out general limitations with regard to estate management charges. Subsection (1) states:

"A charge demanded as an estate management charge is payable…only to the extent that the amount of the charge reflects relevant costs"—

in other words, purely the costs associated with estate management—and cannot be used to fund wider activities. This means that not every cost incurred by an estate manager is chargeable; an example would be if costs arose from the award of damages against the estate manager or an activity outside the estate by the estate manager that is not regulated. Those costs cannot be passed on.

Subsection (2) goes on to set out more detailed circumstances in which costs that are relevant costs may cease to become relevant costs and hence not payable or only partially payable.

Richard Fuller: I want to probe a bit more, because of the speed with which we shot through clause 39—with your leave, Chair, I am sure you will find this in order, because clause 40 also relates to relevant costs. Clause 39(10) says that relevant costs,

"in relation to a dwelling, means costs which are incurred by an estate manager in carrying out estate management for the benefit of the dwelling or for the benefit of the dwelling and other dwellings."

As the Government were considering clauses 39 and 40, the general limitations on what might be a relevant cost, what consideration did the Minister or the Government give to the fact that there are some costs that might be covered within that general limitation that, for some people, are covered by payments they make through their council tax? Therefore, in certain circumstances it may be the case that people are paying twice for the same services covered by what are defined as estate management running costs.

Lee Rowley: I am grateful to my hon. Friend for his point. He tempts me, at this relatively late hour, to get into an extremely important conversation that we will come to in the coming days. With his leave, I will limit my response to acknowledging his broader point, which is potentially broader than simply the discussions here on this Bill. Having listened to the evidence given to the Committee last week, I recognise that this is a key area that those impacted by estate management charges would like to debate further. I know that we will come to this in due course. I am putting that down as a marker for further discussion—I am not sure if I can satisfy him with the discussion, but I will put down a marker for it none the less.

To conclude on clause 40, specifically, subsection (2) refers to the provisions in clauses 41 to 43, which cover the requirement for the reasonableness of estate management costs and broader consultation requirements. Clause 40 provides clarity that not all costs incurred by estate managers may be passed on and sets out circumstances when even chargeable costs are not payable. I commend the clause to the Committee.

Question put and agreed to.

Clause 40 accordingly ordered to stand part of the Bill.

Ordered, That further consideration be now adjourned. *—(Mr Mohindra.)*

4.46 pm

Adjourned till Tuesday 30 January at twenty-five minutes past Nine o'clock.

Written evidence reported to the House

LFRB57 Bowlwonder Ltd (further submission)

LFRB58 Paul Robertson

LFRB59 The Conveyancing Association (supplementary)

LFRB60 CommonholdNow

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

LEASEHOLD AND FREEHOLD REFORM BILL

Ninth Sitting

Tuesday 30 January 2024

(Morning)

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No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor's Room, House of Commons,

not later than

Saturday 3 February 2024

The Committee consisted of the following Members:

Chairs: Dame Caroline Dinenage, Clive Efford, † Sir Mark Hendrick, Sir Edward Leigh

Amesbury, Mike *(Weaver Vale)* (Lab)
† Carter, Andy *(Warrington South)* (Con)
† Davison, Dehenna *(Bishop Auckland)* (Con)
Edwards, Sarah *(Tamworth)* (Lab)
† Everitt, Ben *(Milton Keynes North)* (Con)
† Fuller, Richard *(North East Bedfordshire)* (Con)
† Gardiner, Barry *(Brent North)* (Lab)
† Glindon, Mary *(North Tyneside)* (Lab)
† Hughes, Eddie *(Walsall North)* (Con)
† Levy, Ian *(Blyth Valley)* (Con)
† Maclean, Rachel *(Redditch)* (Con)
† Mohindra, Mr Gagan *(South West Hertfordshire)* (Con)
† Pennycook, Matthew *(Greenwich and Woolwich)* (Lab)
† Rimmer, Ms Marie *(St Helens South and Whiston)* (Lab)
† Rowley, Lee *(Minister for Housing, Planning and Building Safety)*
† Smith, Chloe *(Norwich North)* (Con)
† Strathern, Alistair *(Mid Bedfordshire)* (Lab)

Huw Yardley, Katya Cassidy, *Committee Clerks*

† attended the Committee

Public Bill Committee

Tuesday 30 January 2024

(Morning)

[Sir Mark Hendrick *in the Chair*]

Leasehold and Freehold Reform Bill

9.25 am

Clause 41

Limitation of estate management charges: reasonableness

Richard Fuller (North East Bedfordshire) (Con): I beg to move amendment 145, in clause 41, page 66, line 28, at end insert—

"(c) only where they are incurred in the provision of services or the carrying out of works that would not ordinarily be provided by local authorities."

This amendment would mean that services or works that would ordinarily be provided by local authorities are not relevant costs for the purposes of estate management charges.

The Chair: With this it will be convenient to discuss the following:

Amendment 150, in clause 41, page 66, line 28, at end insert—

"(c) where they are incurred in the provision of services or the carrying out of works, only where the requirement for those services or works is not the result of defects in the original construction."

This amendment would ensure that services or works on private or mixed-use estate that are required as a result of defects in its construction are not relevant costs for the purposes of estate management charges.

Clause stand part.

Richard Fuller: It is a pleasure to serve under your chairmanship, Sir Mark. I remind colleagues that we have moved from the clauses that relate to what was termed the "feudal" system of leasehold to the rather more modern problem of estate management charges, which in large part, although not exclusively, are incurred by those who own their homes. Essentially, the charges have arisen because of issues to do with adoption by local authorities. They are charges for a range of services in what might be termed, but are not necessarily, public areas, and for what might be, but are not necessarily, services or provisions that would normally be provided by a local authority.

It is worth bearing in mind how rapidly the issue of estate management charges has grown. From being essentially non-existent, or at least very rare, I think the charges now cover at least 1 million or 1.5 million homeowners—perhaps the Minister will tell us it is an even higher number. One issue is that we are essentially creating a two-tier society of council tax payers: people who pay council tax once to cover a range of public services, and residents in parts of our country who pay for those services twice—once through their council tax and again through their estate management charges.

The provisions in part 4 deal with a number of changes that seek to improve the rights of those subject to estate management charges and to improve access to redress. I commend a number of my local residents and councillors, most importantly Councillor Jim Weir of Great Denham, as well as 30 of my Conservative colleagues who wrote with me to the Prime Minister and Secretary of State to ask them to include the provisions in the Bill. I am grateful to them for doing so. Most particularly, I thank the former Minister—my hon. Friend the Member for Redditch—and the current Minister for their help and guidance on these matters. The provisions will enable us to make a great amount of progress. However, it is clear—and it was clear from the evidence the Committee received—that there is another path, or at least it is clear that the public also desire to abolish or reduce the current system of estate management charges, rather than improving it and the rights that people have. That is what the amendment seeks to achieve.

At issue is the matter of adoption. In the summary on page 4, paragraph 2 of the Competition and Market Authority report that looks into estate management charges and other issues, it states that

"evidence gathered in our market study to date has shown that, over the last five years or so, amenities on new housing estates that are available for wider public use (ie not for the exclusive use of households on the estate), are increasingly not being adopted by the relevant authority. This appears to be driven by the discretionary nature of adoption, housebuilders' incentives not to pursue adoption and by local authority concerns about the future ongoing costs of maintaining amenities".

That gets to the crux of the issue. The decision process for creating estate management charges takes place in a cosy discussion between the developers of new estates and the local authorities, both of which have an interest in ensuring that they are not the ones to carry the cost for a range of communal services. Guess who ends up paying the bill? It is homeowners up and down the country, who have no role in that cosy discussion. I wish to influence that cosy discussion through my amendment.

It is tricky to change the process of adoption, and I think you would consider it out of scope, Sir Mark, if we sought to do so in the Bill. In the evidence session, I heard colleagues talk about some of the risks involved in leaving councils with unadoptable roads and poor-standard infrastructure that the council tax payer has to pay to bring up to standard. No one on the Committee wishes to see that happen. My amendment would not force adoption, then, but essentially take the payer—the householder or homeowner—out of the equation for paying for those costs. It would exclude services or works that would ordinarily be provided by local authorities so that they would not count as costs that could be incurred by estate management charges.

My hope is that the amendment would pour a dose of reality on to developers by saying that they could no longer pass the buck for the costs of poor-standard infrastructure used by the public to homeowners on their estates. They would have to bring them up to standard, and then councils could adopt them.

Matthew Pennycook (Greenwich and Woolwich) (Lab): It is a pleasure to continue our line-by-line consideration of the Bill with you in the Chair, Sir Mark. I rise to speak to amendment 150, tabled in my name and that of my hon. Friend the Member for Weaver Vale. As we have

heard, part 4 of the Bill deals with the regulation of estate management. The hon. Member for North East Bedfordshire provided an extremely comprehensive overview of the problem and its prevalence.

The distinct set of problems faced by residential freeholders on private or mixed-tenure estates that part 4 seeks to address is well known and well understood. Those problems include: excessive or inappropriate charges levied for minimal or even non-existent services; charges imposed for services that should by right be covered by council tax; charges that include costly and arbitrary administration fees; charges hiked without adequate justification; and charges levied when residential freeholders are in the process of selling their property.

In addition to a general lack of clarity and transparency about how estate management charges and fees are arrived at and how they break down—these problems are not dissimilar to those experienced by long leaseholders in respect of service charges—residential freeholders on privately owned and managed estates clearly suffer from inadequate transparency in other unique respects. For example, as I have said in past debates on the subject in the House, it would appear to be fairly common for residential freeholders not to be notified of their future liability for charges early in the conveyancing process; many learn of their exposure only at the point of completion. Even in instances in which residential freeholders are notified about their future liability in good time, many have to confront the fact that their contracts do not specify limits or caps on charges and fees.

There is clearly a distinct problem with management fragmentation on many privately owned estates that have been constructed throughout the country in recent years, with residential freeholders even on relatively new estates frequently having to navigate scores of management companies, each levying fees for services in a way that further exacerbates the general lack of transparency and potential for abuse that they face in respect of charges and fees. Underpinning all those issues of concern is a fundamental absence of adequate regulation or oversight of the practices of estate management companies and the fact that residential freeholders currently do not enjoy statutory rights equivalent to those held by leaseholders.

There has been a broad consensus across the House for some time that residential freeholders on new build private and mixed-tenure estates require greater rights and protections, and the Government have recognised publicly—for at least six years, by my count—that they need to act to address the range of problems that freeholders face. Labour therefore welcomes the Government's decision to use the Bill to create an entirely new statutory regime for residential freeholders based on leaseholders' rights and is fully supportive of the intent behind the provisions in this part of the Bill.

Although part 4 sets the broad framework for regulating estate management, much of the detail necessary to bring that framework into force will come via regulations. We take no issue with that, and do not intend to pre-empt the regulations by attempting to prescribe a series of requirements on the face of the Bill. However, we believe that, where possible, we should seek to use part 4 not only to provide greater protection to residential freeholders who live on the estates, but to contribute to a reduction in the prevalence of such arrangements—a point that the hon. Member for North East Bedfordshire was driving at.

Although additional protections of the kind introduced under part 4 will almost certainly still be required, in its "Private management of public amenities on housing estates" working paper, published on 3 November last year, the Competition and Markets Authority stated that

"we consider that reducing the prevalence of private management arrangements would be the most direct route to address the root cause of our emerging concerns".

The CMA made it clear in that working paper that reducing the prevalence of private management arrangements would require a mix of legislative and policy changes more fundamental than the introduction of regulatory protection, and drew attention to the fact that it would result in a wider set of consequential changes, not least the potential for

"significant impact on local authority finances and resources at a time when local authority funding is already stretched."

That is why, while we very much sympathise with its intent of ensuring that residential freeholders on private or mixed-tenure estates are not charged for services that should by right be covered by council tax, we have reservations about amendment 145. We are concerned that it will, in effect, force local authorities to adopt public amenities on new housing estates, irrespective of circumstance, or—if compulsion is not the intent of the hon. Member for North East Bedfordshire—would see those amenities degrade and deteriorate as a result of not being maintained by either the private management company or the local authority.

Richard Fuller: I am grateful to the shadow Minister for his detailed look at my amendment. First, will he explain to the Committee where he sees compulsion on local authorities in the amendment? I cannot see it. Secondly, will he explain why his more material concern about the possibility of items degrading and estate management not doing anything would not be addressed by the strengthening provisions that the Government are putting in the Bill on behalf of homeowners?

Matthew Pennycook: Under my reading of the hon. Gentleman's amendment, if it is ensured that services or works that would ordinarily be provided by local authorities are not relevant costs for the purposes of charges in this part, who will pick up the bill? If the local authority is not compelled to adopt the amenities, our concern is that no one will maintain them. To address his point directly, I worry that his amendment would not ensure that the private estate management company picks up the charge. I will come to why I think our amendment is a superior way of addressing this very real problem.

Barry Gardiner (Brent North) (Lab): I am listening carefully to my hon. Friend. It may interest him to know that I was on a private estate in Kingswood at the weekend, for some reason. It soon became apparent that the developer had gone into liquidation and the estate was being run down in a quite dreadful way. As my hon. Friend said, in that situation, the developer itself and the management of the estate had, to all intents and purposes, ceased—residents were very voluble

[Barry Gardiner]

on things not being done—but the local authority had not adopted the road in the first place, and the services were suffering accordingly.

Matthew Pennycook: We are all driving at the same point. I was very much taken by the CMA's conclusion that reducing the prevalence of these arrangements requires a combination of the mandatory adoption of amenities and putting in place corresponding common adoptable standards. If we do one without the other, we risk some unintended consequences.

My concern about the amendment tabled by the hon. Member for North East Bedfordshire is that we cannot simply remove from estate charges costs that should in an ideal circumstance be borne by local authorities and then expect the private management company to simply pick them up. I fear that the more likely scenario will be that the amenities are not properly maintained. That is a real concern, and should be for residential freeholders on the estates. As the hon. Member for North East Bedfordshire outlined, there are some good reasons why local authorities are reluctant to adopt public amenities on private or mixed-tenure estates.

Richard Fuller: I would hate to detain the Committee because we have a lot to go through, but let us understand the economic process here. Initially, the local authority and the developer will work out whether to adopt roads. The developer will then have to decide whether to set up an estate management company, which may or may not deliver facilities and services that would normally be covered by council tax. If the amendment is part of legislation, no property manager in their right mind will accept taking on the responsibility because they will not wish to be liable. Here is the flow of responsibility: one cannot lumber home owners with the cost, the property manager will not be lumbered with the cost for the reasons outlined—it may go bust—so the developer will then have to recognise that there is nowhere for it to turn.

Matthew Pennycook: We fundamentally disagree on where the logic chain leads. I do not think that, on the basis of the amendment, the developer will be forced to pick up the costs. It is far more likely that they would build below what would be considered a common adoptable standard and then leave residential freeholders to live with substandard amenities. We could debate this further, but that is my take on the hon. Gentleman's amendment: it would not force the management companies to do that. That is a real concern.

As I said, there are a variety of reasons why local authorities often do not take on responsibility. The most common one is that the public amenities on new housing estates are not built to a determined, adoptable standard. In those circumstances, one can hardly blame the local authority in question for a reluctance to adopt roads and common services that it will have to repair and maintain a great cost. My central argument is that if we are to reduce the prevalence of these arrangements, we must ensure that we introduce a common adoptable standard for public amenities on estates at the same time as we require mandatory adoption, as the CMA advises.

Eddie Hughes (Walsall North) (Con): It is a pleasure to serve under you, Sir Mark. The civil engineer in me rises to agree with the hon. Gentleman completely; it is slightly embarrassing that we once again find common cause. The point is well made: if a set standard is identified that will be accepted universally by councils as one they would be prepared to adopt, and forced on the developers, the developers will meet that standard, but if they are left with any opportunity to build something substandard, they will always take it and they will frequently try to go further and not even meet the standard that they have prescribed in their own design work. I am sure that all Committee members will have seen examples of that in their constituencies. I again find common cause, and I hope the Minister considers these points.

Matthew Pennycook: I thank the hon. Gentleman for that intervention; it is a habit that I hope he continues because I think there is common ground here. When it comes to common adoptable standards, Ministers have often put it to me—the Minister no doubt will; previous Ministers have done—that local authorities have the tools they need to drive up the standards of public amenities that are constructed, but there is clearly something going wrong in that they are not ensuring that those standards are in place. As a consequence—not in every instance, but in many—local authorities have good reason to be reluctant to take them on.

We have tabled amendment 150 in an attempt to challenge the Government to consider how they might utilise the regulatory framework introduced by part 4 to drive up the standards of public amenities on the estates in question—that is the other half of the equation that I think we are all agreed we need. Our amendment would ensure that services or works on private or mixed-tenure estates that are required as a result of defects in construction are not relevant costs for the purposes of estate management. I think that, rather than the amendment of the hon. Member for North East Bedfordshire, would be the incentive that developers need to ensure that high standards are in place at the point that they hand the estate over. Ours is consciously a probing amendment and I hope the Minister will understand and appreciate the problem that it attempts to address, as does the hon. Member's amendment. I look forward to hearing the Minister's thoughts on it.

Alistair Strathern (Mid Bedfordshire) (Lab): I rise briefly to add my weight to the comments of the shadow Minister, my hon. Friend the Member for Greenwich and Woolwich. I wholeheartedly share the concerns on this issue expressed by my Bedfordshire neighbour, the hon. Member for North East Bedfordshire. I know that, like me, he has received a lot of correspondence from constituents who find themselves with a variety of challenges and exposed by a situation whereby regulation simply has not kept pace with best practice.

As the CMA outlined last year, we have gone from a situation in which it was simply the norm that estates were adopted by the local authority to one in which that is far from the norm. In the last week, I have spoken to residents right across my constituency who have faced incredibly high service charges. Estate management companies are looking for the next frontier for their rent-seeking behaviour, often by charging fees for services that would normally be covered by council tax. Such is

the fragmentation on estates, as the shadow Minister set out, that they sometimes even duplicate the fees charged by other management companies on the same estate.

9.45 am

Alongside that, there is a lack of quality provision, because residents do not have the same level of recourse or challenge as they would in the case of a local authority, which could ensure that services were delivered in an effective, timely and transparent way.

Finally, there are challenges around the sale of properties. The opaqueness of some of the fees arrangements and, frankly, the shoddy standard of the work that often results mean that residents can face real challenges when moving house. Last year, the CMA set out the real necessity of Government action on the issue. It gave some good reasons, which both the hon. Member for North East Bedfordshire and the shadow Minister have set out. I will not duplicate what they said about why the issue requires Government action, rather than leaving it to the CMA or other actors.

I welcome action on the regulatory side to drive up standards, empower homeowners and correct some of the persistent power imbalances that enable such exploitation. However, as the CMA has set out, those power imbalances, and the inherent inequity of the relationship between a management company and individual freeholders, mean that some of the challenges are likely to persist, absent removing them at source, which would mean enabling estates, finally and with confidence, to be adopted.

I share the desire of the hon. Member for North East Bedfordshire to drive change as quickly as possible, although I am afraid I share the shadow Minister's concern that the hon. Member's amendment might do so in a way that left homeowners in a situation in which their estates were not well maintained. It could actually exacerbate some of the challenges of requiring homeowners to ensure that public areas are built to a common standard.

If we cannot resolve the issue now, I urge the Minister and the shadow Minister to go away and think about actions to tackle it, whether that is in the Bill or in other legislation. It is one of the biggest emerging challenges facing new towns and new communities, such as those in Mid Bedfordshire, and we should not enable such practices to continue. Exactly the same logic that the Minister set out last week—cracking down on rent-seeking behaviours in other areas, which the Bill does good work on—applies here. I urge him and my Front-Bench colleague to continue their work with renewed vigour, so that the Bill and subsequent legislation can tackle the issue once and for all.

Barry Gardiner: The Minister will recall that in response to a Government consultation in 2018, the Government committed to introducing a section 24 right for freeholders on housing estates, but that has not appeared in the Bill. It would have given those freeholders the right to go to a first-tier tribunal and appoint a court protective manager. The Minister and his officials may wish to reflect on and remedy that failing in the Bill. However, even that would be an imperfect measure, because it would not ensure that leaseholders in homes on estates had the same rights as leaseholders in a development block, for whom the Bill seeks to facilitate the right to manage. Will the Minister look at that issue and ensure that that provision is realised?

The Minister for Housing, Planning and Building Safety (Lee Rowley): It is a pleasure to serve under your chairmanship, Sir Mark, and it is good to continue debating these issues this morning. I am grateful to all hon. Members who have raised such important points. I do not think that the disagreement between Members on any of the Benches is about whether there are issues; the question is rather about the technicalities of how to approach them, what to do and what is proportionate.

I will talk briefly about the amendments. Although the Government cannot accept them now, I hope that my hon. Friend the Member for North East Bedfordshire and the shadow Minister will listen to the points that I make; the broader point is that I am listening carefully and have a lot of sympathy for the underlying point, which we are all trying to solve. The question is about how we do it and whether we need to go further.

There was an extended debate between my hon. Friend the Member for North East Bedfordshire and the hon. Member for Greenwich and Woolwich. I will not try to repeat that, but not because I do not want to give due regard to everything that my hon. Friend put on record or to his underlying point. He is absolutely right that there is a problem; we all see it in our constituencies. The challenge, as I see in my constituency of North East Derbyshire, is that there is now a move towards greater estate management outside the demise of the local representation of the state. It works in some areas and for some elements, but there are specific areas and specific estates in which it clearly does not work. We have all heard the stories about the issues that are visible.

In the past, it would have been typical for local authorities to have adopted estates, but that is moving further and further away from reality. There is a question about whether there are some elements of estate management where it is reasonable to have some kind of arrangement outside the aegis of the state, but equally I accept the argument that that has gone too far in certain areas.

Rachel Maclean (Redditch) (Con): I have listened carefully to the debate. I thank my hon. Friend the Member for North East Bedfordshire for his reference to the work that we did together.

I want to ask the Minister to expand a bit more on his comments, as I am sure he will. The argument has often been made that if we make clear to the people who are buying those homes what they are actually getting into, and if we give them a schedule of charges, the regime will be more acceptable. That is the heart of the issue: if customers know what they are buying, presumably they can freely choose whether to buy that property or a different type of property.

I think we all agree that there should be freedom of choice and that the buyer should take responsibility for their choices. However, does the Minister think that the current regime and framework are adequate to provide choice? My personal view is that we do not have that, and that that is at the heart of the problem. But even if we provide that choice, a fundamental philosophical problem remains. I am interested in his view on the balance of those two issues.

Lee Rowley: I am grateful to my hon. Friend, who has a huge amount of knowledge, expertise and background in the subject. She is right to highlight the tension with agency. As long as there is sufficient knowledge in the decision being made, the logical extension is that the decision was made on the basis on the preponderance of the facts, and people should therefore be willing to accept the consequences of their choices.

Equally, through colleagues and in our postbags, we have all seen the reality that this does not work in all instances, and it is not necessarily clear where it works. We have examples of where an indication was given about some of these things, but the reality is very different from what may have been said during the sales process. A different estate manager may take over, the developer may disappear or things may change. The reality of what happens on the ground with estate management charges can be very different from what has been talked about.

The question is therefore not whether there is an issue, but how we drive up standards. Clause 41, which I will address in a moment, seeks to drive up standards through transparency. There is a perfectly legitimate question—it has been correctly posed via the amendments tabled by my hon. Friend the Member for North East Bedfordshire and by the hon. Member for Greenwich and Woolwich, and has been outlined by the hon. Member for Mid Bedfordshire and others—as to whether that is sufficient or whether additionality is needed. Although I cannot accept the amendments today, because I think that there are genuine questions about whether they would work, the Department wants to continue looking at the issue. I would be happy to talk about it at a future stage.

Andy Carter (Warrington South) (Con): I am listening carefully to the debate. Warrington is a new town. Over the past 60 years, about 100,000 homes have been built in total. From looking carefully at the borough council's own details on estate adoption, it is clear that there are currently 13 estates that are not adopted, where there have been agreements in place with the council but, for all kinds of reasons, developers are not doing anything. One problem seems to be that in many cases the estates are built out over many years and things change. Some estates have been building for 13 years. The builders have changed, the involvement of council officers has changed and the structure of how things are built out has changed.

There seems to be no redress for householders so that what was promised in the first place can be delivered. That is a real problem. When the Minister is looking carefully at the issue, can he bear in mind that it is not a straightforward case of "The developer promised to do this, but they haven't"? Things can change dramatically over time, and there is a complicated path. I think that that is what the Minister is saying; it is certainly my experience in Warrington.

Lee Rowley: My hon. Friend is absolutely right. If the Committee will indulge me, I have personal experience of examples of this in North East Derbyshire, and I know the complexity involved in getting this correct. I have an estate by an unnamed developer in the south of the constituency, near Wingerworth, where this discussion is going on already. Before Christmas, I spent two hours talking to representatives of owners on the estate and to the estate management company itself. I recognise the complexities on an estate that was being managed relatively adequately from afar but clearly still had issues.

The second example—this is why we have to be so careful to get this right—is from the other side. Fenton Street in Eckington has been unadopted for more than a century. The residents recognise that it is unadopted and have bought their houses understanding and acknowledging that. Possibly it was been adopted many decades ago, but there is no record.

We have to make sure that this works for everybody. In an ideal world, everybody would be scooped up and this would all be fixed in one fell swoop with whatever a benevolent Government could do, but that is not the reality of the choices that we face. Nor is it often the reality of what happens when a Government try to do things that work in the way that we all intend. Although I understand the intention behind the two amendments, I encourage hon. Members to withdraw them.

Barry Gardiner: The Minister has not responded to the point about a section 24 court-appointed manager. Would that not give a power enabling redress for residents in situations such as the one he outlines, where there has been a complete failure to adopt and maintain? Will he commit to considering that point as part of the mix?

Lee Rowley: We may touch on some of those elements under later clauses. The hon. Gentleman's core point is about whether the Government are willing—without providing any guarantees in this place—to look at additionality. Of course we are. There are the usual caveats, which I have explained in previous sittings, about what we can do, how we do it, and the priorities, but this is an area in which we are listening carefully.

In conclusion, I ask my hon. Friend the Member for North East Bedfordshire and the hon. Member for Greenwich and Woolwich to consider withdrawing their amendments. I hope that they have heard that I am serious and willing to look at the issue again, although I cannot offer guarantees at this stage.

I will turn briefly to clause 41, to put on the record exactly what the clause contains and what we are voting for. Freehold homeowners on private and mixed-tenure estates who pay estate management charges have fewer protections than leaseholders paying the service charges that we have spoken about. Clause 41 will introduce limitations on what estate management companies can charge homeowners through estate management charges. Subsection (1) states:

> "Costs incurred by an estate manager are relevant costs…only to the extent that they are reasonably incurred."

Clause 41 will ensure that where these costs are incurred in the provision of services or the carrying out of works, they will be relevant costs only if the services or works are of a reasonable standard.

Subsection (2) makes it clear that when an estate management charge is payable in advance, only reasonable costs are payable. Furthermore, after reasonable costs have been incurred, any necessary adjustment must be made to the charge by repayment, reduction of subsequent charges or any other method. Those new rules are equivalent to requirements in the leasehold regime and provide homeowners with more confidence that they

will not be overcharged. We seek to provide increased protections for homeowners through the clause. I commend it to the Committee.

10 am

Matthew Pennycook: Amendment 150 was a probing amendment. I take on board the Minister's statement that the Government are looking at the issue and that they do not believe that this legislation is the appropriate vehicle to deal with it.

If the Minister is willing to respond again, I would like a bit more clarity on precisely why in many cases amenities on estates are not being built to an adoptable standard. I think we all agree that we would like to see such a system. The Minister introduced a different problem, namely circumstances in which residents might not want their amenities adopted; I think that that would be a relatively small number of estates, but we would have to account for them. In general, we want to reduce the prevalence of arrangements and see adoption becoming mandatory in most circumstances.

Will the Minister expand on why the Government think the common amenable standards are not being met across the board? In a previous debate, the then Minister stated:

"The local authority has powers to ensure that developers build and maintain communal facilities to the standards and quality set out in the planning permission."—[*Official Report,* 22 January 2019; Vol. 653, c. 132WH.]

Is something going wrong with the standards that most local authorities require at the planning permission stage? Is the section 106 agreement breaking down in some way? What is the reason? That might give us an insight into the solution that the Government have in mind and into why common adoptable standards are not currently the norm.

Lee Rowley: The hon. Gentleman is absolutely right that there are a variety of scenarios. I am not sure that residents of Fenton Street would not take the opportunity to adopt if they were given the opportunity; it is more about the broader challenges of getting a single coherent answer to a very complicated set of questions that have come about in the past few decades or over a longer period.

The hon. Gentleman raises a valid point about the outcome of the planning system. Everybody, irrespective of party, would want the planning system to work to a point where there are common standards for roads and public spaces. There is an interesting question as to why that is not the case. It is an area that as a Minister I intend to look into in more detail.

The question is whether is it a systemic problem or a matter of individual circumstances, where it is working okay in some areas but not in others. Anecdote leads to bad policy and bad law, but in my experience as a constituency MP it has worked in a number of areas and not in others. That suggests that there is variability and that it is therefore not a systemic issue, but that might be different elsewhere in the country. It is an area that I think we should look at more; I am not sure whether it needs legislation. That is an open question, but it is definitely something that I am keen to understand more.

Richard Fuller: I have listened with interest to hon. Members' contributions, particularly in respect of my amendment 145. I strongly believe that we need to close down the trend to create two tiers of council tax payers —those who pay once and those who have to pay twice— and ensure that we all pay only once. My amendment would directly address that issue. I would therefore like to put it to a vote.

Question put, That the amendment be made.

The Committee divided: Ayes 1, Noes 9.

Division No. 14]

AYES

Fuller, Richard

NOES

Carter, Andy	Maclean, Rachel
Davison, Dehenna	Mohindra, Mr Gagan
Everitt, Ben	Rowley, Lee
Hughes, Eddie	Smith, rh Chloe
Levy, Ian	

Question accordingly negatived.

Clause 41 ordered to stand part of the Bill.

Clause 42

LIMITATION OF ESTATE MANAGEMENT CHARGES: CONSULTATION REQUIREMENTS

Question proposed, That the clause stand part of the Bill.

Lee Rowley: Clause 42 introduces new obligations on estate managers where the costs they wish to charge a homeowner exceed an appropriate amount. It mirrors sections 20 and 20ZA of the Landlord and Tenant Act 1985. Subsection (1) places an obligation on estate managers to consult homeowners where the costs for works or services exceed a given threshold. Subsections (2) to (4) confer a power to allow the Secretary of State to determine the appropriate threshold in regulations; the Secretary of State may also determine whether the threshold is to be a total sum or if the costs for individual homeowners exceed an appropriate amount.

Subsections (6) and (7) confer a power on the Secretary of State to set out in regulations the consultation requirements and the provisions that may be included in the consultation process. Issues that may be in regulations are not exhaustive, but may include matters of relevance, including details of the proposed works, the provision of estimates, and requirements to have regard to homeowner observations and to specify reasons for carrying out the works if they proceed. We recognise that there are occasions where it may not be appropriate or possible for estate managers to consult homeowners—for example, where urgent or emergency works need to be carried out. Subsections (5) and (8) to (10) therefore allow estate managers to seek dispensation from the relevant tribunal of the need to consult. However, should estate managers fail to obtain dispensation or follow the consultation requirements, individual homeowner contributions are capped at the appropriate amount. The Government will engage extensively with stakeholders

[Lee Rowley]

to determine the appropriate threshold for consultation and what the detail of the consultation arrangements should be. I commend the clause to the Committee.

Matthew Pennycook: I wish to probe the Minister a little further on the clause. As he said, it introduces requirements for estate managers to consult managed owners if the costs of any works to be charged as an estate management charge exceed an appropriate amount, which will be set out in regulations. Overall, the Government's aim in this part of the Bill is clearly to introduce statutory protections for residential freeholders equivalent to those enjoyed by long leaseholders with regard to service charges.

If I understood the Minister correctly, he has confirmed that the Government's intention with the clause is to establish for residential freeholders an equivalent to section 20 of the Landlord and Tenant Act 1985. If that is the intention, can the Minister confirm that the new requirements provided for by the clause will include requiring estate managers to have regard to written observations from residential freeholders on charges in excess of the to-be-determined appropriate amount, and where necessary to justify in writing the reasons why they awarded a contract to a tenderer that neither submitted the lowest estimate nor was nominated by a resident?

Furthermore, if the clause is indeed intended to mirror the operation of the existing section 20 consultation process, I urge the Minister to consider what might be done to address the known deficiencies of the process, including the fact that a leaseholder's sole means of redress if they take issue with the landlord's decision is the tribunal, and that there is no statutory meaning of what "have regard to" means in the context of the consultation. While he does so, I encourage him to take the opportunity to overturn, or at least modify, the decision of the Supreme Court in the 2013 Daejan Investments Limited *v*. Benson case, which has proved so detrimental to the consultation rights of leaseholders. I make this series of points because the Homeowners Rights Network, among others, has questioned the logic of extending to privately managed estates a regime that is not always effective in protecting residential leaseholders from unreasonable charges associated with major works.

Lee Rowley: The hon. Member for Greenwich and Woolwich encourages me to seek to overturn decisions of the Supreme Court! That could start a whole heap of discussion early on a Tuesday morning, but I will withhold further comment for now.

The hon. Member is absolutely right that clause 42 is intended to mirror section 20 of the 1985 Act. He is correct that the intention is to consider written responses as well; I hope that that reassures him. We will need to go through a consultation process: although we have said that our intention is to mirror section 20 of the 1985 Act to give confidence about the direction of travel, what is appropriate for these individual circumstances will need to be discussed, and I hope that we can pick up that discussion within the consultation.

Question put and agreed to.

Clause 42 accordingly ordered to stand part of the Bill.

Clause 43

LIMITATION OF ESTATE MANAGEMENT CHARGES: TIME LIMITS

Lee Rowley: I beg to move amendment 53, in clause 43, page 68, line 7, leave out from "not" to end of line 12 and insert

"given a future demand notice in respect of the costs before the end of the period of 18 months beginning with the date on which the costs were incurred.

(2) A 'future demand notice' is a notice in writing that—

(a) relevant costs have been incurred, and

(b) the owner will subsequently be required to contribute to the costs by the payment of an estate management charge.

(3) A future demand notice must—

(a) be in the specified form,

(b) contain the specified information, and

(c) be given in a specified manner.

'Specified' means specified in regulations made by the Secretary of State.

(4) The regulations may, among other things, specify as information to be contained in a future demand notice—

(a) an amount estimated as the amount of the costs incurred (an 'estimated costs amount');

(b) an amount which the owner is expected to be required to contribute to the costs (an 'expected contribution');

(c) a date on or before which it is expected that payment of the estate management charge will be demanded (an 'expected demand date').

(5) Regulations that include provision by virtue of subsection (4) may also provide for a relevant rule to apply in a case where—

(a) the owner has been given a future demand notice in respect of relevant costs, and

(b) a demand for payment of an estate management charge as a contribution to those costs is served on the owner more than 18 months after the costs were incurred.

(6) The relevant rules are—

(a) in a case where a future demand notice is required to contain an estimated costs amount, that the owner is liable to pay the charge only to the extent it reflects relevant costs that do not exceed the estimated costs amount;

(b) in a case where a future demand notice is required to contain an expected contribution, that the owner is liable to pay the charge only to the extent it does not exceed the expected contribution;

(c) in a case where a future demand notice is required to contain an expected demand date, that, if the demand is served after the expected demand date, the owner is not liable to pay the charge to the extent it reflects any of the costs.

(7) Regulations that provide for the relevant rule in subsection (6)(c) to apply may also provide that, in a case set out in the regulations, the rule is to apply as if, for the expected demand date, there were substituted a later date determined in accordance with the regulations.

(8) A statutory instrument containing regulations under this section is subject to the negative procedure."

This amendment would require notice of future service charge demands (as envisaged in clause 43(b)) to be given in accordance with regulations.

The Chair: With this it will be convenient to discuss clause stand part.

Lee Rowley: We are aware that there is no clear limit on when homeowners on private and mixed-tenure estates can be charged for works and services, regardless of when the costs were incurred. Homeowners could therefore be subjected to unexpected estate management charge demands, making it difficult for them to plan for and finance those costs. That could be the case if in future there are long-term works that take some time to complete.

Clause 43 introduces a new 18-month time limit for estate management companies to demand payment for works that have been carried out. If they fail to issue a demand within this period, the costs will not be recoverable and homeowners will not be required to pay them. Paragraph (b) sets out arrangements making it clear when the homeowner will not receive a demand for payment within the 18-month period. It requires the estate manager to notify in writing before the end of the period that the costs have been incurred and that the homeowner will be required to contribute through their estate management charge. If the estate manager does not notify, the homeowner is not liable to pay. The clause seeks to provide greater certainty for homeowners; I commend it to the Committee.

Currently, when works are undertaken estate managers may require a homeowner to pay the costs up front or pass on costs to the homeowner once the work has been carried out. Clause 43 will require estate managers to charge homeowners for works within 18 months. Amendment 53 introduces new subsections (2) to (9), which require estate managers to specify the costs incurred, the expected contribution of homeowners and the date by when the demand will be served. The intention is to give homeowners certainty about the costs that have been incurred by the manager, their own individual liability, and when they are likely to receive the demand. The amendment requires estate managers to issue a future demand notice if they will be passing on costs more than 18 months after works are carried out. Subsection (2) defines a future demand notice as a notice in writing that the relevant costs have been incurred and the homeowner is required to contribute.

New subsection (3) sets out that the Secretary of State and Welsh Ministers can, by regulations, specify the form, the information to be included and the manner in which the future demand notice must be given to the homeowner. Subsection (4) details that regulations made by the Secretary of State and Welsh Ministers may specify as information to be included in the future demand notice an estimated amount of the costs incurred, an amount that the homeowner is expected to contribute, and a date by which it is expected that the service charge will be demanded. We will work with estate managers, managing agents and homeowners to set out what a future demand notice may contain, to ensure that notices have the right level of information.

New subsection (5) lays out that regulations may provide for a relevant rule to apply where the homeowner has been given a future demand notice and the demand for payment is served more than 18 months after costs were incurred. New subsection (6) details the relevant rules and the homeowner's liability to pay the estate management charge where a future demand notice contains estimated costs, an expected contribution or an expected demand date. New subsection (7) allows estate managers to extend the expected demand date in cases specified by regulations, for example because of unexpected delays in completing the work.

Through these measures, we seek to provide homeowners with more certainty about costs. I commend amendment 53 to the Committee.

Amendment 53 agreed to.

Clause 43, as amended, ordered to stand part of the Bill.

Clause 44

Determination of tribunal as to estate management charges

10.15 am

Richard Fuller: I beg to move amendment 139, in clause 44, page 68, line 31, at end insert—

> "(3A) Where the appropriate tribunal has made a determination on an application under subsection (1) or (3) that an estate management charge is not payable because the costs incurred by an estate manager are not relevant costs under section 41(1)(b) (services or works to be of a reasonable standard), the tribunal may impose a penalty on the estate manager which is payable to the residents of affected managed dwellings; and the tribunal may determine how much of the penalty is to be paid to the residents of each affected managed dwelling."

This amendment would enable the tribunal to impose a financial penalty, payable to residents of affected managed dwellings, where estate management work has not been completed to a reasonable standard.

The clause is an excellent step forward in ensuring that freeholders will have rights to access a tribunal when there are errors and poor provision of services on their estate, so I very much welcome it. Through the amendment, I seek to probe the Minister about whether we have got the balance right to enable effective use of the tribunal. The amendment essentially says that in addition to requiring that poor-standard, poorly provided services are brought up to standard, the tribunal could impose a financial penalty on the management company.

It requires a tremendous effort for people to take cases to a tribunal: they often have to make a collective effort and gather evidence about what has gone wrong, and they may have to go through weeks, months or potentially years to get to the point where they can take a case successfully to tribunal. If the only remedy at the end of that is that those services have to be brought up to standard, where is the incentive not to provide defective services in the first place? By enabling the tribunal to impose financial penalties, the amendment would redress the balance, with the bias more towards those suffering from poor service in the first place.

Lee Rowley: I am grateful to my hon. Friend for tabling this probing amendment. I agree that where works and services are provided and charged for on freehold estates, their costs should be charged to residents only if they are of a reasonable standard. As he indicated, clause 41 makes progress in that regard. Clause 44 allows for the appropriate tribunal to determine whether an estate management charge is payable. Should the tribunal find that services or works charged for have not been carried out to a reasonable standard, it will determine

[Lee Rowley]

the amount that the homeowner is liable to pay. That is equivalent to the leasehold regime, and I do think that tribunals are the best placed to make that decision.

On whether additionality is required, the appropriate tribunal is not an enforcement body; it is not a weights and measures authority or a district council. If a financial penalty were applied for works not completed to a reasonable standard, the appropriate tribunal would need to be satisfied beyond reasonable doubt that that was the case. My hon. Friend may say—I have some sympathy with the point—that people would probably not go to tribunal, given its complexity. In addition, if people want to sue for defective works and such things, they can do so through other parts of the legal system; that form of redress is available if necessary.

If we were to introduce penalties for works or services not completed to a reasonable standard on freehold estates, the challenge would be in the implications for the tribunal and the equivalent leasehold regime. Therefore, while I have a lot of sympathy with my hon. Friend's point, I hope that he will consider withdrawing the amendment it on the basis that it would probably move the tribunal too much in one direction and create a whole heap of other consequences that we would need to think carefully about, and which I do not think we can accept at the current time.

Richard Fuller: I am grateful for the Minister's comments. On that basis, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Richard Fuller: I beg to move amendment 140, in clause 44, page 69, line 6, at end insert—

"(7) The Secretary of State must by regulations provide—

(a) that an estate manager's litigation costs incurred as a consequence of an application under this section may not be recouped through the estate management charge, except where the tribunal considers it just and equitable for such costs to be so recouped;

(b) for the right of an applicant under this section to claim litigation costs incurred as a consequence of an application under this section from the estate manager, where the tribunal considers it just and equitable in the circumstances.

(8) Regulations under subsection (7) may amend primary legislation."

This amendment would require the Secretary of State to make regulations preventing estate managers from passing their litigation costs on to residents through the estate management charge, and providing for residents to be able to reclaim their litigation costs from an estate manager.

The amendment, which is in a similar vein to the previous one, is designed to probe the Minister on whether we have got the balance right in the clause to enable effective use of the tribunal by those who would wish to bring a case against estate managers. As we heard when we discussed the clauses on leasehold, one of the biggest concerns that people have is that they will face open-ended litigation costs. In this case, the litigation costs will essentially be cycled back through the estate management charges, and therefore effectively end up being paid by homeowners on the affected estates.

Amendment 140 is designed to prevent that passing on of litigation costs. It also recognises that many homeowners may wish to take action but not have the wherewithal to pay the litigation costs. Paragraph (b) of the amendment therefore enables residents to claim the litigation costs arising from their application. I am interested in the Minister's view on the balance of litigation in such circumstances—we have spoken about it in relation to other circumstances. I think we all want the tribunal to work, but for that to happen, people must not be put off by the fear that they may face significant direct or indirect litigation costs.

Matthew Pennycook: I rise to support the amendment. We discussed litigation costs in relation to clause 34; we strongly argued for a general prohibition with very limited exceptions. The hon. Gentleman is right to draw attention to the fact, which applies to part 4 as a whole, that we should not replicate the flaws of the leasehold system in the newer system of estate management charges. Our arguments in relation to the leasehold regime therefore apply equally here, and the hon. Gentleman is right to raise the point.

Lee Rowley: I will try directly to address the point made by my hon. Friend the Member for North East Bedfordshire, to which we are sympathetic. It is important that litigation costs are not passed on. On the leasehold side, there is clear evidence that that is happening, but the question is whether there is clear evidence of it happening in the area of estate management. From speaking to officials, we do not see that clear evidence at the moment. However, if any members of the Committee or others have such evidence, I would welcome it. If it is happening, I am sure that we would be happy to consider the issue as the Bill progresses.

Richard Fuller: With the Minister's assurance that he will keep a watching brief on the issue, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Question proposed, That the clause stand part of the Bill.

Lee Rowley: Clause 44 grants homeowners a new right to apply to the appropriate tribunal for a determination on whether their estate management charge is payable, and if it is, how it should be paid, by whom and to whom it should be paid, and the date by which the payment should be made. Under this provision, the tribunal will enforce the newly established reasonableness principle set out by clause 41, which requires estate management services to be reasonable, and any works or services to be of a reasonable standard.

The clause requires estate management companies to charge the correct fees from the outset, thereby reducing the number of homeowners being overcharged for works and services on their estate or being at risk of legal action. The clause also sets out the circumstances in which an application cannot be made, including when the homeowner has already agreed to, but not paid, the charge, or in which the issue has already been subject to a decision by a court. That will prevent homeowners from bringing unjustified or vexatious claims, which can lead to delays in the payment of valid estate management charges and negatively impact the upkeep and good

management of the estate. The clause delivers on a Government commitment to increase protections for existing homeowners, and I commend it to the Committee.

Question put and agreed to.

Clause 44 accordingly ordered to stand part of the Bill.

Clause 45

DEMANDS FOR PAYMENT

Question proposed, That the clause stand part of the Bill.

Lee Rowley: Where homeowners on a managed estate pay an estate management charge, it is essential that they have transparency about what they are paying for. Currently, there is no universal approach for demanding payment of such a charge, so there can be inconsistencies between estates and potential confusion for homeowners. Clause 45 mirrors the obligations that we introduce for leaseholders elsewhere in the Bill. Subsection (1) enables the Secretary of State to prescribe a standard form for demanding payment and the information that it should contain. We will work closely with the sector to ensure that that is the right level of information and detail. Subsection (2) makes it clear that failure to provide information in the new standard format means that homeowners do not have to pay the charge, and any provisions in the deed, lease or any other contractual document for non-payment will not apply. The Secretary of State will also have the power to create any exemptions if our work with stakeholders demonstrates a good case for them both now and in the future. I commend the clause to the Committee.

Question put and agreed to.

Clause 45 accordingly ordered to stand part of the Bill.

Clause 46

ANNUAL REPORTS

Question proposed, That the clause stand part of the Bill.

Lee Rowley: Clause 46 introduces a new obligation for estate management companies to provide homeowners on their estates with an annual report, which might cover issues such as budgets for the year ahead and details of planned works.

Subsections (2) and (5) require that the report must be provided within one month of the end of the 12-month accounting period, although it may be provided earlier if it is practical and expedient to do so. Subsection (4) defines the 12-month accounting period as starting either on a date agreed between the company and homeowner or, if no period is agreed, on 1 April. Subsection (3) allows the Secretary of State to prescribe the detailed contents of the report, while subsection (6) allows the Secretary of State to provide exceptions from the duty to provide a report.

The detail will be set out in secondary legislation and allows the Secretary of State to respond effectively to changing market circumstances. We will work closely with the sector and relevant parties to ensure that we have the right level of detail and consider the case for any exceptions.

Matthew Pennycook: Briefly, when we discussed the regulation of service charges in clauses 26 to 30, we made a number of specific arguments about how those clauses might be tightened and strengthened. Can the Minister give us a commitment that if the Government determine to amend those clauses in any way, they will seek to read across the equivalent changes to this part of the Bill or, if they do not think that they apply, to justify where wider deviations between the two regimes are necessary? As I said, we are mirroring broadly the statutory protections in place for long leaseholders here, but where they differ, the Committee would certainly welcome clarification as to why.

Lee Rowley: I am grateful to the hon. Gentleman for his question. He tempts me into hypotheticals, but I hope that we are demonstrating our willingness to try to work constructively to see where areas can be improved. I must caveat that with clarity that we will not be able to improve every area; of necessity, prioritisations will need to be made. Of course there will be disagreements in this place and elsewhere about what is possible, but we shall see; if there is read-over, we shall see.

Question put and agreed to.

Clause 46 accordingly ordered to stand part of the Bill.

Clause 47

RIGHT TO REQUEST INFORMATION

Question proposed, That the clause stand part of the Bill.

The Chair: With this it will be convenient to discuss clause 48 stand part.

Lee Rowley: As part of our reforms to drive up transparency, clause 47 introduces new provisions to enable freehold homeowners of managed dwellings to request information from their estate manager.

Subsections (1) and (3) give owners of a managed dwelling the right to require an estate manager to provide information. As per subsection (2), that information may relate to estate management. One example of such information might be a health and safety assessment of communal areas. The estate manager will be required to provide relevant information that they have in their possession.

We know that, sometimes, the estate manager will not have that information to hand, so subsections (4) and (5) introduce an obligation for the estate manager to request the information from a third party and, if they hold it, that the third party is required to provide it. Subsections (6) and (7) create an obligation where the other person under subsection (4) does not have it, but knows who does. This person must make the request to the person who does have it, who in turn must provide the information, and—presumably—so on and so on.

Subsections (1) and (8) allow the Secretary of State to prescribe further details of these requirements in secondary legislation, such as the type of information to be provided, how a request can be made and when the request can be denied. We will consult on that to make sure that it works effectively. I commend the clause to the Committee.

10.30 am

Clause 48 introduces additional provisions to give full effect to the right of an owner of a managed dwelling to obtain information under clause 47. Subsections (2) and (3) allow homeowners the right to access premises where they can inspect or make copies of any information that they have requested. It also requires information to be provided within a time specified by the Secretary of State in regulation.

Subsections (7) and (8) set out further provisions that might be covered in regulation made by the Secretary of State, including the circumstances in which the specified period is to be extended and how the requested information should be provided. These measures will ensure that estate managers do not delay in providing information to the homeowner.

None the less, we also recognise that there is a cost associated with providing information, so subsection (6) allows the estate manager to charge through an estate management charge. The sort of things that the estate manager will be able to charge for include making copies of information, but they will not be able to charge for granting homeowners access to premises so that they can inspect the information located there. That seeks to mirror existing leasehold provisions to ensure that we are improving transparency and ensuring that estate managers are answerable to the homeowner. I commend the clause to the Committee.

Question put and agreed to.

Clause 47 accordingly ordered to stand part of the Bill.

Clause 48 ordered to stand part of the Bill.

Clause 49

ENFORCEMENT OF SECTIONS 45 TO 48

Richard Fuller: I beg to move amendment 141, in clause 49, page 72, line 26, leave out "£5,000" and insert "£50,000".

This amendment would increase from £5,000 to £50,000 the maximum amount of damages which may be awarded for a failure on the part of an estate manager to comply with the obligations imposed by clauses 45 to 48 (rights relating to estate management charges).

The Chair: With this it will be convenient to discuss clause stand part.

Richard Fuller: The Minister or shadow Minister will correct me if I am wrong, but I believe we covered issues to do with penalties earlier. The intent of this proposal is to ensure that damages in the leasehold and freehold system are the same. I therefore think I ought to ask leave to withdraw my amendment.

Matthew Pennycook: Without rehashing the debate on clause 30, I rise briefly to put on record that the Opposition think that the point the amendment is driving at is well made. We need equivalence between the two regimes, but we were concerned, notwithstanding damages versus penalties and all the rest, that the proposed financial penalty is too low to act as a serious deterrent to the type of behaviour that we are trying to do away with.

Richard Fuller: I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 49 ordered to stand part of the Bill.

Clause 50

MEANING OF "ADMINISTRATION CHARGE"

Question proposed, That the clause stand part of the Bill.

Lee Rowley: Currently, freehold homeowners on managed estates have very few protections relating to the cost of administration charges they may be liable to pay. This can leave homeowners paying excessively high administration charges that they are unable to challenge. We will address this issue and give homeowners greater protection. We intend to do that by mirroring the existing framework in place to protect leaseholders.

Clause 50 provides a definition of an administration charge. It is

"an amount payable…by an owner of a dwelling".

That amount must be in connection with applications or approvals in connection with a relevant obligation, the provision of documents, the sale or transfer of land, a failure to make a payment by the owner, or a breach of a relevant obligation. Subsections (2) and (3) allow the Secretary of State and Welsh Ministers to amend the definition of an administration charge by regulations, which must be done using the affirmative procedure. I commend the clause to the Committee.

Question put and agreed to.

Clause 50 accordingly ordered to stand part of the Bill.

Clause 51

DUTY OF ESTATE MANAGERS TO PUBLISH ADMINISTRATION CHARGE SCHEDULES

Question proposed, That the clause stand part of the Bill.

The Chair: With this it will be convenient to discuss the following:

Amendment 143, in clause 52, page 74, line 10, leave out "£1,000" and insert "£10,000".

This amendment would increase from £1,000 to £10,000 the maximum amount of damages which may be awarded for a failure on the part of an estate manager to comply with the provisions of clause 51 (duty of estate managers to publish administration charge schedules).

Amendment 144, in clause 52, page 74, line 13, at end insert—

"(5) An estate manager may not for any purpose set off damages payable by the estate manager to the owner under subsection (2)(b) against any present or future liability of the owner to the estate manager."

This amendment would prevent estate managers from recouping damages from residents through subsequent charges.

Clause 52 stand part.

Lee Rowley: Homeowners on managed estates can be subject to high and unreasonable administration charges, as I indicated. Part of the problem is the lack of clarity or transparency surrounding them. Clause 51 introduces a duty for an estate manager to publish an administration charge schedule if they expect to impose an administration charge.

Subsection (2) requires that the schedule should include the detail of administration charges that the estate manager considers to be payable and their associated costs. Where the cost cannot be confirmed before a charge is payable, the method of determining the cost should be included. Subsection (3) requires a revised schedule to be published if an estate manger revises the administration charges. Subsection (5) allows the Secretary of State and Welsh Ministers to prescribe in regulations the form and content of the administration charge schedule and how it is to be provided to homeowners. We will work with all relevant partners to ensure that we obtain the right level of detail in regulations.

I thank my hon. Friend the Member for North East Bedfordshire for his amendment 143, which would increase the maximum amount of damages from £1,000 to £10,000. I hope that, potentially, our discussion on the previous clause would apply here, and I repeat that the Government intend to write to all Committee members about this issue in the days ahead.

Amendment 144 seeks to ensure that any damages that the tribunal orders payable under Clause 52 (2)(b) cannot be recouped from residents through subsequent charges. I agree with my hon. Friend that residents should be protected from future charges. An estate manager can only recover costs incurred in estate management. A tribunal order to pay damages would not be regarded as falling within the definition of costs of estate management.

The transparency measures included in clauses 46 and 47, in the form of the annual report and the right to obtain information upon request, would also deter estate managers from attempting to recoup these costs. That is because it would become obviously visible and it would be clear that it was not related to estate management. I note, however, my hon. Friend's concerns and I am listening carefully on this matter. I hope that he might see fit to withdraw his amendment, having heard the Government's response.

Finally, clause 52 sets out the enforcement provisions that reinforce the new duty in clause 51 to publish a schedule. A freehold homeowner on a managed estate may make an application to the appropriate tribunal if an estate manager has not published a schedule, or has done so but contrary to any provisions determined by the relevant Ministers.

The appropriate tribunal may order that the estate manager provides a correct schedule within 14 days of the order being made, and it may also order that the estate manager pays damages not exceeding £1,000 to the homeowner. We believe that this is a proportionate and effective enforcement mechanism where an estate manager fails to comply with its obligations. I commend the clause to the Committee.

Richard Fuller: Many thanks to the Minister, again, for proposing further changes to help homeowners who are affected by estate management charges. I am pleased to hear him reiterate that he will consider the issues raised in my amendment 143 about the appropriateness of charges. The shadow Minister raised similar concerns about those being set at an effective level.

On amendment 144, will the Minister consider writing to the Committee about how, in practice, not passing on damages, fees or charges to residents will work? Great Denham is a new part of my constituency, and in an estate of a few thousand houses, there may be 50, 60, 70 or more property management companies. All of them are discrete limited companies and all were set up as subsidiaries of one or more parent company. We need to be sure, from the Government's point of view—given that some of these limited companies could go bust—about where the trail leads to. Under corporate law, as I understand it, there is no requirement for a parent company to be liable for the losses of a subsidiary that goes bust, and we want to ensure that liabilities flow upwards to the ultimate holding company.

Presumably, the payment of administration fees or dividends may go from subsidiary companies to the very large companies that are the ultimate parents. Is the Minister able to explain how he sees that working in practice? If not, or if it is too detailed to talk about now, perhaps he could agree to write to give some examples to the Committee in due course.

Lee Rowley: My hon. Friend highlights an important point. I think it is better that I write, but in principle, the transparency we seek to bring and the requirement to clearly articulate the charges that have been made, either in the annual report or elsewhere, aim to provide the sunlight that means that it is clear who is paying for what, and, if it is not a reasonable charge, there is a process that can be followed. But I will write to him with more on that, if that is helpful, because we all want to get this right.

Matthew Pennycook: I rise briefly to support the argument made by the hon. Member for North East Bedfordshire. There is a specific problem on privately managed estates, which I referred to when speaking to clause 41, relating to the fragmentation of multiple estate management companies. I share his concern, which partly speaks to whether the penalties are appropriate in terms of enforcement. On some estates, residential leaseholders will face a situation where, yes, there may be a requirement for an annual report and there may be a degree of transparency, but the onus will be on them to go through six or seven sets of accounts from the different subsidiaries. We need to look at how we can simplify some of the management structures that companies use, which could cause huge amounts of confusion for residential leaseholders, and, as I say, put the onus on them to try to work through different sets of accounts in a way that they might find difficult to do.

Question put and agreed to.

Clause 51 accordingly ordered to stand part of the Bill.

Clause 52 ordered to stand part of the Bill.

Clause 53

LIMITATION OF ADMINISTRATION CHARGES

Question proposed, That the clause stand part of the Bill.

Lee Rowley: I hope that some of the comments I am about to make will reassure my hon. Friend the Member for North East Bedfordshire that we are keen to get this right.

[Lee Rowley]

Homeowners on managed estates can be subject to excessive administration charges, with little understanding of what fees they may be liable to pay. Subsection (1) puts a stop to that by introducing a requirement for all administration charges to be reasonable. Subsections (2) and (3) require that an administration charge is payable only if the amount or the description of how the amount is to be calculated has been published on an administration charge schedule for 28 days. Subsection (4) sets out other conditions under which an administration charge is not payable to the estate manager. They include circumstances where the estate manager is charging homeowners on the same estate different amounts for carrying out similar tasks, and therefore prevents them from being charged at different rates. I commend the clause to the Committee.

Question put and agreed to.

Clause 53 accordingly ordered to stand part of the Bill.

Clause 54

DETERMINATION OF TRIBUNAL AS TO ADMINISTRATION CHARGES

Question proposed, That the clause stand part of the Bill.

Lee Rowley: Clause 54 introduces a new right for homeowners on managed estates to challenge the reasonableness of administration charges they are liable to pay. This approach delivers on a Government commitment to give freehold homeowners the equivalent right as leaseholders with regards to the charges they pay, and allows homeowners to get an independent assessment of whether the charge they are being asked to pay is justified and appropriate.

Subsection (1) sets out the basis on which homeowners may make an application to the appropriate tribunal and describes those issues on which the tribunal is able to be determined. They include: whether the administration charge is payable and, if so, by whom and to whom it is payable; the amount that is payable, as well as the date by, or on which, it is payable; and the manner in which it is payable. Subsection (2) is clear that this application can be made whether or not any payment has been made. Subsection (4) confirms that any payment made by the homeowner does not mean that they have agreed or admitted to its reasonableness. Subsection (3) sets out instances when an application may not be made to the tribunal. These measures mirror those provisions that apply to leaseholders under the Landlord and Tenant Act 1985.

This clause, alongside clauses 50 to 53, brings the rights of homeowners on managed estates in line with those of leaseholders with regard to administration charges. I commend the clause to the Committee.

Question put and agreed to.

Clause 54 accordingly ordered to stand part of the Bill.

Clause 55

CODES OF MANAGEMENT PRACTICE: EXTENSION TO ESTATE MANAGERS

Question proposed, That the clause stand part of the Bill.

10.45 am

Lee Rowley: Clause 55 amends section 87 of the Leasehold Reform, Housing and Urban Development Act 1993. It enables the Secretary of State to approve or publish a code of practice in relation to managed estates. The effect of this clause mirrors the position in leasehold, for which the Government have approved two codes of practice. These codes outline best practice for managing agents, landlords or other relevant parties in relation to residential leasehold property management. An approved code of practice may be taken into account as evidence of a breach of an estate manager's obligation at a tribunal or a court. I commend this clause to the Committee.

Question put and agreed to.

Clause 55 accordingly ordered to stand part of the Bill.

Clause 56

PART 4: APPLICATION TO GOVERNMENT DEPARTMENTS

Question proposed, That the clause stand part of the Bill.

Lee Rowley: Clause 56 deals with the issue of Crown land, and makes it clear that the measures in part 4 should apply in circumstances where estate management functions are carried out by or on behalf of Government Departments. We consider that there are no grounds to exclude homeowners who live on land owned by Government Departments where they pay a contribution. They have as much right to hold the estate manager accountable for the charges it spends. There may be a very small number of locations where land that could now or in the future be built on is owned by His Majesty or other parts of the Crown Estate. In such circumstances, the Crown will act by analogy—in other words, it will ensure homeowners on such estates have access to equivalent rights. Prior to Second Reading, the King and the Prince of Wales granted consent in writing. I commend the clause to the Committee.

Question put and agreed to.

Clause 56 accordingly ordered to stand part of the Bill.

Clause 57

INTERPRETATION OF PART 4

Question proposed, That the clause stand part of the Bill.

Lee Rowley: Clause 57 provides a comprehensive definition of terms used in part 4 of the Bill. For key terms used in the Bill, such as "estate manager" or "relevant costs", it points to other parts of the Bill where they are defined. Subsection (2) sets out the definition of an "owner" of a dwelling as being either the person who owns the freehold land that comprises a dwelling, or the person who is a leaseholder of a dwelling under a long lease. This ensures that all homeowners who pay a contribution can enjoy the new protections in this part. It also makes it clear that, where homeowners rent out their property or let it out under an assured tenancy, they—not the occupants of the dwellings—are entitled to these protections. This clause provides the more comprehensive definition of relevant measures that inform the regulatory framework in part 4. I commend the clause to the Committee.

Question put and agreed to.

Clause 57 accordingly ordered to stand part of the Bill.

Clause 58

MEANING OF "ESTATE RENTCHARGE"

Question proposed, That the clause stand part of the Bill.

Lee Rowley: Part 5 of the Bill addresses issues relating to rentcharges. Since the Rentcharges Act 1977, the creation of most types of rentcharge has been prohibited. The main class of rentcharge excepted from the general prohibition is known as an estate rentcharge. Estate rentcharges are usually mechanisms for a management company to obtain contributions towards the costs of maintaining communal areas.

Part 4 of the Bill creates new protections for homeowners who pay an estate rentcharge to an estate manager for the provision of estate management services. Clause 58 makes a minor amendment to the Rentcharges Act 1977 to amend the definition of "estate rentcharge" in section 2 of the Act. The effect of the amendment is to ensure that payments may be made to cover improvements to communal areas as well as maintenance and repairs. This ensures that it aligns with the definition of the service charges that leaseholders must pay, and allows estate managers to pass on costs of any improvements to the areas they look after, and will ensure that they meet their legal obligations as well as having sufficient funds to carry out such works. The sums paid for improvement will still be subject to the protections in part 4—for example, the requirement to be reasonable. This is a clarificatory amendment, and I commend clause 58 to the Committee.

Matthew Pennycook: This is a clarificatory amendment, and we do not take issue with it. I will speak on our concerns about rentcharges in relation to clause 59.

Question put and agreed to.

Clause 58 accordingly ordered to stand part of the Bill.

Clause 59

REGULATION OF REMEDIES FOR ARREARS OF RENTCHARGES

Question proposed, That the clause stand part of the Bill.

The Chair: With this it will be convenient to discuss new clause 4—*Remedies for the recovery of annual sums charged on land—*

"(1) Section 121 of the Law of Property Act 1925 is omitted.

(2) The amendment made by subsection (1) has effect in relation to arrears arising before or after the coming into force of this section."

This new clause, which is intended to replace clause 59, would remove the provision of existing law which, among other things, allows a rentcharge owner to take possession of a freehold property in instances where a freehold homeowner failed to pay a rentcharge.

Lee Rowley: An income-supporting rentcharge is an annual sum paid by a freehold homeowner to a third party who normally has no other interest in the property. Under the 1977 Act, no new rentcharges of this type may be created, and all existing ones will be extinguished in 2037. Most income-supporting rentcharges can be for relatively small amounts—typically between £1 and £25 per annum—and the majority of freehold properties affected by these rentcharges are located in the north-west and the south-west of England.

However, a loophole remains. Failure to pay a rentcharge within 40 days of its due date means that, under section 121 of the Law of Property Act 1925, the recipient of the rentcharge may take possession of the subject premises until the arrears and all costs and expenses are paid. The rentcharge owner may alternatively grant a lease of the subject premises to a trustee that the rentcharge owner may set up themselves. The Government believe that that law is unfair and can have a grossly disproportionate consequence for a very small amount of money not being paid. This clause seeks to address that and ensure that freeholders cannot be subject to a possession order or the granting of a lease for rentcharge arrears.

Subsection (2) introduces new sections into the 1925 Act. Proposed new section 120B details that no action to recover or require payment of regulated rentcharge arrears may be taken unless notice has been served and the demand for payment complies with the new requirements. Those requirements set out what information the notice must include. The section also sets out that the homeowner does not have to pay the rentcharge owner any administrative fee.

Proposed new section 120C sets out various requirements relating to the serving of notice under proposed new section 120B, aimed at ensuring that freeholders receive the demand of payment at the address of the charged land. Proposed new section 120D confers powers on the Secretary of State to set out in regulations a limit on the amounts payable by landowners, indirectly or directly, in relation to the action of recovering or requiring payment of regulated rentcharge arrears. That provision seeks to avoid abuse of administration costs charged when simply accepting payment of arrears, and the process of removing any restriction on the freehold title at the Land Registry. The charge does not affect the cost that is paid directly to the Land Registry itself.

Clause 59 (3) and (4) to clause 59 seek to disapply rentcharge owners from using the provisions set out in sections 121 and 122 of the 1925 Act. In doing so, they provide additional protection to avoid rentcharge owners rushing to invoke those provisions. The effect of those subsections is to make any action to reclaim arrears using the 1925 Act void retrospectively once the provisions are introduced. Subsection (5) ensures that the provisions of the clause apply to rentcharge arrears that have arisen before and after the changes come into force. Subsection (6) inserts new section 122A into the 1925 Act, which details that an instrument creating a rentcharge, contract or any other arrangement is of no effect to the extent that it makes provision contrary to the provisions in this clause. Clause 59 delivers on a Government commitment to protect freehold homeowners from the disproportionate effects of falling into arrears in the payment of their rentcharge.

I turn to new clause 4, for which I thank the shadow Minister, the hon. Member for Greenwich and Woolwich. It seeks to abolish section 121 of the 1925 Act. The effect of the new clause would be that a failure to pay any form of rentcharge would prevent the owner of the rentcharge from granting a lease on the property, or from taking possession of it until the fee was paid. We are sympathetic to the issue raised by the shadow Minister, and we have recognised that forfeiture is an extreme

[Lee Rowley]

measure and should only be used as a last resort. Although in practice it is already rarely used, I recognise that the potential consequences may feel disproportionate. That is why we have included clause 59, which disapplies this remedy for income-supporting rentcharges where we know that homeowners pay nominal sums for very little in return.

As with leasehold forfeiture, any changes will require a careful balancing of the rights and responsibilities of interested parties. We are concerned as to what this new clause could mean where a homeowner pays estate rentcharges that are essential for the management of their estate, or any other form of legitimate rentcharge. The Government want to ensure that where they are required to be paid, these charges are paid in a timely manner so that the smooth running of the estate can continue. If estate management companies are unable to recover these sums, there is the potential that the costs will fall to other homeowners or that the upkeep of the estate will worsen. We are keen to understand any unintended consequences before abolishing section 121 of the 1925 Act all together. We need to weigh up the needs of the estate with the stress and uncertainty that we know this law can cause for some homeowners and lenders. We are listening carefully to the arguments, and I am happy to give the hon. Gentleman that commitment. I hope that, with those reassurances, he may consider not moving his new clause.

Matthew Pennycook: I was slightly surprised, in a welcome way, by the Minister's response, in that he seemed to indicate that the Government are open to considering the abolition of section 121 of the 1925 Act all together, notwithstanding the need to ensure that there are no unintended consequences, but we are debating clause 59 as it stands, which does not propose that, so I hope to convert the Minister's sympathy into agreement with our position if I can.

Part 5 of the Bill concerns rentcharges, which in general terms can be understood as an indefinite, periodic payment made in respect of freehold land by the current freeholder to a third party or "rent owner" who has no reversionary interest in the charged land in question. In some cases, the charge relates to the provision of a service; in others it is, in effect, simply a profit stream for the interested third party. All rentcharges, as the Minister made clear, are covered by the Rentcharges Act 1977, which prohibited the creation of new so-called income-only rentcharges and provided that all such rentcharges will be extinguished in 2037.

The 1977 Act does not detail the remedies available to a rentcharge holder whose rentcharge is not paid, although any can simply sue for a money judgment. It is section 121 of the Law of Property Act 1925 that creates two additional remedies for rentcharge non-payment. First, unless excluded by the terms of the rentcharge itself, there is a right for the rentcharge holder to take possession of the charged land in question and retain any income associated with it so long as the money owed, whether demanded or not, is unpaid for 40 days. Secondly, unless prohibited by the terms of the rentcharge, and assuming that the money owed is outstanding for at least 40 days, there is a power to demise the land to a trustee by way of a lease in order to raise the funds necessary to pay the arrears and costs.

In short, the 1925 Act provides for the power to seize freehold houses for non-payment of a rentcharge, even if the arrears are merely a few pounds, and allows the rentcharge holder to retain possession or render it in effect worthless by means of maintaining a 99-year lease over it, even if, as demonstrated by the 2016 case of Roberts *v.* Lawton, the rentcharge is redeemed or the underlying debt cleared. In our view, the remedies provided for by the 1925 Act are a wholly disproportionate and draconian legacy of Victorian-era property law. As I have said, the 1977 Act prohibited the creation of new rentcharges and provided for existing rentcharges to be abolished in 2037, but 13 years from now is still a long time away and any lease granted prior to the abolition will remain in force. Rentcharges are therefore an area of law in respect of which legislative reform is long overdue, and the need to protect rent payers from what amounts, essentially, to a particularly severe form of freehold forfeiture as a result of the relevant remedies provided for by the 1925 Act is pressing.

With clause 58 having amended the definition of estate rentcharge, clause 59 seeks to provide for revised remedies for arrears by amending the 1925 Act. As the Minister has set out, clause 59, in place of the existing two remedies for rentcharge non-payment under the Act, proposes requiring the third party or rent owner to issue an appropriate demand before they can seek to recover or compel payment, and gives the Secretary of State the power by regulation to limit the amount payable by the freehold homeowner in respect of rentcharge arrears or to provide that no amount is repayable. Although we appreciate that the intent of the clause is to better protect freehold homeowners from the existing disproportionate remedies that are available to rentcharge holders when rentcharges go unpaid, we believe it is an overly complicated and onerous attempt to make more palatable the methods of enforcing rentcharges provided for by the 1925 Act that are simply not justifiable in any form.

No one disputes that there might be a need for legitimate and reasonable rentcharges. Indeed, if and when the Government finally deliver on the pledge to require all new houses in England and Wales to be sold as freehold properties, such charges will become even more important as a means to ensure that freehold houses contribute towards communal estate services. However, the threat of their being enforced by means of the draconian remedies in section 121 of the 1925 Act must, in our view, be removed.

11 am

It was our understanding that until recently the Government shared that view. I refer the Minister to, for example, a response to a written question dated 18 February 2020 by the then Minister for Housing and Planning, Mr Christopher Pincher. It stated:

> "As part of our leasehold reform work, we are moving forward with legislation to repeal Section 121 of the Law of Property Act 1925 to ensure homeowners are not subjected to unfair possession orders."

We believe that that was the right decision to take and that the Government should think again about doing away with section 121 of the 1925 Act all together. We therefore propose that clause 58, as it stands, be left out

of the Bill entirely and that new clause 4, which repeals the relevant section of the 1925 Act, be inserted in its place.

If accepted, the effect of replacing the existing clause 59 with new clause 4 would be that the rentcharge holder would have to seek to recover any rentcharge arrears like anyone else seeking to recover a contractual debt —namely, by suing for it. We think that that is a far more reasonable and appropriate way to deal with the contraventions that we are talking about. I look forward to the Minister's response.

Lee Rowley: I am grateful to the hon. Gentleman. He makes a strong case for his arguments. As I have indicated, although I will not accept new clause 4, we do think there is an argument that is reasonable to be had here, while recognising that we need to consider the consequential potential of any change. I am happy to discuss that further with him separately to see whether we can make further progress at a later stage of the Bill.

Matthew Pennycook: I thank the Minister for that answer. I am tempted to not move the new clause, but I can only deal with the piece of legislation in front of me. What is in front of me is not a placeholder clause that says, "We will review the 1925 Act"; it is a clause that puts in place an amended version of the remedies. We feel so strongly about this point that we will vote against clause stand part, but I will take the Minister up on his offer to discuss a more sensible way of dealing with the types of contraventions that we have discussed.

Question put, That the clause stand part of the Bill.

The Committee divided: Ayes 9, Noes 6.

Division No. 15]

AYES

Davison, Dehenna	Maclean, Rachel
Everitt, Ben	Mohindra, Mr Gagan
Fuller, Richard	Rowley, Lee
Hughes, Eddie	Smith, rh Chloe
Levy, Ian	

NOES

Carter, Andy	Pennycook, Matthew
Gardiner, Barry	Rimmer, Ms Marie
Glindon, Mary	Strathern, Alistair

Question accordingly agreed to.

Clause 59 ordered to stand part of the Bill.

Clause 60

INTERPRETATION OF REFERENCES TO OTHER ACTS

Amendment made: 54, in clause 60, page 80, line 13, at end insert—

"'the LTA 1987' means the Landlord and Tenant Act 1987;"—*(Lee Rowley.)*

This amendment and Amendment 47 align references to the Landlord and Tenant Act 1987 with other references to Acts.

Question put, That the clause, as amended, stand part of the Bill.

Lee Rowley: Clause 60 sets out the meaning of references throughout the Bill to other Acts. I commend the clause to the Committee.

Question put and agreed to.

Clause 60, as amended, accordingly ordered to stand part of the Bill.

Clause 61

POWER TO MAKE CONSEQUENTIAL PROVISION

Question proposed, That the clause stand part of the Bill.

Lee Rowley: Clause 61 gives the Secretary of State the power to make provision that is consequential on the Bill through regulations, including provision amending an Act of Parliament. We do not take such a power lightly and, in drafting this legislation, we have sought to identify necessary consequential amendments on the face of the Bill. Long residential leasehold is, however, a complex and interdependent area of law. Therefore we consider it prudent to take the power in Clause 61 in order to ensure that, should any further interdependencies be identified at a later date, those can be addressed appropriately.

There are various precedents for such provisions, including section 92 of the Immigration Act 2016, section 213 of the Housing and Planning Act 2016, section 42 of the Neighbourhood Planning Act 2017, and section 20 of the Leasehold Reform (Ground Rent) Act 2022.

Question put and agreed to.

Clause 61 accordingly ordered to stand part of the Bill.

Clause 62

REGULATIONS

Lee Rowley: I beg to move amendment 55, in clause 62, page 80, line 33, at end insert—

"(1A) A power to make regulations under Part 4A also includes power to make different provision for different areas."

This amendment would expressly provide that a power to make regulations under the new Part to be inserted after Part 4 includes the power to make different provision for different areas.

The Chair: With this it will be convenient to discuss the following:

Government amendment 56.

Government new clause 9—*Appointment of manager: breach of redress scheme requirements.*

Government new clause 15—*Leasehold and estate management: redress schemes.*

Government new clause 16—*Redress schemes: voluntary jurisdiction.*

Government new clause 17—*Financial assistance for establishment or maintenance of redress schemes.*

Government new clause 18—*Approval and designation of redress schemes.*

Government new clause 19—*Financial penalties.*

Government new clause 20—*Financial penalties: maximum amounts.*

Government new clause 21—*Decision under a redress scheme may be made enforceable as if it were a court order.*

Government new clause 22—*Lead enforcement authority: further provision.*

Government new clause 23—*Guidance for enforcement authorities and scheme administrators.*

[The Chair]

Government new clause 24—*Interpretation of Part 4A.*

Government new schedule 1—*Redress schemes: financial penalties.*

Lee Rowley: Turning first to new clause 15, some leaseholders and homeowners on freehold estates do not currently have access to redress outside of the tribunal or the courts. I should note that part 4 of the Bill will give comprehensive rights and protections to homeowners on freehold estates, including access to the relevant tribunal. Though property managing agents are required by law to join a Government-approved redress scheme, there is no such requirement for leasehold landlords and freehold estate managers who manage their property or estate themselves. This means that for issues that fall outside the court or tribunal's jurisdiction, such as poor communication or behavioural issues, those leaseholders and homeowners on freehold estates can make a complaint only through their landlord or estate manager's own complaints process. If there is no complaints procedure, or once the leaseholder or homeowner has exhausted it, their access to redress is exhausted.

New clause 15 will fill this gap by providing that leasehold landlords and freehold estate managing agents who manage their property or estate can be required to join a redress scheme. The redress scheme will independently investigate and determine complaints made by a current or former owner. A redress scheme will need to be approved by, and administered by or on behalf of, the "lead enforcement authority"—the Secretary of State or other designated body. The Government have taken powers that will allow us to make exemptions to the requirement in specific circumstances and also a power to amend the definitions in this section. New clause 15 will fill gaps that leaseholders and homeowners on freehold estates currently experience in access to redress. I commend the clause to the Committee.

New clause 16 makes it clear that the redress scheme provided for under this part may act under a voluntary jurisdiction. That means they may allow for members to join the scheme who are not required to join under new clause 15. The scheme may also investigate and determine complaints outside their jurisdiction at their discretion, including complaints by people who are not current or former owners of a relevant dwelling. The scheme may offer voluntary mediation services and allow for certain complaints or circumstances to be excluded from their remit. The voluntary jurisdiction may be subject to the approval conditions that the redress scheme must comply with under new clause 18, which I will come to in a moment.

New clause 17 gives the Secretary of State the power to make payments, including loans, or give financial assistance to establish or maintain a redress scheme. The Government expect the costs of the redress scheme to be funded by the scheme themselves—for example, through charging membership fees. However, there may be some circumstances where the provision of funding is needed. The clause offers flexibility in that instance.

New clause 18 makes provision for the approval and designation of redress schemes. The approval conditions will apply to the future redress scheme and must be satisfied before the redress scheme is approved or designated. The approval conditions will be set out in regulations made by the Secretary of State and will include, but are not limited to, those conditions set out in subsection (3). In addition, new clause 18 allows the Secretary of State to make regulations to provide for the process for making applications for the approval of a redress scheme, the time the approval or designation remains valid, and the process for approval or designation to be withdrawn or revoked. It also allows for a scheme to set membership fees to cover the cost of providing the service.

I will now turn to new clauses 19, 20 and 9, and new schedule 1. To ensure compliance from landlords and freehold estate managers who are required to join a redress scheme, we need to ensure that robust enforcement mechanisms are in place. New clause 19 does that by allowing an enforcement authority to impose financial penalties where breaches of regulations by not joining a redress scheme occur. It also allows for the Secretary of State to make regulations to allow for the investigation of suspected breaches, and for co-operation and information sharing between enforcement authorities for the purposes of investigation.

New clause 20 sets out the amounts of the financial penalty that enforcement authorities may impose on landlords and freehold estate managers who do not comply with the requirement to join a redress scheme. An initial penalty for breaching the requirement may be up to £5,000. However, repeated breaches could lead to a penalty of up to £30,000. The new clause also allows the Secretary of State to amend the amount of financial penalty in regulations to reflect changes in the value of money.

New clause 9 provides a route for leaseholders to apply to the tribunal for an order to appoint a manager in place of their landlord if their landlord has failed to join the redress scheme. As with other "reasons", leaseholders can apply for an order that a manager be appointed, and the tribunal will make one if

"it is just and convenient to make the order in all the circumstances of the case".

Richard Fuller: The Minister will be aware of concerns about the practical application of this provision when it is put into practice, and the pressures on the tribunal. Under new clause 9, as I best understand it, homeowners will have the right to go to the first-tier tribunal to ask to change from company A to company B as their estate manager. If that is the case, why does it have to go through a tribunal? Why is it not feasible for people to determine that themselves without referring to a tribunal?

Lee Rowley: My hon. Friend raises an important point. I recognise the significant body of views in this place and elsewhere about the ability to appoint a right to manage company or a representative directly, and I have certainly heard those concerns. In this case, working within the framework of the proposed legislation, we wanted to ensure that there is a route to allow a manager to be appointed if a landlord refuses to comply. Of course, we would hope that a landlord would not refuse in the first instance.

The Government have also provided in new clause 13 that homeowners on freehold estates can apply to the tribunal for an order to appoint a new manager for the

estate if a relevant estate manager has breached the requirement to join a redress scheme. New schedule 1 sets out further provisions relating to the penalties set out in new clause 19. It will require an enforcement authority to give a landlord or freehold estate manager whom they suspect of breaching the requirement to join a scheme a notice of its intention to issue a financial penalty before issuing a final notice. Those who are given a notice by the enforcement authority may make representations. The schedule sets out that where an enforcement authority imposes a financial penalty, it may apply the proceeds towards meeting the costs and expenses incurred in carrying out its functions. Any proceeds that are not so applied will be paid to the Secretary of State.

New clause 21 gives the Secretary of State the power to provide that a future redress scheme provider may apply to a court or tribunal for an order that a decision made under the scheme be enforced as if it were an order of the court. That may be necessary if there is an issue with landlords or freehold estate managers not complying with the redress scheme's decisions.

New clause 22 makes the necessary provisions for the role of the lead enforcement authority. That is defined by new clause 15 as the Secretary of State, or another person designated by the Secretary of State. New clause 22 provides that the lead enforcement authority will have necessary oversight of the scheme. It also provides that if the Secretary of State decides to designate the role of the lead enforcement authority to another person, the Secretary of State will still have the appropriate power to direct the lead enforcement authority. That includes provisions to make payments and to bring the arrangement to an end.

New clause 23 provides for the Secretary of State to issue or approve guidance for enforcement authorities and the administrator of the future redress scheme about co-operation. It makes clear that the Secretary of State will exercise powers under new clause 18 to ensure that the administrator of the redress scheme has regard to guidance issued or approved under the section. Importantly, the amendment also requires the enforcement authority to have regard to the same guidance. New clause 24 makes necessary provision for the interpretation of this part of the Bill, including the definitions used. I commend the clauses to the Committee.

11.15 am

Amendment 55 provides that regulations made under powers in the new part may make different provision for different geographical areas. Amendment 56 provides that a draft statutory instrument under the part will not be treated as a hybrid instrument, which is necessary to allow redress schemes to be rolled out flexibly should the need arise.

Finally, clause 62 itself makes provision relating to regulations under the Bill. Subsection (1) is a standard provision that enables consequential, supplementary, incidental, transitional, saving or differential provision to be made, if necessary, in connection with the exercise of powers under the Bill. As is usual, subsection (2) provides that regulations under the Bill must be made as statutory instruments. Subsection (3) relates to the procedure if the regulations are subject to the affirmative procedure, and subsection (4) relates to the procedure if the regulations are subject to the negative procedure. Subsection (5) sets out that the section does not apply to regulations under section 64, namely regulations relating to the commencement of the Bill.

Amendment agreed to.

Amendment made: 56, in clause 62, page 81, line 13, at end insert—

> "(4A) If a draft of a statutory instrument containing regulations under Part 4A would, apart from this subsection, be treated for the purposes of the standing orders of either House of Parliament as a hybrid instrument, it is to proceed in that House as if it were not a hybrid instrument."—*(Lee Rowley.)*

This amendment would provide that a draft of a statutory instrument containing regulations under the new Part to be inserted after Part 4 is not to be treated as a hybrid instrument (where it would otherwise be treated as such).

Clause 62, as amended, ordered to stand part of the Bill.

Clause 63

EXTENT

Question proposed, That the clause stand part of the Bill.

Lee Rowley: Clause 63 states the territorial extent of the Bill. It applies to England and Wales. We have worked closely with the Welsh Government to develop the reforms, and we will continue to engage with them. That will ensure that the legislation operates effectively to deliver long-term improvements to home ownership across both England and Wales. I commend the clause to the Committee.

Question put and agreed to.

Clause 63 accordingly ordered to stand part of the Bill.

Clause 64

COMMENCEMENT

Question proposed, That the clause stand part of the Bill.

Lee Rowley: Clause 64 makes provision for the commencement of the Bill. The substantive provisions of the Bill will come into force on a day appointed by the Secretary of State by regulation. For a number of policy areas, regulations need to be drafted and laid before Parliament before the provisions in the Bill can commence. Hon. Members should be assured that we are not intending to have any unnecessary delay in implementation, and the Department is working hard to plan and carry out the associated programme of secondary legislation. Subsection (2) sets out that the provisions for section 59, namely the regulation of remedies for rent charge arrears, come into force two days after the Act is passed. I commend the clause to the Committee.

Matthew Pennycook: I have two brief points. On the general commencement provisions, the Minister just made it perfectly clear that there are no firm dates for commencement on all the issues that require regulations. I take on board what he said about not seeking any unnecessary delay, and that is welcome. However, I push him to go slightly further to give us a sense of the

[Matthew Pennycook]

timetabling of some of the more important provisions in the Bill, because leaseholders watching our proceedings will want to know when the rights provided for by the Bill can be enjoyed.

I have a point specifically on subsection (2), which specifies that clause 59 comes into force at the end of a period of two months, as I understand it—the Minister said "two days", and I think it is two months. Given that some of the provisions in clause 59—I am thinking particularly of new subsection 120D(4)—bring the relevant provision into force on First Reading on 27 November 2023, why is there a two-month delay after Royal Assent? Why not bring the measures into force on Royal Assent?

Lee Rowley: I am grateful to the hon. Gentleman for his questions. Obviously, as he will know, I do not need to push too heavily the point that we need to get the Bill through this place. We are trying to move it as quickly as we possibly can, but the other place may have other ideas, although I hope that it will not. I hope I can provide assurances that we will try to get these things moving as quickly as possible.

On the hon. Gentleman's specific point about subsection (2), I thank him for correcting me; it is two months. As I understand it—I am happy to go away and review it—there is a relative convention in these instances. However, given the desire and intention of all parties, including the Secretary of State, to move as quickly as possible, we will see whether we can speed it up.

Question put and agreed to.

Clause 64 accordingly ordered to stand part of the Bill.

Clause 65

SHORT TITLE

Question proposed, That the clause stand part of the Bill.

Lee Rowley: Clause 65 sets out that the short title of the legislation is to be the Leasehold and Freehold Reform Act. I commend the clause to the Committee.

Question put and agreed to.

Clause 65 accordingly ordered to stand part of the Bill.

Ordered, That further consideration be now adjourned. *—(Mr Mohindra.)*

11.21 am

Adjourned till this day at Two o'clock.

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

LEASEHOLD AND FREEHOLD REFORM BILL

Tenth Sitting

Tuesday 30 January 2024

(Afternoon)

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No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor's Room, House of Commons,

not later than

Saturday 3 February 2024

The Committee consisted of the following Members:

Chairs: Dame Caroline Dinenage, Clive Efford, Sir Mark Hendrick, † Sir Edward Leigh

Amesbury, Mike *(Weaver Vale)* (Lab)
† Carter, Andy *(Warrington South)* (Con)
† Davison, Dehenna *(Bishop Auckland)* (Con)
Edwards, Sarah *(Tamworth)* (Lab)
† Everitt, Ben *(Milton Keynes North)* (Con)
† Fuller, Richard *(North East Bedfordshire)* (Con)
† Gardiner, Barry *(Brent North)* (Lab)
† Glindon, Mary *(North Tyneside)* (Lab)
† Hughes, Eddie *(Walsall North)* (Con)
† Levy, Ian *(Blyth Valley)* (Con)
† Maclean, Rachel *(Redditch)* (Con)
† Mohindra, Mr Gagan *(South West Hertfordshire)* (Con)
† Pennycook, Matthew *(Greenwich and Woolwich)* (Lab)
† Rimmer, Ms Marie *(St Helens South and Whiston)* (Lab)
† Rowley, Lee *(Minister for Housing, Planning and Building Safety)*
† Smith, Chloe *(Norwich North)* (Con)
† Strathern, Alistair *(Mid Bedfordshire)* (Lab)

Huw Yardley, Katya Cassidy, *Committee Clerks*

† attended the Committee

Public Bill Committee

Tuesday 30 January 2024

(Afternoon)

[Sir Edward Leigh *in the Chair*]

Leasehold and Freehold Reform Bill

2 pm

New Clause 6

Notice of future service charge demands

"In section 20B of the LTA 1985 (time limit on making service charge demands), in subsection (2), for the words from 'notified in writing' to the end substitute

'given a future demand notice in respect of those costs.

(3) A "future demand notice" is a notice in writing that—

(a) relevant costs have been incurred, and

(b) the tenant will subsequently be required under the terms of the lease to contribute to the costs by the payment of a variable service charge.

(4) A future demand notice must—

(a) be in the specified form,

(b) contain the specified information, and

(c) be given to the tenant in a specified manner.

"Specified" means specified in regulations made by the appropriate authority.

(5) The regulations may, among other things, specify as information to be contained in a future demand notice—

(a) an amount estimated as the amount of the costs incurred (an "estimated costs amount");

(b) an amount which the tenant is expected to be required to contribute to the costs (an "expected contribution");

(c) a date on or before which it is expected that payment of the variable service charge will be demanded (an "expected demand date").

(6) Regulations that include provision by virtue of subsection (5) may also provide for a relevant rule to apply in a case where—

(a) the tenant has been given a future demand notice in respect of relevant costs, and

(b) a demand for payment of a variable service charge as a contribution to those costs is served on the tenant more than 18 months after the costs were incurred.

(7) The relevant rules are—

(a) in a case where a future demand notice is required to contain an estimated costs amount, that the tenant is liable to pay the service charge only to the extent it reflects relevant costs that do not exceed the estimated costs amount;

(b) in a case where a future demand notice is required to contain an expected contribution, that the tenant is liable to pay the service charge only to the extent it does not exceed the expected contribution;

(c) in a case where a future demand notice is required to contain an expected demand date, that, if the demand is served after the expected demand date, the tenant is not liable to pay the service charge to the extent it reflects any of the costs.

(8) Regulations that provide for the relevant rule in subsection (7)(c) to apply may also provide that, in a case set out in the regulations, the rule is to apply as if, for the expected demand date, there were substituted a later date determined in accordance with the regulations.

(9) Regulations under this section—

(a) are to be made by statutory instrument;

(b) may make provision generally or only in relation to specific cases;

(c) may make different provision for different purposes;

(d) may include supplementary, incidental, transitional or saving provision.

(10) A statutory instrument containing regulations under this section is subject to the negative procedure.'"—*(Lee Rowley.)*

This new clause, to be inserted after clause 26, would require notice of future service charge demands under section 20B of the Landlord and Tenant Act 1985 to be given in accordance with regulations.

Brought up, read the First and Second time, and added to the Bill.

New Clause 7

Restriction on recovery of non-litigation costs of enfranchisement, extension and right to manage

"After section 20I of the LTA 1985 (as inserted by section 31) insert—

'**20J Limitation of variable service charges: non-litigation costs of enfranchisement etc**

(1) Non-litigation costs incurred, or to be incurred, by a landlord in connection with a relevant claim are not to be regarded as relevant costs to be taken into account in determining the amount of a variable service charge payable by a tenant who is a non-participating tenant in relation to that claim.

(2) A lease, contract or other arrangement is of no effect to the extent it makes provision to the contrary.

(3) In this section and section 20K—

"the 1967 Act" means the Leasehold Reform Act 1967;

"the 1993 Act" means the Leasehold Reform, Housing and Urban Development Act 1993;

"the 2002 Act" means the Commonhold and Leasehold Reform Act 2002;

"non-litigation costs" means costs incurred, or to be incurred, other than in connection with proceedings before a court or tribunal;

"non-participating tenant", in relation to a relevant claim, means a tenant who is not a participating tenant;

"participating tenant", in relation to a relevant claim, means a tenant who—

(a) in the case of a claim under Part 1 of the 1967 Act or Chapter 1 or 2 of Part 1 of the 1993 Act, is making the claim;

(b) in the case of a claim under Chapter 1 of Part 2 of the 2002 Act, is or has been a member of the RTM company making the claim;

"relevant claim" means—

(a) a claim under Part 1 of the 1967 Act (enfranchisement and extension of leases of houses);

(b) a claim under Chapter 1 or 2 of Part 1 of the 1993 Act (enfranchisement and extension of leases of flats);

(c) a claim under Chapter 1 of Part 2 of the 2002 Act (right to manage);

"RTM company" has the same meaning as in Chapter 1 of Part 2 of the 2002 Act (see section 71 of that Act).

(4) For provision about when a participating tenant is and is not liable in respect of non-litigation costs in relation to a relevant claim, see—

(a) section 19A of the 1967 Act;

(b) section 89A of the 1993 Act;

(c) section 87A of the 2002 Act.

20K Right to claim where non-litigation costs charged contrary to section 20J

(1) This section applies if, despite section 20J(1), a non-participating tenant in relation to a relevant claim pays a prohibited amount to any person.

(2) For the purposes of this section, a 'prohibited amount' is an amount that is—

(a) demanded as a variable service charge, and

(b) attributable to non-litigation costs incurred, or to be incurred, in connection with the claim.

(3) The appropriate tribunal may, on the application of the tenant, order the person to which the prohibited amount was paid to return all or any part of the amount to the tenant."—*(Lee Rowley.)*

This new clause, to be inserted after clause 35, would prevent variable service charges being paid by a tenant for non-litigation costs in connection with enfranchisement, extension and right to manage claims made by other tenants.

Brought up, read the First and Second time, and added to the Bill.

New Clause 8

APPOINTMENT OF MANAGER: POWER TO VARY OR DISCHARGE ORDERS

"In section 24 of the LTA 1987 (appointment of manager by a tribunal)—

(a) in subsection (9), after 'interested' insert 'or of its own motion';

(b) in subsection (9A), omit 'on the application of any relevant person'."—*(Lee Rowley.)*

This new clause, to be inserted after NC7, would enable a tribunal to vary or discharge an order to appoint a manager of premises without an application, and require the tribunal to be satisfied that the variation or discharge is just and convenient and would not lead to a recurrence of the circumstances that led to the order being made.

Brought up, read the First and Second time, and added to the Bill.

New Clause 9

APPOINTMENT OF MANAGER: BREACH OF REDRESS SCHEME REQUIREMENTS

"In section 24(2) of the LTA 1987 (grounds for appointment of manager)—

(a) omit the 'or' at the end of paragraph (ac);

(b) after paragraph (ac) insert—

'(ad) where the tribunal is satisfied—

(i) that any relevant person has breached regulations under section (*Leasehold and estate management: redress schemes*)(1) of the Leasehold and Freehold Reform Act 2024 (requirement to join redress scheme), and

(ii) that it is just and convenient to make the order in all the circumstances of the case;'".—*(Lee Rowley.)*

This new clause, to be inserted after NC8, would provide for a breach of regulations under the new Part after Part 4 (see NC15) to be grounds for the appointment of a manager under section 24 of the Landlord and Tenant Act 1987.

Brought up, read the First and Second time, and added to the Bill.

New Clause 10

NOTICES OF COMPLAINT

"(1) An owner of a managed dwelling may give a notice of complaint to an estate manager.

(2) A notice of complaint is a notice that—

(a) sets out one or more complaints listed in subsection (3) in relation to the estate manager,

(b) states that, if the complaints are not remedied by the end of the qualifying period (see subsection (7)), the owner may make an application under section (*Appointment of substitute manager*) (application to appoint substitute manager), and

(c) contains any other information specified in regulations made by the Secretary of State.

(3) The complaints are—

(a) that the estate manager—

(i) is in breach of an obligation in relation to the dwelling, or

(ii) in the case of an obligation dependent on notice, would be in breach of such an obligation but for the fact that it has not been reasonably practicable to give the estate manager the appropriate notice;

(b) that sums payable by way of estate management charges by the owner, or, if the owner is a tenant or sub-tenant, by the landlord or superior landlord, are not being applied in an efficient or effective manner;

(c) that an estate management charge payable, or proposed or likely to be payable, by the owner, or, if the owner is a tenant or sub-tenant, by the landlord or superior landlord, is unreasonable;

(d) that an administration charge payable, or proposed or likely to be payable, by the owner, or, if the owner is a tenant or sub-tenant, by the landlord or superior landlord, is unreasonable;

(e) that the estate manager has failed to comply with a relevant provision of a code of practice approved by the Secretary of State under section 87 of the LRHUDA 1993 (codes of management practice).

(4) A notice of complaint may be given jointly by two or more persons if each of those persons is entitled to give a notice to the estate manager (whether or not in respect of the same dwelling).

(5) For that purpose, it is not necessary for every complaint set out in the notice, or every part of each complaint, to apply in relation to each dwelling owned by each of the persons giving the notice.

(6) The Secretary of State may by regulations make provision for determining when a notice of complaint is given.

(7) In this section and sections (*Appointment of substitute manager*) to (*Appointment orders: further provision*)—

'notice of complaint' means a notice of complaint under this section;

'qualifying period', in relation to a notice of complaint, means the period of six months beginning with the date on which the notice is given.

(8) A statutory instrument containing regulations under this section is subject to the negative procedure.—*(Lee Rowley.)*

This new clause, to be inserted after clause 55, would allow owners of managed dwellings to give their estate manager a notice of complaint, as a precursor to making an application for appointment of a substitute manager under NC11.

Brought up, and read the First time.

The Minister for Housing, Planning and Building Safety (Lee Rowley): I beg to move, That the clause be read a Second time.

The Chair: With this it will be convenient to discuss the following:

Government new clause 11—*Appointment of substitute manager*.

Government new clause 12—*Conditions for applying for appointment order*.

Government new clause 13—*Criteria for determining whether to make appointment order.*

Government new clause 14—*Appointment orders: further provision.*

Lee Rowley: Homeowners who pay estate management charges for the upkeep and management of their estate must be able to hold their estate management company to account. The Government are committed to giving homeowners the right to apply to the appropriate tribunal to appoint a substitute manager where the estate management company is failing them. The intention is that the substitute manager will then carry out the services set out in an order that will be issued by the tribunal.

New clause 10 introduces the first stage in the procedure for doing so. It will require one or more homeowners to issue a notice of complaint to their estate management company.

Subsection (2) sets out what information must be contained in the notices. Subsection (3) sets out the grounds for issuing a complaint, which largely mirror the grounds set out under section 24 of the Landlord and Tenant Act 1987 that apply to leaseholders. Subsections (4) and (5) make it clear that a notice may be issued jointly with more than one complainant, and that it is not necessary for the grounds for complaint to be the same for each complainant.

Subsection (7) defines the term "qualifying period". It gives the estate management company a period of six months from the time at which a complaint is received to remedy the complaint before the homeowner can move towards the next step. That is a sensible period to ensure that estate management companies have sufficient time to address concerns fully. It gives homeowners time to gather the evidence required to demonstrate failings, should that be necessary, to any tribunal. I commend new clause 10 to the Committee.

New clause 11 will introduce arrangements to allow owners of managed dwellings to apply for the appointment of a substitute estate manager. Subsection (1) requires an application by an owner of a managed dwelling to be made to the appropriate tribunal. Once it receives an application, the appropriate tribunal may appoint a person to carry out functions in connection with estate management as the tribunal sees fit. That appointed person would then carry out functions instead of the estate manager or the agent acting on its behalf.

Subsections (2) to (4) refer to other new clauses that set out the process to be followed and the issues that must be take into account. Subsection (2) refers to new clause 12, which sets out the conditions that must be met for the person to make an application. Subsection (3) refers to new clause 13, which sets out the criteria that the appropriate tribunal must consider in deciding whether to make an order.

Subsection (4) refers to new clause 14, which makes further provision in relation to appointment orders, including what may be contained in such an order and under what terms an order may be varied or discharged. Subsection (5) sets out the two key definitions that apply to this new power: it defines an appointment order, and then defines a substitute manager as the person appointed under the appointment order. New clause 11 sets out the parameters for the new power and how it should be used; I commend it to the Committee.

New clause 12 sets out the conditions for an application for an appointment order to be made under new clause 11. Subsection (1) sets out the main condition that must be met: the homeowner must have given a notice of complaint and must have given the estate manager the required six-month period to resolve that complaint. The homeowner must also have issued a subsequent final warning notice, such that it is clear within a reasonable time period that either the estate manager is not capable of taking steps or not willing to take steps to remedy the problem.

Subsections (2) and (3) set out the arrangements for an appointment notice where it is given jointly by a number of homeowners. Critically, they allow additional homeowners to join the final warning notice even if they were not part of the initial complaint. Importantly, people who have provided the initial notice of complaint must also sign the final warning notice.

Subsection (4) sets out what a final warning notice must contain, such as the addresses and names of those issuing the notice. The notice must also set out the grounds on which those people consider that the appropriate tribunal should make that order. The final warning notice must give the estate manager a reasonable period in which to solve the problem. The Secretary of State and equivalent Welsh Ministers have the power to specify what other information might be required.

Subsection (6) allows the appropriate tribunal to dispense with the need to make a final warning notice if it is satisfied that it would not be reasonably practical to do so. New clause 12 provides clarity about what steps are required in order to make an appropriate order to the tribunal. I commend it to the Committee

New clause 13 sets out the criteria and grounds on which the appropriate tribunal may make an appointment order. Subsection (1) defines the estate management arrangements that are within scope of an appointment order by allowing the appropriate authority to set out in regulations any exemptions, should they be required.

Subsection (2)(a) states that the appropriate tribunal may make an appointment order if it is "just and convenient" in the circumstances. Subsections (2)(b) and (3) set out the grounds under which an appointment order may be made. In broad terms, these are where the estate manager has breached an obligation; where a management charge or an administration charge may be unreasonable; where a manager has failed to comply with a relevant code of practice; and where the estate manager has failed to belong to a redress scheme. However, the appropriate tribunal is also able to issue an order if it considers that there are other circumstances that make it just and convenient to do so.

Subsection (4) sets out the grounds under which an estate management charge under subsection (3)(b) is taken to be unreasonable. Subsection (5) will allow the appropriate tribunal additional freedom to make an order in circumstances in which

"a period specified in a final warning notice was not a reasonable period",

or in which the final warning notice did not contain all the required information. I commend new clause 13 to the Committee.

New clause 14 sets out further provision relating to the making of orders to appoint substitute estate managers. Subsection (1) sets out matters for which the appropriate tribunal may wish to make a provision in an appointment order, such as provision allowing the substitute manager to become party to certain rights and liabilities, provision for remuneration to be paid to a substitute manager by

the estate management company, and provision setting a time limit for how long the manager may carry out its functions.

Subsection (2) allows the appropriate tribunal to

"vary or discharge…an appointment order."

Subsection (3) sets out the conditions under which an appointment order may be varied or discharged. Subsection (4) states that

"the appropriate tribunal must have regard to whether"

or not the estate management company is part of a "redress scheme" in deciding the terms of the appointment order, or when it considers variation or discharge of the order. I commend new clause 14 to the Committee.

Question put and agreed to.

New clause 10 accordingly read a Second time, and added to the Bill.

New Clause 11

Appointment of substitute manager

"(1) The appropriate tribunal may, on the application of an owner of a managed dwelling, by order appoint a person to carry out, in place of an estate manager, such functions in connection with the estate management relating to that dwelling as the tribunal thinks fit.

(2) Section (*Conditions for applying for appointment order*) sets out conditions that must be met for a person to make an application.

(3) Section (*Criteria for determining whether to make appointment order*) sets out criteria the appropriate tribunal must consider in deciding whether to make an appointment order.

(4) Section (*Appointment orders: further provision*) makes further provision in relation to appointment orders.

(5) In this section and sections (*Conditions for applying for appointment order*) to (*Appointment orders: further provision*)—

'appointment order' means an order under subsection (1);

'substitute manager' means a person appointed under an appointment order."—*(Lee Rowley.)*

This new clause, to be inserted after NC10, would allow owners of managed dwellings to apply for the appointment of a substitute estate manager.

Brought up, read the First and Second time, and added to the Bill.

New Clause 12

Conditions for applying for appointment order

"(1) An owner of a managed dwelling may make an application for an appointment order in relation to an estate manager only if—

(a) the owner has given a notice of complaint to the estate manager,

(b) the qualifying period in relation to that notice has ended,

(c) the owner has, after the end of the qualifying period but before the application is made, given further notice to the estate manager (a 'final warning notice'), and

(d) the condition in subsection (5) is met in relation to the final warning notice.

(2) If the owner gave the notice of complaint jointly with other persons, the owner may not make an application for an appointment order unless—

(a) the owner does so jointly with each of those other persons that remain owners of managed dwellings in relation to the estate manager, and

(b) the final warning notice was given jointly by the owner and each of those other persons.

(3) The owner, or the owners acting jointly in accordance with subsection (2), may make an application jointly with an owner of a managed dwelling who did not give the notice of complaint to the estate manager (a 'joined applicant'), if the final warning notice was given jointly by the owner or owners and the joined applicant.

(4) A final warning notice must—

(a) specify—

(i) the name of the person (or persons) giving the notice,

(ii) the address of their dwelling (or the addresses of each of their dwellings), and

(iii) if different, an address (or addresses) at which a person may give notice to that person (or one or more of those persons) in connection with the application,

(b) state that the person or persons giving the notice intend to make an application for an appointment order in respect of the dwelling specified in the notice,

(c) specify the grounds on which the appropriate tribunal would be asked to make such an order and the matters that would be relied on by the person or persons for the purpose of establishing those grounds,

(d) where those matters are capable of being remedied by the estate manager, require the estate manager, within a reasonable period specified in the notice, to take specified steps for the purpose of remedying them,

(e) state that, if those matters are remedied, the person or persons will not make an application, and

(f) contain any other information specified in regulations made by the Secretary of State.

(5) The condition in this subsection is met if—

(a) the matters specified in the final warning notice were not capable of being remedied, or

(b) the period specified in the final warning notice for the matters to be remedied has expired without the estate manager having taken the required steps to remedy them.

(6) The appropriate tribunal may by order dispense with a requirement in subsection (1), (2) or (3) if the tribunal is satisfied in light of the urgency of the case that it would not be reasonably practicable for the requirement to be satisfied.

(7) But the tribunal may, when so ordering, direct that such other notices are given, or such other steps are taken, as it thinks fit.

(8) If the tribunal makes an order under subsection (6), an application for an appointment order may be made only if any notices required to be given, and any other steps required to be taken, by virtue of the order have been given or taken.

(9) The Secretary of State may by regulations make provision for determining when a notice under this section is given.

(10) A statutory instrument containing regulations under this section is subject to the negative procedure."—*(Lee Rowley.)*

This new clause, to be inserted after NC11, would set out conditions for an application to be made under NC11.

Brought up, read the First and Second time, and added to the Bill.

New Clause 13

Criteria for determining whether to make appointment order

"(1) The appropriate tribunal may not make an appointment order in relation to an estate manager if the estate manager is specified, or is of a description specified, in regulations made by the Secretary of State.

(2) The appropriate tribunal may make an appointment order only if the tribunal is satisfied that—

(a) it is just and convenient to make the order in all the circumstances of the case, and

(b) either—

(i) those circumstances include those set out in subsection (3), or

(ii) there are other circumstances that make it just and convenient for the order to be made.

(3) The circumstances are—

(a) that the estate manager is—

(i) in breach of an obligation in relation to a dwelling, or

(ii) in the case of an obligation dependent on notice, would be in breach of the obligation but for the fact that it has not been reasonably practicable to give the estate manager the appropriate notice;

(b) that an estate management charge payable, or proposed or likely to be payable, is unreasonable;

(c) that an administration charge payable, or proposed or likely to be payable, is unreasonable;

(d) that the estate manager has failed to comply with a relevant provision of a code of practice approved by the Secretary of State under section 87 of the LRHUDA 1993 (codes of management practice);

(e) that the estate manager has breached regulations under section (*Leasehold and estate management: redress schemes*)(1) of this Act (requirement to be member of redress scheme).

(4) For the purposes of subsection (3)(b), an estate management charge is to be taken to be unreasonable if—

(a) the amount is unreasonable having regard to the items for which it is payable,

(b) the items for which it is payable are of an unnecessarily high standard, or

(c) the items for which it is payable are of an insufficient standard with the result that additional charges are or may be incurred.

(5) An appointment order may be made despite the fact that—

(a) a period specified in a final warning notice was not a reasonable period, or

(b) a final warning notice otherwise failed to comply with a requirement under section (*Conditions for applying for appointment order*)(4).

(6) A statutory instrument containing regulations under this section is subject to the negative procedure."—*(Lee Rowley.)*

This new clause, to be inserted after NC12, would set out criteria for the making of an order under NC11.

Brought up, read the First and Second time, and added to the Bill.

New Clause 14

APPOINTMENT ORDERS: FURTHER PROVISION

"(1) An appointment order may—

(a) make provision with respect to such matters relating to the exercise by the substitute manager of their functions under the order, and such incidental or ancillary matters, as the tribunal thinks fit, including—

(i) for rights and liabilities arising under contracts or other arrangements to which the substitute manager is not party to become rights and liabilities of the substitute manager;

(ii) for the substitute manager to be entitled to prosecute claims in respect of causes of action (whether contractual or tortious) accruing before or after the date of their appointment;

(iii) for remuneration to be paid to the substitute manager by the estate manager;

(iv) for the substitute manager's functions to be exercisable during a specified period;

(b) be subject to such conditions as the tribunal thinks fit;

(c) be subject to suspension on terms set by the tribunal.

(2) The appropriate tribunal may, on the application of any interested person or of its own motion, vary or discharge (whether conditionally or unconditionally) an appointment order.

(3) The tribunal may not vary or discharge an appointment order unless the tribunal is satisfied that—

(a) the variation or discharge will not result in a recurrence of the circumstances which led to the appointment order being made, and

(b) it is just and convenient in all the circumstances of the case to vary or discharge the order.

(4) In deciding—

(a) the terms of an appointment order, or

(b) whether or how to vary or discharge an appointment order,

the appropriate tribunal must have regard to whether the estate manager in relation to which the order is made has breached regulations under section (*Leasehold and estate management: redress schemes*)(1) (requirement to be member of redress scheme)."—*(Lee Rowley.)*

This new clause, to be inserted after NC13, would set out further provision about orders to appoint substitute estate managers under NC11.

Brought up, read the First and Second time, and added to the Bill.

New Clause 15

LEASEHOLD AND ESTATE MANAGEMENT: REDRESS SCHEMES

"(1) The Secretary of State may by regulations require a person that carries out estate management in respect of a dwelling in England in a relevant capacity to be a member of a redress scheme.

(2) A person carries out estate management in a 'relevant capacity' if they do so—

(a) as a relevant landlord of the dwelling, or

(b) as an estate manager.

(3) But a person may not be required to be a member of a redress scheme under this section if they carry out estate management only—

(a) as a tenant, or

(b) as an agent.

(4) A 'redress scheme' is a scheme—

(a) which provides for a complaint against a member of the scheme made by or on behalf of a current or former owner of a dwelling in relation to which estate management is carried out to be independently investigated and determined by an independent individual, and

(b) which is—

(i) approved by the lead enforcement authority for the purposes of regulations under subsection (1), or

(ii) administered by or on behalf of the lead enforcement authority and designated by the lead enforcement authority for those purposes.

(5) Regulations under subsection (1) may require a person to remain a member of a redress scheme after ceasing to be a person mentioned in that subsection, for a period specified in the regulations.

(6) Before making regulations under subsection (1), the Secretary of State must be satisfied that all persons who are to be required to be a member of a redress scheme will be eligible to join such a scheme before being so required (subject to any provision in the scheme about expulsion, as to which see section (*Approval and designation of redress schemes*)(3)(k)).

(7) For potential consequences of breaching regulations under subsection (1), see—

(a) section 24(2)(ad) of the LTA 1987 and section (*Criteria for determining whether to make appointment order*)(3)(e) of this Act (appointment of manager by tribunal);

(b) section (*Financial penalties*) of this Act (financial penalties by enforcement authorities).

(8) In this Part—

'estate management' means—

(a) the provision of services,

(b) the carrying out of maintenance, repairs or improvements,

(c) the effecting of insurance, or

(d) the making of payments,

for the benefit of one or more dwellings;

'estate manager' means a body of persons (whether incorporated or not)—

(a) which carries out, or is required to carry out, estate management, and

(b) which recovers the costs of carrying out estate management by means of relevant obligations;

'the lead enforcement authority' means either—

(a) the Secretary of State, or

(b) another person designated by the Secretary of State as the lead enforcement authority,

and see section (*Lead enforcement authority: further provision*) for further provision about the lead enforcement authority;

'relevant landlord', in relation to a dwelling, means a landlord under a long lease of the dwelling;

"relevant obligation', in relation to a dwelling, means each of the following—

(a) a rentcharge which—

(i) is charged on or issues out of the land which comprises the dwelling or a building of which the dwelling forms part, and

(ii) is an estate rentcharge by virtue of section 2(4)(b) and (5) of the RA 1977;

(b) an obligation under a long lease of the dwelling;

(c) any other obligation that—

(i) runs with the land which comprises the dwelling or a building of which the dwelling forms part, or

(ii) otherwise (whether in law or in equity) binds the owner for the time being of the land which comprises the dwelling;

(d) any other obligation—

(i) to which the owner of the dwelling is subject, and

(ii) to which any immediate successor in title of that owner will become subject, if an arrangement to which a relevant landlord or an estate manager and that owner are parties is performed.

(9) The arrangements that are within paragraph (d) of the definition of 'relevant obligation' include an arrangement under which the owner is required (in particular by a limitation on transfer of title to the dwelling or on registration of a transfer of title) to ensure that any immediate successor in title to the owner enters into an obligation.

(10) The Secretary of State may by regulations make provision (including provision amending this Act) for the purpose of changing the meaning of 'relevant capacity', 'relevant landlord' or 'relevant obligation'.

(11) A statutory instrument containing regulations under this section (whether alone or with other provision) is subject to the affirmative procedure."—*(Lee Rowley.)*

This new clause, to be inserted as the first clause of a new Part after Part 4, would enable the Secretary of State to make provision for redress schemes for property management work carried out other than by agents.

Brought up, read the First and Second time, and added to the Bill.

New Clause 16

REDRESS SCHEMES: VOLUNTARY JURISDICTION

"(1) Nothing in this Part prevents a redress scheme from providing (subject to regulations under section (*Approval and designation of redress schemes*))—

(a) for membership to be open to persons who wish to join as voluntary members;

(b) for the investigation or determination of any complaints under a voluntary jurisdiction (including complaints by persons who are not current or former owners of dwellings in relation to which estate management is carried out);

(c) for voluntary mediation services;

(d) for the exclusion from investigation and determination under the scheme of any complaint in such cases or circumstances as may be specified in or determined under the scheme.

(2) In this Part—

'complaints under a voluntary jurisdiction' means complaints in relation to which there is no duty to be a member of a redress scheme, where the members against which the complaints are made have voluntarily accepted the jurisdiction of the scheme over those complaints;

'voluntary mediation services' means mediation, conciliation or similar processes provided at the request of a member in relation to complaints made—

(a) against the member, or

(b) by the member against another person;

'voluntary members', in relation to a scheme, means members who are not subject to a duty to be a member of a redress scheme."—*(Lee Rowley.)*

This new clause, to be inserted after NC15, would provide for redress schemes to have the possibility of voluntary jurisdiction.

Brought up, read the First and Second time, and added to the Bill.

New Clause 17

FINANCIAL ASSISTANCE FOR ESTABLISHMENT OR MAINTENANCE OF REDRESS SCHEMES

"The Secretary of State may give financial assistance (by way of grant, loan, or guarantee, or in any other form) or make other payments to a person for the establishment or maintenance of—

(a) a redress scheme, or

(b) a scheme that would be a redress scheme if it were approved or designated under section (*Leasehold and estate management: redress schemes*)(4)(b)."—*(Lee Rowley.)*

This new clause, to be inserted after NC16, would allow the Secretary of State to give financial assistance for the establishment or maintenance of redress schemes.

Brought up, read the First and Second time, and added to the Bill.

New Clause 18

APPROVAL AND DESIGNATION OF REDRESS SCHEMES

"(1) This section applies where the Secretary of State makes regulations under section (*Leasehold and estate management: redress schemes*)(1).

(2) The Secretary of State must by regulations set out conditions which are to be satisfied before a scheme is approved or designated under section (*Leasehold and estate management: redress schemes*)(4)(b).

(3) The conditions must include conditions requiring the scheme to include provision in accordance with the regulations—

(a) for an administrator of the scheme to appoint an individual, having obtained the lead enforcement authority's approval of the individual and the terms of the appointment, who is to be responsible for overseeing and monitoring the investigation and determination of complaints under the scheme;

(b) about the complaints that may be made under the scheme, which must include provision enabling the making of complaints about non-compliance with any codes of practice that are issued or approved by the Secretary of State;

(c) about the time to be allowed for scheme members to resolve matters before a complaint is accepted under the scheme in relation to those matters;

(d) about the circumstances in which a complaint may be rejected;

(e) about co-operation (which may include the joint exercise of functions) of an individual who is investigating or determining a complaint with persons who have functions under other schemes for providing redress and with enforcement authorities;

(f) about the provision of information to the persons mentioned in paragraph (e);

(g) if members are required to pay fees in respect of compulsory aspects of the scheme, about the level of those fees;

(h) if there are voluntary aspects of the scheme—

(i) for fees to be payable in respect of those aspects of the scheme, and

(ii) for the fees to be set at a level that, taking one year with another, is sufficient to meet the costs incurred in the administration of those aspects of the scheme;

(i) for the individual determining a complaint to be able to require members to provide redress of the following types to the complainant—

(i) providing an apology or explanation,

(ii) paying compensation, and

(iii) taking such other actions in the interests of the complainant as the individual determining the complaint may specify;

(j) about the enforcement of the scheme and decisions made under the scheme;

(k) for a person to be expelled from the scheme only—

(i) in circumstances specified in the regulations,

(ii) once steps to secure compliance that are specified in the regulations have been taken, and

(iii) once the decision to expel the person has been reviewed by an independent person in accordance with the regulations;

(l) for an expulsion to be revoked in circumstances specified in the regulations;

(m) prohibiting a person from joining the scheme when the person has been expelled from another redress scheme and the expulsion has not been revoked;

(n) for circumstances in which the administration of the scheme is to be transferred to a different administrator;

(o) about the closure of the scheme by an administrator of the scheme.

(4) Conditions set out in regulations under subsection (3)—

(a) may include conditions requiring an administrator or proposed administrator of a scheme to undertake to do things—

(i) on an ongoing basis following approval or designation;

(ii) after ceasing to be an administrator of the scheme;

(b) in the case of conditions set out in regulations by virtue of subsection (3)(d), may require a scheme to reject complaints by a current or former owner of a dwelling where that owner is of a description specified in the regulations;

(c) in the case of conditions set out in regulations by virtue of subsection (3)(n), may—

(i) require an approved scheme to provide for the administration of that scheme to be transferred to the lead enforcement authority or a person acting on behalf of the lead enforcement authority in circumstances specified in the regulations, and

(ii) where they so require, provide for a scheme whose administration is transferred to be treated as a designated scheme instead of an approved one.

(5) Subsections (3) and (4) do not limit the conditions that may be set out in regulations under subsection (2).

(6) The Secretary of State may by regulations make further provision about the approval or designation of redress schemes under section *(Leasehold and estate management: redress schemes)*(4)(b), including provision—

(a) about the number of redress schemes that may be approved or designated (which may be one or more);

(b) about the making of applications for approval;

(c) about the period for which an approval or designation is valid;

(d) about the withdrawal of approval or revocation of designation;

(e) authorising the approval or designation of a scheme which provides for fees payable by a compulsory member to be calculated by reference to the total of the costs incurred, or to be incurred, in the administration of the compulsory aspects of the scheme (including costs unconnected with the member in question).

(7) Regulations under this section may confer a discretion on the lead enforcement authority or require a scheme to do so.

(8) In this section—

'compulsory aspects', in relation to a scheme, means aspects of the scheme relating to complaints in relation to which there is a duty to be a member of a redress scheme;

'compulsory member', in relation to a scheme, means a member of the scheme who is subject to a duty to be a member of a redress scheme;

'voluntary aspects', in relation to a scheme, means aspects of the scheme that relate to—

(a) complaints under a voluntary jurisdiction,

(b) voluntary mediation services, or

(c) voluntary members.

(9) A statutory instrument containing regulations under this section (whether alone or with other provision) is subject to the affirmative procedure."—*(Lee Rowley.)*

This new clause, to be inserted after NC17, would make provision for the approval and designation of redress schemes.

Brought up, read the First and Second time, and added to the Bill.

New Clause 19

Financial penalties

"(1) An enforcement authority may impose a financial penalty on a person if satisfied beyond reasonable doubt that the person has breached regulations under section (*Leasehold and estate management: redress schemes*)(1).

(2) The Secretary of State may by regulations make provision about the investigation by an enforcement authority of suspected breaches of regulations under section (*Leasehold and estate management: redress schemes*)(1) for the purpose of determining whether to impose a financial penalty.

(3) Regulations under subsection (2) may, among other things, make provision about—

(a) co-operation between enforcement authorities, and

(b) the sharing of information between enforcement authorities,

for the purposes of an investigation.

(4) The amount of a financial penalty imposed under this section is to be determined in accordance with section (*Financial penalties: maximum amounts*).

(5) More than one penalty may be imposed for the same conduct only if—

(a) the conduct continues after the end of 28 days beginning with the day after the day on which the final notice in respect of the previous penalty for the conduct was given to the person, unless the person appeals against that notice within that period, or

(b) if the person appeals against that notice within that period, the conduct continues after the end of 28 days beginning with the day after the day on which the appeal is finally determined, withdrawn or abandoned.

(6) Subsection (5) does not enable a penalty to be imposed after the final notice in respect of the previous penalty has been withdrawn or quashed on appeal.

(7) Schedule (*Redress schemes: financial penalties*) makes provision about—

(a) the procedure for imposing a financial penalty under this section,

(b) appeals against financial penalties,

(c) enforcement of financial penalties, and

(d) how enforcement authorities are to deal with the proceeds of financial penalties.

(8) For the purposes of this section and section (*Financial penalties: maximum amounts*)—

(a) a financial penalty is imposed on the date specified in the final notice as the date on which the notice is given;

(b) 'final notice' has the meaning given by paragraph 3 of Schedule (*Redress schemes: financial penalties*).

(9) A statutory instrument containing regulations under this section (whether alone or with other provision) is subject to the affirmative procedure."—*(Lee Rowley.)*

This new clause, to be inserted after NC18, would provide for an enforcement authority to impose a financial penalty for breach of regulations under NC15.

Brought up, read the First and Second time, and added to the Bill.

New Clause 20

FINANCIAL PENALTIES: MAXIMUM AMOUNTS

"(1) The amount of a financial penalty imposed on a person under section (*Financial penalties*) is to be determined by the enforcement authority imposing it, but—

(a) if Case A, B or C applies, the penalty must not be more than £30,000;

(b) otherwise, the penalty must not be more than £5,000.

(2) Case A applies if—

(a) a relevant penalty has been imposed on the person and the final notice imposing the penalty has not been withdrawn, and

(b) the conduct for which the penalty was imposed continues after the end of the period of 28 days beginning with—

(i) the day after the day on which the penalty was imposed on the person, or

(ii) if the person appeals against the final notice in respect of the penalty within that period, the day after the day on which the appeal is finally determined, withdrawn or abandoned.

(3) Case B applies if—

(a) a relevant penalty has been imposed on the person for a breach of regulations under section (*Leasehold and estate management: redress schemes*)(1) and the final notice imposing the penalty has not been withdrawn, and

(b) the person engages in conduct which constitutes a different breach of such regulations within the period of five years beginning with the day on which the penalty was imposed.

(4) Case C applies if—

(a) a relevant penalty has been imposed on the person for conduct in respect of which Case A, B or C applies and the final notice imposing the penalty has not been withdrawn, and

(b) the person breaches regulations under section (*Leasehold and estate management: redress schemes*)(1) within the period of five years beginning with the day on which the penalty was imposed.

(5) For the purposes of this section, 'relevant penalty' means a financial penalty imposed under section (*Financial penalties*) where—

(a) the period for bringing an appeal against the penalty under paragraph 5 of Schedule (*Redress schemes: financial penalties*) has expired without an appeal being brought,

(b) an appeal against the financial penalty under that paragraph has been withdrawn or abandoned, or

(c) the final notice imposing the penalty has been confirmed or varied on appeal.

(6) The Secretary of State may by regulations amend the amounts specified in subsection (1) to reflect changes in the value of money.

(7) A statutory instrument containing regulations under this section is subject to the negative procedure.'—*(Lee Rowley.)*

This new clause, to be inserted after NC19, would provide for the maximum penalties that may be imposed under NC19.

Brought up, read the First and Second time, and added to the Bill.

New Clause 21

DECISION UNDER A REDRESS SCHEME MAY BE MADE ENFORCEABLE AS IF IT WERE A COURT ORDER

"(1) The Secretary of State may by regulations make provision for, or in connection with, authorising an administrator of a redress scheme to apply to a court or tribunal for an order that a determination made under the scheme and accepted by the complainant in question be enforced as if it were an order of a court.

(2) A statutory instrument containing regulations under this section is subject to the negative procedure."—*(Lee Rowley.)*

This new clause, to be inserted after NC20, would enable the Secretary of State to make regulations making a decision under a redress scheme enforceable as if it were a court order.

Brought up, read the First and Second time, and added to the Bill.

New Clause 22

LEAD ENFORCEMENT AUTHORITY: FURTHER PROVISION

"(1) The lead enforcement authority must oversee the operation of a redress scheme under this Part.

(2) The lead enforcement authority must provide—

(a) other enforcement authorities, and

(b) the public in England,

with information and advice about the operation of redress schemes, in such form and manner as the lead enforcement authority considers appropriate.

(3) The lead enforcement authority may disclose information to another enforcement authority for the purposes of enabling that authority to determine whether there has been a breach of regulations under section (*Leasehold and estate management: redress schemes*)(1).

(4) The lead enforcement authority may issue guidance to other enforcement authorities about the exercise of their functions under this Part.

(5) Enforcement authorities other than the lead enforcement authority must have regard to any guidance issued under subsection (4).

(6) If the Secretary of State designates a person as the lead enforcement authority for the purposes of this Part—

(a) the Secretary of State may make arrangements in connection with the person's role as the lead enforcement authority, which may include arrangements—

(i) for payments by the Secretary of State;

(ii) about bringing the arrangements to an end;

(b) the Secretary of State may give the lead enforcement authority directions as to the exercise of any of its functions, which—

(i) may relate to all or particular kinds of enforcement authorities, and

(ii) may make different provision for different purposes;

(c) the lead enforcement authority must keep under review and from time to time advise the Secretary of State about—

(i) the operation of redress schemes;

(ii) social and commercial developments relating to estate management (including by relevant landlords) in England, so far as it considers those developments relevant to redress schemes.

(7) The Secretary of State may by regulations make transitional or saving provision which applies when there is a change in the lead enforcement authority (which may relate to a specific change in the lead enforcement authority or to changes that might arise from time to time).

(8) A statutory instrument containing regulations under this section is subject to the negative procedure."—*(Lee Rowley.)*

This new clause, to be inserted after NC21, would make further provision about lead enforcement authorities.

Brought up, read the First and Second time, and added to the Bill.

New Clause 23

GUIDANCE FOR ENFORCEMENT AUTHORITIES AND SCHEME ADMINISTRATORS

"(1) The Secretary of State may from time to time issue or approve guidance for enforcement authorities in England and administrators of redress schemes about co-operation between such enforcement authorities and persons exercising functions under the schemes.

(2) An enforcement authority in England other than the Secretary of State must have regard to any guidance issued or approved under this section.

(3) The Secretary of State must exercise the powers in section (*Approval and designation of redress schemes*) for the purpose of ensuring that every administrator of a redress scheme has regard to any guidance issued or approved under this section."—*(Lee Rowley.)*

This new clause, to be inserted after NC22, would enable the Secretary of State to issue guidance to enforcement authorities and scheme administrators.

Brought up, read the First and Second time, and added to the Bill.

New Clause 24

INTERPRETATION OF PART 4A

"In this Part—

'complaints under a voluntary jurisdiction" has the meaning given in section (*Redress schemes: voluntary jurisdiction*)(2);

'dwelling' means a building or part of a building occupied or intended to be occupied as a separate dwelling, together with any yard, garden, outhouses and appurtenances belonging to it or usually enjoyed with it;

'enforcement authority' means—

(a) the lead enforcement authority,

(b) the Secretary of State,

(c) a local housing authority, or

(d) another person designated by the Secretary of State as an enforcement authority;

'estate management' has the meaning given in section (*Leasehold and estate management: redress schemes*)(8);

'estate manager' has the meaning given in section (*Leasehold and estate management: redress schemes*)(8);

'the lead enforcement authority' has the meaning given in section (*Leasehold and estate management: redress schemes*)(8);

'local housing authority' means—

(a) a district council,

(b) a London borough council,

(c) the Common Council of the City of London (in its capacity as a local authority), or

(d) the Council of the Isles of Scilly;

'long lease' has the meaning given in section 77(2) of the LRHUDA 1993;

'owner', in relation to a dwelling, means—

(a) the owner of freehold land which comprises the dwelling;

(b) a tenant under a long lease of the dwelling;

'redress scheme' has the meaning given in section (*Leasehold and estate management: redress schemes*)(4);

'relevant capacity' has the meaning given in section (*Leasehold and estate management: redress schemes*)(2);

'relevant landlord' has the meaning given in section (*Leasehold and estate management: redress schemes*)(8);

"relevant obligation' has the meaning given in section (*Leasehold and estate management: redress schemes*)(8);

'rentcharge" has the same meaning as in the RA 1977 (see section 1 of that Act);

'voluntary mediation services' has the meaning given in section (*Redress schemes: voluntary jurisdiction*)(2);

'voluntary members' has the meaning given in section (*Redress schemes: voluntary jurisdiction*)(2)."—*(Lee Rowley.)*

This new clause, to be inserted after NC22, would make interpretation provision for the purposes of the new Part to be inserted after Part 4.

Brought up, read the First and Second time, and added to the Bill.

New Clause 42

LEASEHOLD SALES INFORMATION REQUESTS

"(1) In the LTA 1985, after section 30J (as inserted by section 35) insert—

'Sales information requests

30K Sales information requests

(1) A tenant of a dwelling under a long lease may give a sales information request to the landlord.

(2) A "sales information request" is a document in a specified form, and given in a specified manner, setting out—

(a) that the tenant is contemplating selling a long lease of the dwelling,

(b) information that the tenant requests from the landlord for the purpose of the contemplated sale, and

(c) any other specified information.

(3) A tenant may request information in a sales information request only if the information is specified in regulations made by the appropriate authority.

(4)The appropriate authority may specify information for the purposes of subsection (3) only if the information could reasonably be expected to assist a prospective purchaser in deciding whether to purchase a long lease of a dwelling.

(5) The appropriate authority may by regulations provide that a sales information request may not be given until the end of a particular period, or until another condition is met.

(6) Regulations under this section—

(a) are to be made by statutory instrument;

(b) may make provision generally or only in relation to specific cases;

(c) may make different provision for different purposes;

(d) may include supplementary, incidental, transitional or saving provision.

(7) A statutory instrument containing regulations under this section is subject to the negative procedure.

30L Effect of sales information request

(1) A landlord who has been given a sales information request must provide the tenant with any of the information requested that is within the landlord's possession.

(2) The landlord must request information from another person if—

(a) the information has been requested from the landlord in a sales information request,

(b) the landlord does not possess the information when the request is made, and

(c) the landlord believes that the other person possesses the information.

(3) That person must provide the landlord with any of the information requested that is within that person's possession.

(4) A person ("A") must request information from another person ("B") if—

(a) the information has been requested from A in a request under subsection (2) or this subsection (an "onward request"),

(b) A does not possess the information when the request is made, and(c)A believes that B possesses the information.

(5) B must provide A with any of the information requested that is within B's possession.

(6) A person who is required to provide information under this section must do so before the end of a specified period beginning with the day on which the request for the information is made.

(7) A person who—

(a) has been given a sales information request or an onward request, and

(b) as a result of not possessing the information requested, does not provide the information before the end of a specified period beginning with the day on which the request is made, must give the person making the request a negative response confirmation.

(8) A "negative response confirmation" is a document in a specified form, and given in a specified manner, setting out—

(a) that the person is unable to provide the information requested because it is not in the person's possession;

(b) a description of what action the person has taken to determine whether the information is in the person's possession;

(c) any onward requests the person has made and the persons to whom they were made;

(d) an explanation of why the person was unable to obtain the information, including details of any negative response confirmation received by the person;

(e) any other specified information.

(9) A person who is required to give a negative response confirmation must do so before the end of a specified period beginning with the day after the day on which the period referred to in subsection (7)(b) ends.

(10) The appropriate authority may by regulations—

(a) provide that an onward request may not be made until the end of a particular period, or until another condition is met;

(b) provide for how an onward request is to be made;

(c) make provision as to the period within which an onward request must be made;

(d) provide for circumstances in which a duty to comply with a sales information request or an onward request does not apply;

(e) make provision as to how information requested in a sales information request or an onward request is to be provided;

(f) make provision for circumstances in which a period specified for the purposes of subsection (6), (7) or (9) is to be extended.

(11) Regulations under this section—

(a) are to be made by statutory instrument;

(b) may make provision generally or only in relation to specific cases;

(c) may make different provision for different purposes;

(d) may include supplementary, incidental, transitional or saving provision.

(12) A statutory instrument containing regulations under this section is subject to the negative procedure.

30M Charges for provision of information

(1) Subject to any regulations under subsection (2), a person ("P") may charge another person for—

(a) determining whether information requested in a sales information request or an onward request is in P's possession;

(b) providing or obtaining information under section 30L.

(2) The appropriate authority may by regulations—

(a) limit the amount that may be charged under subsection (1);

(b) prohibit a charge under subsection (1) in specified circumstances or unless specified requirements are met.

(3) If a landlord charges a tenant under subsection (1), the charge—

(a) is an administration charge for the purposes of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (see paragraph 1(1)(b) of that Schedule), and

(b) is not to be treated as a service charge for the purposes of this Act.

(4) For the purposes of the provisions of this Act relating to service charges, the costs of—

(a) determining whether information requested in a sales information request or an onward request is in a person's possession, or

(b) providing or obtaining information under section 30L,are not to be regarded as relevant costs to be taken into account in determining the amount of any variable service charge payable by any tenant.

(5) Regulations under this section—

(a) are to be made by statutory instrument;

(b) may make provision generally or only in relation to specific cases;

(c) may make different provision for different purposes;

(d) may include supplementary, incidental, transitional or saving provision.

(6) A statutory instrument containing regulations under this section is subject to the negative procedure.

30N Enforcement of sections 30L and 30M

(1) A person who makes a sales information request or an onward request ("C") may make an application to the appropriate tribunal on the ground that another person ("D") failed to comply with a requirement under section 30L or 30M in relation to the request.

(2) The tribunal may make one or more of the following orders—

(a) an order that D comply with the requirement before the end of a period specified by the tribunal;

(b) an order that D pay damages to C for the failure;

(c) if D charged C in excess of a limit specified in regulations under section 30M(2)(a), an order that D repay the amount charged in excess of the limit to C;

(d) if D charged C in breach of regulations under section 30M(2)(b), an order that D repay the amount charged to C.

(3) Damages under subsection (2)(b) may not exceed £5,000.

(4) The appropriate authority may by regulations amend the amount in subsection (3) if the appropriate authority considers it expedient to do so to reflect changes in the value of money.

(5) Regulations under this section—

(a) are to be made by statutory instrument;

(b) may make provision generally or only in relation to specific cases;

(c) may make different provision for different purposes;

(d) may include supplementary, incidental, transitional or saving provision.

(6) A statutory instrument containing regulations under this section is subject to the negative procedure.

30P Interpretation of sections 30K to 30N

(1) In sections 30K to 30N—

"information" includes a document containing information, and a copy of such a document;

"landlord" includes—

(a) any person who has a right to enforce payment of a service charge;

(b) a RTM company within the meaning of Chapter 1 of Part 2 of the Commonhold and Leasehold Reform Act 2002 (see section 73 of that Act);

"long lease" has the same meaning as in Chapter 1 of Part 2 of the Commonhold and Leasehold Reform Act 2002 (see sections 76 and 77 of that Act);

"onward request" has the meaning given in section 30L(4)(a);

"sales information request" has the meaning given in section 30K(2);

"specified" means specified in, or determined in accordance with, regulations made by the appropriate authority.

(2)A reference in sections 30K to 30N to purchasing a long lease is a reference to becoming a tenant under the lease for consideration, whether by grant, assignment or otherwise, and references to selling a long lease are to be read accordingly.

(2) In section 172(1) of the CLRA 2002 (application to Crown of provisions of the LTA 1985), after paragraph (ac) (as inserted by section 35) insert—

"(ad) sections 30K to 30P of the 1985 Act (sales information requests),".'"—*(Lee Rowley.)*

This new clause, to be inserted after NC9, would require a landlord to provide specified information to a tenant, in anticipation of the tenant selling their property, within a specified time and at a specified cost, and request that information from other parties.

Brought up, and read the First time.

Lee Rowley: I beg to move, That the clause be read a Second time.

The Chair: With this it will be convenient to discuss the following:

Government new clause 43—*Estate management: sales information requests.*

Government new clause 44—*Effect of sales information request.*

Government new clause 45—*Charges for provision of information.*

Government new clause 46—*Enforcement of sections (Effect of sales information request) and (Charges for provision of information).*

Lee Rowley: New clause 42 will introduce a requirement for a landlord to provide specific information requested by a leaseholder. That information is vital for a leaseholder to enable the sale of their property; it also provides the detail that a prospective purchaser needs to make an informed decision. Regulations will set out what information is to be provided, as well as a maximum timeframe and a maximum cost for providing that information. Regulations will further specify how a request must be made, how the requested information must be provided, in what circumstances a request can be refused and when the time period for its provision may be extended. The clause also sets out enforcement mechanisms, including the various orders that a tribunal may make such as requiring compliance, awarding damages and requiring the repayment of excessive fees.

Under the current system, there is no consistency for leaseholders, some of whom are left paying thousands of pounds and waiting months for this information. Some of them never receive the information at all. The clause will reduce the time that leaseholders have to wait to receive the information that they need, which should reduce delays in selling their properties. It will also make the selling process cheaper and less uncertain. I commend new clause 42 to the Committee.

2.15 pm

I turn to new clause 43. There is currently no obligation for an estate manager to respond to a sales information request from a homeowner who wishes to sell their property. Although many estate managers do provide information in a timely manner, failures by some managers mean that it can take weeks or months for homeowners on freehold estates to receive the information that they need, if they receive it at all.

The new clause, along with new clauses 44, 45 and 46, will provide for a fairer, more streamlined system in which homeowners can get the information they need when they need it. It will introduce a requirement for an estate manager to provide specific information requested by a homeowner who intends to sell their property. Subsection (2) will require the request to be set out in a specified form and given in a specified manner. This will ensure that the estate manager can confirm that it is indeed a request for sales information, rather than a general request for information. The information will be specified in regulations but must relate to estate management, estate managers, estate management charges or relevant obligations, and must be reasonably expected to help a prospective purchaser to decide whether to

purchase a property. We intend to work with estate managers, homeowners and other stakeholders when preparing the regulations, to ensure that we capture the right level of detail. I commend new clause 43 to the Committee.

New clause 44 will introduce a requirement for an estate manager to provide sales information requested by a homeowner on a freehold estate, within a timeframe set out in regulations. Subsections (2) and (3) will require estate managers to request from another party information that they do not hold, if they consider that the other party holds it; the other party must provide the information that they possess. Subsections (4) and (5) will place an additional obligation on the other party to forward on the request if it does not hold the information; the further party must provide the information that it possesses.

Subsection (6) requires that the information must be requested within a specified period. Subsection (7) states that if a person receives a request but does not hold the required information, they must confirm to the person who made the request that they do not hold that information. This is called a negative response confirmation. The negative response confirmation should detail that the individual does not hold the information and the actions taken by the individual to determine that. Subsection (10) allows regulations to set out the detail of how the process for making onward requests for information should work.

New clause 44 will create the framework for ensuring that relevant sales information is provided in a timely manner, and will cut the time that it takes for a homeowner to receive sales information. I commend it to the Committee.

I turn to new clause 45. Estate managers have considerable discretion as to what they can charge for collating and providing sales information. This means that homeowners can often be left paying an excessive amount. The new clause will allow for a maximum fee to be set out in regulations and will introduce a maximum fee for onward requests for information. The new clause also sets out that any cost incurred by the homeowner for the provision of sales information by the estate manager is to be an administration charge and should not be treated as an estate management charge. I commend it to the Committee.

I turn to new clause 46. Under the current arrangements, homeowners often feel powerless when information is not forthcoming or if they are charged what they consider an extortionate fee for obtaining it. New clause 46 will introduce an enforcement mechanism where sales information has not been provided or where the cost charged has exceeded the maximum permitted cost. Subsection (2) will allow a homeowner who has made a sales information request or an individual who has made an onward request to make an application to the relevant tribunal. The tribunal, in turn, may make one or more orders. This includes an order that the estate manager or other party provide the sales information within a specified time frame.

New clause 46 will also allow the tribunal to award damages of up to £5,000 to the homeowner or person making the onward request. In cases of overcharging, the tribunal may require the excess amount to be repaid or, where there has been a charge in breach of regulations, may require the full amount to be repaid. I commend the new clause to the Committee.

Matthew Pennycook (Greenwich and Woolwich) (Lab): I rise to say simply that the Opposition welcome this group of Government new clauses.

Barry Gardiner (Brent North) (Lab): I, too, welcome the new clauses, but I do so in the knowledge that they do not provide a perfect solution. My concern, and the question I put to the Minister, relates to situations such as the one that I outlined the other day. Where information is held by a series of Russian dolls, as it were, the ultimate one of which is located in the Cayman Islands—as is the case with Wembley Central Apartments in my constituency—what ultimate redress do the leaseholders have? Damages does not get to the nub of the problem.

Lee Rowley: As the hon. Member has outlined, we spoke about this issue on Thursday. I have a lot of sympathy for the point that he makes, and I think we agreed that we would explore it further; I was going to write to the hon. Gentleman and the Committee, if I recall correctly. He is right to raise and highlight that point. Where we can make further progress, we should try to do so. As I know he will appreciate, there is ultimately a challenge when entities move out of jurisdictions, but that should not mean that we should not have a look at whether we can make things better, if not perfect.

Question put and agreed to.

New clause 42 accordingly read a Second time, and added to the Bill.

New Clause 43

ESTATE MANAGEMENT: SALES INFORMATION REQUESTS

"(1) An owner of a managed dwelling may give a sales information request to the estate manager.

(2) A 'sales information request' is a document in a specified form, and given in a specified manner, setting out—

(a) that the owner is contemplating selling the dwelling,

(b) information that the owner requests from the estate manager for the purpose of the contemplated sale, and

(c) any other specified information.

(3) An owner of a managed dwelling may request information in a sales information request only if the information is specified in regulations made by the appropriate authority.

(4) The appropriate authority may specify information for the purposes of subsection (3) only if the information—

(a) relates to estate management, estate managers, estate management charges or relevant obligations, and

(b) could reasonably be expected to assist a prospective purchaser in deciding whether to purchase a dwelling.

(5) The appropriate authority may by regulations provide that a sales information request may not be given until the end of a particular period, or until another condition is met.

(6) In this section and sections (*Effect of sales information request*) to (*Enforcement of sections (Effect of sales information request) and (Charges for provision of information)*)—

(a) a reference to purchasing a dwelling is a reference to becoming an owner of the dwelling, and references to selling a dwelling are to be read accordingly;

(b) 'sales information request' has the meaning given in subsection (2);

(c) 'specified' means specified in, or determined in accordance with, regulations made by the appropriate authority.

(7) A statutory instrument containing regulations under this section is subject to the negative procedure."—*(Lee Rowley.)*

This new clause, to be inserted after NC14, would provide for the owner of a managed dwelling to give a sales information request to the estate manager in anticipation of selling the dwelling.

Brought up, read the First and Second time, and added to the Bill.

New Clause 44

EFFECT OF SALES INFORMATION REQUEST

"(1) An estate manager who has been given a sales information request by the owner of a managed dwelling must provide the owner with any of the information requested that is within the estate manager's possession.

(2) The estate manager must request information from another person if—

(a) the information has been requested from the estate manager in a sales information request,

(b) the estate manager does not possess the information when the request is made, and

(c) the estate manager believes that the other person possesses the information.

(3) That person must provide the estate manager with any of the information requested that is within that person's possession.

(4) A person ('A') must request information from another person ('B') if—

(a) the information has been requested from A in a request under subsection (2) or this subsection (an 'onward request'),

(b) A does not possess the information when the request is made, and

(c) A believes that B possesses the information.

(5) B must provide A with any of the information requested that is within B's possession.

(6) A person who is required to provide information under this section must do so before the end of a specified period beginning with the day on which the request for the information is made.

(7) A person who—

(a) has been given a sales information request or an onward request, and

(b) as a result of not possessing the information requested, does not provide the information before the end of a specified period beginning with the day on which the request is made,

must give the person making the request a negative response confirmation.

(8) A 'negative response confirmation' is a document in a specified form, and given in a specified manner, setting out—

(a) that the person is unable to provide the information requested because it is not in the person's possession;

(b) a description of what action the person has taken to determine whether the information is in the person's possession;

(c) any onward requests the person has made and the persons to whom they were made;

(d) an explanation of why the person was unable to obtain the information, including details of any negative response confirmation received by the person;

(e) any other specified information.

(9) A person who is required to give a negative response confirmation must do so before the end of a specified period beginning with the day after the day on which the period referred to in subsection (7)(b) ends.

(10) The appropriate authority may by regulations—

(a) provide that an onward request may not be made until the end of a particular period, or until another condition is met;

(b) provide for how an onward request is to be made;

(c) make provision as to the period within which an onward request must be made;

(d) provide for circumstances in which a duty to comply with a sales information request or an onward request does not apply;

(e) make provision as to how information requested in a sales information request or an onward request is to be provided;

(f) make provision for circumstances in which a period specified for the purposes of subsection (6), (7) or (9) is to be extended.

(11) In this section and sections (*Charges for provision of information*) and (*Enforcement of sections (Effect of sales information request) and (Charges for provision of information)*), 'onward request' has the meaning given in subsection (4)(a).

(12) A statutory instrument containing regulations under this section is subject to the negative procedure."—*(Lee Rowley.)*

This new clause, to be inserted after NC43, would require an estate manager who has been given a sales information request to provide the information requested, and request that information from other parties.

Brought up, read the First and Second time, and added to the Bill.

New Clause 45

CHARGES FOR PROVISION OF INFORMATION

"(1) Subject to any regulations under subsection (2), a person ('P') may charge another person for—

(a) determining whether information requested in a sales information request or an onward request is in P's possession;

(b) providing or obtaining information under section (*Effect of sales information request*).

(2) The appropriate authority may by regulations—

(a) limit the amount that may be charged under subsection (1);

(b) prohibit a charge under subsection (1) in specified circumstances or unless specified requirements are met.

(3) If an estate manager charges the owner of a managed dwelling under subsection (1), the charge—

(a) is an administration charge for the purposes of this Part, and

(b) is not to be treated as an estate management charge for the purposes of this Part.

(4) For the purposes of this Part, the costs of—

(a) determining whether information requested in a sales information request or an onward request is in a person's possession, or

(b) providing or obtaining information under section (*Estate management: sales information requests*),

are not to be regarded as relevant costs to be taken into account in determining the amount of any estate management charge.

(5) A statutory instrument containing regulations under this section is subject to the negative procedure."—*(Lee Rowley.)*

This new clause, to be inserted after NC44, would regulate charges for the provision of information under NC44.

Brought up, read the First and Second time, and added to the Bill.

New Clause 46

ENFORCEMENT OF SECTIONS (*EFFECT OF SALES INFORMATION REQUEST*) AND (*CHARGES FOR PROVISION OF INFORMATION*)

"(1) A person who makes a sales information request or an onward request ('C') may make an application to the appropriate tribunal on the ground that another person ('D') failed to comply with a requirement under section (*Effect of sales information request*) or (*Charges for provision of information*) in relation to the request.

(2) The tribunal may make one or more of the following orders—

(a) an order that D comply with the requirement before the end of a period specified by the tribunal;

(b) an order that D pay damages to C for the failure;

(c) if D charged C in excess of a limit specified in regulations under section (*Charges for provision of information*)(2)(a), an order that D repay the amount charged in excess of the limit to C;

(d) if D charged C in breach of regulations under section (*Charges for provision of information*)(2)(b), an order that D repay the amount charged to C.

(3) Damages under subsection (2)(b) may not exceed £5,000.

(4) The appropriate authority may by regulations amend the amount in subsection (3) if the appropriate authority considers it expedient to do so to reflect changes in the value of money.

(5) A statutory instrument containing regulations under this section is subject to the negative procedure."—*(Lee Rowley.)*

This new clause, to be inserted after NC45, would provide for the enforcement of obligations under NC44 and NC45.

Brought up, read the First and Second time, and added to the Bill.

New Clause 1

ABOLITION OF FORFEITURE OF A LONG LEASE

"(1) This section applies to any right of forfeiture or re-entry in relation to a dwelling held on a long lease which arises either—

(a) under the terms of that lease; or

(b) under or in consequence of section 146(1) of the Law of Property Act 1925.

(2) The rights referred to in subsection (1) are abolished.

(3) In this section—

"dwelling" means a building or part of a building occupied or intended to be occupied as a separate dwelling, together with any yard, garden, or outhouses and appurtenances belonging to it or usually enjoyed with it;

"lease" means a lease at law or in equity and includes a sub-lease, but does not include a mortgage term;

"long lease" has the meaning given by sections 76 and 77 of the Commonhold and Leasehold Reform Act 2002." —*(Matthew Pennycook.)*

This new clause would abolish the right of forfeiture in relation to residential long leases in instances where the leaseholder is in breach of covenant.

Brought up, and read the First time.

Matthew Pennycook: I beg to move, That the clause be read a Second time.

It is a pleasure to continue our line-by-line proceedings with you in the Chair, Sir Edward. For the sake of probity, simply because I will make reference to the organisation's work, I once again declare that my wife is the joint chief executive of the Law Commission.

The reason for tabling the new clause is simple: forfeiture is a wholly disproportionate and horrifically draconian mechanism for ensuring compliance with a lease agreement, and it needs to be abolished through the Bill. To remind the Committee, the law of forfeiture gives the landlord the right, following a breach of a clause in the lease or an unpaid debt of £350, or a lesser sum if it has been outstanding for more than three years, to terminate the lease, regain possession of the property and pocket the unmerited windfall gain that would accrue from its sale.

Not all forfeiture actions relate to trivial breaches—some are made in response to serious transgressions of a covenant in a lease, such as instances of persistent and egregious antisocial behaviour—but many are initiated for entirely trivial breaches, such as nominal ground rent or service charge arrears. The current laws of forfeiture render it entirely possible, for example, for a tenant to lose possession of a £500,000 flat or house for a debt of as little as £351, or even £15 if unpaid for more than three years, with the landlord keeping the entire difference between the value of the property and the debt owed.

Eddie Hughes (Walsall North) (Con): The hon. Gentleman is making a compelling speech. It seems crazy that in the 21st century somebody can lose possession of their property for such a small amount of money. I sincerely hope that he continues his compelling speech in such a way that he has a very positive effect on the Minister.

Matthew Pennycook: I thank the hon. Gentleman for that helpful intervention. I hope that I do have that effect, and that he can use his good offices to persuade the Minister of the merits of adopting new clause 1.

Richard Fuller (North East Bedfordshire) (Con): The shadow Minister is making a good point, but to play the cynic on this issue, there is a difference between things that could take place and things that are taking place. What is the evidence? We should probably get rid of this latent power in any case, but how often is the power being used in practice? Is this a real thing that is happening?

Matthew Pennycook: I thank the hon. Gentleman. If he allows me to develop my case, I will address that very point, which was well made.

Not only is the potential penalty for a breach incredibly draconian in the circumstances in which it is used, but even in instances in which a lease is not terminated, with the landlord gaining the financial benefit of any capital loans attached to it, the laws of forfeiture can lead to a significant financial loss for leaseholders. Take the following scenario. For whatever reason, a leaseholder accumulates a small arrears—perhaps a demand has not been received—and the freeholder or managing agent issues reminders, which add to the initial debt. That debt is then handed over to a debt collector, whose means of remuneration incentivise them to pursue it aggressively. The leaseholder might then attempt to pay, but they also have to find the money to cover large legal costs. If there is a mortgage, the bank is often drawn in to secure its interest, so a compulsory loan is added to the leaseholder's account. In our view, it is the lack of any proportionate relationship between a breach of a lease and its consequences that makes forfeiture so unjust.

Since 1925, this House has regularly taken steps to make it more difficult for a freeholder to successfully forfeit a lease. For example, the Housing Act 1996 and the Commonhold and Leasehold Reform Act 2002 introduced prohibitions on the serving of a section 146 notice under the Law of Property Act 1925 in relation to service charges and breach of a covenant, respectively, in instances in which the amount payable has not been determined. Those were not the first attempts to constrain the laws of forfeiture. History shows that Parliament

[Matthew Pennycook]

has returned to the matter every few decades in an attempt to mitigate forfeiture's manifest injustices. Despite the laws of forfeiture being made stricter, a great many freeholders and managing agents still routinely use forfeiture powers as a first resort when seeking to recover alleged arrears of payments from leaseholders, and they rely—this is in some ways the more important point—on the mere threat of forfeiture, and the financial risks it presents, to deter leaseholders from disputing any unreasonable costs and defending claims.

Those who advocate retaining forfeiture often argue that it is a minor issue that does not affect many leaseholders. However, although termination of a lease under forfeiture may be relatively rare—I deliberately use the word "may", because His Majesty's Courts and Tribunals Service does not track the number of cases—evidence from across the country shows hundreds of cases and scores of outright forfeitures on average each year. As I said, the threat is as damaging as the use of the power, because it puts landlords in a nearly unassailable position of strength in disputes vis-à-vis leaseholders, which is why forfeiture is routinely threatened in money disputes.

Because the law of forfeiture remains so manifestly unjust, despite successive attempts to render it more palatable, there have been many calls over recent decades for more wholesale reform. For example, hon. Members may know that in 2006 the Law Commission proposed abolishing the current law of forfeiture and replacing it with a statutory scheme for the termination of tenancies. It even drafted legislation, the Termination of Tenancies Bill, to implement that proposal. Yet nothing has been done. Indeed, the relevant section of the Law Commission's website states—this amused me—that, 18 years on,

"We are awaiting the Government's response to our recommendations"—

eighteen years and counting.

There is, of course, a need to carefully balance the rights and responsibilities of landlords and leaseholders, and there must be effective means of ensuring compliance with a lease agreement, but those means must be appropriate and proportionate to the breach in question. We can debate precisely what alternative arrangements are needed to deal with breaches of the covenant or unpaid arrears, whether orders of some kind are necessary to sell a property when a debt is not paid, and what kind of measured method is appropriate to removing problem tenants from a building—we heard about that in our oral evidence sessions. The starting point, however, must be that we finally grasp the nettle and abolish forfeiture, and the windfall it provides, once and for all. It operates to the prejudice of leaseholders and it cannot be justified.

The Secretary of State made clear on Second Reading that he was open to this Committee looking at how we end the abuse of forfeiture. I believe there is a broad consensus across the House—indeed across this Committee—that we should consign it to history, even if there is a debate about precisely what replace it with. Following the point made by the hon. Member for Walsall North, I sincerely hope that the Minister will not disappoint us and the many thousands of leaseholders who support the abolition of forfeiture by resisting this new clause out of hand. I very much look forward to his response.

2.30 pm

Rachel Maclean (Redditch) (Con): It is a pleasure to serve under your chairmanship, Sir Edward. I wish to place on the record my support for the eventual removal of this most feudal and abusive practice—one of the worst examples in this whole system—and I look forward to hearing the Minister's plans to eventually do that.

In response to my hon. Friend the Member for North East Bedfordshire, I just want to let him know that there is ample evidence that this abusive practice has had a deleterious impact on decent people who have bought their properties in good faith. Take, for example, the evidence from Free Leaseholders, which represents many people in this position. The organisation says,

"Forfeiture has no place in a modern housing market"

and that it gives

"the freeholder landlord complete whip hand over his 'tenant'."

It is a "draconian remedy" that really has very few comparators anywhere else. Unlike mortgage foreclosure, where there is a balancing payment at the end of it, someone loses all the equity in their own home. That means they could actually lose, for example, a flat worth half a million pounds because of non-payment of a £5,000 bill. The freeholder would seize that flat, take back the lease, and make a windfall irrespective of the size of the contested charge. It kicks in at just £350.

There are alternative ways of resolving these debts available in our system. For example, the freeholder could sue for an injunction. He does not need forfeiture and the windfall to enable him to carry out good management of the block. The Levelling Up, Housing and Communities Committee looked at this issue and also recommended its abolition, on the grounds that it puts the freeholders in an unassailable position of strength in disputes. Once again, it is about that power imbalance, which we have highlighted all the way through this Committee. We should absolutely take up the Law Commission's proposals to remove forfeiture. It is true that it is relatively rare, with perhaps an estimated 80 to 90 cases every year, but it is the threat that hangs over people—people who are not legal experts, fighting a very uneven battle against these big boys with deep pockets and plenty of lawyers on speed dial.

As well as the evidence I have just referred to, I want to represent again the fantastic testimony from the National Leasehold Campaign, which I think has 29,000 members. It has described again and again the impact of this sword of Damocles hanging over its members who have bought these properties in good faith, doing their best to navigate this thicket of rules, with the debt completely stacked against them. I look forward to hearing about the pathway that I am sure the Minister will set out for us, where we can remove this element from our laws once and for all.

Lee Rowley: I am grateful to the hon. Member for Greenwich and Woolwich for this new clause and for the opportunity to debate it. The hon. Gentleman set me a challenge at the end of his speech. He said he hoped I would not resist the new clause out of hand—I will not resist it out of hand, but I may resist it. In all seriousness, this is an important part of the discussion and I do not disagree with what the hon. Member for Greenwich and Woolwich and my hon. Friend the Member for Redditch said—I absolutely accept it. I am happy to confirm that the Government are aware of the strength of feeling on

this issue and sympathetic to some of the objectives of the amendment. It is absolutely the case that forfeiture is an extreme measure. That is why we committed on Second Reading to look at this.

On the question from my hon. Friend the Member for North East Bedfordshire, it is difficult to get numbers. As has been outlined by others, the principle is clearly a real problem. The disproportionate nature of the outcome completely outweighs the likely loss being pursued. The Leasehold Knowledge Partnership, or one of the other witnesses, suggested in oral evidence that there were 80 to 90 forfeitures a year, but the Government do not have specific data to validate that at this stage. We understand that most of the threats are defused during the process—particularly if a mortgage company is involved, it tends to, in extremis, step in and offer to put the amount of money on to the mortgage or equivalent. The evidence base is and will always be challenging, but we absolutely accept that the principle is disproportionate and unreasonable.

However, as with so many of these clauses and elements of law, there is the question of how to make something in the system better while still ensuring the ability to balance all the things underneath. That is probably one of the reasons why this place has returned to this issue so often over the decades—it is not just because the Government may not respond in time, as the hon. Member for Greenwich and Woolwich indicated. This new clause is definitely well intentioned. We are sympathetic, but we do not necessarily believe in the full abolition of forfeiture without some form of replacement for some elements of it that may still have validity—not the forfeiture itself, but a recognition that people cannot just not pay things without some form of process to address that. That is one of the reasons we cannot accept this amendment at the moment.

However, I do not condone the abuse of forfeiture. I want to be absolutely clear that we are listening very carefully to the arguments being made. We have already committed to look at this again, and we are currently looking at it. I hope we will be able to say more at future stages of the Bill. With those reassurances, I hope the hon. Member for Greenwich and Woolwich will consider withdrawing his clause.

Matthew Pennycook: That was a slightly frustrating response from the Minister. I had hoped for a little more. I am glad that he thinks the new clause is well intentioned and sympathises with some of its objectives. From the Opposition's point of view, as with rent charges, another example of draconian and wholly disproportionate Victorian-era property law, we need to cut the knot and get rid of these provisions entirely. As I said, we can have a debate on what we replace them with. We are very clear that there must be a replacement. There must be an effective means of ensuring compliance with a lease agreement, but it must be appropriate and proportionate to the breach in question. We all agree that forfeiture is not proportionate or appropriate to the breach, so why retain it? What I did not get from the Minister, but had hoped for, was a clear indication that that is the Government's intent, at whatever stage of the Bill.

I suspect this is one of those new clauses that the Minister has resisted—perhaps not out of hand, but resisted none the less—but that we may see back in a different form at a later stage with the Government's seal of approval. However, I would like to make very clear our strength of feeling on the matter, and I will therefore press the clause to a vote.

Question put, That the clause be read a Second time.

The Committee divided: Ayes 5, Noes 9.

Division No. 16]

AYES

Gardiner, Barry	Rimmer, Ms Marie
Glindon, Mary	
Pennycook, Matthew	Strathern, Alistair

NOES

Carter, Andy	Maclean, Rachel
Davison, Dehenna	Mohindra, Mr Gagan
Fuller, Richard	Rowley, Lee
Hughes, Eddie	Smith, rh Chloe
Levy, Ian	

Question accordingly negatived.

New Clause 2

REQUIREMENT TO ESTABLISH AND OPERATE A MANAGEMENT COMPANY UNDER LEASEHOLDER CONTROL

"(1) The Secretary of State may by regulations make provision—

(a) requiring any long lease of a dwelling to include a residents management company ('RMC') as a party to that lease, and

(b) for that company to discharge under the long lease such management functions as may be prescribed by the regulations.

(2) Regulations under subsection (1) must provide—

(a) for the RMC to be a company limited by share (with each share to have a value not to exceed £1), and

(b) for such shares to be allocated (for no consideration) to the leaseholder of the dwelling for the time being.

(3) Regulations under subsection (1) must prescribe the content and form of the articles of association of an RMC.

(4) The content and form of articles prescribed in accordance with subsection (3) have effect in relation to an RMC whether or not such articles are adopted by the company.

(5) A provision of the articles of an RMC has no effect to the extent that it is inconsistent with the content or form of articles prescribed in accordance with subsection (3).

(6) Section 20 of the Companies Act 2006 (default application of model articles) does not apply to an RMC.

(7) The Secretary of State may by regulations make such provision as the Secretary of State sees fit for the enforcement of regulations made under subsection (1), and such provision may (among other things) include provision—

(a) conferring power on the First-Tier Tribunal to order that leases be varied to give effect to this section;

(b) providing for terms to be implied into leases without the need for any order of any court or tribunal.

(8) The Secretary of State may by regulations prescribe descriptions of buildings in respect of which regulations may be made under subsection (1).

(9) In this section—

'dwelling' means a building or part of a building occupied or intended to be occupied as a separate dwelling, together with any yard, garden, or outhouses and appurtenances belonging to it or usually enjoyed with it;

'long lease' has the meaning given by sections 76 and 77 of the Commonhold and Leasehold Reform Act 2002;

'management function' has the meaning given by section 96(5) of the Commonhold and Leasehold Reform Act 2002.

(10) The Secretary of State may by regulations amend the definition of 'management function' for the purposes of this section."—*(Matthew Pennycook.)*

This new clause would ensure that leases on new flats include a requirement to establish and operate a residents' management company responsible for all service charge matters, with each leaseholder given a share.

Brought up, and read the First time.

Matthew Pennycook: I beg to move, That the clause be read a Second time.

As I made clear at the outset of our line-by-line consideration of the Bill, while we have no intention of trying to convince this Government to radically overhaul this limited piece of legislation to enact the Law Commission's recommendations on enfranchisement, right to manage and commonhold in full, we do want to make the case for a limited number of new measures that would give future leaseholders greater control and strengthen the foundations on which bolder reform will be enacted. New clause 2 seeks to incorporate one of those measures into the Bill—namely, that all leases on new flats should include a requirement to establish and operate a residents' management company responsible for all service charge matters, with each leaseholder given a share.

The new clause seeks to remedy two significant flaws in the current leasehold system. The first is that unless leaseholders in blocks of flats either take it upon themselves to acquire the right to manage, collectively enfranchise and then establish an RMC or buy a property on a development where an RMC has been set up, they find that despite being the people who pay all the costs associated with maintaining and managing their building, they have no control whatever over how their money is spent. The second is that the rights that this House has chosen to give leaseholders to empower them to exercise a degree of control over the management of their buildings—for example, the right to make an application to the first-tier tribunal, to appoint a manager under section 24 of the Landlord and Tenant Act 1987 or to acquire the right to manage under the Commonhold and Leasehold Reform Act 2002—can be exercised only following what is often an arduous and costly legal process.

New clause 2 would go some way to remedying both of those problems. It would mean that, where a new residential block of flats was constructed and its units sold, the development would have to be a tripartite lease between the freeholder, leaseholder and a new residents' management company. Each leaseholder in the block would own a share of the RMC and it would be under their exclusive control, giving them full responsibility for services, repairs, maintenance, improvements, insurance and the cost of managing their building, and thereby enabling them to control how their money was spent. Their share of the company and ability to influence the management of their building would be theirs by right and at no additional cost.

The importance of this proposed measure lies not only in the greater control it would give to leaseholders over the maintenance and management of their buildings, but in it being one of several ways by which we can lay the groundwork for a future in which leasehold has been rendered obsolete and commonhold is the norm. New clause 2, even if it is in operation for only a few years prior to commonhold being made the default tenure for new blocks of flats, as is our intention, would facilitate the reinvigoration of that tenure by creating a cohort of leaseholders who, of necessity, have experience in running their building as they would under a commonhold arrangement, even if that experience extends only to appointing and overseeing a managing agent—hopefully one properly regulated as a result of the Government's accepting our new clause 25.

In facilitating leaseholder control of the operation of a site and giving them responsibility for everything covered by a service charge, new clause 2 would also further undermine freehold by depriving unscrupulous landlords of the ability to extract income from leaseholders using opaque and potentially unlawful practices such as appointing managing agents that are just related companies and using captive insurance brokers.

Lastly, if enacted in conjunction with leaseholders being given a mandatory share of freehold, as provided for by new clause 29, mandatory RMCs in new blocks of flats would ensure that we have a standardised management model and an agreed set of rules for those new blocks of flats where the freehold is collectively owned, making the process of converting buildings to commonhold at scale far easier.

Let me be clear with the Committee: we do not pretend that this is a perfect solution. It would obviously not help those leaseholders who have already purchased their flats and who do not currently have an RMC. We will need other solutions, building on the measures already in the Bill, to address the challenges that they will continue to face. However, if the Committee believes —as I think it does—that commonhold is the ideal form of tenure, and that reinvigorating it is the solution for blocks of flats, we should take practical steps to pave the way for that to happen. New clause 2 is one of the ways we can do so, and I urge the Minister to consider it.

2.45 pm

Lee Rowley: I thank the hon. Gentleman for his new clause which, as he has indicated, seeks to require the establishment of leaseholder-owned management companies for all new leasehold flats. I understand that his intention is to ensure that, by default, all leaseholders of new flats would be responsible for the management of their buildings. I support the well-intentioned desire to give more homeowners control over the management of their buildings. The Bill as a whole is intended to do that, and I hope everybody accepts that it is moving in the right direction.

As the hon. Gentleman knows, existing leaseholders can already use the right to manage to take over management responsibility for their building. It is an established no-fault right that allows leaseholders to take over management responsibility when a majority of them wish to do so. The Bill accepts and implements key elements of the Law Commission recommendations that broaden access to the right to manage and reduce leaseholders' costs when they make a claim. The Bill gives leaseholders the right to take control over their building, but it does not compel those who do not wish

to. There is an important point there: I understand the intentions behind the new clause, but there is a question about compulsion and there may be a question about operation if some leaseholders do not wish to step up. For that reason, the requirement would not easily apply in some scenarios and a blanket requirement to establish such companies is probably not appropriate.

Although I accept, understand and sympathise with the intention of the new clause, I am afraid that we will resist it because there are times when it would not be appropriate for it to apply, and we should not change the law on that basis.

Matthew Pennycook: I am disappointed by that response from the Minister, as he would expect. We very much agree that the Bill is moving in the right direction, but we do not think it goes far enough for two reasons, which I will reiterate to help the Committee to understand why we feel strongly about this issue. Yes, the right to manage is an established right. The Bill makes provisions to enhance and expand access to RTM, but the RTM application process comes after an arduous and costly legal process. We are saying that, as a matter of right, residents in new build blocks of flats would have an RMC put in place and a share of it, without that cost. That is one point.

There is a more fundamental difference of principle, which is that if we are serious about reinvigorating commonhold, we need a number of steps. We need the legal changes that are recommended by the Law Commission, and we need to do those as one process, not in a partial way. However, there are other non-legislative policy changes that we need to make if we are to pave the way for commonhold. This new clause is one of them, and we feel quite strongly that it should be included in the Bill.

The Minister argued that there may be limited cases in which a mandatory RMC is not appropriate. If the Government want to bring forward their own amendment to provide for general RMCs across the board with limited exceptions, they are more than welcome to do so. However, we feel strongly, on a point of principle, that we should take this step alongside providing a share of the freehold, which I will argue for when I speak to new clause 29. Given our strength of feeling on this issue, as with the previous new clause, I will press this one to a vote.

Question put, That the clause be read a second time.

The Committee divided: Ayes 5, Noes 10.

Division No. 17]

AYES

Gardiner, Barry	Rimmer, Ms Marie
Glindon, Mary	
Pennycook, Matthew	Strathern, Alistair

NOES

Carter, Andy	Levy, Ian
Davison, Dehenna	Maclean, Rachel
Everitt, Ben	Mohindra, Mr Gagan
Fuller, Richard	Rowley, Lee
Hughes, Eddie	Smith, rh Chloe

Question accordingly negatived.

New Clause 5

POWER TO ESTABLISH A RIGHT TO MANAGE REGIME FOR FREEHOLDERS ON PRIVATE OR MIXED-USE ESTATES

"In Section 71 of the Commonhold and Leasehold Reform Act 2002, after subsection (2) insert—

'(3) The Secretary of State may by regulations make provision to enable freeholder owners of dwellings to exercise a right to manage in a way which corresponds with or is similar to this Part.

(4) A statutory instrument containing regulations under subsection (3) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.'"—*(Matthew Pennycook.)*

This new clause would permit the Secretary of State to establish a Right to Manage regime for freeholders of residential property on private or mixed-use estates.

Brought up, and read the First time.

Matthew Pennycook: I beg to move, That the clause be read a Second time.

I will be relatively brief in speaking to the new clause, because I trust that it is self-explanatory, and we believe that the case for it is robust and well understood. Part 4 of the Bill, which we have already considered, will give residential freeholders on private and mixed-tenure estates rights to challenge the reasonableness of estate management charges and to hold estate management companies to account that are equivalent to those of leaseholders, but it does not give those same residential freeholders the right to take over the management functions on their estate.

We appreciate the concern among some that the right to manage would be too complex and onerous in a freehold estate setting, but it is only a right; it is not a requirement that it be exercised. We believe that there is evidence of an appetite among residential freeholders not only to be able to change a poorly performing or exploitative estate manager, for which part 4 provides, but to have more direct control of the management of their estates. We also believe that it is right in principle that there is parity between residential leaseholders and freeholders when it comes to the right to manage. New clause 5 simply seeks to provide them with that right.

In their June 2019 response to the 2018 consultation on reforms to the leasehold system in England, the Government committed to considering the implications of introducing a right to manage for residential freeholders, as part of their wider commitment to ensuring that leaseholders and residential freeholders enjoy equivalent rights. The Secretary of State made it clear on Second Reading that this Committee should look at the issue, as well as the issue of the abuse of forfeiture. On that occasion, the hon. Member for Redditch went even further. She stated:

"I know that the Government intend to introduce a right to manage for freeholders".—[*Official Report*, 11 December 2023; Vol. 742, c. 677.]

We hope that she is right and that that remains the Government's intent, but there are no Government amendments that would incorporate the power to establish a right to manage regime for freeholders on privately managed estates. New clause 5 would do so, and I hope the Minister will accept it.

Lee Rowley: I am grateful to the hon. Gentleman for tabling the new clause.

[Lee Rowley]

Let me separate my remarks into two parts. First, am I relatively sympathetic to the hon. Gentleman's point? The answer is yes: there is a strong case for the measure. It has not been brought forward to date, and we will have to see whether it is possible to do so in the future. I cannot guarantee that, but we are looking at it and listening carefully. I understand the hon. Gentleman's point, and he made a strong case for it. We will not be able to do everything that we have said throughout this process, in the end, but I assure him that we are interested in this potential area.

However, we will resist the new clause, not because it is the convention to do so but because we genuinely think that it is not the right measure, even if we did agree with the principle. To go back to the Henry VIII powers discussion, this is probably an area in respect of which, if we were to do something—again, there are no guarantees—we would do it on the face of the Bill.

Richard Fuller: I am listening carefully to the Minister, as I did to the shadow Minister. The current Minister says he is sympathetic to the intentions, but I take his point that it is the wrong new clause, so I will oppose it if it is pressed to a vote. However, the shadow Minister said that the Minister's predecessor, my hon. Friend the Member for Redditch, said on the Floor of the House that she was sympathetic to the measure. That is two up. Will the Minister outline what the impediments might be? Will he give some reassurance that by the time we get to Report the Government may have turned sympathy into action? By the way, I think it is empathy, not sympathy.

Lee Rowley: My hon. Friend makes a number of salient points—

Barry Gardiner: And puts you on the spot.

Lee Rowley: Indeed—so let me see how to get out of this one. Out of principle, from a Conservative perspective, we would want people to have choice about how they approach such things. It is also the case that there is an additional operator, which is the person who owns the capital or the asset. We need to consider that carefully. Having started conversations with officials in the Department, I think there is a challenge around complexity. There is always a challenge with complexity; that is not an argument in itself but a recognition of the reality. I recognise that there are people in this room with much more experience than me on this issue, and hope colleagues will take what I say in the spirit in which it is meant. There will be a point at the end of this process when the sheer number of additional things that have been requested mean that there will need to be prioritisation.

This is a good Bill, and we should not take away from that fact—I think everybody present acknowledges that—but as the Secretary of State said on Second Reading, where we can improve it, we will seek to do so. I confirm that we are looking at this issue in more detail and hope we will be able to say more in the Bill's following stages, if that is possible—I emphasise the "if", with no guarantees. I urge the hon. Member for Greenwich and Woolwich, if he is willing, to withdraw his new clause, solely on the basis that if something happens in the future, the provisions should be in primary legislation, not introduced under Henry VIII powers.

Matthew Pennycook: I think I quote the Minister accurately when I say that he said, "Let me see how to get out of this one." He is developing a reputation not just for reasonableness but for undue honesty. This is one of those features of the parliamentary process that I think anyone watching our proceedings will struggle to understand: there is clearly agreement here, and there is clearly a high chance that the Government are going to introduce a right to manage on privately managed estates, yet the Minister cannot accept the new clause.

I take the point about the particular drafting of the new clause. It was done to put the onus on the Government, who have the resources to bring forward the necessary amendments, given that it is a complex area. I did not hear a clear commitment from the Minister to bring forward those provisions. If he had given one, I would have withdrawn the new clause, but he has not. All he has said is, "We're looking and listening but won't be able to do everything"—despite the fact that the Government are dumping hundreds of amendments into the Bill at the last minute and no doubt will dump hundreds more. If we want to put these important measures in the Bill, we can, and we think we should. We feel strongly about this issue and I am going to press the new clause to the vote.

The Chair: We look forward to a Labour Government always accepting Opposition amendments. *[Laughter.]*

Question put, That the clause be read a second time.

The Committee divided: Ayes 5, Noes 10.

Division No. 18]

AYES

Gardiner, Barry	Rimmer, Ms Marie
Glindon, Mary	
Pennycook, Matthew	Strathern, Alistair

NOES

Carter, Andy	Levy, Ian
Davison, Dehenna	Maclean, Rachel
Everitt, Ben	Mohindra, Mr Gagan
Fuller, Richard	Rowley, Lee
Hughes, Eddie	Smith, rh Chloe

Question accordingly negatived.

New Clause 25

REGULATION OF PROPERTY AGENTS

"(1) The Secretary of State must by regulations make provision for implementing the proposals of the Regulation of Property Agents Working Group final report of July 2019 as far as they relate to—

(a) estate management;

(b) sale of leasehold properties; and

(c) sale of freehold properties subject to estate management or service charges.

(2) Regulations under this section—

(a) must be laid within 24 months of the date of Royal Assent to this Act,

(b) shall be made by statutory instrument, and

(c) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.

(3) If, at the end of the period of 12 months beginning with the day on which this Act is passed, the power in subsection (1) is yet to be exercised, the Secretary of State must publish a report setting out the progress that has been made towards doing so."—*(Matthew Pennycook.)*

This new clause would require the Secretary of State to make regulations to implement the proposals of the Regulation of Property Agents Working Group final report within 24 months of the Act coming into force and to report on progress to that end at the end of the period of 12 months.

Brought up, and read the First time.

Matthew Pennycook: I beg to move, That the clause be read a Second time.

I hope that on this occasion the Minister will give me enough reason to withdraw the new clause. I always prefer to withdraw a new clause with a commitment that the Government will introduce what we seek to incorporate into the Bill. New clause 25 raises the important issue of the regulation of property agents, particularly managing agents.

For all that the various measures in the Bill seek to give leaseholders greater control over the buildings in which they live, and to give residential freeholders greater control over their estates, managing agents will remain responsible for day-to-day management in almost all circumstances. In the case of newly empowered leaseholders involved in either an RMC or an RTM company, there will be managing agents they have to take advice from and instruct. The ultimate success of many of the provisions in the Bill, and the extent to which leaseholders experience a tangible improvement in the quality of the services they receive, is dependent on the performance of those managing agents.

3 pm

In its current form, the Bill contains no measures designed to prevent bad practice and improve performance in the industry. We believe that that issue should be addressed. We know that there are good managing agents who work hard to ensure that residents for whom they are responsible are safe and secure, and that the homes that they manage are properly looked after. However, we also know that there are a great many substandard agents whose behaviour reflects poorly on the industry as a whole.

If property agency were a well-functioning market, there would be no need for regulation—managing agents providing a bad service would eventually be dismissed, struggle to secure new contracts and go bust, and in instances where such companies broke the law, they would be investigated and prosecuted—but property agency is not a well-functioning market. In the main, residential leaseholders and freeholders do not choose and cannot easily remove poorly performing managing agents, and they do not have access to the information required effectively to hold such agents to account.

As we have repeatedly argued in recent years, the case for doing more to protect leaseholders from poor service and exploitation at the hands of unscrupulous managing agents by means of regulating the industry is extremely strong. In our view, the alternative—seeking to rely on incremental improvement, the sharing of best practice in the industry and the ability and willingness of RTMs and RMCs collectively to weed out poorly performing agents—is bound to fail.

The Government clearly recognise that it is a problem that currently there is no overarching statutory regulation of managing agents in England, and that the existing powers under consumer protection legislation do not provide leaseholders with sufficient protection. That is why, in their response in April 2018 to the "Protecting consumers in the letting and managing agent market" consultation, the Government committed to regulating managing agents to

"protect leaseholders and freeholders alike."

It is why they proposed to introduce a single mandatory and legally enforceable code of practice covering managing agents as well as letting agents, and it is why they established a working group and tasked it with bringing forward detailed recommendations on how a new regulatory framework for property agents should operate.

The working group was chaired by a respected Cross-Bench Member of the other place, Lord Best, and its membership included a number of distinguished professional bodies. It issued its final report in July 2019, which included a series of proportionate and sensible recommendations with appropriate transitional and grandfathering arrangements as necessary, designed to

"prevent bad practice and drive cultural change within the industry, focussing on prevention rather than enforcement after the event".

However, 55 months on, the Government have done nothing whatever to progress the implementation of those recommendations. Not only is the Government's general procrastination on the issue a matter of regret, but their decision not to take the opportunity to use this Bill to introduce relevant property agent regulation is incomprehensible, given the extent to which it would help to ensure that many of the provisions in it operate effectively. We believe that Ministers should think again.

The case for regulating property agents has been accepted in principle by the Government. There is extensive support for it, not just among leaseholders and residential freeholders, but in the sector itself, as attested to by Andrew Bulmer, CEO of the Property Institute, and others in our evidence sessions. The blueprint for making it a reality is ready and waiting to be implemented in the form of the working group's detailed final report. All that is required now is for Ministers to determine that the Government should use the Bill as the legislative vehicle for honouring the commitment they made in 2018 to regulate managing agents to protect leaseholders and freeholders alike.

Although the Government have had the working group's final report for more than four and a half years, we appreciate that introducing an entirely new regulatory framework is not without challenge. They may need to consider carefully how best to implement a number of the recommendations or how to appropriately phase in some requirements. They might even have good reason to refrain from implementing a limited number of the specific proposals made by the working group on the grounds that they are not necessary or are too burdensome.

We have therefore deliberately not sought to compel the Government to bring each and every one of the recommendations made by the working group into force on Royal Assent. Instead, new clause 25 would give the Government two years to implement the working group's proposals as far as they relate directly to matters in the scope of the Bill, with a requirement to report on progress to that end after 12 months to ensure that

sufficient progress is being made. We think that our new clause is a necessary and reasonable measure. I urge the Minister to accept it.

Lee Rowley: I will not detain the Committee particularly long on this provision. I regret that we will not be able to accept new clause 25, for two reasons. First, I accept that people come down in different places on the use of broad Henry VIII-type powers, but we are not sure that those would be proportionate here. This measure concerns a considerable framework that would require a significant level of scrutiny to make it work. We are not convinced that it would be agreeable or acceptable to the Delegated Powers and Regulatory Reform Committee, either.

Secondly, the new clause relates to an area that has been under debate for a number of years, as the hon. Member for Greenwich and Woolwich has outlined, and we think that it is without the scope of the Bill. It is a significant area on which further consideration is needed, and we do not think that there is space for that among all the other discussions. That will ultimately be a matter for the House to determine, but the Government do not think that this is the place to do it, given its significance and given the significance of the other things that we are trying to bring forward in the Bill.

Matthew Pennycook: I expected a little more from the Minister, because the Government have accepted in principle that property agents need to be regulated. We think it important that this matter be discussed in connection with this Bill, and that some form of regulation be introduced. As I say, the effective functioning of many of the provisions in this Bill will rely on the standard of managing agents being driven up, and on substandard agents being driven out of the market.

At the moment, all the Minister is saying is that the lack of an overarching regulatory framework in this area is fine. The Government have had four and a half years and are comfortable with taking many more years to come to consider this matter. From our point of view, that is not good enough. The Government have had the working group's report for some time. They should have made better progress in implementing at least some of its recommendations, if not the vast majority of them. I will press new clause 25 to a vote.

Lee Rowley: I should put it on record—just in case, although it was many years ago—that I used to be an estate agent. I should probably make that clear.

The Chair: Dear me—even lower than a politician.

Lee Rowley: Indeed, and via banking.

The Chair: Well, that's an admission.

Question put, That the clause be read a Second time.

The Committee divided: Ayes 5, Noes 10.

Division No. 19]

AYES

Gardiner, Barry	Rimmer, Ms Marie
Glindon, Mary	
Pennycook, Matthew	Strathern, Alistair

NOES

Carter, Andy	Levy, Ian
Davison, Dehenna	Maclean, Rachel
Everitt, Ben	Mohindra, Mr Gagan
Fuller, Richard	Rowley, Lee
Hughes, Eddie	Smith, rh Chloe

Question accordingly negatived.

New Clause 26

PRE-CONSOLIDATION AMENDMENTS OF LEGISLATION RELATING TO RESIDENTIAL LEASEHOLD AND FREEHOLD AND ESTATE MANAGEMENT

"(1) The Secretary of State may by regulations make such amendments and modifications of the Acts specified by subsection (2) as in the Secretary of State's opinion facilitate, or are otherwise desirable in connection with, the consolidation of the whole or a substantial part of the Acts relating to—

(a) the relationship between landlords and tenants of residential properties;

(b) the relationship between estate managers and the freeholders and leaseholders of properties in relation to which they carry out estate management.

(2) The Acts specified by this subsection are—

(a) the Leasehold Reform Act 1967;

(b) the Rentcharges Act 1977;

(c) the Landlord and Tenant Act 1985;

(d) the Leasehold Reform, Housing and Urban Development Act 1993;

(e) the Commonhold and Leasehold Reform Act 2002;

(f) the Building Safety Act 2022;

(g) the Leasehold Reform (Ground Rent) Act 2022;

(h) this Act;

(i) any other provision of an Act relating to—

(i) the relationship between landlords and tenants of residential properties;

(ii) the relationship between estate managers and the freeholders and leaseholders of properties in relation to which they carry out estate management.

(3) For the purposes of this section, 'amend' includes repeal (and similar terms are to be read accordingly).

(4) Regulations made under this section do not come into force unless an Act is passed consolidating the whole or a substantial part of the Acts relating to—

(a) the relationship between landlords and tenants of residential properties;

(b) the relationship between estate managers and the freeholders and leaseholders of properties in relation to which they carry out estate management.

(5) If such an Act is passed, any regulations made under this section come into force immediately before the Act comes into force.

(6) Regulations under this section are subject to the affirmative procedure."*—(Matthew Pennycook.)*

This new clause would make provision for the Secretary of State to amend certain Acts (insofar as they relate to the relationship between landlords and tenants of residential properties and the relationship between estate managers and the freeholders and leaseholders of properties in relation to which they carry out estate management) if the amendments would facilitate consolidation of those Acts.

Brought up, and read the First time.

Matthew Pennycook: I beg to move, That the clause be read a Second time.

I do not intend to press new clause 26 to a vote, because it is very much a probing amendment. My remarks on it will be brief because it is extremely simple and straightforward.

Leasehold enfranchisement and the right to manage are extremely complex areas of law. There are at least eight Acts relevant to the rights of residential leaseholders, namely the Leasehold Reform Act 1967, the Landlord and Tenant Acts 1985 and 1987, the Housing Act 1988, the Local Government and Housing Act 1989, the Leasehold Reform, Housing and Urban Development Act 1993, the Commonhold and Leasehold Reform Act 2002 and the Building Safety Act 2022. There are also two Acts relevant to residential freeholders on private and mixed-tenure estates, namely the Rentcharges Act 1977 and the Law of Property Act 1925, both of which we have debated extensively.

This limited Bill has made significant changes to almost all of those Acts. If and when it receives Royal Assent, it will add a further layer of complexity and interpretation to a legislative landscape that is perplexing even to those with legal training. The law as it relates to residential and freehold leaseholders is crying out for consolidation. The statute law must be made clearer, shorter and more accessible so that those who work with the law, are concerned with making it or need to access or use it can do so more easily.

This is not a consolidation Bill, but the Opposition believe that it would be useful to give the Secretary of State the power to amend a number of the Acts to which I referred, so as to facilitate their consolidation. I trust that the Minister will see the benefit of incorporating such a power into the Bill, and I hope that he will accept it.

Lee Rowley: I am grateful to the hon. Member for Greenwich and Woolwich for moving new clause 26. He is right that this is an extremely complicated area of law and that there is a significant amount of interaction and overlap between the relevant legislation, which has built up over many decades. He is also right that there is a legitimate question to be asked about whether consolidation or spring cleaning of the relevant Acts is reasonable and proportionate. I am grateful to him and his party for seeking to provide the Government with additional powers to do so. The challenge is in whether that would be proportionate and whether the broad powers are necessary, even given the points that he made.

While I understand the points that the hon. Gentleman highlighted, the Government are taking a self-denying ordinance. We believe that such broad powers should be used only when absolutely necessary and that the test is not met in the case, so we will resist the new clause if the hon. Gentleman chooses to press it, although I hope that, as he indicated, he will not do so.

Matthew Pennycook: I commend the Minister for continuing to deny himself additional powers to do very sensible things. Notwithstanding that self-denying ordinance, I hope that he will at least take on board the point and give some further consideration to how we might tidy up the statute law in this area. It has been complex for all members of the Committee to understand. As I said, it is complex even for those with legal training, let alone those who need to access or use the law, whether or not it is through one of the means of redress we have been debating.

I hope that the Government will give some further thought to what might be done on the issue, but I beg to ask leave to withdraw the motion.

Clause, by leave, withdrawn.

New Clause 27

QUALIFYING LEASES FOR THE PURPOSES OF THE REMEDIATION OF BUILDING DEFECTS

"Section 119 of the Building Safety Act 2022 is amended by the insertion after subsection (4) of the following —

'(5) The Secretary of State may, by regulations, amend subsection (2) so as to bring additional descriptions of lease within the definition of "qualifying lease".'" —*(Matthew Pennycook.)*

This new clause would give the Secretary of State the power to bring "non qualifying" leaseholders within the scope of the protections of the Building Safety Act 2022.

Brought up, and read the First time.

Matthew Pennycook: I beg to move, That the clause be read a Second time.

The Chair: With this it will be convenient to discuss new clause 28—*Meaning of "relevant building" for the purposes of the remediation of building defects—*

"Section 117 of the Building Safety Act 2022 is amended by the insertion after subsection (6) of the following—

'(7) The Secretary of State may, by regulations, amend subsection (2) so as to bring additional descriptions of building within the definition of "relevant building".'"

This new clause would give the Secretary of State the power to bring buildings which are under 11m in height or have fewer than four storeys within the scope of the protections of the Building Safety Act 2022.

Matthew Pennycook: New clauses 27 and 28 concern building safety. The building safety crisis exists within the context of leasehold property and has been rendered more acute by the iniquities on which the leasehold system rests, yet the solutions to the specific problems faced by leaseholders in unsafe buildings are different from the general failings of the leasehold tenure that the Bill has sought to address in a limited number of areas. However, while the provisions in parts 1, 2 and 3 of the Bill are not answers to the problems of dangerous cladding and non-cladding defects, the relationship between the building safety crisis and residential leasehold properties makes the Bill the ideal vehicle for implementing a number of those solutions.

As the Committee will know, the building safety crisis is far from over. It has been almost seven years since the horrific fire at Grenfell Tower that claimed the lives of 72 innocent men, women and children, yet the Minister will know that there remain many thousands of unsafe buildings across the country that still require remediation.

Barry Gardiner: The Minister may also know that last night in my constituency the London fire brigade had to attend with 125 firefighters and 25 fire engines—three with the tall turntables—to put out a fire at King Edward Court. More than 100 people were evacuated from the building—safely, I am pleased to add—but the cladding on that building was similar to that at Grenfell. Here we are, seven years on from Grenfell, and three and a half

[Barry Gardiner]

years since the survey of that building took place in which it was reported that the cladding was of that combustible type, and still the Building Safety Act 2022 has not been able to ensure that, between the manager and the developer, those residents remain safe.

Matthew Pennycook: I am very glad that the residents were evacuated safely, but my hon. Friend highlights a problem that will apply to many other buildings across the country. The pace of remediation is far too slow. We often talk about remediation works as if they were just a practical issue—"When will it start and when will I be updated?"—but for so many residents there remains a very real risk to their health, their safety and in many cases their life. That is why we need to grip the crisis and ensure that it is addressed. No one disputes the fact that some progress has been made over recent years in addressing the building safety crisis, or the fact that the Minister has personally devoted considerable time and attention to the issue, but it really is a damning indictment of the Government's record that nearly seven years on, the crisis remains unresolved for the vast majority of blameless leaseholders whose lives remain blighted by it.

3.15 pm

It has been the Labour party's consistent position that all blameless leaseholders should be protected from the costs of fixing historic cladding and non-cladding defects and associated secondary costs, irrespective of circumstances. That is why we sought to reduce leaseholder non-cladding remediation contributions to zero during the passage of the Building Safety Act 2022; it is why we opposed the Government's decision to arbitrarily divide blameless leaseholders into those who qualify for protections under that Act and those who do not; and it is why we have always taken issue with the imposition of a crude and arbitrary height threshold that not only fails to adequately reflect the complexity of fire risk, but remains an entirely unsound basis for determining which leaseholders in unsafe buildings can and cannot access state support to cover the costs of remediation, should they need it.

Our firmly held belief that all affected leaseholders should be fully protected from the costs of remediation is a principled one. The building safety crisis is the product of pernicious industry practice and state regulatory failure. Affected leaseholders played no part whatever in causing it, and none of them should have to pay to resolve a scandal of which they are the victim. It is manifestly unjust that a minority of them remain trapped in their homes physically, mentally and financially, having been all but abandoned by their Government. If hon. Members doubt the impact that non-qualifying status is having on leaseholders so designated, I recommend spending just a few minutes on the "End Our Cladding Scandal" website and listening to some of the testimonies.

We also take our view for practical reasons, because we know that the decision to exclude a minority of leaseholders from protections under the Building Safety Act and to prohibit a limited number of unsafe low-rise buildings from accessing central Government grant funding will almost certainly ensure in many cases that remediation simply does not take place.

In tabling new clauses 27 and 28, we seek once again to press the Government to reconsider their decision to exclude certain categories of leaseholders and buildings from the protections that have been afforded to others. New clause 27 would give the Secretary of State the power to bring non-qualifying leases within the scope of the protections of the Building Safety Act 2022; new clause 28 would do the same in relation to non-qualifying buildings. I have no doubt that I will be disappointed by the Minister, given the Government's intransigence on the matter. Nevertheless, I urge him, as I have urged his predecessors on countless occasions, to think again and consider accepting our new clauses.

New clauses 27 and 28 also provide me with the opportunity to raise a number of specific problems that arise from the Building Safety Act and that this Bill could potentially rectify. Some of those problems were unforeseen; many others are the entirely predictable result of the manner in which and the pace at which the Building Safety Bill, which was already a complex and technical Bill when it completed its Commons stages, was overhauled in the other place to reflect the Government's belated change of approach.

We know that the Government are considering using the Leasehold and Freehold Reform Bill to address a number of outstanding building safety problems. The background briefing notes accompanying last year's King's Speech explicitly signalled the Government's intention to use the Bill to build on the 2022 Act and to ensure that freeholders and developers are unable to escape their liabilities to fund building remediation work and that leaseholders are protected by extending the measures in the 2022 Act to

"ensure it operates as intended."

As we approach the conclusion of the Bill's Committee stage in this place, the Government have not tabled any building safety-related amendments to achieve those objectives. On Second Reading, in response to an intervention from me, the Minister made it clear that he was

"looking at what may be possible."—[*Official Report*, 11 December 2023; Vol. 742, c. 712.]

Even accounting for the Christmas break, he has had many weeks to do so. I would therefore be grateful if the Minister set out for the Committee the Government's current thinking on how we might use the Bill to better protect blameless leaseholders who are struggling with the inability or unwillingness of their freeholder or original developer to progress remediation works, or are still waiting for such works to commence.

In addition, I would appreciate it if the Minister provided me with answers to the following questions. First, will the Government amend the Bill to make it clear that leaseholder protections under schedule 8 to the Building Safety Act apply irrespective of when service charge demands were issued, and thereby prevent the Court of Appeal from potentially overturning the November 2023 ruling of the upper tribunal to that effect?

Secondly, will the Government amend the Bill to protect qualifying leaseholders in buildings classed as leaseholder-owned and excluded from schedule 8 protections simply because a company owns the freehold and a director of the company personally has a lease or leases of a flat or flats in the building? For us, that was a

hypothetical problem; in recent cases that I have seen, it has become a reality. We think that it needs to be addressed.

Thirdly, will the Government amend the Bill to finally address the detrimental impact on property valuation and mortgage lending resulting from the fact that non-qualifying leases are designated as such in perpetuity, irrespective of whether a building has been fully remediated?

Fourthly, given the extent to which the Bill seeks to encourage leaseholders to acquire their freehold, will the Government amend it to protect leaseholders in enfranchised buildings from the impact of building safety defects? The call for evidence on that subject closed on 14 November 2022, and unless I am mistaken we have heard nothing since then.

Fifthly and finally, if the Government persist in refusing to review the definitions of a qualifying lease and qualifying building in part 5 of the Building Safety Act, will the Minister at least consider amending the Bill to ensure that freeholders and managing agents acting on their behalf must agree reasonable prepayment plans and a permitted maximum annual sum, to provide a measure of protection for non-qualifying leaseholders who are horrifically exposed by their current liability for payment of costs within what are often extremely short timelines? Will the Minister also consider protecting non-qualifying leaseholders from litigation costs relating to building safety?

I look forward to the Minister's response to those questions and to the more fundamental issues raised by new clauses 27 and 28.

Lee Rowley: I am grateful to the hon. Members for Greenwich and Woolwich and for Brent North for the new clause and the contributions to the debate. I put on record how sorry I was to hear about Petworth Court, on which I was briefed overnight. It must have been a real challenge, and very scary for the residents of the property. I hope that we can move that on as quickly as we can. I am grateful for the efforts of London Fire Brigade and others, which ensured that no one came to any harm. It is a salutary reminder of the importance of the work that has been outlined by the hon. Members, which we all support.

The hon. Member for Greenwich and Woolwich asked me a number of detailed questions. We have had many exchanges on these issues in the past, so he will appreciate that this is a sensitive and detailed area, and one that we need to get right. The Building Safety Act 2022 made huge steps forward, and there have been many steps forward in the practical reality of building remediation. I want to ensure that we deal with those questions in turn and in the depth that they deserve. We will have different views on some of those questions. Take, for example, the perpetuity issue. Without going into detail, my answer is that all the buildings have pathways to remediation, so long as they choose one or, in extremis, an actor in the system forces them to take one, and that once the remediation has happened the perpetuity point should become moot and fall away. However, it is better that I write to the hon. Gentleman and the Committee on all those points in due course.

Putting those important matters aside, we come to the question of whether the Secretary of State should have specific powers to amend the definition of "qualifying". This gets to the point of where the Secretary of State's powers should lie, which is obviously a contested matter. It is one on which the Government have a clear view, which we have articulated, notwithstanding the challenges that that brings to some people who are impacted by it. That is better dealt with in primary legislation, rather than through the Secretary of State making changes or having the ability to make regular changes. On that basis, we will resist the new clause.

Let me turn to new clause 28 on buildings under 11 metres, in the name of the hon. Members for Greenwich and Woolwich and for Weaver Vale. I have taken a particular interest in buildings that are under 11 metres, and I and the hon. Gentlemen have had interactions on the issue in the past. There are specific issues about a small set of buildings that are under 11 metres. The previous Minister, my right hon. Friend the Member for Pudsey (Stuart Andrew), and I have made repeated commitments from the Dispatch Box, from as far back as 2022, to look into each and every one of those buildings, and we have done so. A number of them have been raised with us, and we are working through them and getting to the end of the processes.

I encourage any hon. Members with examples—and I see occasional repetitions in parliamentary questions—to raise them with the Department, as I know members of the Committee have, and we will see what we can do to move those cases on or get clarity that no works are required. With almost all under-11 metre buildings, when we get to the end of the discussion there are no works required under the PAS 9980 assessment. That is positive. There is a clear reality that buildings under 11 metres are less likely to be impacted by this issue, and we will resist the new clause on that basis.

As a result of the fire, as I said to the hon. Member for Brent North, it is important that we make progress. Significant progress has been made, and I am grateful to the hon. Member for Greenwich and Woolwich for his recognition of that. Every month, we see more buildings complete and more buildings starting the process. Where freeholders are willing to make their buildings safe, we have mechanisms and processes in place, both centrally and locally, to make sure that is happening; and I continue to see lots of progress. It will take time, but we are cognisant of the importance of moving fast, and we have certainly sped up over recent months.

Matthew Pennycook: I thank the Minister for his response. I will pass over his criticisms of the technical flaws of the new clauses. Their intent is very clear; we can debate whether primary or secondary legislation is the best means of achieving it. I think there is a point of disagreement on qualifying and non-qualifying leaseholders. On a point of principle, we think that the distinction is arbitrary and we should get rid of it. From the evidence I have seen across the country, we should also undoubtedly get rid of it on a practical basis. I do not have responsibility for building safety directly any more—my hon. Friend the Member for Weaver Vale does—but I continue to hear of cases where buildings with a significant proportion of non-qualifying leaseholders see remediation works stalled or held up entirely.

I have always conceded that buildings under 11 metres are small in number and that there is not a systemic issue, but because of the drafting of the Building Safety Act, there remains a problem about liability. In those

[Matthew Pennycook]

cases where the Government certify that the buildings are unsafe and require remediation—as the Minister knows, I have a case in my constituency—the stage that we have got to, after many years, is that the Government ask the original developer to put them right. We do not know what lies behind that request or whether there is any enforcement of it, so we are at the same point that we were at many years ago.

We come back to the question, "What is the need for the distinction?" I would argue that if under-11 metre buildings are that small in number, that is all the more reason for opening them up to access for Government grants should they require that—where the developer will not remediate them voluntarily. But that is beside the point.

I thank the Minister for his willingness to provide me detailed answers to all five of the non-specific questions—that is very welcome—but on the point of principle raised by new clauses 27 and 28, there is a clear difference of opinion. I think it is worth us putting on record, again, our strong feelings about that, so I will push both new clauses to a vote.

Question put, That the clause be read a Second time.

The Committee divided: Ayes 5, Noes 10.

Division No. 20]

AYES

Gardiner, Barry	Rimmer, Ms Marie
Glindon, Mary	
Pennycook, Matthew	Strathern, Alistair

NOES

Carter, Andy	Levy, Ian
Davison, Dehenna	Maclean, Rachel
Everitt, Ben	Mohindra, Mr Gagan
Fuller, Richard	Rowley, Lee
Hughes, Eddie	Smith, rh Chloe

Question accordingly negatived.

3.30 pm

New Clause 28

MEANING OF "RELEVANT BUILDING" FOR THE PURPOSES OF THE REMEDIATION OF BUILDING DEFECTS

"Section 117 of the Building Safety Act 2022 is amended by the insertion after subsection (6) of the following—

'(7) The Secretary of State may, by regulations, amend subsection (2) so as to bring additional descriptions of building within the definition of "relevant building".'"—*(Matthew Pennycook.)*

This new clause would give the Secretary of State the power to bring buildings which are under 11m in height or have fewer than four storeys within the scope of the protections of the Building Safety Act 2022.

Brought up, and read the First time.

Question put, That the clause be read a Second time.

The Committee divided: Ayes 5, Noes 10.

Division No. 21]

AYES

Gardiner, Barry	Rimmer, Ms Marie
Glindon, Mary	
Pennycook, Matthew	Strathern, Alistair

NOES

Carter, Andy	Levy, Ian
Davison, Dehenna	Maclean, Rachel
Everitt, Ben	Mohindra, Mr Gagan
Fuller, Richard	Rowley, Lee
Hughes, Eddie	Smith, rh Chloe

Question accordingly negatived.

New Clause 29

REPORT ON PROVIDING LEASEHOLDERS IN FLATS WITH A SHARE OF THE FREEHOLD

"(1) The Secretary of State must publish a report outlining legislative options to ensure that all qualifying tenants in newly-constructed residential properties containing two or more flats have a proportionate share of the freehold of their property.

(2) The report must be laid before Parliament within three months of the commencement of this Act."—*(Matthew Pennycook.)*

This new clause would require the Secretary of State to publish a report outlining legislative options to provide leaseholders in flats with a share of the freehold.

Brought up, and read the First time.

Matthew Pennycook: I beg to move, That the clause be read a Second time.

When making the case for new clause 2, which sought to ensure that all leases on new flats should include a requirement to establish and operate an RMC with each leaseholder given a share, I stressed that it was one of several ways by which we could lay the groundwork for a future where commonhold is the norm. New clause 29 seeks to press the Government to bring forward legislative options to enact another—namely, mandating that leaseholders in all new blocks of flats should automatically be granted a share of the freehold.

I want to be clear about what such a proposition entails. It is not an alternative to leasehold. If such a measure were brought into force, any leaseholder resident in a new block of flats would own both a lease and a share of the freehold. It would, in effect, ensure that all new blocks of flats were collectively enfranchised by default, without the need for leaseholders in them to go through the process of acquiring their freehold. The advantages of having a default share in the freehold is that it would give the leaseholder a direct say in what happens in their building, as is the case with those that have been collectively enfranchised. It would also provide for additional valuable rights, such as the right to a long lease extension on the basis of a peppercorn rent—or, in other words, the rights that will be accorded to existing leaseholders under clauses 7 and 8 but without the cost of paying a premium to the freeholder that is still required to exercise that modified right.

As we know, having flat owners with a share of freehold can cause tensions—for example, in agreeing how to proceed on crucial decisions such as whether to cover the costs of major works through service charges. That is why it is essential that proper management arrangements are in place as a matter of course, to reduce the likelihood of damaging disputes between neighbours, and why we proposed mandatory RMCs on new blocks of flats as a corollary to the new clause. Much like new clause 2, new clause 29 would also help give leaseholders greater control over their buildings and pave the way for commonhold as the default tenure.

Labour is unequivocal about the fact that commonhold is a preferable tenure to leasehold, in that it gives the benefits of freehold ownership to owners of flats without the burdensome shortcomings of leasehold ownership. As we have heard, the Law Commission made 121 recommendations on commonhold, designed to provide a legal scheme that would enable commonhold to work more flexibly and in all contexts. We share the concern expressed by Professor Nick Hopkins in our evidence sessions:

"With commonhold having failed once, there is a risk of partial implementation"—[*Official Report*, *Leasehold and Freehold Reform Public Bill Committee*, 16 January 2024, c. 39, Q84.]

of those recommendations and "a second false start" that could be "fatal" to the tenure. That is why we have not sought to persuade the Government to incorporate any subset of Law Commission commonhold recommendations into the Bill. We need to reform the legal regime for commonhold in one go, and Labour is committed to doing so if the British people give us the opportunity to serve after the next general election. Given your indication earlier, you are confident of that outcome too, Sir Edward.

We have also expressed a clear preference for commonhold to be the default tenure. That would be a policy decision distinct from the implementation of the Law Commission's recommendations and would necessarily have to follow the legal scheme those recommendations would introduce. However, there will inevitably be a transitional period after the reformed legal regime for commonhold has been introduced, during which Government would need to consult thoroughly on the practicalities of making commonhold the default tenure for flats. The introduction of a mandatory share of freehold in all new blocks of flats, as proposed by the new clause, alongside the requirement to establish and operate an RMC with each leaseholder given a share, would be a sensible staging post on the path towards a commonhold future by making conversion to commonhold at a later date a far simpler process. We urge the Government to accept the new clause.

Lee Rowley: I am grateful to the hon. Gentleman for his new clause. As he has outlined, in share-of-freehold arrangements leaseholders will own the freehold in larger blocks; they are usually the shareholders of a resident management company from which directors are elected to manage the property. As such, there is no third-party landlord, but instead the leaseholders are themselves joint landlords. We appreciate that there are benefits to share-of-freehold arrangements, and obviously there is the opportunity for people, should they wish, to look at that when making decisions about the properties they live in.

Without seeking to detain the Committee, the reality is that although the new clause is well intentioned and understandable, it would be a significant building out of the Bill; it would be a significant additional framework. Again, it goes back to the point about the size of the Bill and exactly what it is able to do. I realise that we return to that often, and some colleagues in this room will wish us to go as far as we possibly can. That is understandable, but given the scale of the new clause—I realise that the hon. Gentleman probably will push it to a vote as a result of my comments—a pretty large and complicated legal framework would need to be put in place. I am afraid that at the current time it is challenging to have the space to do that, as much as I share the hon. Gentleman's overall objective of trying to give people greater choice, and as a consequence we will resist the new clause.

Matthew Pennycook: I welcome the Minister's response to the extent that he recognised the benefits of share of freehold. I am not surprised that he resists the new clause; there is no doubt that it would be a significant build-out of the Bill, as he put it. We hope that we will see other significant build-outs of the Bill and finally see a ban on new leasehold houses, as the Government have committed to, at some point. Maybe we will even get a couple of hours to debate that—who knows?

We think that this is an important provision that should be incorporated in the Bill for the reasons I have give, but mainly because—perhaps this is a point of disagreement between us and the Government—we think that we must be serious about paving the way for commonhold with the Bill and cannot leave everything to a future Government to enact. As I said, we should take some practical and specific steps to lay the groundwork for that future, which I think we all want to see. As we felt with mandatory RMCs, we feel that these two specific measures would enable us to go some way on that journey. For that reason, I will push the new clause to a vote—it will probably be the final one.

Rachel Maclean: I want to make a brief remark in sympathy with the shadow Minister's policy objectives. I will not be supporting his new clause, but I have had extensive discussions with the Minister, who knows that I feel strongly that we should have a pathway to commonhold in the future.

Commonhold is a system that works well. Commonhold, or a version of it, works extremely well in almost every other major developed country in the world. We are quite unique in the UK—for some bizarre reason—in having this leasehold system, which is to the great regret of me and the leaseholders who live in such houses and flats. Unfortunately, something like 1.5 million people live in leasehold houses and something like 5 million people overall live in leasehold dwellings. It does not need to be that way.

In 2002, the former Labour Government did try to legislate in this regard, but a number of those measures were not enacted—we are going back into ancient history. Nobody really seems to know why it did not happen, but we now need to seize the opportunity. This Bill has been a long time in gestation; it has benefited from the contributions of many Ministers to get it to this point. I know that the Minister is listening to me, and I think it is important that we do not miss the opportunity, even at this late stage, to introduce some of the commonhold framework measures that the Department has been looking at in great detail. I hope that the Minister has listened, and he and his officials will take that point away.

Barry Gardiner: The hon. Lady is absolutely right to go back to the 2002 Act. In fact, I think in a speech on its Second Reading, I said that we would have to return to that Act in six or seven years' time to amend the deficiencies in it. I am sad to say that here we are, 22 years later, still not having amended those deficiencies, and the Minister's response, I am afraid, has indicated that we will not amend them again under this Bill.

[Barry Gardiner]

This is urgent, and leaseholders have been waiting for far too long for the remedy that my hon. Friend the Member for Greenwich and Woolwich has proposed. That is why I feel that it is vital that I support his new clause.

Question put, That the clause be read a Second time.

The Committee divided: Ayes 5, Noes 10.

Division No. 22]

AYES

Gardiner, Barry	Rimmer, Ms Marie
Glindon, Mary	
Pennycook, Matthew	Strathern, Alistair

NOES

Carter, Andy	Levy, Ian
Davison, Dehenna	Maclean, Rachel
Everitt, Ben	Mohindra, Mr Gagan
Fuller, Richard	Rowley, Lee
Hughes, Eddie	Smith, rh Chloe

Question accordingly negatived.

New Clause 30

REVIEW OF THE PERCENTAGE OF QUALIFYING TENANTS REQUIRED TO PARTICIPATE IN AN ENFRANCHISEMENT CLAIM

"The Secretary of State must before the end of the period of two years beginning with the day on which this Act is passed—

(a) review the effect of the participation limit contained in section 13(2)(b)(ii) of the Leasehold Reform, Housing and Urban Development Act 1993, with particular consideration given to whether it represents an unjustified barrier to leaseholders exercising their rights under this Chapter, and

(b) report to Parliament, in whatever manner the Secretary of State thinks fit, with proposals for reform."—*(Matthew Pennycook.)*

This new clause would require the Secretary of State to consider, within two years of the Act coming into force, whether the current requirement that 50% of leaseholders must support an enfranchisement application should be lowered.

Brought up, and read the First time.

Matthew Pennycook: I beg to move, That the clause be read a Second time.

The Chair: With this it will be convenient to discuss the following:

New clause 31—*Review of the percentage of qualifying tenants required to participate in a claim to acquire the Right to Manage—*

"The Secretary of State must before the end of the period of two years beginning with the day on which this Act is passed—

(a) review the effect of the participation limit contained in section 79(5) of the Commonhold and Leasehold Reform Act 2002, with particular consideration given to whether it represents an unjustified barrier to leaseholders exercising their rights under Chapter 1 of Part 2 of that Act, and

(b) report to Parliament, in whatever manner the Secretary of State thinks fit, with proposals for reform."

This new clause would require the Secretary of State to consider, within two years of the Act coming into force, whether the current requirement that 50% of leaseholders must support an application for the Right to Manage should be lowered.

New clause 33—*Proportion of qualifying tenants required for a notice of claim to acquire right to manage—*

"Section 79 of the CLRA 2002 is amended, in subsection (5), by leaving out 'one-half' and inserting 'one-third'."

This new clause would reduce the proportion of qualifying tenants who must be members of a proposed right to manage company for an RTM claim to be made.

Matthew Pennycook: These are the last new clauses that I will speak to on behalf of the Opposition. In our fifth sitting, we considered eligibility for leasehold enfranchisement and extension, including the welcome changes that the Bill makes to the non-residential limit on collective enfranchisement claims. However, increasing access to collective enfranchisement by rendering more leaseholders eligible does not necessarily mean that take-up will significantly increase. That is because there are other barriers to exercising the statutory right to freehold acquisition. Some relate to the complexity of the process, but perhaps the most notable is the requirement under section 13 of the 1993 Act that at least half of qualifying tenants in a building must participate in the claim.

While there is no escaping the need to organise collectively to initiate a claim, in some buildings, particularly large blocks of flats, securing the participation of the minimum numbers of tenants required to take part in the service of the initial notice can be next to impossible, given the number of units that are occupied by tenants renting privately from the leaseholder. We therefore believe that there is a strong case for considering whether the minimum participation rate for collective enfranchisement should be reduced.

Precisely what the revised minimum participation rate might be is a matter for debate. We have not sought to be prescriptive in order to allow the Government the freedom to consider what threshold best strikes the right balance between encouraging enfranchisement and ensuring that there is sufficient participation to sustain the proper ongoing management of the building.

New clause 30 would simply require the Secretary of State to consider, within two years of the Act coming into force, whether the current 50% participation threshold should be lowered. New clause 31 would have the same effect in relation to the right to manage, where, in many ways, the argument for lowering the participation threshold is even stronger, owing to the fact that there is really no need for half of all qualifying tenants to remain involved in an RTM company once it has been established.

Again, determining the revised minimum participation rate is a matter for debate, and we have left that question for another day. If I am right in remembering, my hon. Friend the Member for Brent North is proposing, by way of his new clause 33, that that threshold should be a third of qualifying tenants, which strikes us as a reasonable proportion. However, what new clause 31 seeks to secure is the Government's agreement in principle that the 50% threshold for an RTM acquisition should be reconsidered. These, quite consciously, are probing amendments, but I very much look forward to the Government's thoughts on the principle of whether that 50% threshold is right, and whether there should be scope in the future to look at it again.

3.45 pm

Barry Gardiner: I am grateful to my hon. Friend for the way in which he has introduced his new clause 30. We heard from witnesses the difficulty faced by leaseholders on larger developments in attaining that 50% participation threshold for the right to manage. It can be a more permissive regime than collective enfranchisement, wherein someone else's property interests are being compulsorily purchased. Right to manage is just regulating the management of the building and ensuring democratic resident control of the managing agent and service charges.

We heard from Philip Rainey KC in the oral evidence, who said, almost 10 years ago, that the right to manage should be a no-fault right and it should not be caveated with the need to solicit half of the entire building. He suggested the 50% threshold should be reduced to 35%. We have heard leaseholders say that this is not enough, because the threshold is even harder to meet nowadays with high levels of buy to let and overseas leaseholder populations, as suggested by Harry Scoffin of Free Leaseholders, when he gave oral evidence to the Committee. This proposal could help leaseholders to bring their service charges under resident control and scrutiny.

That is the position for flat owners almost everywhere else in the world, including north of the border in Scotland. I believe that the Government should support the amendment from my hon. Friend the Member for Greenwich and Woolwich. If I were to hear any indication that the Government might be so inclined or that they would introduce a measure that would achieve the same effect, I would happily withdraw new clause 33.

Lee Rowley: After a number of days of often great agreement across the Committee, it is my job, unfortunately, to point out where we cannot agree, so I apologise for doing that again. The hon. Member for Greenwich and Woolwich has indicated that he is probing the Government with new clauses 30 and 31—at least, I hope he is. We understand the point that he is making, but we are seeking to apply the Law Commission's recommendation that the participation level should remain at 50%. On that basis, we are not proposing to change that at this time. I do not think it is necessary to create the report, because we have taken a view within this legislation that—

Matthew Pennycook: Will the Minister give way?

Lee Rowley: I will, happily.

Matthew Pennycook: This may not be the case in the Minister's constituency, but I have very large blocks of flats in my constituency that, as my hon. Friend the Member for Brent North has just made clear, consist of hundreds of buy-to-let flats and flats owned by overseas investors. Are the Government really content to say that in those cases—in large urban centres, these blocks are springing up all over the place—the barrier to collective enfranchisement and RTM acquisition is higher? Effectively, many of these leaseholders will be locked out of the rights in this Bill purely by the design and ownership arrangements in their building. Surely the Minister must recognise that there is a subset of buildings that will not enjoy the rights that the Bill provides for, and that the Government should look again at what can be done in those circumstances.

Lee Rowley: There is no doubt that there are challenges. There are always challenges with individual buildings, but there is a specific challenge here, which the hon. Gentleman has outlined. My hon. Friend the Member for Cities of London and Westminster (Nickie Aiken), who is not serving on this Committee, has outlined that to me, and I have had the privilege of talking to a number of her constituents who are impacted by the understandable challenges that the hon. Gentleman raised.

The question is not about the Government being unwilling to look at this in the future or unwilling to discuss this further in relation to the Bill. I know this is a probing amendment, but the narrow sense of the question is: should we be legislating to create reports? I am always reluctant to legislate in that way. I understand why the Opposition would do it and why the other place do it, all too often, in my view, but I am not sure I am keen on this happening, so the Government are keen to resist it on that basis. But on the broad point about whether we would return to this if it was not working, either in this discussion or more broadly, the answer is: of course—that would be a reasonable thing for the Government to do in the future.

I appreciate the points made by the hon. Member for Brent North about new clause 33, and I know that the measure is potentially in operation elsewhere. I hope that he will agree that, when a minority can make decisions, a whole heap of additional considerations and questions are opened up. At this stage, we remain of the view that the proportion should be 50%, and for those reasons we will oppose the new clause, should it be pressed to a vote.

Matthew Pennycook: I will end on an optimistic note, because I got enough from the Minister to suggest that he is conscious of the issue and is open to looking at it again, either in the context of the Bill or at a later date. Setting aside the precise drafting of the new clauses, which have allowed us to debate the issues, the Minister recognised that we may need to look at the substantive point again. We may well come back to this at a later stage of the Bill.

The Chair: Barry Gardiner, do you wish to comment?

Barry Gardiner: Thank you, Sir Edward. It has long been recognised that my hon. Friend the Member for Greenwich and Woolwich is a much more reasonable gentleman than I am. I would be inclined to press the new clause to a vote, but I do not want to try the patience of the Committee. My hon. Friend and I will discuss these matters further and, if the Government do not act, we will see what we might do on Report. I will therefore not press the new clause.

Matthew Pennycook: I beg to ask leave to withdraw the motion.

Clause, by leave, withdrawn.

New Clause 32

PREMISES TO WHICH LEASEHOLD RIGHT TO MANAGE APPLIES

"Section 72 of the CLRA 2002 is amended in subsection (1)(a), by the addition at the end of the words 'or of any other building or part of a building which is reasonably capable of being managed independently.'"—*(Barry Gardiner.)*

This new clause which is an amendment to the Commonhold and Leasehold Reform Act 2002 adopts the Law Commission's Recommendation 5 in its Right to Manage report which would allow leaseholders in mixed-use buildings with shared services or underground car park to exercise the Right to Manage.

Brought up, and read the First time.

Barry Gardiner: I beg to move, That the clause be read a Second time.

I am very happy to move the new clause, which would amend the Commonhold and Leasehold Reform Act 2002 to adopt recommendation 5 of the Law Commission's right to manage report. That would allow leaseholders in mixed-use buildings with shared services or an underground car park to exercise the right to manage.

We had some debate on this issue last week. I recall, from the time of the 2002 Act, that flatted developments—especially mixed-use blocks—had not taken off yet in England in the same way as they have over the past 22 years. Given the proliferation of mixed-use buildings, the paradigms of the 2002 Act are therefore now outdated and unfair. Developers have sought to use the Act to secure the exclusion of leaseholders on the basis of shared services. If the Government do not move on the issue of shared services, many of the leaseholders in mixed-used buildings who would otherwise have benefited from the uplift in the non-residential limit from 25% to 50%—which, as I said last week, I welcome—will still not qualify for the right to manage or for enfranchisement.

We heard from the founders of the National Leasehold Campaign and from Free Leaseholders on this point. It was clear from the evidence that the presence of a plant room or underground car park alone can disqualify leaseholders from appointing their own managing agent and controlling the service charges, which they already have to pay but do not have any influence over.

The Law Commission did a great deal of work on the right to manage. It stated:

"We recommend that premises should be eligible for the RTM if they are a building or part which is reasonably capable of being managed independently. This means that if leaseholders cannot demonstrate that their premises are either a self-contained building or self-contained part of a building, the RTM will still be available if the premises are nevertheless a building or part which is reasonably capable of being managed independently. This might be straightforwardly demonstrated where parts of a building are already subject to separate management arrangements."

That is the Law Commission's case, and it looked into this with great care. It said:

"We think this will lead to fewer Tribunal cases and where there are still disputes the focus will instead switch to whether the premises can properly be managed autonomously, rather than their physical attributes."

So I plead the backing of the Law Commission; I plead the common sense of some of the foremost jurors of our age. I am sure that the Minister will take on board their wisdom, if not mine.

Lee Rowley: I am grateful to the hon. Member for Brent North for moving the new clause. The Government support the aim of the amendment to improve leaseholders' rights. As he indicates, we are taking forward key recommendations of the Law Commission to do that. The Bill takes forward the most significant measures to increase access to the right to manage and makes it simpler and cheaper for leaseholders to make a claim.

To implement the wider recommendations, the Government need to proceed carefully and undertake further work to ensure that the regime will operate satisfactorily. The Government will keep the remaining recommendations from the Law Commission's right to manage report under consideration following the implementation of the Bill's provisions. I thank the hon. Member for bringing forward the amendment, but I hope that because the most significant measures have already been introduced, he may be convinced enough not to push the new clause to a vote.

Barry Gardiner: With that very reasonable response, I am happy to beg to ask leave to withdraw the motion.

Clause, by leave, withdrawn.

New Clause 34

COMMENCEMENT OF SECTION 156 OF THE CLRA 2002

"(1) Section 181 of the CLRA 2002 is amended as follows.

(2) In subsection (1), after '104' insert ', section 156'.

(3) After subsection (1) insert—

'(1A) Section 156 comes into force at the end of the period of two months beginning with the day on which the Leasehold and Freehold Reform Act 2024 is passed.'"—*(Barry Gardiner.)*

This new clause would bring into force a requirement of the Leasehold and Freehold Reform Act 2024 that service charge contributions be held in designated accounts.

Brought up, and read the First time.

Barry Gardiner: I beg to move, That the clause be read a Second time.

New clause 34 would bring into force the requirement that service charge contributions be held in designated accounts. The new clause seems like a quick win for the Government: it would boost the security of leaseholder funds and would implement a policy that was in the Commonhold and Leasehold Reform Act 2002 which, unusually—22 years later—has still not been brought into force.

We have heard from witnesses such as Martin Boyd at the Leasehold Knowledge Partnership and Andrew Bulmer at the Property Institute, who have signalled support for such a policy. I understand that the British Property Federation has been actively lobbying for section 156 of the CLRA 2002 to be enacted since at least October 2012, so I hope that the Minister will see the new clause as eminently reasonable and will be prepared to comply.

Lee Rowley: Landlords and managing agents hold significant sums of leaseholder money, and it is right that they should be held to account for ensuring that such money must be managed effectively, as the hon. Member for Brent North indicates. Those who hold service charge moneys must hold them in trust, and the moneys must be deposited at a bank, building society or financial institution that is regulated by the Financial Conduct Authority. This ensures that those moneys can be used only for their intended purpose and that they are treated separately from the landlord's other assets. This approach seeks to provide protection.

As the hon. Gentleman indicated, the effect of his new clause would be to commence section 156 of the CLRA 2002. The Government are not convinced that it is necessary. Procedurally, primary legislation is not required. I know that the hon. Gentleman will say, "Well, you've had the primary legislation for a significant time, so I'm giving you help to get it through," but it can be done through secondary legislation, and I am afraid that we would seek to move it back into that domain. There is a perfectly reasonable discussion to be had about whether this provision is enacted, but I do not think that we need this primary challenge in order to continue that debate.

Barry Gardiner: Once bitten, twice shy. We were promised this measure in 2002. I am not convinced that I should accept the same blandishments once again, so I am afraid that I really do want to push this one to a vote.

Question put, That the clause be read a Second time.

The Committee divided: Ayes 1, Noes 9.

Division No. 23]

AYES

Gardiner, Barry

NOES

Carter, Andy	Levy, Ian
Davison, Dehenna	Maclean, Rachel
Everitt, Ben	Mohindra, Mr Gagan
Fuller, Richard	Rowley, Lee
Hughes, Eddie	Smith, rh Chloe

Question accordingly negatived.

The Chair: It was close, Barry.

New Clause 35

DUTY TO NOTIFY PURCHASERS OF LIABILITY FOR ESTATE MANAGEMENT CHARGES

"(1) The Secretary of State must by regulations make provision to ensure that any purchaser of a property which is subject to estate management charges—

(a) is notified about their liability for estate management charges at the point at which an offer is accepted by the seller on the property; and

(b) is provided with the most recent set of accounts of the property management company.

(2) Regulations under this section—

(a) must be laid within 24 months of the date of Royal Assent to this Act,

(b) shall be made by statutory instrument, and

(c) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament."—*(Richard Fuller.)*

This new clause would require the Secretary of State to make regulations to ensure that purchasers of properties subject to estate management charges are notified of those charges.

Brought up, and read the First time.

4 pm

Richard Fuller: I beg to move, That the clause be read a Second time.

New clause 35 seeks further to improve the rights of those who will be liable for estate management charges. We know from written and oral evidence that people do not know what they are getting into right at the start of the purchase of a property. My clause asks the Government to make it clear by regulations that purchasers of properties who will get management charges are notified about them. It would ensure that people have access to the latest set of accounts, enabling them not only to understand what charges may be due, but to see what liabilities there were in the past.

Lee Rowley: I am grateful to my hon. Friend the Member for North East Bedfordshire for moving new clause 35. I share his concern that purchasers should know about estate management charges; we talked a little about that issue in our sitting this morning.

There is nothing worse than facing a bill that we know nothing about at a time when we can do nothing about it. That is why the Government have been working with the national trading standards estate and letting agency team to develop guidance for property agents on what constitutes material information. The information must be included in property listings to meet the obligations under the Consumer Protection from Unfair Trading Regulations 2008. Estate management charges are considered material if they will have an impact on a decision to purchase. That should mean that purchasers get information on the expected level of estate management charges when they see the property particulars before they even view the property, let alone make an offer.

In addition to the measures that we discussed this morning, we are seeking to include in the Bill a requirement that freehold estate management information be provided to potential sellers, meaning that conveyancers acting on behalf of those sellers can quickly get the detailed information that they need to provide to potential purchasers. That could include accounts, if the estate manager is a resident-owned company, as well as any previous or future charges. With that reassurance in mind, I hope that my hon. Friend will consider withdrawing his new clause.

Richard Fuller: I think that that reassurance has been provided. The particular issue is that when people buy these homes, the solicitors are usually appointed by the people selling them. It is important that the Minister thinks carefully about that, and it sounds very much as if he is doing so. I beg to ask leave to withdraw the motion.

Clause, by leave, withdrawn.

New Clause 36

ASBESTOS REMEDIATION

"(1) The Leasehold Reform, Housing and Urban Development Act 1993 is amended as follows.

(2) After section 37B, insert—

'**37C Asbestos remediation**

(1) This section applies where a claim to exercise the right to collective enfranchisement in respect of any premises is made by tenants of flats contained in the premises and the claim is effective.

(2) The landlord must cause a survey of the premises to be undertaken by an accredited professional to ascertain whether asbestos is, or is liable to be, present in those parts of the premises which the landlord is responsible for maintaining.

(3) Where the survey required by subsection (2) reveals the presence of asbestos, the landlord must, at the landlord's cost, arrange for its safe removal.

(4) If the removal of asbestos required by subsection (3) is not carried out before the responsibility for maintaining the affected parts transfers to another person under the claim to exercise the right of collective enfranchisement, the landlord is liable for the costs of its removal.'"—*(Barry Gardiner.)*

Brought up, and read the First time.

Barry Gardiner: I beg to move, That the clause be read a Second time.

The Minister will be relieved to know that this is genuinely a probing new clause, which I am pleased to move on behalf of my right hon. Friend the Member for East Ham (Sir Stephen Timms). He is not a member of the Committee, but he certainly wishes to raise the issue on Report.

New clause 36 would address the problems relating to enfranchisement when asbestos has been found, or is liable to be found, in the structure of a building. It requires that a survey be done prior to any enfranchisement process, and sets out that the landlord would be responsible for the remediation if asbestos should need to be cleared from the building. I am laying out the new clause before the Committee so that the Minister can set out his thinking about such problems in buildings, in the full knowledge that my right hon. Friend the Member for East Ham will speak to it on Report.

Lee Rowley: I thank the hon. Member for Brent North for moving the new clause. I heard the right hon. Member for East Ham make his case clearly on Second Reading, and I asked officials at the Department to go and look at it. I will read this into the record for their benefit and that of the right hon. Gentleman.

The Government recognise the devastating impact that asbestos-related disease has on those who are exposed and on their families, and we are committed to ensuring that the risk of asbestos exposure is properly managed. New clause 36 would either duplicate existing UK law or change the well-established evidence-based policy in this area.

Specifically, proposed new subsection (3) would mostly duplicate the existing duty in regulation 4 of the Control of Asbestos Regulations 2012 for landlords to survey the common areas of their property, where they are responsible for maintenance. It is true that there is no current requirement for the survey to be done by an accredited professional. That is partly because currently only organisations, not individuals, can be accredited to carry out surveys. The Health and Safety Executive is carrying out research to see whether changes to the accreditation of surveyors would be beneficial. That is in response to a recommendation from the recent inquiry into asbestos by the Work and Pensions Committee, chaired by the right hon. Member for East Ham.

Proposed new subsection (3) would be a significant departure from current health and safety policy regarding asbestos. It could increase the risk of exposure to asbestos: it could create a situation in which asbestos was removed, irrespective of whether it was in good condition. Evidence shows that any removal of asbestos is difficult and inevitably involves disturbing asbestos fibres and making them airborne. In some cases, asbestos can be removed only if there is significant and highly invasive work to the fabric of the building. For that reason, the HSE's long-held view is that asbestos that is unlikely to be disturbed or is in good condition gives rise to less risk if it is left in situ and monitored until a suitable opportunity to remove it arises, such as refurbishment or demolition. That part of the new clause goes against HSE policy. Such a policy shift in this case would have significant implications for the legal framework for the management of asbestos across the built environment. Understandably for such a hazardous substance as asbestos, any proposed changes to how it is managed in the UK must be considered carefully.

While I appreciate the points that the hon. Member for Brent North has made on behalf of the right hon. Member for East Ham, I hope that that explains why the Government are not supporting new clause 36. I look forward to comments from them, should we have missed anything. I hope that the hon. Member for Brent North will consider withdrawing the new clause.

Barry Gardiner: I am grateful to the Minister for reading that into the record. I beg to ask leave to withdraw the motion.

Clause, by leave, withdrawn.

New Clause 37

ELIGIBILITY FOR ENFRANCHISEMENT

"(1) The LHRUDA 1993 is amended as follows.

(2) In section 3—

(a) in subsection (2)(a), after third 'building', insert ', or could be separated out by way of the granting of a mandatory leaseback on the non-residential premises to the outgoing freeholder';

(b) after sub-paragraph (2)(b)(ii), insert 'or

(iii) are reasonably capable of being managed independently or are already subject to separate management arrangements;'

(3) In section 4(1)(a)(ii), after 'premises;', insert 'nor

(iii) reasonably capable of being separated out by way of the granting of a mandatory leaseback and reasonably capable of being managed independently from the residential premises;'"—*(Barry Gardiner.)*

This new clause would ensure that leaseholders in mixed-use blocks with shared services with commercial occupiers would qualify to buy their freehold.

Brought up, and read the First time.

Barry Gardiner: I beg to move, That the clause be read a Second time.

New clause 37 would ensure that leaseholders in mixed-use blocks with shared services with commercial occupiers would qualify to buy their freehold. We have covered this ground to a certain extent, and I do not wish to detain the Committee unduly.

I commend the Government for bringing forward the reforms that promised to liberate leaseholders in mixed-use buildings and developments, including the lifting of the 25% non-residential premises limit to 50%. However, with the advent of compulsory leasebacks on commercial space to the departing freeholder, there is now a workable mechanism to split out the commercial units and their management from the ownership and management of residential leasehold homes and the common parts for the other side of the building.

It is imperative to remove any other outdated impediments to freehold purchase faced by leaseholders of flats in mixed-use buildings, if the reforms to enfranchisement are to be successful on the ground. Without moving on shared services and the structural dependency rules that bedevilled the 1993 Act, many leaseholders in mixed-use blocks, who would otherwise stand to benefit from the proposed changes that the Government have put forward, could be instantly disqualified from exercising their enfranchisement rights to gain control of their building and their service charges because of a shared plant room or a car park that connects them to the commercial occupiers and that they had no hand in constructing. That seems unfair, especially given that developers are increasingly building flatted developments in which the flats have shared services with commercial units for matters of efficiency and cost.

Mixed-use schemes are proliferating in our constituencies. The issue of shared services, structural dependency and structural detachment will continue to be a major one for leaseholders seeking self-rule, so long as the Government do not cut the red tape in the 1993 Act and, relatedly, in the 2002 Act in relation to the right to manage. I look forward to the Minister's considered response.

Lee Rowley: I am grateful to the hon. Member for Brent North for moving new clause 37. As he says, we have talked about the issue before, including on new clause 33, so I will not detain the Committee for more than a few moments. However, the brevity of my remarks does not in any way seek to diminish the importance of this discussion.

We agree with the overall ambition behind new clause 37; as the hon. Gentleman has graciously accepted, we are seeking to increase the non-residential limit. This is a discussion about whether the improvements that are already in the Bill should go any further. I hope that I have already articulated, in our debates on previous amendments and previous clauses, the reasons why we are not seeking to agree to that at this time. I hope that on this occasion the hon. Gentleman will agree to withdraw his amendment.

Barry Gardiner: We have indeed been over this ground. I beg to ask leave to withdraw the motion.

Clause, by leave, withdrawn.

New Clause 38

RIGHT TO MANAGE: PROCEDURE FOLLOWING AN APPLICATION TO THE APPROPRIATE TRIBUNAL

"(1) The CLRA 2002 is amended as follows.

(2) After section 84, insert—

'**84A Procedure following an application to the appropriate tribunal**

(1) Where an application is made to the appropriate tribunal under section 84(3) for a determination that an RTM company was on the relevant date entitled to acquire the right to manage the premises, the Tribunal may, if satisfied that it is reasonable to do so, dispense with—

(a) service of any notice inviting participation;

(b) service of any notice of claim;

(c) any of the requirements in the provisions set out in subsection (2); or

(d) any requirement of any regulations made under this part of this Act.

(2) Subsection (1)(c) applies to the following provisions of this Act—

(a) section 73;

(b) section 74;

(c) section 78;

(d) section 79;

(e) section 80;

(f) section 81.'"—*(Barry Gardiner.)*

This new clause would provide the appropriate tribunal with the discretion to dispense with certain procedural requirements where it is satisfied that it is reasonable to do so. It is designed to deal with cases where a landlord attempts to frustrate an RTM claim by procedural means.

Brought up, and read the First time.

Barry Gardiner: I beg to move, That the clause be read a Second time.

New clause 38 would provide the appropriate tribunal with the discretion to dispense with certain procedural requirements where it is satisfied that it is reasonable to do so. It is designed to deal with cases in which a landlord attempts to frustrate a right to manage claim by procedural means.

Let me enlighten the Committee. This morning I received the following email: "Your amendment NC38 to the Bill—right to manage—is the single best thing to happen to the right to manage since it was introduced in 2002. It will put an end to the litigation over detailed procedural objections which has frustrated this important statutory right." The gentleman went on to say that he believes this "despite me (1) earning a good living from right to management disputes and (2) being chair of the local Tory association."

The Law Commission report from four years ago highlighted "the tactical, game-playing approach" of some freeholders and how the current law is acting to incentivise unnecessary litigation between the parties. Mark Loveday's proposal, which I have adopted, seems eminently sensible to provide the tribunal with the discretion to waive a right to manage application of leaseholders where the breaches are deemed to be non-material. That is a necessary guard against vexatious litigation by freeholders to thwart legitimate right to manage bids. Sadly, as a barrister, Mr Loveday has seen all too many cases in which landlords have used irrelevant technicalities in the existing legislation to try to scupper leaseholders trying to exercise their right to manage. I want to put on the record my thanks for Mr Loveday's defence of leaseholders' rights in the Settlers Court case and the Canary Gateway case.

I hope the Committee will understand that Mr Loveday gave evidence in writing to this Committee. The new clause draws on his proposals, which are contained within his written submission. Mr Loveday is not just a barrister, but the editor of the standard work, the fifth edition of "Service Charges and Management". He is not just somebody who has a passing knowledge; he is recognised as an authority in these matters.

For the sake of full disclosure, I should add that the gentleman who wrote to me so effusively about my new clause was in fact Mr Loveday, so it was really about his own amendment.

The Chair: It is the greatest amendment since 2002, apparently.

4.15 pm

Lee Rowley: I am grateful to the hon. Member for Brent North for tabling new clause 38. I understand that he seeks to reduce landlords' ability to frustrate right to manage claims. We all share his view, and we also do not want leaseholders to fail on minor technicalities, but at the risk of disappointing his Conservative friend, we believe that there are good reasons for the procedural requirements in a right to manage claim. For example, standard requirements provide legal certainty for all parties. I recognise that there is a valid discussion to be had around the issue, but that is the position that the Government come down on. We are concerned about giving a broad, sweeping power in respect of disapplication.

There are also potential unintended consequences. All qualifying leaseholders are entitled to become members of the right to manage company, and no one person can be excluded for any reason. The legislation opens membership to all qualifying leaseholders. The procedural requirement to serve the notice inviting participation informs leaseholders of their rights to join the claim and become directors of the right to manage company. Providing discretion to the tribunal to disapply this could result in some leaseholders failing to receive adequate information about the claim and being denied such an opportunity. I am not saying that that is likely to happen; I am simply taking it to its logical extent. There are other potential areas where it would go. I am not saying that it is likely, but it is possible.

It is accepted that some landlords have sought to defend right to manage claims on the basis of minor, technical flaws in compliance with the procedural requirements. The tribunal, however, generally takes a common-sense, pragmatic approach to errors that are not critical or of primary importance. That should limit the scenarios in which there is a problem. Landlords will also have an added disincentive to raise vexatious disputes, as they will now pay their own litigation costs.

On the basis of both those points, I hope that the hon. Member for Brent North might be willing to withdraw his new clause and convince his new Conservative friend that it is not necessary at this time.

Barry Gardiner: I will press the new clause to a vote and leave it to the Minister to persuade his Conservative friends.

Question put, That the clause be read a Second time.

The Committee divided: Ayes 4, Noes 7.

Division No. 24]

AYES

Gardiner, Barry	Pennycook, Matthew
Glindon, Mary	Rimmer, Ms Marie

NOES

Davison, Dehenna	Mohindra, Mr Gagan
Fuller, Richard	Rowley, Lee
Levy, Ian	
Maclean, Rachel	Smith, rh Chloe

Question accordingly negatived.

New Clause 39

SERVICE CHARGES: CONSULTATION REQUIREMENTS

"(1) The Landlord and Tenant Act 1985 is amended as follows.

(2) In section 20ZA, after subsection (1), insert—

'(1A) "Reasonable" for the purpose of subsection (1) is a matter of fact for the tribunal, which—

(a) may or may not consider the matter of relevant prejudice to the tenant. If prejudice is to be considered the burden is on the landlord to demonstrate a lack of prejudice or to prove the degree of prejudice;

(b) must include consideration of the objectives of increasing transparency and accountability, and the promotion of professional estate management, as well as of ensuring that leaseholders are protected from paying for inappropriate works or paying more than would be appropriate;

(c) must consider the dignity and investment of the tenant, who should be treated as a core participant in the process of service charge decisions;

(d) must have regard to the tenant's legitimate interest in a meaningful consultation process, bearing in mind that minor or technical breaches may not impinge on the tenant's interest, nor prejudice the tenant;

(e) at its discretion may or may not consider a reconstruction of the 'what if' situation, analysing what would have happened had the consultation been followed properly. The landlord is liable for the costs of such a reconstruction.'"—*(Barry Gardiner.)*

This new clause would set matters for the tribunal to consider when deciding whether to dispense with all or any of the requirements for landlords to consult tenants in relation to any major works.

Brought up, and read the First time.

Barry Gardiner: I beg to move, That the clause be read a Second time.

This new clause would set matters for the tribunal to consider when deciding whether to dispense with all or any of the requirements for landlords to consult tenants in relation to any major works. That is something that I am particularly concerned about, because in 2002 I sought to bolster transparency over the nature and costs of major works that leaseholders were paying for, and the troubles that they were experiencing in their blocks. I am also concerned because the freeholder that successfully neutered key provisions on major works is the same Daejan—then Daejan Holdings, part of the Freshwater Group—which over the years has caused absolute misery for many leaseholders in my constituency and in many other right hon. and hon. Members' constituencies. It was one of the landlords whose behaviour saw me begin my campaign against the iniquities of leasehold back in the 1990s.

Since the Daejan *v.* Benson Supreme Court case of 2013, the factual burden on freeholders has been transferred to leaseholders. It was ruled that the conduct of the landlord is irrelevant, no matter how flagrantly it might have behaved in failing to adhere to the consultation requirements, unless it can be shown that the conduct caused actual prejudice. As a result of that decision, in many first-tier tribunal cases, it is now freeholders who are seeking dispensation from consultation requirements on major works. Hapless leaseholders are left trying to prove prejudice in the face of clear breaches of the legal requirements, and landlords, who of course are much better resourced, are able to game the system accordingly.

In Daejan, Lord Wilson issued a strong dissenting judgment, as did Lord Hope. Both thought, correctly, that what is reasonable should be left to the tribunal. They mentioned transparency and accountability, both ignored by the Supreme Court. In fact, Lord Wilson described the conclusion of the majority as subverting the intention of Parliament. I urge the Government to revisit their position on major works in the Bill and ensure that leaseholders have, at the very least, the same transparency and accountability that they were assured under the 2002 Act, before the Supreme Court interfered in 2013 with Daejan, fettered the tribunal's discretion in this vital area and accordingly undermined leaseholders' rights.

Lee Rowley: I am being tempted again to comment on the Supreme Court and the veracity of its decisions, but I will stick to the new clause. As the hon. Gentleman indicated, it seeks to amend the Landlord and Tenant Act 1985. We agree that there should be protections for leaseholders when their landlord is seeking to dispense with the requirements to consult on major works. Where a landlord has failed to comply with the statutory requirements, they must apply to the appropriate tribunal to dispense with the requirements to consult. Should they fail to consult and fail in any application for dispensation, the costs that they may pass on to the tenant are limited to a £250 threshold.

We believe that the appropriate tribunal is best placed to consider the circumstances of each application for dispensation. We would not wish to fetter the tribunal's ability to consider a wide range of matters when deciding whether it is reasonable to dispense with the consultation requirements.

Barry Gardiner: What has happened here is that the whole weight of proof has been shifted by the Court's decision. It has been shifted precisely against what was the legislative intent, which is why I think it is appropriate that the Minister seeks to reinstate what Parliament originally said it had decided and wanted to be the case, and ensure that the tribunal has the ability to exercise its judgment in that way.

Lee Rowley: Let me ask the hon. Gentleman whether he is willing to allow me to go away and look at this issue without any promises or guarantees. I am not across the level of detail that he obviously is, and I need to be in order to discharge the very legitimate questions that he has asked. If he is prepared to withdraw the new clause, I am happy to write to him, and if there is something that we need to take forward, I would be happy to look at it in future phases of the Bill.

Barry Gardiner: On that basis, I beg to ask leave to withdraw the motion.

Clause, by leave, withdrawn.

New Clause 40

MEANING OF "ACCOUNTABLE PERSON" FOR THE PURPOSES OF THE BUILDING SAFETY ACT 2022

"(1) Section 72 of the Building Safety Act 2022 is amended in accordance with subsections (2) and (3).

(2) After subsection (2)(b), insert—

'(c) all repairing obligations relating to the relevant common parts which would otherwise be obligations of the estate owner are functions of a manager appointed under section 24 of the Landlord and Tenant Act 1987 in relation to the building or any part of the building.'

(3) In subsection (6), in the definition of 'relevant repairing obligation', after 'enactment', insert

'or by virtue of an order appointing a manager made under section 24 of the Landlord and Tenant Act 1987'.

(4) Section 24 of the Landlord and Tenant Act 1987 is amended in accordance with subsection (5).

(5) Omit subsection (2E)."—*(Barry Gardiner.)*

This new clause would provide for a manager appointed under section 24 of the Landlord and Tenant Act 1987 to be the "accountable person" for a higher-risk building.

Brought up, and read the First time.

Barry Gardiner: I beg to move, That the clause be read a second time.

New clause 40 would provide for a manager appointed under section 24 of the Landlord and Tenant Act 1987 to be the accountable person for a higher-risk building. A number of stakeholders raised in the evidence sessions that there is a major problem with the way in which the Building Safety Act 2022 is interacting with the 1987 Act, with the practical effect of depriving leaseholders of redress and the ability to replace a failed or failing freeholder from controlling their homes and service charges.

The accountable person regime of the 2022 Act has critically undermined the section 24 court-appointed manager scheme, which has been a lifeline for leaseholders who cannot afford to buy the freehold or mobilise 50% of their neighbours to participate in an enfranchisement claim but who face a predatory—or very often absentee—freeholder, have high and opaque service charges or suffer block deterioration and badly require independent and professional management. That was the whole point of having the accountable person in the court-appointed manager scheme.

The section 24 regime also gives leaseholders who do not qualify for the right to management the ability to replace freeholder management of their building and moneys by applying to tribunal to consider whether it is just and convenient to install an officer of the court—a section 24 manager—to steward the development with tribunal backing and a special management order that provides them with a bespoke scheme of management and effectively replaces the leases. The section 24 manager essentially steps into the shoes of the landlord. But the Building Safety Act has expressly disallowed a section 24 manager from double-hatting as the accountable person and the principal accountable person through its definition of accountable persons and its amendments to the Landlord and Tenant Act 1987.

That must be an oversight by Government or an unintended consequence of the Building Safety Act, because fettering a section 24 manager in this way will encourage tribunals not to grant new section 24 orders on the basis that while such an order may be just because of freeholder failure, it would not be convenient, since there would now be two squabbling managers for functions under the BSA versus a court appointee installed under the 1987 Act. Even with the reforms to enfranchisement and right to manage in this Bill, many leaseholders will still be unable to meet the qualifying criteria to remove

[Barry Gardiner]

freeholder management. We need to keep that pathway for a court-appointed manager open and accessible to leaseholders seeking relief. With the BSA, Parliament quite rightly sought to give leaseholders new statutory protections. Surely the intention of the BSA was not to take away leaseholders' existing rights.

At Christmas, a tribunal heard about this issue as part of the long-running litigation at Canary Riverside, an estate in east London where leaseholders have enjoyed court protection via the section 24 scheme since 2016. Regrettably, it determined that section 72 of the Building Safety Act and the amendments made to section 24 by section 110 of the 2022 Act prohibit a section 24 manager from being an appointed person, and a tribunal cannot order a section 24 manager to carry out building safety responsibilities that Parliament has decided should fall outside the section 24 regime and which should be the responsibility of an AP.

The tribunal said,

"We accept that this conclusion is likely to have significant practical consequences"

for the manager. It also said,

"We accept too that there is a risk of disagreement between him and the PAP as to how the cladding-removal works should be progressed."

The 22 December 2023 tribunal decision in the Canary Riverside case has effectively given the freeholder licence to take back control of leaseholders' homes and moneys, despite being stripped of management rights by the court in 2016 because of its poor financial transparency and non-existent accountability to leaseholders. It now runs the risk of allowing the freeholder to take up to £20 million in public money from the building safety fund. The same freeholder's related company, Westminster Management Services, wrongly demanded £1.6 million in insurance commission and fee—a kick-back from the leaseholders, as determined by a tribunal in December 2022.

4.30 pm

The emotional and financial cost of the arbitrary law change to leaseholders here is enormous. As the Canary Riverside leaseholders cannot easily afford legal counsel, they are using the services of a barrister under the direct access scheme, which has cost them £25,000. The leaseholders are also having to pay the section 24 manager's costs for their solicitor and barrister, which could easily be double theirs—£50,000. For the two-day hearing and the preparation required beforehand, all the participating leaseholders and the section 24 manager will have racked up a legal bill of more than £100,000 to have a tribunal decide a very narrow legal point. Meanwhile, the leaseholders on a nearby estate, West India Quay, who have raised an impressive six-figure sum for a section 24 bid because of sky-high and escalating service charges and a rundown building, now face the invidious position of not going ahead with the application unless the law is changed in the Bill to allow a manager appointed under section 24 to be the accountable person and principal accountable person where a tribunal makes such a determination.

End Our Cladding Scandal has also made clear its opposition to this Building Safety Act policy. Leading landlord and tenant barrister Philip Rainey KC, whom we heard from in oral evidence, even provided suggestions for amendments in his testimony to the Committee. I am grateful for that and have echoed them in my new clause. It is nonsensical that a freeholder who needs to have no qualification in fire safety or management and is not vetted by a tribunal can be the accountable person while a professional property manager, who has had his or her credentials heavily scrutinised by tribunal and who has been appointed by a judge and tribunal panel because they are deemed to be a fit and proper person with suitable experience, is literally barred from taking on the accountable person and principal accountable person role.

On the point that the section 24 manager does not own the freehold or have a possession in land and so cannot be an AP or a PAP, a non-freehold-owning resident management company or right to management company can be an AP or a PAP, so the policy is contradictory. I believe that comes from a misunderstanding of section 24 and the importance of this backstop scheme for leaseholders with recalcitrant freeholders who need court protection.

Before the Minister points to the special measures manager provision in the BSA as a mitigator, that still damages the section 24 scheme because a special measures manager can be appointed by tribunal only if the Building Safety Regulator—an unknown entity—makes its own application to tribunal. Before the Building Safety Act, the whole management of a block and stewardship of leaseholders' moneys would be decided by a tribunal in one application made by leaseholders and, if successful, all handed over to the section 24 manager. Now, the leaseholders would have to petition a separate body for a special measures manager, and there is no guarantee that the Building Safety Regulator would make such a tribunal application, especially where the tribunal has not found fault against the freeholder, because no section 24 order is in existence for the leaseholders to point to.

Naturally, cautious tribunals will refuse to grant section 24 managers going forward because the split management will be so messy and so fraught with risk. That is a travesty of the section 24 scheme, which successive Governments have sought to protect. The Government, in background notes to the King's Speech, pledged to use this Leasehold and Freehold Reform Bill to revisit the Building Safety Act, building on the legislation that was brought forward by the 2022 Act, to ensure that freeholders and developers are unable to escape their liabilities to fund building remediation work and protecting leaseholders by extending the measures in the 2022 Act to ensure that it operates as intended.

That is what the Government said, and the Government are already moving amendments to reform the section 24 scheme, so we cannot say that section 24 is out of scope or that section 24 reform will not be pursued by the Government at this juncture. The Government's own estimate, as of February 2021, is that there are more than 11,000 higher-risk buildings—blocks from 18 metres or 7 storeys high containing 1.31 million residents. That means that there are over 11,000 buildings where hundreds or thousands of leaseholders, at least, have had their lifeline right of applying for a section 24 court-appointed manager stripped of them by the Government by obscure clauses in the Building Safety Act.

I urge the Minister to consider the desperate situation of leaseholders who already have a section 24 manager or are, at this moment, preparing their applications to have one installed. I urge the Government to expeditiously remedy the situation brought about by major policy change that flew under the radar of Parliament, was never put out to public consultation and has affected the lifeline right for leaseholders who have predatory freeholders or are in a situation whereby management is dire and service charges excessive.

One witness told us that the Secretary of State is taking "a personal interest in this"—[Official Report, Leasehold and Freehold Reform Public Bill Committee, 16 January 2024; c. 57, Q146.]
area and that he sent a letter to the leaseholders at Canary Riverside ahead of the December hearing. I believe that that is another of the lease extension nightmares that saw qualifying leaseholders lose their statutory remediation costs protection under the Building Safety Act because they extended their lease, and that saw the BSA amended by the Levelling-up and Regeneration Act 2023.

In the same way, Parliament could not have intended to deprive leaseholders of cost protection rights when extending their lease under the BSA. I believe that Parliament could not have intended to deprive them of the long-cherished right to secure a section 24 manager, where there is an extensive fault against their freeholder proven in a court of law. It is absolutely imperative that the Minister acts on this.

Lee Rowley: I am grateful to the hon. Gentleman for outlining that in such detail. I will be brief and to the point. We are reviewing this, and I think that an important point has been raised. In the meantime, we have asked the Building Safety Regulator to review all higher-risk buildings that currently have a section 24 manager in place, with a view to considering whether an application for a special measures order should be made for any of the buildings impacted. On that basis, I hope that the hon. Member may withdraw the new clause until we have concluded the review.

Barry Gardiner: I want to press the new clause to a vote.

Question put, That the clause be read a Second time.

The Committee divided: Ayes 4, Noes 7.

Division No. 25]

AYES

Gardiner, Barry	Pennycook, Matthew
Glindon, Mary	Rimmer, Ms Marie

NOES

Davison, Dehenna	Maclean, Rachel
Everitt, Ben	Mohindra, Mr Gagan
Fuller, Richard	
Levy, Ian	Rowley, Lee

Question accordingly negatived.

New Clause 47

COLLECTIVE ENFRANCHISEMENT: REMOVAL OF PROHIBITION ON PARTICIPATION

"(1) Section 5 of the LRHUDA 1993 is amended in accordance with subsection (2).

(2) Omit subsections (5) and (6)."—*(Barry Gardiner.)*

This new clause would implement recommendation 41 of the Law Commission's report on enfranchisement, that the prohibition on leaseholders of three or more flats in a building being qualifying tenants for the purposes of a collective enfranchisement claim should be abolished.

Brought up, and read the First time.

Barry Gardiner: I beg to move, That the clause be read a Second time.

This new clause would implement recommendation 41 of the Law Commission's report on enfranchisement, that the prohibition on leaseholders of three or more flats in a building being qualifying tenants for the purposes of a collective enfranchisement claim should be abolished. The Law Commission could not be clearer on this issue. It said:

"We remain firmly of the view that this rule–that a leaseholder of three or more flats in a building is not a qualifying tenant in respect of any–is ineffective in excluding investors from collective enfranchisement rights. It is easily avoided by sophisticated investors, and thus only penalises less well-informed leaseholders of multiple units. We do not think that there is any good justification for retaining the exclusion in its current form… Crucially, we think that removing the restriction will provide the opportunity to enfranchise to a number of leaseholders who should benefit from enfranchisement rights, but who currently do not do so. Take the building which we gave as an example in the Consultation Paper: one containing seven flats let on long leases, of which three are owned by the same person. This building is ineligible for collective enfranchisement, as there are only four qualifying tenants (and therefore the two-thirds requirement is not fulfilled). However, it may well be in the interests of the four qualifying tenants to carry out a collective freehold acquisition: indeed, the investor who owns the three other leasehold flats may also wish to participate. It may be asked why, from the point of view of the five owners in the building, it is desirable that they be prevented from acquiring the freehold jointly. In this case, the four owners of their individual flats would still have the largest say in the control of the building following the claim (assuming every owner participated)."

Removing the bar on leaseholders with three or more properties from qualifying for a collective enfranchisement is a Law Commission recommendation. It could be done easily and have the practical effect of ensuring that more leaseholders can acquire the freehold and gain control of their homes and service charges, meeting a key Government goal for this Bill.

I am aware that some freeholders buy up leases in a block using separate special purpose vehicle companies in order to make it harder for leaseholders to hit the 50% participation threshold and thwart enfranchisement bids. Meanwhile, innocent leaseholders who have three flats in their name as part of their retirement plan are instantly disqualified from participating in the freehold purchase. That is unfair, but it could be easily remedied by this amendment or another amendment were it to come from the Government.

Lee Rowley: The Government recognise that the Law Commission did not think that there was a justification for keeping the exclusion in its current form and recommended its removal, as the hon. Gentleman has indicated. However, there might be unexpected consequences if the exclusion is removed, and the Government need to proceed carefully. For example, removal of the restriction may spur investors and speculators to buy up blocks, which may not be in the interests of the remaining leaseholders and take properties out of the market that could otherwise be acquired by owner-

[Lee Rowley]

occupiers. Investors would be able to buy multiple flats in a building in order to take control of the building following a collective acquisition claim.

Furthermore, the exclusion as it applies currently has the effect of limiting the circumstances that could result in one leasehold owner monopolising the freehold once it has been acquired. Leaseholders of a single flat may find that they escape the control of one freeholder to find that they are now subject to the control of a single owner of multiple flats, creating the same issues.

I recognise that the restriction has the effect of denying some leaseholders the right to collective enfranchisement, and there is no equivalent requirement when claiming the right to manage. However, the nature of the interest being acquired is different and the difference in approach is appropriate. I hope I can assure the hon. Member that the Government understand his concern. I hope he agrees, although I hear he might not, that the current restriction provides a level of protection for leaseholders. I ask him to consider withdrawing his new clause.

Barry Gardiner: I am grateful to the Minister for recognising the problem here. I urge him to consider coming back on Report with his own amendment to try to circumvent the other issues that he has rightly raised, which might counterbalance on the other side. On that basis, I beg to ask leave to withdraw the motion.

Clause, by leave, withdrawn.

New Clause 48

RIGHT TO PARTICIPATE IN ENFRANCHISEMENT

"(1) The Secretary of State may by regulations make provision to enable qualifying leaseholders to buy a share of the freehold at a development where a collective enfranchisement has already taken place.

(2) Provision made under subsection (1) is to be known as a 'right to participate'."—*(Barry Gardiner.)*

This new clause would enable the Secretary of State to make regulations allowing those residential leaseholders whose unit qualified for a collective enfranchisement, but whose leaseholders were unable or unwilling to do so at the time, to exercise the right to participate in the enfranchisement upon payment of a proportionate sum.

Brought up, and read the First time.

Barry Gardiner: I beg to move, That the clause be read a Second time.

This new clause would enable the Secretary of State to make regulations allowing those residential leaseholders whose unit qualified for a collective enfranchisement, but whose leaseholders were unable or perhaps unwilling to do so at the time, to exercise the right to participate in the enfranchisement subsequently upon payment of a proportionate sum.

Through its work the Law Commission emphasised the inequity of leaseholders who did not have the money to participate in the freehold purchase or were not even holding a lease on the qualifying flat at the time of the enfranchisement, having no right under the current law to buy a share in the freehold to make their home more saleable and to be part of the decision-making process of those enfranchisement leaseholders with management control.

The Law Commission stated that

"in the Consultation Paper, we proposed that a leaseholder who did not participate in a collective freehold acquisition should, at a later date, be able to purchase a share of the freehold interest held by those who did participate. We maintain our view that the policy has merit. Indeed, a clear majority of consultees were supportive of our provisional proposal."

The Chair: We will suspend for Divisions in the House.

4.45 pm

Sitting suspended for Divisions in the House.

5.37 pm

On resuming—

Barry Gardiner: We were discussing the right to participate, and I was quoting the Law Commission, which stated that

"in the Consultation Paper, we proposed that a leaseholder who did not participate in a collective freehold acquisition should, at a later date, be able to purchase a share of the freehold interest held by those who did participate. We maintain our view that the policy has merit. Indeed, a clear majority of consultees were supportive of our provisional proposal."

Additionally, the Law Commission believes that

"the existence of the right to participate"—

attaching to an individual leasehold unit—

"might even encourage leaseholders making a collective freehold acquisition claim to invite others to join in the first place, and might also be a partial solution to the ping-pong problem",

as the Law Commission describes it; I will not go into detail about that. The Law Commission states that, unlike with the right to manage and the notice inviting participation, leaseholders

"proposing to make a collective enfranchisement claim are not obliged to invite all other leaseholders in the building to participate in the proposed claim, nor even to inform them of their intentions. This means that leaseholders can be excluded from the opportunity to exercise their enfranchisement rights, either inadvertently or deliberately."

The Law Commission received various suggestions as to how leaseholders could be made aware that a collective freehold acquisition has taken place and therefore that the right to participate is available to them. The new clause seeks to give the Government the flexibility to bring forward—through either regulations or, preferably, their own amendments—some provision to remedy the situation. I look to the Minister for his advice.

Lee Rowley: The principle of a right to participate is sound, and I think we all agree on that across both sides of the Committee. However, as with many of the new clauses, there are practical issues with such a right, and we struggle to see a way that it is addressed through the Bill.

I will not detain the Committee for too long, but currently leaseholders who did not participate in a previous collective acquisition claim have no means to require the previous participants to allow them to join, as the hon. Gentleman outlined. There is an existing route around that for the non-participant leaseholders if they can agree with the participating enfranchised leaseholders to allow them to obtain a share in the ownership of the building through negotiation; however, enabling that through a statutory right is complicated. The Law Commission gave considerable thought to the

issues and how they may be resolved, and, although it too agreed with the principle of such a right, it was not able to make a recommendation for the creation of the right to participate without separate and detailed work on the measure. Its report analysing the difficulties that arise is publicly available.

As set out by the Law Commission, a number of highly complex questions need to be resolved, including when and to whom the right should apply; whether to include former landlords in possession of a leaseback; the terms of participation; the premium payable; the cost of the claim; and any remedies available if damages are appropriate. Bluntly, they go to the core of an individual's rights, so the whole framework for the regime needs to be in place in order to ensure certainty on who has those rights and how they can best be exercised in practice. As a result, while I understand and appreciate the sentiment behind the new clause, it is a broad power to set out a regime that is extremely complicated, and the Government are unable to accept it at this time, while accepting the principle and hoping that in the future we can make progress on it.

Barry Gardiner: I am grateful to the Minister for recognising the need to do something in this area and accepting that there is a problem here that it would be best to resolve. I simply point out that leasehold reform Bills tend to come infrequently before Parliament, and I urge him to come back at a later stage with his best endeavours to resolve the problem. On that basis, I beg to ask leave to withdraw the motion.

Clause, by leave, withdrawn.

New Clause 50

CONTROL OF BOARDS OF ESTATE MANAGERS

"(1) Within six months of the passage of this Act, the Secretary of State must by regulations provide for—

(a) every estate manager (see section 39(3)) to be constituted such that a controlling majority on its board is held by an owner or lessor of a managed dwelling (see section 39(5));

(b) the requirement stipulated in paragraph (a) to be in place within two years of the sale or lease of the first managed dwelling.

(2) Regulations under subsection (1) may amend primary legislation."—*(Richard Fuller.)*

This new clause would provide for the Secretary of State by regulations to oblige every estate management company to have a majority of residents on its board within two years of the sale or let of the first house or flat on the managed estate.

Brought up, and read the First time.

Richard Fuller: I beg to move, That the clause be read a Second time.

I am receiving some interesting guidance from the Government Whip that I should seek to speak at length on the new clause, which is contrary to all his earlier exhortations, which were rather of the flavour that I should shut up entirely. I am not getting any further guidance from the Whip, so I will go at my own pace.

New clause 50 is a suggestion to the Minister. We have discussed the general hope that people subject to estate management charges should have much greater control over their estate management companies. They potentially should have the right to self-manage and it should be much easier for them to change from one estate manager to another. At the moment it can take a considerable time for estate management companies essentially to be set up and/or for them to go through what is essentially a transfer to resident control. I think all members of the Committee know this, but I will just inform them that we have had a number of representations from people who have talked about how long they have had to wait, including someone who said that a family had to wait up to 13 years for the right to manage their own estate management company and endured poor service over that entire period.

As the Minister thinks about his options to bring forward on Report or in further deliberations improvements to the rights of people, the new clause suggests that, by law, within two years of the sale or lease of the first building a majority of the directors of the estate management companies should be residents of their community.

Lee Rowley: This is an interesting new clause that bears a few moments' consideration, and I am grateful to my hon. Friend for tabling it. Obviously, the first challenge is the matter of Henry VIII powers. I will put that aside for the moment, but we have genuine concerns about whether the new clause would get past the Delegated Powers and Regulatory Reform Committee on the basis of whether it is proportionate.

5.45 pm

As with a number of other very well-intentioned amendments, we come back to the question of unintended consequences. For example—without being overly difficult—if homeowners are reluctant or unavailable to become directors, problems could potentially arise with respect to compliance with company law requirements. For instance, if a company does not meet the requirement cited in the Companies Act 2006 for the minimum number of directors, it could face a sanction. An estate management company might be unable to function because of the reluctance of homeowners to be represented on the board. I accept my hon. Friend's point and recognise the challenge that he puts forward—of course, we want as many householders and homeowners to participate in these companies as possible—but this is a narrow new clause that we cannot accept, although I am happy to continue the broader conversation with him.

It is also the case that the Competition and Markets Authority study of housebuilding, which will include the private management of public amenities on housing estates, is due to report by 27 February. I do not know what is in the report, but it may be that we return to this matter in later stages once we know the CMA's thoughts about estate management. I hope that I have convinced my hon. Friend to withdraw the new clause.

Richard Fuller: That was a very helpful and thoughtful response from the Minister, so I beg to ask leave to withdraw the motion.

Clause, by leave, withdrawn.

New Clause 51

ABILITY TO CHANGE ESTATE MANAGEMENT COMPANY

"(1) Within three months of the passing of this Act, the Secretary of State must consider and report to Parliament on the situation of homeowners who have been told that they cannot change their estate management company because they are named on a TP1.

(2) The report required by subsection (1) must include proposals for legislative change to enable such homeowners to change their estate management company where appropriate."—*(Richard Fuller.)*

Brought up, and read the First time.

Richard Fuller: I beg to move, That the clause be read a Second time.

Again, this new clause originates from some of the inbound traffic that we have received as we have considered the Bill. I seek clarification from the Minister about the extent of these changes. The Committee was advised by a number of citizens about the status of estate management companies that are written into the deeds or other legal documents that are signed upon purchase. One such citizen wrote:

"Our management company…is named in the TP1, so we have no rights to do this"—

that is, to essentially appoint their own managers.

This is a probing new clause: I just want the Minister to be clear about the impact of the Bill on individuals such as the person whom I just quoted. As a consequence of the Bill's provisions, will they be able to change their estate management company, or is there some legal trick about the original documents that were signed on purchase that would mean they are not brought into the ambit of those new rights?

Lee Rowley: As my hon. Friend outlined, the new clause would introduce a requirement for the Government to assess the situation of homeowners with estate management companies explicitly named on their deeds within a three-month timeframe.

I am sympathetic to the concerns that my hon. Friend raised. I know that he recognises that this is a complex area and that there are detailed issues to be worked through. As well as being clear about the nature of the problem, there could be issues about defining the scope of estate management functions and what criteria need to be met. The Law Commission carried out a review of the right to manage for flats, but that is not always directly transferable to freehold estates. It will take some time to carry out a review, and we need to engage with people across the sector. Then, the CMA report is coming. None the less, I recognise my hon. Friend's concerns that the comprehensive measures in the Bill do not go far enough, and I acknowledge his desire for the Government to go further. I am listening carefully to his concerns on this matter. On that basis, I hope that he might withdraw his new clause.

Richard Fuller: It is not actually clear that the Minister was addressing new clause 51 as I was expecting; that may be the fault of my hearing. I was seeking clarification about the TP1—transfer of part of registered title—form, which is used by developers when selling a house to explicitly name an estate management company that will be in situ. That may be the norm; I do not know. However, can the Minister clarify, if the way that it is originally set up is not the norm and it is a legal device, whether it has greater legal standing, and whether the rights of people for whom the estate management company is defined in form TP1 will be included in the rights that we are trying to establish with the rest of the Bill? If we introduce changes that increase the right to manage and so on, will they be covered? I may well have missed it, because the Minister is much more knowledgeable about the Bill than I am, even after all our deliberations. However, just to the specific point about the legal forms, will he consider bringing that in as part of this?

Lee Rowley: I want to double-check the valid points made by my hon. Friend. I will commit to writing to him on that specific point to make sure that we are covering in the way that he expects.

Richard Fuller: That is very kind of the Minister. With that assurance, I beg to ask leave to withdraw the motion.

Clause, by leave, withdrawn.

New Schedule 1

REDRESS SCHEMES: FINANCIAL PENALTIES

"*Notice of intent*

(1) Before imposing a financial penalty on a person under section (Financial penalties), an enforcement authority must give the person notice of its proposal to do so (a 'notice of intent').

(2) The notice of intent must be given before the end of the period of 6 months beginning with the first day on which the enforcement authority has sufficient evidence of the conduct to which the financial penalty relates.

(3) But if the person is continuing to engage in the conduct on that day, and the conduct continues beyond the end of that day, the notice of intent may be given—

(a) at any time when the conduct is continuing, or

(b) within the period of 6 months beginning with the last day on which the conduct occurs.

(4) The notice of intent must set out—

(a) the date on which the notice of intent is given,

(b) the amount of the proposed financial penalty,

(c) the reasons for proposing to impose the penalty, and

(d) information about the right to make representations under paragraph 2.

Right to make representations

2 (1) A person who is given a notice of intent may make written representations to the enforcement authority about the proposal to impose a financial penalty.

(2) Any representations must be made within the period of 28 days beginning with the day after the day on which the notice of intent was given to the person ('the period for representations').

Final notice

3 (1) After the end of the period for representations the enforcement authority must—

(a) decide whether to impose a financial penalty on the person, and

(b) if it decides to do so, decide the amount of the penalty.

(2) If the enforcement authority decides to impose a financial penalty on the person, it must give a notice to the person (a 'final notice') imposing that penalty.

(3) The final notice must require the penalty to be paid within the period of 28 days beginning with the day after the day on which the notice was given.

(4) The final notice must set out—

(a) the date on which the final notice is given,

(b) the amount of the financial penalty,

(c) the reasons for imposing the penalty,

(d) information about how to pay the penalty,

(e) the period for payment of the penalty,

(f) information about rights of appeal, and

(g) the consequences of failure to comply with the notice.

Withdrawal or amendment of notice

4 (1) An enforcement authority that gives a notice of intent or final notice may at any time—

(a) withdraw the notice of intent or final notice, or

(b) reduce an amount specified in the notice of intent or final notice.

(2) The power in sub-paragraph (1) is to be exercised by giving notice in writing to the person to whom the notice was given.

Appeals

5 (1) A person to whom a final notice is given may appeal to the First-tier Tribunal against—

(a) the decision to impose the penalty, or

(b) the amount of the penalty.

(2) An appeal under this paragraph must be brought within the period of 28 days beginning with the day after the day on which the final notice is given to the person.

(3) If a person appeals under this paragraph, the final notice is suspended until the appeal is finally determined, withdrawn or abandoned.

(4) An appeal under this paragraph—

(a) is to be a re-hearing of the enforcement authority's decision, but

(b) may be determined having regard to matters of which the enforcement authority was unaware.

(5) On an appeal under this paragraph the First-tier Tribunal may quash, confirm or vary the final notice.

(6) The final notice may not be varied under sub-paragraph (5) so as to impose a financial penalty of more than the enforcement authority could have imposed.

Recovery of financial penalty

6 (1) This paragraph applies if a person fails to pay the whole or any part of a financial penalty which, in accordance with this Schedule, the person is liable to pay.

(2) The enforcement authority which imposed the financial penalty may recover the penalty or part on the order of the county court as if it were payable under an order of that court.

Proceeds of financial penalties

(1) Where an enforcement authority imposes a financial penalty under section (Financial penalties), it may apply the proceeds towards meeting the costs and expenses (whether administrative or legal) incurred in, or associated with, carrying out any of its functions under this Part of this Act.

(2) Any proceeds of a financial penalty imposed under section (Financial penalties) by an enforcement authority other than the Secretary of State which are not applied in accordance with sub-paragraph (1) must be paid to the Secretary of State."—*(Lee Rowley.)*

This new Schedule, to be inserted after Schedule 8, would make further provision about the imposition of financial penalties under NC19.

Brought up, read the First and Second time, and added to the Bill.

Title

Lee Rowley: I beg to move amendment 28, in title, line 5, leave out "charges and costs payable by residential" and insert

"the relationship between residential landlords and".

This amendment is consequential on amendments to Part 3.

This is a consequential amendment to remove the reference to part 3 in the long title of the Bill. It ensures that it provides an accurate description of the Bill's contents to reflect the impact of the measures the Committee has brought forward. That includes the amendments to enable the first-tier tribunal to vary or discharge an order to appoint a manager of a premises without an application.

Amendment 28 agreed to.

Matthew Pennycook: On a point of order, Sir Edward, may I take the opportunity to put on record our sincere thanks to you and your colleagues in the Chair for overseeing our proceedings over recent weeks; our hard-working Clerks for their assistance; the Doorkeepers and Hansard reporters for facilitating the Committee's work; and officials in the Department and our own staff for their support? I also briefly thank all hon. Members who have contributed to the Committee's deliberations and debates. It is not entirely unexpected, given the uncontentious nature of the Bill; nevertheless, we very much appreciate the generally constructive and good-humoured nature of our proceedings.

Finally, I thank the Minister for his thoughtful engagement with the arguments the Opposition have made in an attempt to improve this limited Bill. He has dutifully held the line in attempting to justify the decision to resist a large number of sensible and reasonable amendments. Nevertheless, I suspect we can look forward to seeing a number of them return with the Government's seal of approval in the Bill's remaining stages.

Lee Rowley: Further to that point of order, Sir Edward, I wish to put on record my thanks. I echo the thanks of the hon. Member for Greenwich and Woolwich to everybody who has been involved in the Bill, and I thank him and all colleagues here who have helped us get through this. I am grateful for colleagues' time and also—even though I may not be in order in making this acknowledgment—I thank those in the Gallery who have taken the time to come here and listen. I am grateful to everyone for getting the Bill through this stage and I look forward to seeing everyone on Report.

The Chair: I thank both of you for those gracious words. The Opposition spokesperson warned me at the beginning that the Bill was as dry as dust. It is certainly very complicated and you have all done extremely well in a very complex part of the law. We should all be proud of ourselves. Order.

Bill, as amended, to be reported.

5.54 pm

Committee rose.

Written evidence reported to the House

LFRB62 Pensions and Lifetime Savings Association (PLSA)

LFRB63 Joe Ogden

LFRB64 Jonathan Hewitt

LFRB66 National Leasehold Campaign

LFRB67 Henley Holdings Limited

LFRB68 Propertymark