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GENERAL COMMITTEES

Public Bill Committee

LEASEHOLD AND FREEHOLD REFORM BILL

Third Sitting

Thursday 18 January 2024

(Morning)

CONTENTS

Examination of witnesses.
Adjourned till this day at Two o'clock.

PBC (Bill 13) 2023 - 2024

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The Committee consisted of the following Members:

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

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

Huw Yardley, Katya Cassidy, *Committee Clerks*

† attended the Committee

Witnesses

Ms Paula Higgins, CEO, HomeOwners Alliance

Bob Smytherman, Chairman, Federation of Private Residents' Associations

Sue Phillips, Founder, Shared Ownership Resources

Professor Andrew Steven, Professor of Property Law, Edinburgh University

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

Paul Broadhead, Head of Mortgage Policy, Building Societies Association

Public Bill Committee

Thursday 18 January 2024

(Morning)

[Clive Efford *in the Chair*]

Leasehold and Freehold Reform Bill

11:30 am

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

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

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

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

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

Examination of Witnesses

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

11.31 am

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sue Phillips: My expertise does not lie so much with right-to-manage claims; what I would reiterate is that they should have the same rights as any other leaseholder.

What is more important—what is specific to shared owners—is that they are liable for 100% of the costs of repair and maintenance, and I think there are two separate issues within that. One is the issue relating to the model. In previous sessions—

Barry Gardiner: Sorry, I couldn't hear what you said there.

Sue Phillips: Sorry. One is to do with the model and one is to do with the transparency around the model. On the model itself, in the previous sessions on Tuesday people talked about the unfairness of generating income streams from leaseholders after the profit made on the sale of the initial share, and I think that the 100% liability for service charges that shared owners have falls within those kinds of questions. It should certainly be looked at to see whether it is proportionate for shared owners to pay 100% of charges. Again, there is a great deal more that I could say, but I am aware of the limits on time.

The second issue is transparency. In evidence submitted to the Levelling Up, Housing and Communities Committee inquiry into shared ownership, one of the themes that has come out of the published responses from shared owners is that people do not seem to be aware at the

point of sale of their liabilities in this respect. Therefore, if we cannot tackle that 100% liability in this Bill, given time constraints, at the very least regulators should pay more attention to the nature of marketing and whether it is fair, transparent and compliant with consumer protection regulations.

You asked me earlier for a quick fix. I certainly have a quick fix around transparency and it is that the relevant regulators should look more closely at transparency about the model as it stands, up until we have meaningful reform of the areas that are problematic.

Q231 Barry Gardiner: In conversation with my colleague, Matt Pennycook, you talked about the lack of statutory lease extension provision. The Law Commission said that shared owners should have the right to extend. Do you consider that that would be a welcome amendment to the Bill?

Sue Phillips: I think it is essential, and this relates to the marketing that I have talked about. Shared owners come into shared ownership believing that they are a leaseholder like any other leaseholder; they have no reason to think differently. Often, there is a caveat emptor attitude and I think that is reprehensible, to be honest, when you are talking about provision of social housing to households that by definition are financially vulnerable compared with people who can afford to buy outright. It is not a failure of their due diligence; it is a failure of the Government, the housing sector and their agencies to spell out the difference between assured tenancy and leasehold.

There is a moral compass argument that they should have the statutory right to lease extension, because of the manner in which they have been sold those short leases. I think there are separate debates to be had about whether 99-year leases were mis-sold. A recent ruling by the Advertising Standards Authority outlined that it is likely to be misleading not to provide material information about the costs of lease extension. That suggests that there certainly is an argument that those short leases have been mis-sold.

We cannot change that. Most of those shared owners will be outside any scope of limitations for redress. The least we can do is ensure that lease extension is available not only to future buyers, but current shared owners, who have been left with a lease that does not actually give this right. Can they afford to take up the right? They should have a right to lease extension, but that right should be made affordable. If you are sitting there with a 50, 60 or 70-year lease, even if you have got that right to statutory lease extension, it might not be affordable to take up that right. So there is a basketful of issues to look at here, and I encourage collaboration with other regulators and with the Levelling Up, Housing and Communities Committee to resolve those other issues.

The Chair: Just one last question, Barry, because I want to get other people in. I might have the time to come back to you if you have more, but—

Barry Gardiner No, I will leave it there.

Q232 Andy Carter: Paula, your organisation, the HomeOwners Alliance, has described the Bill as a huge missed opportunity, because including flats in the changes was not done in this Bill. Would you like to elaborate a bit on that?

Ms Paula Higgins: I feel strongly about that. This is really going to be a missed opportunity. These types of Bills will come once every 20 years, so you must finish the job that you start. We saw that in the Commonhold and Leasehold Reform Act 2002, where we had the commonhold and it did not happen. If we cannot get commonhold sorted, why do we not have all flats being built having to be share of freehold—having to be sold share of freehold within five years—and have a sunset clause saying that there will be no new leasehold flats after a certain time? If you do not do it now, the next opportunity is not going to arise. I feel very strongly. We have lots of people who are waiting. We have people coming to us every day saying, “I am waiting for my lease extension. The Government are going to do something about it.” We have been waiting for years; we put out our report in 2017 showing that 43% of leaseholders did not even know how much time was left on their lease. They are not expected to be experts in this; they are buying a flat to live in. So it is a real missed opportunity if we do not do something on this and it will come back to bite us.

Andy Carter: Bob, is there anything you want to say on that?

Bob Smytherman: I would just completely echo that. For us as an organisation, in 2002 we were really hoping that the Government would ban new leaseholds in the 2002 Act, and the sector would be in a very different place had we done that. This Bill is a really good step, and I hope that we can get it as a first step and then build on it from there. I would hate to think that we try to make it perfect and we end up with something less perfect. From our organisation’s point of view, this is a really good starting point. I think it is the beginning of this, as Paula said, but it is a really good opportunity to get it right. But, yes, 2002 was a bit of a missed opportunity to ban leaseholds for blocks of flats.

Q233 Andy Carter: Can I just stick with you for a second, Bob? I will come back to you in a second, Paula. From your perspective as the chair of the Federation of Private Residents’ Associations, Bob, can you just talk us through the main elements of the Bill that will apply to your organisations?

Bob Smytherman: Thank you for that opportunity. Our organisation is called the Federation of Private Residents’ Associations. To be clear, we are talking about groups of leaseholders who come together democratically within their blocks of flats; we are not talking about neighbourhood watch groups and those sorts of residents associations.

Very different sorts of residents associations come to us for membership. We have those more informal groups that do not meet the 51% threshold to be a recognised tenants association; we have that group of RTAs that are formally recognised by their landlords; and then we have the residents management companies, which are probably the majority of our members. We have RMCs such as mine, which has a tripartite lease, which I am sure Members will understand, where you have an external freeholder and then a landlord who has responsibilities, which enables people such as me in my block to basically act as a commonholder. We are a limited company, limited by share. I am a shareholder in my block. I am elected every year as a director and we

manage our own block. Of course, we also have those RMCs that may have a different arrangement with their freeholder, and that is where the Leasehold Reform (Ground Rent) Act 2022 has been very helpful in coming into law, because there are sections, which we do not need to rehearse today, to deal with a doubling and tripling of ground rents and things like that.

So there are different sorts of residents associations, but I would argue on behalf of all of those, certainly our members across England and Wales, that this Bill is a really good starting point for all of them. I encourage leaseholders to come together in their buildings and take control of their buildings democratically, working with their neighbours.

Q234 Andy Carter: What do you think is missing from the Bill that would benefit your members?

Bob Smytherman: At the moment, I would like to see this over the line, in all honesty. There is the conversation to be had—I think Paula mentioned it—about commonhold, which I think can come later on. But in terms of blocks like mine, where we have those controls already, there is absolutely no advantage to us in banning leasehold, because we have all the controls we need.

As the directors, elected democratically by the shareholders of a limited company, we are the landlords, so we have the ability to manage that estate democratically. We hold an annual general meeting and we comply with the company law, like any company. Hopefully this legislation will encourage more volunteers. I am a volunteer, I don’t get paid for what I do in my block, but I am really passionate about working together with my neighbours to make my estate better. Members of this Committee are very welcome to come to Worthing, down on the south coast, to see how we manage our own block, because I am very passionate about working together to make a real difference for our neighbours and friends where we live.

The Chair: One more question, Andy, and then I am going to move on to get everyone in.

Q235 Andy Carter: Just so I understand, you do not object to leasehold continuing, but what is your view on new leasehold?

Bob Smytherman: I think all new developments should be commonhold. It is a shame we did not do that in 2002, but I think—as Paula said—there is an opportunity to do that now. But I wouldn’t want to throw everything else out at this point to die in a ditch over that, because actually I think there is some really good stuff in the Bill.

The Chair: I am sure I will have time to come back to you, but I just want to get the first batch of questions in.

Q236 Mike Amesbury: Good morning. Paula, you also said that ground rents have not been tackled by this Bill; could you elaborate? What changes would you like to see?

Ms Paula Higgins: I think that was a statement put out at the time of the King’s Speech, when it was not clear. It sounded like the Government were going to consult on the ground rents, which is what they are doing now; it closed yesterday and we welcome that. I think at that time I was concerned that the King’s Speech said the Government were going to consult on how to limit ground rents. At the moment, there is no justification to have a ground rent payment for nothing; any payments should be as part of the service charge.

I welcome the Bill, and I fully support the ground rent being a peppercorn, if you cannot have the legal challenge. If you cannot have it as a peppercorn, then having it as a set amount makes it clean and clear. What we want is that when people are doing lease extensions, there is a calculator so they do not need to get valuers and have lots of negotiation; there is a lot of cost in that. You want to make it a process that is as simple as possible for people to extend their lease and get rid of their ground rent.

Mike Amesbury: That is great. Bob and Sue, do you have anything to add to that?

Sue Phillips: I just want to flag that one of the distinctions between shared owners and leaseholders is that shared owners cannot eliminate a ground rent via statutory lease extension, and that is a huge problem. My understanding is that there may have previously been an expectation in Homes England guidance—although it was not mandated—that shared owners would not be subject to ground rent. There is massive inconsistency in the shared ownership sector on all kinds of aspects, but it includes the imposition of ground rent, the nature of that ground rent, and whether you encounter it at the point it is staircasing to 100%. Ultimately, the key point is that shared owners do not have that resort to lease extension to eliminate ground rent at present.

Mike Amesbury: Thank you.

The Chair: If anyone has not asked a question and wants to come in, please just indicate. Matt, Barry and Andy want to come back, so I come to you, Matt.

Q237 Matthew Pennycook: Two quick questions while I have got you here—on slightly different subjects. The first relates to the purchasing of a lease initially. In its 2018 consultation on implementing reforms to the leasehold system, the Government committed to requiring freeholders and managing agents to provide leasehold information at the point of sale within a defined time limit and a maximum cost. That is not in the Bill; would you welcome that being incorporated?

My second question is on the service charge provisions—clauses 26 to 30. In principle they might work very well; there is lots of detail to come through regulations. However, are there any specific ways in which you would like to see those service charge clauses tightened?

Ms Paula Higgins: We really welcome standardisation and having standard forms. That is what we, as the HomeOwners Alliance, when we get more than 4 million people coming to our website, can present and say, “These are the questions you can ask.” I really welcome that and having everything aligned so that it is similar. I am sure that we will go on to estate charges and people on freehold estates. Sorry—what was the first question?

Q238 Matthew Pennycook: Just on whether we should require freeholders to have standardised information at the point of purchase.

Ms Paula Higgins: Even though estate agents are supposed to provide basic up-front information, when we did our report on leasehold, half of the estate agents on things we were looking at were not even providing

the information that the property was leasehold or freehold. We know that work is going on, and that estate agents are supposed to provide up-front information—we understand that there is the BASPI form—but the reality is that it is not happening. They are not regulated; they don't know what their obligations are.

This is the other piece, particularly with managing agents, as you mentioned before. We need to have better regulation of managing agents, developers, and of housing associations that are promoting shared ownership, to ensure that they are giving the right up-front information and to ensure that in blocks—as you said you did, Bob—you do the LP form right away. We know that there is lots of delay there. That is one of the reasons why buying and selling leasehold properties takes so much longer. So we really welcomed having that up-front information. That is through the BASPI form, and it is probably through the regulation and management—having regulation of estate agents and managing agents, which is another piece of the pie that I think would be really welcomed in the Bill. I would welcome it if it were put in the Bill.

Q239 Matthew Pennycook: Do you want to say anything on service charges?

Ms Paula Higgins: On service charges, I think it is about being transparent. Some of the provisions in the Bill are about having proper annual accounts, so a lot of it is about trying to get that information. I have not looked at the detail of all the clauses there, but it is about people being able to get that information. That is why you need to have regulation of managing agents—to be able to provide that information properly.

Q240 The Chair: Sue Phillips, I think you wanted to say something.

Sue Phillips: Yes, on information at the point of sale. That is a little bit more complicated for shared owners. They are often directed towards the lease, but the lease is of course silent on the issue of 100% liability for service charges, so there is an issue there. They are often directed towards the key information document. I welcome the changes to the key information document in recent times, but I think they really do not go far enough. I would direct you to a report that I wrote last year about the 2016 to 2021 key information document, which goes into detail on improvements that I think should be made.

It is important to flag up that we need to look at not just content, but understandability in format. I have previously suggested that I think it would be useful to benchmark with other sectors, such as the pensions sector, on the understandability of issues relating to risk as well as benefit, and how to ensure that that content is communicated in a way that people do actually understand.

I will make a final point: a lot of shared ownership marketing presents itself as education about the model, which I think can be problematic, particularly because housing associations and their marketing teams are very up front about the idea that their marketing promotes the benefits. But it is important that people understand the risks and hazards as well as the benefits. So we need to look very closely at exactly where shared owners get their information at the point of sale, and where improvements could be made across all those areas.

Bob Smytherman: I think we would certainly welcome improvements in the conveyancing process. One of the things that our members certainly see is that they can get the information from a very specialist leasehold lawyer, which is obviously really helpful, but as in all sectors there are conveyancers out there where people google "conveyance" and think, "Oh, that is just a standard lease." Of course, we all know that there is no such thing as a standard lease—their contracts are all very different. I know that about four or five years ago the Leasehold Advisory Service did some work around standardisation of information, so anything that we can do to prescribe that would be really helpful.

On the issue of service charges, there is absolutely one word, isn't there—"transparency"? All the disputes that we see around service charges are where managing agents hide things because there is no statutory regulator, or where landlords kick accounts into the long grass because they don't have to produce them. Having a prescribed way to be completely transparent about service charges is really important.

The Chair: We have just over 10 minutes left. I will bring in Richard Fuller and then we will try to get back to Barry and Andy.

Q241 Richard Fuller (North East Bedfordshire) (Con): We have been talking a bit about regulation, which is often seen as some sort of answer to problems and frequently is not—or, at least, is different from simplification or standardisation, which each of you have mentioned at different points.

I am interested in your thoughts when it comes to property managers and managing agents, about where you think the interaction is between simplification and regulation, and whether regulation is a matter of regulating the process—"You must provide this set of information by this date"—or of regulating the people—"Thou must have this qualification in order to do *x*"—or whether it is about the process of redress: being able to get some compensation at the end; because we are going to be wrestling with all those things here. They all have a role to play, to a greater or lesser extent. But we run the risk of just vomiting out a whole new set of what we think is going to be the solution. As you said, Ms Higgins, we have a once-in-20-years chance. I said this to Mr Gardiner on the way in—he goes back to 1993 thinking about this, and he is an MP now.

What are your thoughts? Give us some guidance on simplification and standardisation versus regulation, and then regulation of people, regulation of process and the provision of redress.

Bob Smytherman: I would not reinvent the wheel. I don't know whether you have had The Property Institute in yet, and Andrew Bulmer from the Association of Residential Managing Agents. They fill the gap as the main membership organisation for managing agents. Andrew will give you the figures, but I believe they represent about 50% of all property managers of leasehold property. That means that 50% of people are not members of ARMA and are not part of their regime, along with the Institute of Residential Property Management—obviously, ARMA and the IRPM have now merged to form The Property Institute.

They have done amazing work to fill the void, where there has been a lack of an independent regulator, and I think working with Andrew and with them would be a

really good starting point for the Government to create a regulatory regime. Certainly we would stand ready as an organisation to help with that. I just think that giving leaseholders the confidence that there is an independent body that they can go to when they have disputes with their property manager or their landlord is really important—as people do with Ofwat or Ofgem or other regulators. Having that independent regulator is really, really important.

Ms Paula Higgins: You make a really interesting point, but there are things that I would not want to see happening. We also work in the new homes area. We have legislated for a New Homes Ombudsman—fantastic—but we have not enacted it yet, and we now have a more confusing landscape for people who are buying new homes, who are probably also leaseholders and probably also shared owners; they have another competing code. It is incredibly confusing. That is not what I want to see happening.

Regulation means enforcement. There are a lot of things that estate agents have to do now, and we know from our research that they are not doing what they should be doing. The problem is that people do not have the right of redress if something happens. We have heard about the managing agents, but it is the estate agents, the developers and the housing associations who are selling these dreams. You have seen lots of people on Tuesday who feel they have been mis-sold, and others will continue to be mis-sold. These estate agents are the first port of call for the people going into the process, and we have to remember that people are buying a home, and they have not done it before. They might have bought a couch or something like that, but this is the first time they are doing this, and they can get it so wrong. People need to be protected. The estate agent is the only part of the professional world of property that is not regulated. The estate agent is that person there who is alongside the person trying to get their dream, which could go massively wrong.

Q242 Richard Fuller: When you say "regulated", do you mean they should have a qualification—that they can tick a box to say, "I was qualified to do this"—or redress, as in, there is a regulatory body above them?

Ms Paula Higgins: That is a really good point. I know the RoPA stuff—the regulation of property agents working group; in fact, we gave evidence to it. A tick box is probably not the right thing. Perhaps it is more about a proper single place for redress, but as I think Andrew Bulmer mentioned, that is the ambulance at the bottom, and what matters is what is at the top.

What we don't want is people doing online qualifications and getting a tick, and then they can jump up as an estate agent and come back down again. So I appreciate the complexities and I look forward to seeing what your deliberations will be.

Sue Phillips: I do not have the expertise to speak directly to the regulation of property management, but I would like to pick up on a couple of related issues from a shared-ownership perspective. The first is that the evidence submitted to the Advertising Standards Authority's inquiry into Black Friday marketing highlighted the fact that industry sector standards for the marketing of shared ownership are lower than other standards that are out there. For example, shared ownership is currently excluded from the New Homes Quality Board's code of practice. That simultaneously reflects the complexity of shared ownership but also the fact that shared owners do not have access to the same level of protections as other homebuyers in relation to new build codes. That is slightly off to one side.

I also wanted to pick up on the matter of transparency of service charges. Transparency is clearly essential: people should know what they are paying for. However, shared owners and other leaseholders should not have to effectively take on an audit function where it falls upon them to scrutinise accounts. They should be able to place some degree of reliance on the accuracy and proportionality of the accounts that they receive. I cannot speak to how that will be achieved, but I think that the onus should be on the providers of services and service charge accounts to be better, rather than leaseholders and shared owners having more and more obligations to scrutinise and take whatever action is required if problems are identified in those accounts.

Q243 Barry Gardiner: Ms Higgins, do you agree that it would be appropriate to allow leaseholders to withhold service charges where there has not been compliance with the very extensive requirements in the Bill to provide accounts no later than six months after, and so on? Is that an appropriate and proportionate way for leaseholders to be permitted to respond?

Ms Paula Higgins: I fully agree with that. It is a bit like the situation where, if you are getting building work done in your home and the building work is not completed or whatever, you withhold money. That happens in all of the construction industry. The stuff in relation to the forfeiture is very disproportionate, is it not?

Barry Gardiner: Indeed, yes.

Ms Paula Higgins: I fully support something like that.

The Chair: This needs to be very brief.

Q244 Barry Gardiner: Thank you also for what you said about wanting all new apartments to be leasehold with a share of freehold, Ms Higgins. That was echoed by Mr Smytherman.

In so far as new apartments are going to have a share of freehold, Mr Smytherman, you indicated that you felt that you had got the best of both worlds as a director of a freehold franchise company.

Bob Smytherman: Yes. Ours is a tripartite lease. A ground freeholder owns the land and there is a separate middle lease, which is the limited company—limited by shares—of which we are shareholders.

Q245 Barry Gardiner: As a leaseholder with a share of freehold, if commonhold were to become available, do you think that it would be equitable and fair to charge you for the privilege of transferring to commonhold, or do you think that more people would take the opportunity to transfer to commonhold if that came?

The Chair: A one-word answer, please, because I have to get to the end.

Bob Smytherman: That is difficult. It depends. If you have a difficult freeholder, then that would clearly be an advantageous thing to do. Then there is a scenario like ours, where you have a democratic limited company with shareholders.

Sorry, I cannot do a one-word answer.

Q246 Andy Carter: We have two minutes. I am conscious that you have talked to us a lot. Is there anything that you have not had the opportunity to tell us that you would particularly like us to hear from your relevant organisations?

Ms Paula Higgins: There is another thing that I feel very passionately about. People come to us—

The Chair: Less than a minute.

Ms Paula Higgins: Two minutes?

The Chair: Less.

Ms Paula Higgins: The other things that I feel very passionately about are estate charges and right to manage. We need right to manage and we need to make it so that all new-build estates are adopted by the local council.

Sue Phillips: I agree. The problems with estate charges can be overlooked in looking at service charges, rent charges and estate charges. The other thing I would flag up is for you to please look at the resale of shared-ownership homes. There are issues there.

Bob Smytherman: Simplify the process of bringing leaseholders together to form a residents association, so that they can speak to their landlord and the management with one voice.

Andy Carter: Thank you; that is much appreciated.

The Chair: Perfect, bang on. I am afraid that that brings this question session to an end. Thank you for coming in and giving evidence to us.

Examination of Witnesses

Professor Andrew Steven and Professor Christopher Hodges OBE gave evidence.

12.10 pm

The Chair: Right, that is a surprise: we have sound and vision. Excellent. We were not expecting vision, so that is all the better. We will now hear oral evidence from Professor Andrew Steven, professor of property law at the University of Edinburgh, via Zoom, and from Professor Christopher Hodges, emeritus professor of justice systems at the Centre for Socio-Legal Studies at the University of Oxford. We have until 12.40 pm for this session. Could the witnesses please introduce themselves for the record? We will start with Professor Hodges.

Professor Hodges: Good morning. Thank you for the invitation. I am not an expert at all in property law, but I am an expert in regulation, which picks up the point that Mr Fuller was just asking, so I hope to be able to help you on that. I am also an expert in dispute resolution systems—questions of ombudsmen and tribunals—which are fairly peripheral for today but are relevant to the broader regulatory systems. The interest I have is that I chair the housing and property redress group, which is an ad-hoc committee of the president of the property tribunal, the various three ombudsmen and the property and redress scheme.

The Chair: Members have a profile of our witnesses, so let us get to the questions. Thank you for that. Would our other guest introduce himself?

Professor Steven: Hello. I am Andrew Steven, professor of property law at Edinburgh University. I was a Scottish law commissioner from 2011 to 2019, and I am a member of the Scottish Government's cladding remediation taskforce. I can hear you but I cannot see you.

The Chair: We can see you, so if you want to come in on any question, gesticulate and you will hopefully catch my eye. That goes for both of you.

Q247 Matthew Pennycook: Thank you for your time, gentlemen. We have half an hour, but I would love to get in three specific questions, so I encourage you to be as brief as you can while answering.

The first question is on commonhold. Professor Steven, you have published extensively on the Scottish experience of commonhold legislation; Professor Hodges, I believe that you are a member of the Commonhold Council. On Tuesday, we heard from Professor Hopkins of the Law Commission that there are risks associated with a partial implementation of the Law Commission's recommendations on commonhold. Do you agree with that, and if you do, are there any sensible steps we might take via amendments to the Bill to pave the way for commonhold in the future—for example, share of freehold in flats?

Professor Hodges: I think that was for Professor Steven.

Professor Steven: I am reluctant to answer that in any detail, because I am really not an expert on English land law. May I say something briefly about the Scottish perspective? The difference goes all the way back to 1290, when Edward I, in England, said, "You cannot have feudal grants of property." Leasehold therefore had to be used, particularly for flats, because of the desire to impose obligations in relation to maintenance and contributions to maintenance. In Scotland, feudal grants were not banned until 2004, which means that flats and other properties were sold that way. We do not have leasehold in the way that you do. Existing feudal holdings were converted into outright ownership in 2004. We also had legislation on long leases that took effect in 2015, which also converted into ownership. The context is quite different.

Q248 Matthew Pennycook: In that case, I will move over to Professor Hodges, in the interests of time, if that is okay.

Professor Steven: Absolutely, and I can see you now.

Professor Hodges: I am very supportive of all the work that the Law Commission has done on commonhold, and we discussed it two or three years ago. I would do it, and this is part of a wider discussion that I expect we will get on to shortly. It is about change management. At the moment, it is rather like the point mentioned by the three previous witnesses. Property law moves terribly slowly—for heaven's sake, just get on with it. We have the agents, the tenants and the landlords. What we are doing is saying, "Well, do this. Then do that. Then do that. Then do that." We know where we need to get to, and that would be a very good system if we can get there. They need to train and do all sorts of things. You want to take out repetition or unnecessary cost in doing several things at once. It really is a change management point. We know where we want to get to—just do it basically.

Q249 Matthew Pennycook: Unless they confound us, the Government have been very clear that they are not going to do a commonhold package. Would share of freehold be a good interim step?

Professor Hodges: It is the obvious thing to do, isn't it? But I would go further.

Q250 Matthew Pennycook: That is all I was looking for. My second question relates to non-litigation costs. The Government, when they published the Bill, claimed that it protected all leaseholders from non-litigation costs. However, clause 12 allows those costs to be passed on, either as they are or at a prescribed rate, in cases of low-value claims. That was because the Law Commission said that the shorter the expired term, the greater the risk for leaseholders in not extending but buying out their lease. This is a point about litigation in some senses, but do you think that, because of the difficulties of challenging a claim to that prescribed sum, leaseholders will be deterred from initiating the process of extending their lease or acquiring their freehold, if they still face, even at a prescribed rate, essentially non-litigation costs as part of claims?

Professor Hodges: Quite possibly, and this is a generic point about access to justice and simplifying dispute resolution. I think the answer to that is to move towards an integrated system, which actually the tribunal and several of the ombudsmen have been working on in the past year in relation to service charges. There are too many places where disputes can go. If we simplify that to an integrated system that supports decision making—part of the answer is clarity and transparency in regulation—but if you support that, things move much more quickly. It has always been the case that, for example, courts are slow. They are a very careful process and therefore you need experts and lawyers, and it takes money—it costs. Whereas, with tribunals and improvement, ombudsmen are free and they move quickly. Getting a modernisation of that system is the answer to this basically. That is not there yet, but it is absolutely within sight and achievable.

Matthew Pennycook: If you do not have anything to add Professor Stephen, I will move on to my third question.

Professor Steven: Please move on.

Q251 Matthew Pennycook: My last question relates to ground rents. Clause 21 gives effect to schedule 7, which provides leaseholders with a right to permanently replace their ground rent with a peppercorn, without extending their lease. However, the Government are proposing to apply it only to those with very long leases, so 150 years left or more. The rationale is, as per the Law Commission, that the shorter the unexpired term, the greater the likelihood of disadvantage. Do you have any thoughts on why the Government have chosen that 150-year limit? The Law Commission said 250 years. Do you think it is right, in principle, that someone with a 120-year lease, who may wish to extinguish their ground rent but not extend, is prohibited from doing so on the basis of the Bill, as it stands?

Professor Hodges: I think that it is outside my competence to know the background. My answer would be: just move to commonhold.

Q252 The Chair: Professor Steven, do you have anything to add?

Professor Steven: No, I agree with my colleague. From a Scottish perspective, I would be more in favour of commonhold.

Barry Gardiner: Professor Steven, my question is to you. Last week, in the House of Lords, the Government indicated that they were looking at the Scottish system of tenements. Could you perhaps explain that to the Committee? My understanding is that the Scottish Law Commission has been looking to review tenement structure and actually make it more like commonhold. Is it correct that there is a lack of standardisation and no ability to ensure those share costs are split proportionately under the tenement structure, and therefore that would not be a quick cut-and-paste for the Government if they are considering what to move forward to?

Professor Steven: Yes, I absolutely agree. The legislation in Scotland is the Tenements (Scotland) Act 2004, which is 20 years old and is fairly basic. It does not have owners associations, for example, so it is less sophisticated than the commonhold proposals that the Law Commission for England and Wales made. But we have problems in Scotland too. There are always problems, no matter what the law says.

There are two particular problems. The first is where money comes from to make repairs to flatted properties—we typically call them tenements in Scotland. The second, sadly, is apathy. I was watching the earlier session, and I saw how engaged your witness in Worthing was, but sadly in other cases the owners are not so engaged. Even if you have an owners association regime, which the Scottish Law Commission is now looking at, it still depends on people being engaged. There are no easy solutions. I favour commonhold, but it will not be a magic wand.

Q253 Barry Gardiner: Nothing takes away the capacity of people to disagree with each other. I want to ask you a further question, which Professor Hodges may also have a view on. In the early 2000s in Scotland, the Government did away with feu duty in one fell swoop. You got rid of the inefficiencies of that system. Is it not unfair that we are going through all these inefficient qualifying criteria to ensure that enfranchisement happens only on a development-by-development basis? Could we not do this in one fell swoop in England too? I see Professor Hodges is smiling from ear to ear, but I will allow you to come in first, Professor Steven.

Professor Steven: As a former law commissioner in Scotland, I am reluctant to disagree with the Law Commission for England and Wales, given the amount of work it has done on this. It is clearly very complicated.

You said that we got rid of our feudal system in one fell swoop in 2004. That is broadly true, but in 1974—50 years ago—we banned new feudal payments, which are like ground rents. There was a system whereby the existing feudal payments had to be paid off when the property was sold, so by 2004 there was not much left. My impression is that in England there is quite a lot left, in terms of ground rents. Because there was not so much left in Scotland, the compensation issues and the European convention on human rights issues that Dr Maxwell spoke about on Tuesday were not so

prominent. Although we had the feudal system till 2004, it was a shell of what it originally was. In a certain way, it would be much simpler just to change leasehold into commonhold, but I fear that it would lead to all sorts of unforeseen consequences.

Q254 Barry Gardiner: Just to make you feel a little better about disagreeing with your Law Commission counterparts in England, of course they were constrained in what they could do by the parameters the Government set them.

Professor Hodges: Very briefly: modernise, because we are still living in the past; simplify, because we can easily do that on a comprehensive basis; and get it done so that people can plan, retrain and know what they have to do. You then get good behaviour throughout the system. I am very tempted to repeat facetiously the "Get it done" slogan, which crops up a lot.

Q255 Richard Fuller: My questions are for Professor Hodges. We have to deal with the Bill as it is—on the commonhold thing—so, "Get it done" is not particularly helpful, if I may say. It might be a good indication, but not particularly detailed, so help us on the detail of that. Often in Parliament, we regulate and think that that is the solution. I do not know whether you have had a chance to look at some of the regulatory details in the Bill, but what would be your guidance be to us about where it is pointing in the right direction, where it might be going wrong, and the pitfalls that we should look out for?

Professor Hodges: As far as the detail of the Bill is concerned, looking technically at what is in there without expressing a view as whether it is a good or a bad idea substantively, it seems to me to be fine. You asked a wider regulatory question earlier on—

Richard Fuller: I will come to that in a minute. But just in here, on this Bill, is there anything that we should look out for?

Professor Hodges: As far as the detail is concerned, there is nothing that stands out to me, as a regulatory expert, that says, "This is a problem".

Richard Fuller: Okay, so more generally then, on regulators—Ofgem on energy prices and Ofwat on sewage and water—that approach seems not to provide the outcomes that perhaps were originally indicated when the legislation was passed. What are your thoughts about the political use of regulation? Is there anything from those general principles that you think might apply here?

Professor Hodges: I sat on Lord Best's RoPA—regulation of property agents—working group, and there was strong consensus around the room that you need regulation of agents. Since then, how we do regulation has evolved. Regulation, in the broadest sense, is an all-encompassing idea, and looking at the problems with Ofgem, Ofwat and so on, there are two aspects that strike me. First, one historically gave specific regulatory bodies certain remits that turned out to be not wide enough, and there were not enough people involved in the conversation; they were not regulated or contributing to good behaviour.

Secondly, the traditional way within which regulation is thought of, in the way that Parliament works, is that you make a number of requirements, rules and procedures. You then identify breaches of those rules and requirements and you then enforce. You can do that through traditionally public or private ways. Public ways in the property sector would be through trading standards authorities or environmental health locally, not a national regulator, as such. The private ways would be through the courts, but that has evolved in relation to the alternative dispute resolution ombudsmen being the best model at the moment and an integration between the tribunal and ombudsman, which is on the cards and may well occur. However, that is not enough because enforcement does not affect behaviour as such. We like to think that it does, but it is a myth, and there is an enormous amount of psychology and evidence published showing that it is not enough.

Therefore, if one stands back and says, "How do we get an effective regulatory system?", it is about how one does it. That involves getting all the stakeholders together —again, that goes back to the first point about how it is not just a regulator telling people what to do, like an Ofgem or Ofcom—and saying, "How are we going to behave and how are we going to do it?" You need the rules, but you also need codes and systems involving data and support.

Richard Fuller: Rules, codes, systems, data, penalties, redress, different organisations—this is your answer as a better solution to caveat emptor?

Professor Hodges: Yes, absolutely. Now, let me give you one example only—

Richard Fuller: In all circumstances or specifically on this Bill? Well, we ought to stick to the Bill. I just want to be clear: you have just outlined the solution—this Bill is going part of the way to that—but the old way was, "I have personal responsibility," "I am responsible for the decision I make," "This is a very big decision about what I buy," and so on. I just want to make sure that we are not trying to put too much faith—one of the last witnesses made some very good points on shared ownership and the fact that people may not have the encompassing knowledge—but I just want to make sure, from your expertise on regulation, that, in this field, you cannot see any damaging consequences for the principles of caveat emptor and personal responsibility by this regulatory structure that you have outlined?

Professor Hodges: Not at all. The most striking example—

The Chair: Please answer briefly if you can, because I want to get some more people in.

Professor Hodges: There are various regulatory systems in this country that are now modernising. In many ways, the most outstanding example, which has been there for several decades, is aviation safety. Everyone works together, and they call it an "open and just culture". They are actually collaborating. They have lots of rules, but you have almost no enforcement, because the Civil Aviation Authority does not need to do it—everyone is doing something.

There are various sectors where you do need public enforcement, and where I would say you need a national system regulator. But you can do a lot through ombudsmen, codes and support. That is now emerging in, say,

information and data protection, food standards and various other areas. It is absolutely ideal for property and housing.

The Chair: Thank you very much. We have 10 minutes left. Mike Amesbury wants to come in, and then I will call Matt and Barry.

Q256 Mike Amesbury: This question is to both witnesses. Are you satisfied with the provisions in the Bill to regulate what is commonly known as the "fleecehold" phenomenon, where what leaseholders pay for communal areas—in the broadest sense—maintenance, service charges and administration charges is uncapped? Is it strong enough at the moment?

Professor Hodges: I do not really think that is a question I can answer, because it is a policy question within which economics and other factors are relevant. Technically, as a regulatory system, I do not see anything wrong with it.

The Chair: Professor Steven, do you have anything to add to that?

Professor Steven: I do not.

Q257 Matthew Pennycook: I am trying to adjust my questions to your areas of expertise, but I am trying to focus on the Bill rather than abstract discussions about regulatory systems and what we might want. I have a specific question that follows on from Mr Amesbury's question. Part 4 of the Bill provides for a new regulatory regime for private and mixed-use estates. Do you think that that is a good idea in principle? We in the House—particularly Mr Fuller and a specific set of Members in whose constituencies this is a very real issue—have been talking for years about a separate management regime. Do you think it is a good idea in principle to establish a completely separate stand-alone regulatory regime for estate management, or should we look instead to incorporate it in the existing system? Essentially, these people are all paying into the same pot, so should they not be covered by the same regulatory system?

Professor Hodges: I think there is an enormous missed opportunity for simplifying across social housing, private and so on. In particular, I would introduce the regulation of property agents working group reforms immediately. Almost everyone wants them, as far as I can see, and it would be easy to do, because you would just cut and paste the relevant regulatory bits from the recently enacted Building Safety Act 2022 and put them in for private managing agents.

As I said in the paper that I sent to you—I gather that Andrew Bulmer was talking about this two days ago here—there are three very good reasons why you need the regulation of property agents, each of which stands up on its own. There are obvious risks if you do not put that building block in place, because things are going to go wrong and there will be detriment to tenants and landlords.

Q258 Matthew Pennycook: To be clear, I agree with you on managing agents; I am talking about the regulation of private estates. The Bill provides for a new regulatory regime for private estates, which are not currently regulated. It is separate from the service charge regime. I am just wondering whether your simplification point works in this case too.

Professor Hodges: Everyone should be in and under the same regime—absolutely everyone in the system.

Professor Steven: I do not have a strong view on this.

Q259 Barry Gardiner: Professor Hodges, my colleague Richard Fuller sought to make a point about caveat emptor to you. Is it your experience that the inequity of power and information between developers or freeholders and the potential purchaser—the leaseholder—is so great that caveat emptor is inappropriate and that you need the power of regulation to sort out that inequity? I think it was the Law Commission that concluded that

"any financial gain for the landlord"—

or freeholder—

"will be at the expense of the leaseholder…Their interests are diametrically opposed, and consensus will be impossible to achieve."

Professor Hodges: In any consumer or property—certainly social housing—dispute system, there is an obvious imbalance of power. People do not have the money to do things. I have chaired the Post Office Horizon compensation board advising Ministers in the past few weeks. The whole reason why Parliament needs to step in is to correct a massive imbalance of power. Private litigation did not work, or it only half worked. There have been many stories about people being traumatised, and not just unable to enforce their rights. That is why we have invented things like legal aid, Citizens Advice and an ombudsman, and we are still moving—we are still improving that one—because of the ongoing imbalance of power between the little people and larger organisations.

Q260 Barry Gardiner: Indeed. Thank you for that, and I think everyone will also want to thank you for your work on the Post Office inquiry.

I want to ask you about introducing insurance commission. I do not know whether you heard what the witnesses said on Tuesday, but you may know of the Canary Riverside case, in which £1.6 million in commission was given to a freeholder by the insurer—in a kickback—which was deemed to be inadmissible, and that is what the tribunal, mercifully, found. Although the Bill is outlawing commission, it is introducing fees for insurance services. In the Canary Riverside case, that is precisely what that £1.6 million was called. Do you fear that the Bill appears to dispense with commission, but actually reintroduces it by the back door?

Professor Hodges: Possibly, but that is why you need regulation. That is an obvious example of an imbalance of power and lack of transparency, for which you need external people to get involved. Exactly what the final result ought to be, I would leave to a regulator—for them to say that so much commission is either allowable or not allowable, or indeed not at all. It depends on the circumstances.

Barry Gardiner: We will hear about—

The Chair: Can I just interject and ask whether Professor Steven has anything to add to what you have asked so far?

Professor Steven: Very briefly, insurance law is UK-wide, but in Scotland insurance of blocks would normally be handled by managing agents because we do not have the freeholder. Since 2011, we have had legislation in

Scotland that regulates managing agents. I know that that is being considered in England as well, but that might be of interest.

Q261 Barry Gardiner: Thank you very much, Professor Steven.

Turning to the value of the building and property rights, we heard from an eminent lawyer on Tuesday about property rights in relation to ground rent. Looking at enfranchisement, I think it was the Residential Freehold Association, which is charged with guarding the property rights of freeholders, that said that their share in the value of the building was only 2.5%. The corollary of that, of course, is that the leaseholders' share in the value of the building is 97.5%. Do you feel that the way in which the costs of enfranchisement look at the total value of the building is therefore unjust?

The Chair: We have less than a minute left.

Professor Hodges: I would need to know an awful lot more to be able to answer that question, as a non-property expert. It is a very interesting question, and my answer would be that it is one for Parliament and the regulatory system to engage with.

Barry Gardiner: Thank you very much. Professor Steven?

Professor Steven: I have nothing to add.

The Chair: I thank the two witnesses for taking the time to give evidence to us today. Thank you for beaming in, Professor Steven, and thank you for attending, Professor Hodges. We will now move to our next witness—Paul Broadhead, come on down.

Examination of Witness

Paul Broadhead gave evidence.

12.40 pm

Q262 The Chair: We will now hear oral evidence from Paul Broadhead, the head of mortgage policy at the Building Societies Association. We have until 1 pm for this session. Could the witness introduce himself for the record, please?

Paul Broadhead: Good afternoon. I am Paul Broadhead, the head of mortgages and housing at the Building Societies Association, which represents all UK building societies and seven of the larger credit unions.

Q263 Matthew Pennycook: Thank you, Mr Broadhead, for coming to give us evidence. I have a very specific question about something that was briefly raised on Tuesday but that has not been explored in real depth. I have seen, as other Members may have, a noticeable rise in RPI-linked ground rent provisions in the wake of the implementation of the Leasehold Reform (Ground Rent) Act 2022—although they may not be connected. You will be aware that such terms could be considered onerous in certain circumstances. They would appear to be the result of specific mortgage lender policies, and somewhat at odds with the UK Finance position. What is your view on that trend and its causes and consequences? Specifically, how will the ground rent provisions in the Bill, namely the peppercorn 990-year lease extensions under clauses 7 and 8, the peppercorn variation under clause 21 and, potentially, complete abolition of ground rents on existing leases, impact on that trend? Will they mean that RPI-linked ground rent provisions are a thing of the past if this Bill is implemented?

Paul Broadhead: Yes, on the RPI, we have seen an increasing trend. I think that started when mortgage lenders changed their policies in terms of the escalating of ground rents—the doubling every five, 10 or 20 years, or whatever it might be. Mortgage lenders have started looking much more closely at the trends in ground rents to make sure that you can predict the affordability and fairness of those rents. You are absolutely right: the RPI change has followed on from many mortgage lenders moving to prevent the doubling of ground rents. We need to make sure we keep an eye on that and to make sure that they are fair and just.

Matthew Pennycook: They can be far more punitive.

Paul Broadhead: They can be, absolutely, with where RPI is. It is really difficult to predict. Some ground rents can grow very rapidly, which puts people in financial difficulty. From the lenders' perspective, when underwriting a mortgage, they need to consider whether the mortgage is affordable on the face of it not only today, but in the future, and to take account of any foreseeable increases in expenditure. That is one of the areas they will take into account.

In terms of the peppercorn ground rent, yes, I do believe that that will resolve this going forward. The important thing to consider is that there is still a separate consultation, which just closed yesterday, on capping ground rent for existing leaseholders. It is really important that that is brought forward to prevent this two-tier system from developing.

Q264 Barry Gardiner: Mr Broadhead, I do not know how long you have been working in your present capacity, but I suspect it is since 1984. In 1984, your organisation's report "Leaseholds—Time for a change?" said that the "leasehold system is incompatible with home ownership" and that an Englishman's leasehold home "is his landlord's castle". I thought that was a very elegant way of expressing what many of us think. Is that still your organisation's view?

Paul Broadhead: You are absolutely right. We have been advocating for the reform of leasehold since 1984. As you kindly point out, it was not me that made that comment at the time.

Barry Gardiner: That elegant comment.

Paul Broadhead: Absolutely—I wish I could be as elegant, and I will try to be throughout this questioning. Our position is that leasehold does require reform. If you were going to design the property tenure today, it is not what you would come up with. However, there are 4 million-plus leasehold properties in this country. Undoing that and replacing it overnight with a new, perhaps more just, system will take time.

The first thing we need to concentrate on is reform, to make the system fair, predictable and equitable, so that people have the security of owner-occupation. In a sense, yes, they do not own the land on which their home sits, but they have the security of tenure that they would not have in other sectors. But it is important that we ensure that that is fair.

Q265 Barry Gardiner: Let me ask you perhaps a more difficult question: how many of the mortgages that are lent to shared equity owners default compared with normal freehold owners?

Paul Broadhead: Are you talking particularly about shared equity or shared ownership?

Barry Gardiner: Sorry, shared ownership—where you have shared ownership in the property.

Paul Broadhead: I have not got those figures to hand, but we can certainly send those through to the Committee. From speaking to our membership, I think it is fairly comparable. Our sector punches above its weight in shared ownership because it is very keen on affordable housing, and we have some big shared-ownership lenders. One thing I would say about shared ownership is that underwriting and managing those cases are slightly different from managing a traditional mortgage, because you have the housing association interest and some potential staircasing—although, of course, many do not. The arrears levels tend to be higher, but the default levels, I think, are comparable. We can confirm that in writing.

Q266 Barry Gardiner: Interesting. Why do you think the arrears levels tend to be higher?

Paul Broadhead: There are two things. One is the housing association rent aspect. Affordability tends to be more stretched by people owning shared ownership properties in any event, as most people land in shared ownership as an intermediate tenure because they are not able to buy their whole home. That, therefore, means their incomes are often less predictable. They do not necessarily always understand—

Barry Gardiner: Or that property prices are too high, of course.

Paul Broadhead: Well, property prices are too high irrespective of tenure, even if you are buying as a freeholder.

Barry Gardiner: Their income may be stable and reasonable—being in shared ownership does not mean that your income is unstable in any way.

Paul Broadhead: No, not at all.

Q267 Andy Carter: I want to pick up on some of the comments we heard on Tuesday around mis-selling. You mentioned the work the building societies—your members—would do to understand the affordability and the ability of a purchaser. What steps do your members go through to ensure that the person taking out the mortgage fully understands what they are buying? I am conscious that you will not necessarily always know all the things that they know. Could you just talk us through that area?

Paul Broadhead: Certainly. The first thing to remember is that mortgage lenders are experts in mortgage lending, not in property law—it is down to the conveyancer to advise the borrower of the requirements of the lease and the purchase of the property they are buying. The way I would describe it is that the conveyancer and the surveyor, to an extent, are the lender's eyes and ears on the ground to ensure all of that is clear to the borrower, and that they are entering into that transaction with their eyes open.

What we have seen from a mortgage lender's perspective, particularly when the escalating ground rent issue started to come to a head, was lenders taking a much more proactive approach on new developments to understand the terms of some of those leases, and actually refusing to lend on those new developments. Of course, there are a whole range of mortgage lenders that will lend on a new development, but the fact is that a new development without some of those large lenders—because they will not lend against that leasehold—drives change. That is what we have seen. We have seen the effect of that with the escalating ground rent—with the reduction of that.

Q268 Andy Carter: I just want to be clear: from a consumer perspective, if somebody is buying a leasehold property, are your members telling them, "This is a mortgage for a leasehold property," or do they not have that conversation?

Paul Broadhead: They will tell them that it is a leasehold property. It may not be known when the customer comes in to apply for the mortgage, because that will come out through the conveyancing process, and often when the property is advertised it does not make clear whether it is a leasehold or a freehold property. But that will be dealt with and it will be made very clear in the terms and conditions of the mortgage what that tenure is.

What we have seen is that some of our members have turned down mortgages because they have come across onerous lease conditions, and the consumer, the prospective purchaser, has then complained to say, "I can afford this mortgage. Why have you turned me down?" When the lender has explained to them what they know—there is this asymmetry of information—the consumer, with what they then know about the terms of the lease, has pulled out of the transaction because they did not realise that before. I think the most important thing with leasehold is not necessarily more information, because you need experts to look at that information, and too much information is often as bad as too little information; it is more about making sure that the right information is given to the right person at the right time.

Q269 Andy Carter: That leads me on to the regulation of managing agents and the property sector. Is that an area that your members have any views on? Is it something that you would welcome?

Paul Broadhead: Yes, we believe that managing agents should be regulated. We think the fees—where the service charges money is spent—should be made clear to the borrower. I think that, at the very minimum, short of regulation, they should be forced to be a member of an alternative dispute resolution scheme.

Q270 Mike Amesbury: That point is very interrelated to this. A considerable number of leaseholders are excluded from provisions to remediate the buildings. An example is people in buildings that are below 11 metres, or it might be people who have more than three flats. How has the market been responding to that?

Paul Broadhead: There have been well-documented issues about building safety post the Grenfell tragedy. We did see some real difficulty about people being able to get mortgages where there was cladding on the building. Progress has been made there. I think that now, in most cases—particularly above 11 metres, as you

suggest—the market is open, because it is clear that there is recourse to either the developer or the Government scheme to fund the work. Our starting position, when this came out with the amended Government guidance note in 2020, was that no leaseholders should be responsible for making good the combustible cladding, if it was now inappropriate, because they have gone into this, they have been advised by their legal advisers, and they should not be forced to put their hand in their pocket.

We are not there yet on properties below 11 metres, because the Government have chosen to exclude them from the support scheme. I have had a number of meetings with consumer groups, looking at cladding and at leasehold, and I think we are on the same page here. We are trying to find a solution from a mortgage-lending perspective, because we want that market to open up, but what seems to be more and more frequently coming out is that the cladding issues and other building safety issues are being conflated. It is really difficult then from a mortgage lender's perspective, because if the cladding itself does not need replacing because it is safe, but there are other defects in there, there may still be some comeback that leaves leaseholders with quite a large unexpected bill that is at the moment unquantified and would affect the affordability of that borrower, going forward. We continue to meet with these groups and with Government to seek a solution, but it certainly is not operating perfectly.

Q271 Mike Amesbury: Would you welcome amendments to the Bill to try to capture that by regulation, by legislation?

Paul Broadhead: Yes. Anything that makes it clearer and gives lenders confidence and consumers confidence that their building is safe and they are not going to face an unexpected bill has to be welcome.

Q272 Eddie Hughes (Walsall North) (Con): I am slightly confused. I thought it was now the case that properties did have to be advertised as leasehold or freehold. Has that changed?

Paul Broadhead: Well, often the advert will say that a property is leasehold but that that will be confirmed by the conveyancer, so you do not know 100% whether it is leasehold or what the terms of the lease are.

Q273 Eddie Hughes: So there is not an obligation currently for estate agents to market properties in a way identifying whether they are leasehold.

Paul Broadhead: Not to my knowledge, no. I do not think there is.

Q274 Eddie Hughes: Maybe I made a mistake. You said that it would take some time to unwind the fact that we have—currently—4 million leasehold properties in the country. Can you give us an idea of how long you think it will take, depending on the outcome of the Government's recent consultation? Were they to move to peppercorn rates, how long would this take to unwind? And give us a flavour of what would be the complexities.

Paul Broadhead: In terms of the peppercorn rate, it is a really difficult question, because it is almost, "How long is a piece of string?"

Q275 Eddie Hughes: But you are a man who knows, so even if you just give us your thoughts, that will be helpful.

Paul Broadhead: I still think it would take decades to unwind everything to a peppercorn rate, because you need the group of leaseholders together to agree to enfranchise, which is quite difficult. I will give you one example we have come across, which was following the escalating ground rents. Housebuilders had written out to leaseholders and said, "We will convert your property to leasehold for free. We are going back on what we've done; we think we did the wrong thing." The number of people coming forward and taking that up was negligible. You need to engage consumers. It is not just about putting the building blocks in place to make this better; it is enabling—

Q276 Eddie Hughes: Or to make it possible. Just because it is possible, does not mean it will actually happen.

Paul Broadhead: Absolutely, and you still need to engage the public and the legal profession that is taking people through, to make sure they understand what the benefits are and the cost of that. That individual value equation will change from leaseholder to leaseholder.

Eddie Hughes: That is very helpful, thank you.

The Chair: We have five minutes left. I will turn to Lee Rowley but please bear in mind that I want to bring in Barry as well.

Q277 The Minister for Housing, Planning and Building Safety (Lee Rowley): I do not want to divert the Committee away from the core discussion, but I will just pick up on something that yourself and Mike discussed a moment ago. On sub-11 metre buildings and potential challenges with fire safety, would you accept that our standards are life-critical safety standards, and that the likelihood of an issue in a sub-11 metre building is substantially lower than one in a building above 11 metres? Fundamentally, it is unlikely that those buildings would need remediation to the extent that would be needed in higher buildings. That is an accepted position of your members, I presume.

Paul Broadhead: That is absolutely an accepted position. The point I think you are getting to is that sometimes there is still an EWS1 form requested on sub-11 metre buildings. As I mentioned earlier, the lender is the expert in mortgage lending, not in building safety, and the surveyor on the ground will have their own gangs from the Royal Institution of Chartered Surveyors that they follow. If they come back and report that it needs further investigation, the lender has to take that at face value, because that is their expert.

Lee Rowley: I am not sure that I would accept that, but I will take that up with you and your members separately.

Q278 Barry Gardiner: I will pick up briefly on what you said to Mr Carter about the way in which sometimes your members were advising people, "Actually, this is leasehold, and there are these additional costs, and service charges are so expensive that we are not prepared to lend to you." Are there any particular freeholders who have a reputation in the industry for doing that? I am thinking of people such as the Freshwater or

Persimmon Homes, or any who seem to be known for their excessive service charges. Is there an automatic flag for them in the industry? Sitting where you are, you would have parliamentary privilege to name them.

Paul Broadhead: Parliamentary privilege notwithstanding, no, we do not have individual organisations I could point to. I certainly do not get reports from my members.

Q279 Barry Gardiner: In that case, my question to you is: why not? You know very well that there are "fleeceholders" out there: freeholders who fleece their leaseholders. They have a reputation for doing it over many, many years. Should your industry not be advising somebody who approaches you for a mortgage about that, when you know full well that if they have a mortgage with that particular freeholder, the likelihood is that over the years those services charges will rack up and be abused in precisely the way that we have talked about with previous witnesses, about the inequity of power in this relationship? Indeed, these are the very issues that we are seeking to amend in this Bill. Why does your association not have those flags so that when it sees names such as Freshwater, it says to the person, "Look, we need to tell you a thing or two here"?

Paul Broadhead: In terms of coming back to me as an association, that is a level of detail that is about individual organisations. It is not really part of my role to represent that. That does not mean they ignore that, just to be clear.

Q280 Barry Gardiner: But you rightly said, Mr Broadhead, that your members would advise a prospective purchaser not to engage in a mortgage where it was leasehold, if they felt that the service charges would rack up and they would then be put into financial penury. Why do you not do it when you know that it will be the case?

Paul Broadhead: Our members will not advise; they will refuse that mortgage, because it does not meet with their policy. In terms of other service charges, they all have a panel of conveyancers that they approve to act for them, and that is for the consumer purchasing that property. The terms of those panels change as some of these practices have come to light, and they will be nipped in the bud at that point.

The Chair: Order. I am afraid that brings us to the end of the time allotted for the Committee to ask questions and, indeed, for this morning's sitting. I thank all our witnesses on behalf of the Committee for their evidence. The Committee will meet again at 2 pm this afternoon here in the Boothroyd Room to continue taking oral evidence.

1 pm

The Chair adjourned the Committee without Question put (Standing Order No. 88).

Adjourned till this day at Two o'clock.