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Public Bill Committee

BUILDING SAFETY BILL

Thirteenth Sitting

Thursday 21 October 2021

(Morning)

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Monday 25 October 2021

The Committee consisted of the following Members:

Chairs: Philip Davies, †Peter Dowd, Clive Efford, Mrs Maria Miller

† Amesbury, Mike *(Weaver Vale)* (Lab)
† Bailey, Shaun *(West Bromwich West)* (Con)
Baillie, Siobhan *(Stroud)* (Con)
† Byrne, Ian *(Liverpool, West Derby)* (Lab)
† Cadbury, Ruth *(Brentford and Isleworth)* (Lab)
† Clarke, Theo *(Stafford)* (Con)
† Clarke-Smith, Brendan *(Bassetlaw)* (Con)
† Cooper, Daisy *(St Albans)* (LD)
† Hopkins, Rachel *(Luton South)* (Lab)
† Hughes, Eddie *(Walsall North)* (Con)
† Logan, Mark *(Bolton North East)* (Con)
† Mann, Scott *(Lord Commissioner of Her Majesty's Treasury)*
Osborne, Kate *(Jarrow)* (Lab)
† Pincher, Christopher *(Tamworth)* (Con)
† Rimmer, Ms Marie *(St Helens South and Whiston)* (Lab)
† Saxby, Selaine *(North Devon)* (Con)
† Young, Jacob *(Redcar)* (Con)

Yohanna Sallberg, Adam Mellows-Facer, Abi Samuels, *Committee Clerks*

† attended the Committee

Public Bill Committee

Thursday 21 October 2021

(Morning)

[Peter Dowd *in the Chair*]

Building Safety Bill

Clause 120

Implied terms in leases and recovery of safety related costs

11.30 am

Question proposed, That the clause stand part of the Bill.

The Chair: With this it will be convenient to discuss that schedule 7 be the Seventh schedule to the Bill.

The Parliamentary Under-Secretary of State for Levelling Up, Housing and Communities (Eddie Hughes): It is a pleasure to have you back in the Chair and to serve under you, Mr Dowd.

The Government are committed to ensuring that leases reflect the duties and obligations placed on landlords and tenants to keep buildings safe, and that the costs associated with the regime are fair and transparent. Clause 120 implies terms relating to building safety into leases, so that both landlord and tenant have obligations associated with the new regime clearly set out in their leases. This cements the duties set out in other parts of the Bill.

Clause 120 also ensures that the landlord passes costs associated with the new regulatory regime, via the building safety charge, to leaseholders with long leases of seven years or more. The overriding principle behind the building safety charge is to give leaseholders further information about what they are paying for to keep the building safe and assurance that the manager of the building is charging reasonably. Without the building safety charge, many of these costs would be charged via a service charge. We are introducing this separate mechanism to deliver greater protection to leaseholders, ensuring that costs are transparent and reasonable. By introducing the building safety charge, the Government are ensuring that costs are clearly set out to leaseholders and that certain costs, such as the cost of enforcement against an accountable person, can never be recovered from leaseholders. In well-run buildings, leaseholders will likely see costs partially offset by a corresponding reduction in service charge costs.

Schedule 7 will enable the Government to set out certain obligations for the landlord to fulfil, including providing details of the building safety charge together with a summary of their rights and obligations to leaseholders. Schedule 7 will also give leaseholders the right to request further information about the charge, and they will be able make a written request for a summary of the relevant building safety costs. Once a summary has been obtained, the leaseholder can request more detailed accounts.

We expect that the protections included around the building safety charge will provide the necessary transparency to drive competition to reduce costs for leaseholders. Leaseholders will be able to challenge the costs associated with keeping a building safe in the same way as they can challenge the costs of unreasonable service charges—that is, through the first-tier tribunal.

Clause 120 is key to ensuring the smooth implementation of the new regulatory regime. Setting out further requirements in respect of the building safety charge in secondary legislation—for example, on the obligations of landlords, consultation requirements and excluded costs—ensures that the provisions remain relevant and responsive to changes in the duties of the accountable person or broader leasehold reform. Leasehold law is a highly technical policy area, and it would be inappropriate and counterproductive to include it in the Bill.

We wish to make it clear that remedial costs are not included in the building safety charge. This clause does not make leaseholders liable for the costs of remedial works. Whether or not leaseholders are liable for works is governed by the terms of their existing leases. Clause 120 is vital to ensure transparency on the costs of the new regime, empowering leaseholders to interrogate bills and hold their building owner to account.

Mike Amesbury (Weaver Vale) (Lab): It is a pleasure to serve once again under your chairmanship, Mr Dowd.

I have a number of questions. The building safety charge has proved to be somewhat controversial among leaseholders, residents, tenants and cladding campaigners—the UK Cladding Action Group, the Leasehold Knowledge Partnership, the National Leasehold Campaign and so on. The Minister has mentioned that charges will be fair and transparent. What is the definition of fair and transparent? What is the Department's assessment of what will be fair and transparent? Given that on 17, if not 18, occasions a promise was made not to put charges for historical remediation costs, which we will get on to in a moment, on to the shoulders of leaseholders, there is a real fear that there could be considerable interplay between the building safety charge, historical remediation costs, service charges and so forth. I would like the Minister to expand on that. Of course, many leaseholders over the past two weeks have had massive invoices arrive through the door for remedial costs relating to historical building safety defects. Some are going bankrupt, as I know he and Department officials will know.

Ruth Cadbury (Brentford and Isleworth) (Lab): Does my hon. Friend agree that the existing service charge system for too many leaseholders is opaque and inconsistent? They never know what they will be charged for and, more important, how much they will be charged in future quarters. Leaseholders need not only an improvement to the current service charge system but to be confident that any new charging system will be far better than the current one.

Mike Amesbury: My hon. Friend makes a powerful and pertinent point, which I am sure the Minister will respond to. I know that it has been a particular issue in shared ownership properties, particularly in London and the south-east. I look forward to the Minister's response to the points that I and other Members have raised.

Eddie Hughes: The point about fairness and transparency is incredibly important, not least given the comments that the hon. Member for Brentford and Isleworth made about the opaqueness or otherwise of the existing service charge system. The reason why we will have two clearly defined separate charging systems is to ensure that everybody—leaseholders, landlords and tenants—understands completely what is being covered within the charging system. We will set out further details in secondary legislation, but it is critical that we know—I am sure the hon. Member for Weaver Vale was not confusing the two—that the charges that will be covered by the system are those that result from the introduction of the Bill, and safety aspects that will be applied going forward. It is not about retrospective remediation. There is a clear delineation between the two, and we will make very clear what is covered.

With regard to what might be considered fair, I genuinely feel that, as the system develops people will be able to see within one building what amount is being charged for a particular service or constituent elements of it, and to make a direct comparison with other buildings, how they are being managed and what charges are being applied. They will then be able to use that as evidence to challenge their own bill in the future. Ensuring that people can challenge their bill and ask for further details will be pivotal to the success of the process.

Ruth Cadbury: With respect, although it is good to know that there may be yet another, possibly complex, mechanism by which leaseholders can challenge, would it not be better if they did not need to challenge, except in exceptional circumstances? If the system were clear, transparent and honest at the outset there would be less need for challenges.

Eddie Hughes: If there was any ambiguity in what I said, I apologise. The expectation is that this will be clear and transparent from the start. We are not setting out in any way to obfuscate; however, it will be reassuring to know that the safety net of challenge exists should it need to be deployed, which I hope will be a rarity.

Question put and agreed to.

Clause 120 accordingly ordered to stand part of the Bill.

Schedule 7 agreed to.

Clause 121

Provision of building safety information

Question proposed, That the clause stand part of the Bill.

Eddie Hughes: We recognise the need to ensure that the building safety regime is compatible with existing legislation, especially when it comes to ensuring that tenants of higher-risk buildings receive important building safety information from their landlords. Clause 121 aligns the Landlord and Tenant Act 1987 with the Bill by ensuring that dedicated provisions are in place for tenants of higher-risk buildings, including those who may be subletting from a long leaseholder, to receive relevant building safety information from their landlords. The clause makes it mandatory for the landlord of a dwelling in a higher-risk building to give the tenant a notice containing the relevant building safety information. The clause states that, where a landlord fails to give such notice to a tenant, any rent, service charge, administration charge or building safety charge that is due from the tenant to the landlord is not due before the landlord gives the notice to the tenant.

The clause amends the Landlord and Tenant Act 1987 by placing a requirement on landlords to include relevant building safety information when giving a tenant a written demand for payment. If the relevant building safety information is not provided with the written demand, any amount demanded, other than in respect of rent, will not be treated as due until such time as the information is provided. The clause specifies that the relevant building safety information will include information about the higher-risk status of the building, and the name and contact details of each person responsible for building safety in their buildings, including details of the Building Safety Regulator. It also makes an exception to those requirements where a court or tribunal-appointed receiver or manager is in place.

Finally, clause 121 allows the Secretary of State to prescribe additional information that must be included in the notice or the written demand. These are key provisions to ensure that tenants have access to vital building safety information about their building—an important principle of our new reforms, which give residents a more transparent understanding of their building's safety information.

Question put and agreed to.

Clause 121 accordingly ordered to stand part of the Bill.

Clause 122

Amendments to the Commonhold and Leasehold Reform Act 2002

Eddie Hughes: In July 2020 the Law Commission published a report on reinvigorating commonhold, and it has made recommendations to make the tenure a workable alternative to leasehold tenure. In partnership with industry and leaseholders, the Government have also established a new commonhold council, which will prepare homeowners and the market for the widespread take-up of commonhold. Although there are no existing commonhold tenure buildings that fall into the scope of the new building safety regime, it is necessary that we ensure that our new building safety regime applies to new, higher-risk commonhold buildings, as they may be developed in the future.

Clause 122 amends the Commonhold and Leasehold Reform Act 2002 to ensure that building safety management is adequately considered in higher-risk commonhold buildings. As per clause 69, the commonhold association will be the accountable person and will be subject to the fire and structural safety building regime. Clause 122 makes it mandatory for a commonhold association to include in its commonhold community statement provision to ensure compliance with its duties under part 4 of the Bill. It also makes amendments to the Commonhold and Leasehold Reform Act 2002 to ensure that the directors of the commonhold association make an annual estimate of the income required to meet the building safety expenses. That must be detailed in the commonhold community statement of a higher-risk commonhold building.

[Eddie Hughes]

The clause also ensures that each commonhold unit holder makes payments in relation to building safety expenses to meet the building safety expenses income requirement. The amendments made by the clause are necessary to ensure that the commonhold legislation aligns with the Bill's requirements.

11.45 am

Mike Amesbury: I want to address a couple of points, for clarity. I thank the Minister for the explanation. Her Majesty's official Opposition support commonholds and have argued for them for a long time. I am pleased to see the emerging consensus as we listen to stakeholders, whether the Leasehold Knowledge Partnership, the national leaseholder campaign or others in the housing sector. I have one question in relation to the Minister's opening narrative. In commonhold, are building safety expenses on top of the building safety service charge?

Eddie Hughes: I completely understand. No, that is not separate; it is one of the items that would typically be covered by the building safety charge in other buildings. Exactly the same principle applies.

Question put and agreed to.

Clause 122 accordingly ordered to stand part of the Bill.

Clause 123

Interpretation of part 4

Question proposed, That the clause stand part of the Bill.

Eddie Hughes: The clause contains key definitions used in part 4 of the Bill. It also clarifies the fact that the requirements in part 4 do not apply to the Palace of Westminster. For example, the clause refers to clause 59, citing that we have defined a "building safety risk" as "a risk to the safety of people in or about a building" due to "the spread of fire" or "structural failure". We see those definitions as appropriate and considered, and they are an important addition to aid the understanding of the various clauses that refer to those terms. The clause provides for a specific place in part 4 that can act as a helpful index of the defined terms used in said part.

Ruth Cadbury: I am intrigued to know why the Palace of Westminster is included. I do not believe it comes under a definition of a residential building, because I thought only one household lives here. We also know that it is a historic building that is a fire risk and has lots of risks, but it cannot be unique in that, either. Why is it in particular drawn out in the Bill?

Eddie Hughes: On the question of one person officially residing here, it may be that two people end up officially residing here at some point due to historical reasons, so it was worth taking it out, just in case that situation could fluctuate. With regard to other elements of the building's safety, other legislation applies and ensures safety.

Ruth Cadbury: I realise that the other person who once resided here was Emily Davison, who resided one night in the broom cupboard downstairs. I wonder whether that is the second resident to whom the Minister refers.

Eddie Hughes: I am embarrassed to say that historically I am not completely clear about that.

The Chair: Order. I would appreciate it if Members intervened while the Minister is on his feet. Otherwise, if we are not careful, we will end up with some sort of badminton.

Question put and agreed to.

Clause 123 accordingly ordered to stand part of the Bill.

Clause 58 ordered to stand part of the Bill.

Clause 124

Service charges in respect of remediation works

Question proposed, That the clause stand part of the Bill.

The Minister of State, Department for Levelling Up, Housing and Communities (Christopher Pincher): I welcome you back to the Chair, Mr Dowd. On the point raised by the hon. Member for Brentford and Isleworth about the late Emily Davison, if she is still resident here, she has rather a lot of back council tax to pay because she has been here for 108 years.

The Government are committed to ensuring that landlords exhaust all other avenues of cost recovery before billing leaseholders, and this clause puts that commitment in statute. It places a new legislative requirement on landlords to take reasonable steps to pursue other cost recovery avenues before passing on the cost of remediation works to leaseholders. We know that some building owners are not fully exploring all the cost recovery avenues and are passing costs on to leaseholders as a default. Many are, but too many are not. The clause will help to bring those unfair practices to an end.

The clause will enable the Secretary of State to prescribe the reasonable steps that the landlord must take, and how that landlord can demonstrate to leaseholders that they have taken them. Landlords will need to comply with guidance issued by the Secretary of State, which will provide clarity on the reasonable steps that the landlord must take. The guidance should act as an important resource for all leaseholders and landlords alike, providing clarity and transparency for landlords, and assurances for leaseholders that the requirements have been met.

The clause also requires landlords to provide leaseholders with details of the steps that they are taking and their reasons for their course of action. The Government will be able to prescribe in regulations the information that must be provided to leaseholders. That will mean that leaseholders have sufficient understanding of decisions taken about their building and why any remediation costs have been passed on to them. Landlords will be required to have regard to observations made by leaseholders or a recognised tenants association.

Selaine Saxby (North Devon) (Con): Could the Minister clarify whether the provisions on special measures will apply solely to leasehold blocks, or whether they will apply to rented commonhold blocks as well?

Christopher Pincher: They will apply to all appropriate buildings—my hon. Friend can take it as read that it is a wide definition.

The clause contains a power to define the scope of works that can be classified as remediation works for the purposes of this clause. That will ensure that the Government have sufficient flexibility to make sure that works defined as remediation works are those that are essential for ensuring that buildings are safe. We will define remediation works and relevant buildings in secondary legislation, and that will create scope to amend the regulations at pace, so that they remain relevant and respond to changes in our analysis of risk over time.

The clause is vital to ensuring that all possible avenues for funding remedial works are explored by the landlord and evidenced to the leaseholder before any remediation costs are sought from them. Leaseholders should not have to pay for works when there are other routes for funding. I commend the clause to the Committee.

Rachel Hopkins (Luton South) (Lab): The Minister raises a pertinent point for many leaseholders in my constituency relating to cases in which builders, companies or developers have folded since they built a building. Those companies may have been originally responsible for remediation costs. I seek reassurance from the Minister that the need in the guidance and any regulations to explore every avenue will cover subsequent builders who took on folded companies or the relevant buildings. Just because the landlord cannot find the original company, or the company no longer exists and so that avenue does not exist, that is not an excuse for bundling the costs on to leaseholders. Those concerns have been raised with me and we need reassurance. I hope we will get that in any regulations and guidance.

Mike Amesbury: I thank the Minister, and my hon. Friend the Member for Luton South for her contribution.

In principle, the clause seems to be a step forward, but in reality, it will hardwire into the Bill the injustice that thousands—indeed, millions—of people are familiar with: they are trapped in their properties, and the Bill will ensure that historical remediation falls on the shoulders of leaseholders. The Ministers and the Department have been in a difficult position because it looks as though the Treasury's door has been closed to any further financial progress.

Ian Byrne (Liverpool, West Derby) (Lab):Let me read out something to put in context what my hon. Friend says about hardwiring and what the clause does. Darren Matthews says:

"I am ruined. Shared owner (50% for £63,000) and in May was billed £101,500 for remedial works. Block 13.5m tall so doesn't qualify for BSF but possibly new loan scheme that'll take 161 years to repay. Madness!"

That is a perfect example of what we are talking about. The clause hardwires unfairness into the Bill. As my hon. Friend the Member for Luton South has just mentioned, many leaseholders will be in the same position as Mr Matthews. How can that be fair?

Mike Amesbury: I thank my hon. Friend for his powerful and insightful intervention. He mentions the case study of somebody who is trapped in this nightmare, which the Ministers and the Department are very familiar with. I will give the Minister another example from social media; it is 47 minutes old. Lucy Brown is a leaseholder trapped in this nightmare that we are, hopefully, collectively trying to resolve. She wrote:

"15 months in the BSF"—

that is, the building safety fund—

"application process. Our managing agent/FH"—

that is, the freeholder—

"won't agree to the BSF terms (likely those requiring the FH guarantee the works be done to an acceptable standard). The joys of the leasehold system—you own nothing, you control nothing + you pay everything."

How will the clause solve the problem when that particular landlord—the freeholder in this case—has already decided that they have exhausted the process? The levy is thousands and thousands of pounds, and people are going bankrupt in the current climate. How will this move things forward?

Christopher Pincher: I am grateful for the questions that the hon. Gentleman and the hon. Member for Luton South asked. I will try to address them in toto.

The Government have already committed a significant amount of public money to the remediation of unsafe tall buildings—£5.1 billion—and I am sure we will discuss these matters further when we come to the new clauses tabled by various members of the Committee, so there will be several opportunities to come back to this point.

12 noon

In the clause, we are attempting to change the Landlord and Tenant Act 1985 to allow leaseholders, under regulations, to ask their landlord to demonstrate that they have taken all reasonable steps to find means of paying for mediation before asking the leaseholders for the money. "Reasonable steps" could be: going back to the original builder; checking warranties; or—in the instance that the hon. Member for Weaver Vale raised—asking for grant funding through the various mechanisms that have been made available. If the landlord cannot reasonably show that they have done those things, the leaseholders can seek redress. It will be for the first-tier tribunal to determine whether those reasonable steps have been taken. There is plenty of case law to that effect. As we develop the regulations through secondary legislation, we will have a mind to exactly how those terms are defined.

Shaun Bailey (West Bromwich West) (Con): Will statutory guidance be issued to landlords on what constitutes "reasonable steps"? If not, what engagement work will the Department do to ensure that landlords properly understand their regulatory duties under the clause?

Christopher Pincher: Yes, we will produce statutory guidance, and will consult on it. We will certainly make sure that we consult not only landlords but leaseholders on the guidance, so that leaseholders have input on what constitutes "reasonable steps". I appreciate that not all leaseholders are legally savvy, so we will make that guidance as plain as possible, to allow them as much power as possible to seek redress when they need to.

Daisy Cooper (St Albans) (LD): Will the Minister give way?

Christopher Pincher: I will, and then I will make some progress.

Daisy Cooper: Does the Minister recognise that throughout the Bill, leaseholders are not only being left to pick up the tab for these enormous costs, but are having to become lawyers to navigate complex statutory instruments that have not even been published, so that they can get their head around what "reasonable steps" might be? Once that guidance is published—it has not been published yet—there will be reams and reams of litigation, which can drag and drag, because there may well be a disagreement about what constitutes reasonable steps. Does he honestly think it is fair that leaseholders, who are entirely innocent and have done everything absolutely right, are being left to pick up the tab, and are having to become lawyers in order to understand the guidance and the clause?

Christopher Pincher: I am obliged to the hon. Lady for that point; I understand it, and the passion that she brings to the issue. We need to get this right, and to make the process as transparent and digestible as possible. She refers to reams and reams of litigation; if we get the guidance right by consulting the right people, including leaseholders and their groups, we can make it as simple, clear and effective as possible. As for applying to the first-tier tribunal, there is plenty of case law already, and the tribunal has experience of working expeditiously; we will try to make sure that that continues.

I am grateful to Committee members for their questions. Clause 124 is key to making certain that the landlord explores and evidences to the leaseholder—that is very important—all possible avenues for funding remedial works before any remediation costs are sought from the leaseholder. I commend the clause to the Committee.

Question put and agreed to.

Clause 124 accordingly ordered to stand part of the Bill.

The Chair: Before we come to clause 125, for the smooth running of the sitting, may I exhort Members to intervene when the Minister, shadow spokesperson or whoever is speaking is still on their feet? Secondly, may I also exhort Members to be clear if they want to intervene, especially if they are sitting behind the person they want to intervene on? It is the person speaking who decides whether to allow the intervention, not me. Thirdly, when Members intervene, can they keep it as short and sharp as possible? Otherwise, they should make a more substantive intervention in due course. I hope that is clear. Thank you.

Clause 125

DUTIES RELATING TO WORK TO DWELLINGS ETC

Question proposed, That the clause stand part of the Bill.

Christopher Pincher: To aid Committee members in making interventions, I will try to sit down slowly, so that I am standing for as long as possible. In conjunction with clause 126, which is to come shortly, clause 125 makes changes to the operation of the Defective Premises Act 1972. That Act creates a right to bring a claim for compensation where a dwelling is not "fit for habituation" on completion of that dwelling. The Act currently applies only in relation to the provision of a dwelling, mainly when a property was built defectively in the first place. It does not apply to work done to a dwelling beyond its initial completion—not even to major or complex refurbishment works, such as the cladding of a block, which is what Grenfell Tower underwent. The clause seeks to remedy that.

The clause expands the Defective Premises Act by inserting proposed new section 2A into it. The new section will create a duty to ensure that any work done to a dwelling does not render that dwelling unfit for habitation. It will cover subsequent works done to the building after construction. The clause applies where a person takes on work in relation to any part of a relevant building in the course of a business. That means that it does not apply, for example, to homeowners doing work on their own properties. As in the case of the 1972 Act, the person to whom the duty is owed—the person who has the right to bring a claim—is the person for whom the work is done and any person who holds or subsequently acquires a legal or equitable interest in a dwelling in the building. That includes the freeholder of a block of flats as well as leaseholders.

The "fit for habitation" test is the same test used in the 1972 Act. Subcontractors also owe the same duty for the work that they take on. The clause applies to any relevant building defined as a building consisting of or containing one or more dwellings. The new provision will apply to work completed after the clause comes into force. Clause 126 will provide for a 15-year limitation period in relation to this clause.

Ian Byrne: On the ability of a leaseholder to bring a civil claim against a contractor, there is a real fear about the ability of David to challenge Goliath. In our discussions on the Bill, we have talked a lot about cultural change and historical problems and what is required. I am listening to what the Minister says, but once again my great fear is that unless the provisions can be outlined in terms, how can David challenge Goliath? Will leaseholders get legal aid to challenge contractors? Will there be a level playing field for people who want to bring civil cases against contractors? Historically, as Opposition Members have outlined, many people have been dragged into the realms of the law, and have basically had to devote their life to challenging unfair decisions.

Christopher Pincher: I am grateful to the hon. Gentleman for his question. Legal aid is not available in these cases, but there are various remedies people can take, either individually or collectively. It is not necessarily the case that the leaseholder would be bringing the claim. It could be the landlord or freeholder. With clause 125, we want to define a very strict provision. That means that the appellant does not have to demonstrate that fault or negligence has taken place. All they have to demonstrate is that the building is not fit for habitation under the terms of the 1972 Act, and the case law already develops that. Adding new section 2A into the Act strengthens the provision. We consider clause 125 to be an important additional safeguard for homeowners against shoddy work done to their dwellings.

Ruth Cadbury: Will the Minister clarify the term "fit for habitation"? Does it mean fit for habitation only with a waking watch? I am trying to get to the bottom of the difference between "fit for habitation" and a building at risk in the more general sense. I have mentioned the example of the Paragon many times. Two years after

the flammable cladding was removed, all residents—students and shared owners—had to leave with a week's notice. Clearly, the risk assessment is that it is not fit for habitation. We all have examples of blocks where waking watch is put in or cladding works are planned. Where is the cut-off?

Christopher Pincher: I am obliged to the hon. Lady. It gives me the opportunity to remind the Committee that, by altering the 1972 Act, we are not simply specifying these changes to taller buildings. It applies to all premises. That is one of the reasons why a whole range of people might use this legislation. To be clear, it is for a court to decide the facts of a specific case—whether a dwelling is fit for habitation. The existing case law, which may be built up and amplified in future, suggests that, in order for a dwelling to be fit for habitation, it must be capable of occupation for a reasonable time without risk to the health or safety of the occupants and without undue inconvenience or discomfort to the occupants. That is the case law definition that the court would understand. Should an appellant bring action against a developer or provider of a building that is defective, that is the definition the court will look at to see whether they have a case. With that, I commend the clause to the Committee.

Mike Amesbury: I thank the Minister and all those who have intervened. Clause 125 is welcome on this side, but it does not go far enough. We welcome the extension to refurbished properties, which we have debated at considerable length with regard to permitted development and additional floors. I know that the Minister will clarify whether the clause captures that scenario in the new building safety regime.

The Minister referred to case law. Others have referred to the nightmare of litigation and the costs in a David and Goliath process. How many claims have been made under the existing regime? The Minister referred to the existing case law, so I am assuming that the Department has made an assessment.

12.15 pm

We heard evidence from Justin Bates and Giles Peaker. They suggested that the chances of litigation were minimal. They have considerable expertise in this field on a national and probably an international level. There are learned lawyers on the Government side of the Committee. I am sure that, with their learned experience, they will have something to say on taking litigation forward under this clause.

Christopher Pincher: I am grateful to the hon. Gentleman for his support for the clause. He asks two questions. The first is on the volume of case law that has been built up. I will have to write to him or inform him at a later point about the specific number of cases. I remind him that the Defective Premises Act 1972 was passed some 49 years ago—many members of the Committee were not born when that Act was passed. The case law is presumably quite voluminous and therefore the courts will be well able to assess any new cases in the light of that established case law of 49 years.

The hon. Gentleman mentioned the evidence given eloquently by Justin Bates—I think that was his name; I apologise if I have got that wrong.

Mike Amesbury: Yes, Justin Bates and Giles Peaker.

Christopher Pincher: Yes. He gave us some eloquent testimony in one of the Committee's witness sessions. The reason why our court processes work so very well and why there are court actions—sometimes rather voluminous actions such as there may have been under the 1972 Act—is that there is always more than one view. There will be another lawyer countering the arguments made by someone such as Mr Bates, who will say that there are in fact very good chances for an individual to seek redress using this mechanism. I invite those who wish to use the new powers we are giving them to so do, to test the courts and test Mr Bates. I commend the clause to the Committee.

Question put and agreed to.

Clause 125 accordingly ordered to stand part of the Bill.

Clause 126

LIMITATION PERIODS

Mike Amesbury: I beg to move amendment 14, in clause 126, page 133, line 1, leave out "15 years" and insert "30 years".

This amendment changes the period for claims under the Defective Premises Act 1972 and the Building Act 1984 to 30 years.

The Chair: With this it will be convenient to discuss clause stand part.

Mike Amesbury: The former Secretary of State, the right hon. Member for Newark (Robert Jenrick), admitted that most cladded buildings were built in the period between 2000 and 2017. Given that the Bill is likely to become law only in July 2022 or later, the limitation period is likely to capture only buildings completed up to and around July 2007, assuming that the Bill keeps making pace as quickly as it has. By the Government's own admittance, then, extending the period for claims under the Defective Premises Act by only 15 years would miss a significant number of buildings, which is why our amendment proposes a change to 30 years. That is based on evidence, which I know other Members will bring to the debate today.

It is important that we do not mistake this change to the Defective Premises Act as giving more than some relief to a small number of leaseholders and residents in the current building safety crisis. Many of their building owners have become insolvent, as Ministers know. As has been mentioned, many leaseholders will simply not be able to tie themselves up in lengthy legal battles with wealthy developers. The Government must fund remediation up front. That does not require a Bill—it is a political decision. The polluter pays principle should be used to recoup the costs. That is the only way to address this.

Our time is certainly not wasted in this Committee Room. Over the last few weeks we have discussed some really good, solid, life-changing proposals and clauses, but the Bill does not address the fundamental principle of polluter pays. The amendment would certainly strengthen the clause. We might not believe it, but sometimes people listen to our debates, read *Hansard* and go through it line by line, so it is important that collectively we show this place at its best, give life to people's voices and pass the amendment.

Ruth Cadbury: It is a pleasure to serve under you again, Mr Dowd. I reinforce what my hon. Friend the Member for Weaver Vale has said about the number of

[Ruth Cadbury]

dwellings that will fall outside the 15-year catch. Obviously, we welcome its being extended from six to 15 years, but a case from my constituency illustrates why 30 years would be more appropriate.

I have had the honour and pleasure to represent Brentford for over 30 years, and a lot of new homes have been developed during that time. My office is keeping tabs on construction issues with blocks of flats, including those in Brentford ward. I can tell which blocks have required no casework during all my years of representation—it is those that were built more than 30 years ago under a regime of good quality construction and in a culture of safety. Those constructed after that were built at a time when standards were starting to fall. The culture of competition and the privatisation of building control meant that there was price competition and a reduction in inspections. There was the demise of the role of the clerk of works, corners were cut, and there was a skills shortage in the construction industry. Taken together, as we have said many times, that created this crisis. My casework shows that well over 25 separate estates in my constituency that were built in the last 20 years—since around 2000—have issues with cladding, lack of compartmentalisation, and shoddy workmanship.

I also picked up casework on damp and safety as a councillor. I will give two examples Even before Grenfell, leaseholders at Holland Gardens, which was built by Barratt, had forced Barratt to replace all the window fixings because they had not been done properly. It was subsequently found that the building had flammable cladding, so scaffolding was put up again. I have already mentioned the Paragon, which was built in about 2003. We do not know what its future is, but it is empty because it is too dangerous to occupy. I absolutely endorse the amendment's aim of extending the timescale from 15 to 30 years. There is so much evidence. I can see it on my own patch, but we all have evidence.

Rachel Hopkins: It is a pleasure to speak under your chairship again, Mr Dowd. I want to add my voice in support of the amendment tabled by my hon. Friend the Member for Weaver Vale and of the points raised by my hon. Friend the Member for Brentford and Isleworth. I have similarly seen many developments go up in my home town of Luton, where I live. I am speaking for the leaseholders of Point Red, who have been in touch with me. Point Red was redeveloped in the mid-2000s, and it is touch and go whether the leaseholders would have any recourse under the current 15-year rule, so it is absolutely right that I stand up and support this amendment.

The metaphor of David and Goliath comes to mind. If the Government are committed to supporting leaseholders who, through no fault of their own, have found themselves in very difficult situations with regard to their homes, the period of time that we are talking about should be longer. That could have a life-changing effect on people working in our communities—we are talking about social workers and teachers—who may be made bankrupt, and who may therefore lose their professional accreditation and no longer be able to work. As one small step among many that we are trying to take, the Government's acceptance of this amendment would be life-affirming for so many of our leaseholders. I urge the Government to consider it carefully and adopt the 30-year period.

The Chair: I call Mike Amesbury.

Christopher Pincher *rose—*

The Chair: I apologise. I call the Minister.

Christopher Pincher: I am grateful to the hon. Members for Weaver Vale, for Brentford and Isleworth and for Luton South for the points that they have raised, and I appreciate that this is an important matter. We are mindful of the challenges faced by leaseholders who are specifically affected by the consequences of the Grenfell tragedy, and I hope that when I have spoken, the hon. Member for Weaver Vale will feel able to withdraw the amendment.

The Defective Premises Act 1972 applies not simply to the tall buildings that we are addressing primarily through the Building Safety Bill, but to all buildings. This clause extends the limitation period of the 1972 Act, and under section 38 of the Building Act 1984, from six to 15 years. That is a highly unusual retrospective change, which we believe will provide a legal route to redress that previously would not have been possible for hundreds of buildings, benefiting thousands of leaseholders.

Limitation periods serve several important purposes. They give legal and financial security and certainty; they protect defendants from stale claims, which may be difficult to counter—that is important, too, and we must remember that we are talking about all buildings covered by the Defective Premises Act—and they prevent injustice that may arise from the courts being required to decide on past events on the basis of evidence that may have become unreliable because of the passage of time.

Various limitation periods are set in the Limitation Act 1980 for different types of civil claim, of which this would be one. They range from 12 months for defamation or late payment of insurance claims, to six years for claims relating to some types of contracts, and to 15 years for cases involving negligence. That is where this type of case sits.

Shaun Bailey: My right hon. Friend will also be aware that it is possible, in the course of litigation, to make an application for those periods to be disregarded in the event that it can be proven to the tribunal that there are circumstances that make it possible to do so. Notwithstanding the conversations that we have had in Committee on the cost of litigation, does he agree that there are avenues by which that limitation period can, in extreme circumstances, be extended?

Christopher Pincher: I believe that my hon. Friend is correct in terms of the Limitation Act 1980, rather than the Building Safety Bill.

12.30 pm

We cannot go back indefinitely, and a proportionate longstop needs to be arrived at. It is clear, I think, to the Committee and the House that the present six-year limitation period is too short. The 15-year limitation

period that we are proposing brings the Defective Premises Act in line with other types of serious civil claim. Of course, were we to choose to go further, we would have to consider what the effect might be on actions brought in relation to the 1980 Act. Any choice of limitation period could be viewed to some extent as arbitrary. There will always be somebody who falls either side of the line. And when we consider a retrospective change, that is even more the case. However, we are clear that hundreds of buildings will be able to benefit from the extension to 15 years. Therefore, and having listened carefully to the hon. Member for Weaver Vale and other members of the Committee, I consider that a 15-year limitation period is appropriate.

To speak specifically to clause 126, it means that claims will be able to be brought for buildings completed up to 15 years prior to commencement of this clause. There has been some criticism—or some other criticism—of the clause, on the basis that individual leaseholders would have neither the expertise nor the funds to bring actions against large developers. We have said that building owners are responsible for ensuring that their buildings are safe, and as we have set out in clause 124, which we have discussed and agreed, they must meet the costs of remediation without passing them on to leaseholders, wherever possible—for example, by recovering costs from applicable warranty schemes, or from the developers or contractors who were responsible for the building and the defects in the first place. Making a claim under the Defective Premises Act will be one of the measures that we would expect building owners to explore. This clause and the previous one expand their opportunity for taking such action, and thereby amplify the culture that we are trying to inculcate across the sector.

Clause 126(1) makes the substantive change to the limitation periods by inserting new section 4B into the Limitation Act 1980. As a result, where a claim is brought under either section 1 or new section 2A of the Defective Premises Act, which we discussed under clause 125, the time limit to bring proceedings is extended from six to 15 years. The same extended limitation period will also apply to actions brought under section 38 of the Building Act 1984.

It might assist the Committee if I explain briefly how the various types of action differ. Section 1 of the Defective Premises Act allows an action for damages to be brought where a dwelling is unfit for habitation as a result of the way it was constructed or converted into a dwelling in the first place. Section 2A, which we have just discussed, allows action to be brought where a dwelling is unfit as a result of other work done to it. That is an addition to the existing Act. Finally, section 38 of the Building Act, which we will bring into force alongside the Defective Premises Act changes, allows an action to be brought for damages where a breach of building regulations in respect of any building, not just domestic premises, has caused damage. That "damage" is a human term rather than damage to a building, so, for example, poor ventilation or a crack in the wall that caused damage to a lung would be a reason for utilising that particular provision in the Act.

Clause 126(2) is technical and reflects changes to limitation provisions since the 1972 Act was passed. Subsections(5) and (6) provide protection for the legal rights of those against whom legal action may be brought under the retrospectively extended limitation period. In very limited circumstances—this is another reason why the hon. Member for Weaver Vale might consider withdrawing his amendment—there is the potential for the defendant's convention rights, human rights, to be breached by the retrospective extension of a limitation period. I suggest that the longer that period is, the more appetite there might be for a defendant in a case to bring forward action under human rights legislation. We have therefore included subsections (5) and (6), which are important safeguards to ensure that our changes to the Defective Premises Act do not conflict with human rights legislation. That does not mean to say that people may or may not choose to bring court action under human rights legislation.

Mike Amesbury: On counter-litigation under the Human Rights Act, will the Minister elaborate on that scenario and the right to private property?

Christopher Pincher: I am not a lawyer and I cannot second-guess why an individual might choose to go to court using one particular Act of Parliament to defend themselves against another. However, we know that the Human Rights Act is cross-cutting. In any legislation that we scrutinise, we see reference to the Human Rights Act in its annexes. All I suggest to the Committee is that the longer the retrospective limitation period, the greater the chance that individuals may choose to go to court and test the legislation under the Human Rights Act.

Finally, I draw the Committee's attention to subsection (3), which provides that the clause will be commenced automatically two months after Royal Assent. That will be the date from which the extended limitation period is calculated, including the retrospective period for action under section 1 of the Defective Premises Act. With that, I commend the clause to the Committee.

The Chair: I apologise, Minister, for my inappropriate limitation on your intervention. As a pre-'69 person, my levels of concentration are not what they should be, I suspect.

Mike Amesbury: I suspect that we will probably come back to this subject on Report, perhaps in a different form of amendment. I thank the Minister for his detailed and considered response. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 126 ordered to stand part of the Bill.

Clause 127

ESTABLISHMENT OF THE NEW HOMES OMBUDSMAN SCHEME

Question proposed, That the clause stand part of the Bill.

The Chair: With this it will be convenient to discuss the following:

Clause 128 stand part.

That schedule 8 be the Eighth schedule to the Bill.

Clause 129 stand part.

Eddie Hughes: This is an exciting day for me. I hope that the Committee will indulge me briefly while I refer back to my time as the chair of the all-party parliamentary group on excellence in the built environment. Our report seeking better redress for homebuyers came just a year after I became an MP, working with the Government and hoping to enjoin them to create a new homes ombudsman—so, an exciting day.

The Government are committed to improving redress for new build homebuyers and improving the quality of new build homes. The clause places a duty on the Secretary of State to ensure that a new homes ombudsman is—finally, I might say—established in England. The clause should be read alongside clause 128, which sets out the conditions that must be met for the new homes ombudsman scheme.

There is no existing provision in legislation for purchasers of new build homes to complain to an ombudsman or redress scheme. The new homes ombudsman is intended to provide clearer and more comprehensive means of redress when problems arise. It will provide a place for new build homebuyers to go with complaints, and it will be able to undertake objective determinations based on its investigations. By creating a trusted independent redress system that is easily accessible, we can drive up performance and create a better housing market.

Brendan Clarke-Smith (Bassetlaw) (Con): I thank the Minister for giving way, and may I say what a pleasure it is to serve under your chairmanship, Mr Dowd? Have the Government considered extending the new homes ombudsman provisions to Scotland, Wales and Northern Ireland?

Eddie Hughes: Regardless of where in the UK people live, it is important that they have access to the redress that we have set out in the Bill. Discussions are ongoing with the devolved nations, because housing is a devolved matter and so it is for them to determine. Those negotiations seem to be going well, and the feeling seems to be warm, so we may have to return to the matter at a later stage of proceedings on the Bill.

The arrangements are flexible to ensure that the best provider can establish and maintain the service. The scheme will be free for homebuyers and is intended to be funded by fees that are paid by the scheme's members. However, should it be necessary, the clause provides the power to give financial assistance to a person for the establishment and maintenance of the scheme.

Shaun Bailey: Will my hon. Friend confirm that the provisions will allow the new ombudsman scheme to work effectively with other ombudsmen and redress schemes to maximise its impact for affected residents?

Eddie Hughes: Schedule 8 allows the scheme to include provision about a person exercising functions under the new homes ombudsman scheme, and it allows them to do so jointly with persons exercising functions from other redress schemes. It is important that we make it possible to work collaboratively. That may include the making of joint determinations by the new homes ombudsman and an independent person making determinations under another redress scheme. We are considering whether amendments may be required further to facilitate joint determinations and other forms of co-operation between the new homes ombudsman and other ombudsmen or redress schemes. I thank my hon. Friend for that helpful intervention, and it is something we are considering.

Clause 128 relates to the conditions that the new homes ombudsman scheme must meet under clause 127, and it sets out who can make a complaint to the scheme. The clause requires the scheme to be open to all developers to join as members so that qualifying complainants can escalate complaints about the scheme's members. A qualifying complainant is a person who, at the time of the complaint, is a relevant owner of a new build home in England. The scheme is given the flexibility to set out other persons who can complain about the scheme's members.

Schedule 8 details the other provisions that the scheme must or may include. This includes provision on which matters may be complained about; how complaints are to be made, investigated, determined and enforced; and complaints about the scheme itself. The scheme must also contain certain provisions required by schedule 8, such as the procedure for developers to become and remain members of the scheme.

To avoid duplication, the scheme may provide that the ombudsman will not be required to investigate and determine complaints that are dealt with under another redress scheme, or complaints that are subject to legal proceedings. The scheme may make provision about working with another redress scheme.

The scheme will require developers to provide complainants with redress if a complaint is well founded. This includes the ombudsman requiring the scheme members to provide compensation, make an apology, provide an explanation or take such other action in the interests of the complainant as the new homes ombudsman may specify. The scheme may also include provision about how the ombudsman's determination will be enforced. This may include provision for the ombudsman to request a member to take action and, where a developer does not meet its requirements, the scheme may as a last resort include the expulsion of a member from the scheme. In such cases, provision must be made for how they can then rejoin the scheme.

12.45 pm

Ian Byrne: I thank the Minister for giving way, and it is an honour to serve under your chairmanship, Mr Dowd. The independence of the scheme is critical and the Minister has not really outlined the make-up of the ombudsman, and how people will be able to have confidence in it. I will keep going back to the culture change point because if the ombudsman is seen as reputable and upstanding, people will have confidence in it. Culture change can then derive from the ombudsman. I welcome the scheme, but I would like a bit more clarity on who will sit on the ombudsman. The explanatory notes say that the scheme could also select a third party to be established to run it, so may we have some clarity on that point, too?

Eddie Hughes: I thank the hon. Gentleman for his intervention. I completely agree with the premise of his point, which is that that independence needs to be present in such a way that those making complaints can have confidence in it. The scheme could be set up in a number of ways. For example, it would be possible for it

to be done in-house so that the Government have tighter control of it, or it could be done by another party. With the New Homes Quality Board, a shadow version is being constituted at the moment. We will be able to see further details on that, but there is no presumption that the shadow board would become the final board once the Bill is passed into law. We will be able to get some indication of how the scheme will work by looking at the workings of the shadow board, and details are available for that, but as I say it will be for the Secretary of State to determine in what form it continues to ensure that there is the confidence that the hon. Gentleman so rightly says is important.

Ruth Cadbury: May I ask the Minister a question on another aspect of the scheme? It is a voluntary scheme, so I believe that for the developers it is voluntary whether they join or not. Can he clarify that point, and if that is correct, what is the redress for leaseholders and other affected parties in blocks developed by developers that are not voluntary members of the scheme?

Eddie Hughes: I apologise if there was any ambiguity in the point that I was making. Housebuilders will have to be a member of the scheme, so if they do not comply with the scheme requirements and are therefore rejected from it, that will effectively prevent them from developing in the future, and that is why we are making provision for them to rejoin subsequently.

Ruth Cadbury: May I get absolute clarification? Is the default that all developers of defined blocks are members of the ombudsman scheme, unless they are excluded? Is that correct?

Eddie Hughes: That is correct.

Ruth Cadbury: Thank you.

Eddie Hughes: The purpose of the ombudsman is not only to resolve complaints but to drive up standards of quality. Therefore, the scheme must include provision for the making of recommendations by the ombudsman to improve widespread or regular unacceptable standards of conduct or quality of work by the scheme's members. Additionally, the scheme must include provision about the provision of information to the Secretary of State and reports on the operation of the scheme. The clause sets out a comprehensive framework for an effective ombudsman scheme that will afford homebuyers substantially more protection and redress than they currently receive.

The new homes ombudsman scheme will allow new build homebuyers to complain to the new homes ombudsman about a developer for up to two years following the purchase of a home from a developer. Clause 129 provides definitions which determine who may complain to the new homes ombudsman, and a definition of a developer, who the Government can require to belong to the ombudsman scheme. The definition of developer includes those constructing new homes and converting existing buildings into new homes, so that complaints about developers of converted homes under permitted development rights, or those creating additional homes from larger buildings with the intention to dispose, sell or grant them to someone else, can be required to become scheme members and subject to the scheme's rules under clause 130. I hope that offers the hon. Lady some reassurance. Clause 129 also includes a power to include an additional description of a developer, which could include organisations connected to developers.

Mike Amesbury: I thank the Minister for the explanation, and his enthusiasm for the creation of the new homes ombudsman scheme, which by his admittance he has rightly argued for in principle since before coming to this place as a Member of Parliament. In principle, the new homes ombudsman is a good thing, though some Committee members have raised concerns and advocated for ensuring that it will be truly independent. I think new build homes have an average of 157 snags at the moment. We will all be familiar from our casework, regardless of where we represent in Britain, that this is a big and very live issue. I would hope that the ombudsman will change the landscape.

On the New Homes Quality Board, which is operating as a shadow board at the moment, sits Jennie Daly, a group director of Taylor Wimpey. The board has representatives of housebuilders and the finance sector, and the hon. Member for Dover (Mrs Elphicke) is the independent chair. I can think of examples in my constituency of Taylor Wimpey homes that have considerable snags and are what we call leaky homes. The 19 million leaky homes that are not properly insulated have been constructed with gas boilers, fossil fuels and the rest of it. All of them will need to be retrofitted and a number have snags. In fact, there is one such development that will probably go forward in the Sandymoor and Daresbury part of my constituency, on former farmers' fields, despite all the rhetoric that we hear in this place. I would hope that they will not be leaky homes, full of snags. It is very important that those on the shadow board take things forward in future.

On the reassurance about independence, if someone is part of the club, whether they be Taylor Wimpey or another housebuilder, they are paying for that service. Then the complaint goes from our constituents—our residents—to the ombudsman. I have real concerns about the checks and balances, and the independence. The Minister mentioned that there are various models to take it forward. It could be done in-house or at arm's length as a Government agency. That would certainly by the Opposition's preference, via a principle, to ensure that checks and balances are hardwired into the process. In principle, we welcome the new homes ombudsman, which is very much needed, but we already have concerns about the evolution of the process, if we look at the shadow board.

Eddie Hughes: I thank the hon. Gentleman for bringing some of his casework for us to consider. The hon. Member for Brentford and Isleworth mentioned the demise of the role of the clerk of works. I started life as a civil engineer but then moved into building site management for housing projects. At that time, we would have had a clerk of works whose job it was solely to monitor the progress of the work and ensure that it complied with the relevant standards. With cost-cutting and other things, we no longer have that, but thanks to the clause and the prospect of the new homes ombudsman, the industry has bought into the concept that quality has to rise and that people will be held more accountable in future.

[Eddie Hughes]

On the point that the hon. Member for Weaver Vale made regarding the number of snags in a property, we will all have seen that. A comparison that has been made previously is that someone has more rights if they buy a faulty kettle than if they buy a faulty home that has minor problems that do not qualify under the National House Building Council regulation. They do not have something such as subsidence; they just have niggly problems. The developer has taken the money and perhaps trades are no longer on site, and the buyer wants to see those things addressed.

I genuinely think that we will see the industry taking quality much more seriously than they might have previously, particularly with that line of accountability coming back to Parliament. I understand that the hon. Gentleman may have reservations about members of the shadow board. We need to draw the sector into the programme and get them bought into the idea that we will raise quality. I do not think that this Secretary of State or any future one would want to be associated with a product that was not delivering for the public, so they will ensure that that confidence remains.

Mike Amesbury: One of the roles that the ombudsman will be charged with will be dealing with rogue builders. What would happen if one of the members of the board seemed to be classed as a rogue builder? How would the checks and balances be assured going forward?

Eddie Hughes: Such a complex question may be outwith the coverage of the Bill; however, it would be beholden on the Secretary of State to ensure that the process was managed appropriately. Given that the scheme allows for builders who are not complying with the code to be ejected from the ability to develop, I am sure that the opportunity would be there for us to deal with members of the board appropriately. If we can chuck a builder out of the scheme, I am sure that we can deal with a member of the board.

Question put and agreed to.

Clause 127 accordingly ordered to stand part of the Bill.

Ordered, That further consideration be now adjourned. *—(Scott Mann.)*

12.58 pm

Adjourned till this day at Two o'clock.