PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

LEASEHOLD AND FREEHOLD REFORM BILL

Ninth Sitting

Tuesday 30 January 2024

(Morning)

CONTENTS

Clauses 41 to 65 agreed to, some with amendments.
New clauses considered.
New schedule considered.
Adjourned till this day at Two o'clock.

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.