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HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

LEASEHOLD AND FREEHOLD REFORM BILL

Fourth Sitting

Thursday 18 January 2024

(Afternoon)

CONTENTS

Examination of witnesses.
Adjourned till Tuesday 23 January at twenty-five past Nine o'clock.
Written evidence reported to the House.

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

not later than

Monday 22 January 2024

The Committee consisted of the following Members:

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

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

Huw Yardley, Katya Cassidy, *Committee Clerks*

† attended the Committee

Witnesses

George Lusty, Senior Director for Consumer Enforcement, Competition and Markets Authority

Simon Jones, Director of CMA Leasehold Investigation, Competition and Markets Authority

James Vitali, Head of Political Economy, Policy Exchange

Philip Freedman CBE KC (Hon), Conveyancing and Land Law Committee, The Law Society

Philip Rainey KC, Barrister, Tanfield Chambers

Jack Spearman, Chair of Leasehold Reform, Residential Freehold Association

Giles Grover, Spokesman, End Our Cladding Scandal

Public Bill Committee

Thursday 18 January 2024

(Afternoon)

[Dame Caroline Dinenage *in the Chair*]

Leasehold and Freehold Reform Bill

Examination of Witnesses

George Lusty and Simon Jones gave evidence.

2.2 pm

The Chair: We will now hear oral evidence from our fourth panel. The witnesses are George Lusty, senior director for consumer protection, and Simon Jones, director of leasehold investigation at the Competition and Markets Authority. We have until 2.20 pm for this panel. Will the witnesses please introduce themselves for the record?

George Lusty: Good afternoon. I am George Lusty. I am the senior director for consumer protection at the Competition and Markets Authority.

Simon Jones: Afternoon. I am Simon Jones. I am a project director at the CMA and I was responsible for our leasehold investigation.

The Chair: Thank you.

Q281 Matthew Pennycook (Greenwich and Woolwich) (Lab): Chair, may I just declare, for reasons of completeness, that my wife is the joint chief executive of the Law Commission, whose work we continue to cite on a regular basis?

Gentlemen, thank you for coming in to give evidence to us. I have two questions. First, in the 2020 update report on leasehold housing that the CMA published, you recommended reforms to

"the system of redress for leaseholders, to make it simpler and less costly for them to contest permission fees and service charges they think are unreasonable or excessive".

What are your views on whether you think the Bill achieves that? If not, what needs to be incorporated to ensure that it does?

My second question is on the recommendations you also made on measures to address the assured tenancy trap, whereby leaseholders who pay ground rents in excess of £1,000 in London and £250 across the rest of the country

"risk having their home repossessed for non-payment".

Again, does the Bill address that? If not, how specifically should we seek to improve it in that respect?

Simon Jones: I will deal with the second one first. Yes, we think that the proposals in the Bill at the moment will make a big difference. We thought that there were a number of ways to go about helping people: you could have created a duration threshold for leases, as in the current proposal—that works. You could have raised the threshold for rent. That, too, would work, although we would have been less in favour of it, because over time it would be less effective. Or you could have completely removed the provisions from the Housing Act. The approach that the Department has taken seems sensible.

Q282 Matthew Pennycook: Is that both recommendations, or just the second?

Simon Jones: That is on the second point. There are a number of ways to do it, but the problem was that there was no minimum length of lease that was not subject to the assured tenancy provisions. That just looked like an oversight, frankly, but that is going to be fixed. That seems like a positive step forward to us.

On redress, the problem that everybody told us about is that you can give leaseholders all the rights that you can, but that does not really help them if they cannot exercise them quickly, cheaply and efficiently. One of the problems—as you know, a big complaint people had—was that leases often had provisions that enabled landlords to recover the costs of litigation from the tenant, regardless of whether the landlord won or lost. That was a big problem, but that has been fixed.

Q283 Matthew Pennycook: May I press you on that? I asked a different witness about that this morning. The Government are saying that with low-value claims, the cost can be passed on, but that leaseholders would have to pay either that or a prescribed sum. I wondered, because we are talking about redress, given the challenges of going to the tribunal, will those leaseholders just end up paying the minimum prescribed amount for enfranchisement?

Simon Jones: I think that the proposal in the Bill is a positive change, but is it really all the change that could be made? This is quite difficult. The tribunal system exists to help leaseholders, but it is still complicated and expensive, and it is not local. Many of the disputes that we have are about costs.

For example, let us say you are a tenant and you have a service charge, but you think it is expensive. You will incur time and expense in trying to challenge it. What you want is probably something that is local, where the panel understands the costs in that area—for painting a stairwell or changing lights, that kind of thing. What we had in mind when we wrote the report was perhaps finding a way to use more local courts to provide more summary-type justice for people, through people who probably know more about what it costs in the local area to do something.

The other problem for consumers is that they do not understand what evidence is required to bring a challenge. I think that came through quite strongly for us. You cannot fix that with legislation, but it is another important point to bear in mind when thinking about how to help consumers help themselves.

Q284 Matthew Pennycook: Is it fair to say that with this legislation, we should look, where possible, to remove instances of where a leaseholder has to go to tribunal at all? In other words, if we said, "No leaseholder should be liable for a non-litigation cost in any circumstances", on that particular point none of them would have to go to tribunal. Should we look to reduce the scope for tribunal use generally?

Simon Jones: If the purpose of all this is that the incentive for managing agents or landlords—whoever is responsible—is not to overcharge, then cost rules that encourage them to be more careful with the charges that they make ought to be advantageous.

The Chair: I remind the Committee that we have only another 10 minutes or so left on this session.

Q285 Andy Carter (Warrington South) (Con): Thank you, Dame Caroline. Simon, the CMA carried out a two-year investigation into mis-selling. Are you satisfied that the Bill contains sufficient provision to address mis-selling and to improve consumer rights?

George Lusty: I will take this one. As you say, we have used our consumer law enforcement powers directly. Ultimately, we are prepared to take developers, and in some cases the freehold investors, to court if these problems have not been fixed. Doing that has secured direct outcomes for the affected people we acted on behalf of, including getting those unfair doubling terms taken out of their contracts and giving financial support to make sure that that is reflected in the paperwork.

We need to look at a number of things together. It is about not just what is in this Bill but what the Leasehold Reform (Ground Rent) Act 2022 did in terms of setting the leases for future properties at a peppercorn ground rent, and the proposed ban on leasehold houses. In particular, that takes away a number of the things that were liable to mislead.

There is the separate consultation that closed yesterday on proposals to cap existing ground rents. That is another thing that we are very keen to support, because our action benefited the 20,000 or so householders on whose behalf we took cases, but ultimately we said that only a legislative solution could fix the problem for people with existing leases with problematic ground rent increase mechanisms.

Q286 Andy Carter: We heard evidence today and on Tuesday of what appears to be quite widespread mis-selling, particularly in this sector. I know that you spent time in my constituency looking at the Steinbeck Grange case, but you were not able to enforce any outcomes from that. My constituents still do not feel that they have had redress. You mentioned the challenge of evidence: what would you say to my constituents who still feel that they have been mis-sold?

George Lusty: Ultimately, we were not able to pursue every case that was brought to us. We brought a separate action in which we secured redress from Persimmon in particular, allowing people to buy their freeholds for an agreed amount. Our case decisions ultimately turn on the evidence and whether we think we can successfully achieve an outcome and as broad an impact as we can on the big issue.

Something went badly wrong with the sale of leasehold homes, particularly with the modern concept of leasehold that started in the early noughties. One of the biggest aspects of that was the selling of houses as leasehold when there was no real, legitimate reason to do so. The proposal to include in this legislation a ban on leasehold houses tackles one of the worst instances of mis-selling, and the problem that people were told that leasehold was as good as or effectively freehold when it was not.

Andy Carter: Or they were not told at all. That seems to be more the problem: people were not told at all.

George Lusty: Yes.

Simon Jones: May I add to George's observation? One thing that we recommended—Lord Greenhalgh picked this up and worked on it with trading standards—was that there should be greater transparency around tenure and the annual cost of owning a property whenever a property is marketed, so that when you look at it, read the spec and see what the purchase price is, you also see what it will cost you every year to own it. In the end, that is what people are trying to figure out whether they can afford. Lord Greenhalgh picked that up, and work has been done with trading standards to move that forward, but momentum needs to be maintained behind it.

Think about the disadvantages that people have with leasehold. You have to pay rent and ground rent; if the Government cap that, that is probably fixed for your constituents. If there is greater transparency around service charges and a system of redress that probably conditions the ability of people to overcharge, that is a big step forward. More generally, there needs to be greater transparency right at the start of the sales process about what you are buying and how much it will cost you. Those things would make a big difference if they all were to happen to your constituents.

Andy Carter: I have one more question if there is time.

The Chair: We will come back to you at the end, Andy.

Q287 Mike Amesbury (Weaver Vale) (Lab): The CMA—including your good selves—has rightfully highlighted concerns around estate management and some of the charges commonly known as fleecehold. You said you were going to assess that information and publish your findings. Have you done that? It would be incredibly useful in shaping the responses in the Bill and perhaps strengthening some of the regulations particularly around park law.

George Lusty: In parallel to this piece of work on leasehold property, the CMA is conducting a market study looking at the house building sector more generally. As part of that, we have looked at the issue of estate charges, the increasing tendency for roads and other facilities not to be adopted, and the framework of consumer protections around charging for those sorts of services and what individual homeowners then need to pick up not being as good as it should.

We published a working paper on that in November. In particular, we called more broadly for greater adoption of those facilities by local authorities and enhanced consumer protection frameworks. That market study will complete its report in February, when we will issue our findings and recommendations across the piece. Neither Simon nor I is directly working on that, but it is connected because leaseholders face similar issues with the service charges that they have to pay in their properties, particularly in leasehold flat blocks.

Q288 Mike Amesbury: Do you have anything else to add, Simon?

Simon Jones: Only the transparency obligations that I mentioned. The initial transparency obligations about the annual cost of owning a home ought to include, in relation to freehold homes, things such as rent charges. An awful lot of people we spoke to had no idea that there could be annual charges connected to a freehold ownership.

Mike Amesbury: Thank you.

Q289 Richard Fuller: I want to follow on from the point made by my colleague, Mike Amesbury, about your November report. When it looked at estate management charges, there was a litany of abuses against residents who own their own home. As Mr Jones has just said, there was no information—or certainly not sufficient information—about obligations at the point of purchase. There was no transparency about the way in which information is provided. There were totally exorbitant charges for provision of basic things such as a bulb to go into a lamp post. There was an inability, or unwillingness, to provide annual reports to people, and limited to no redress for consumers.

I know that you are going to get to your final report in February. This Bill, helpfully in some ways, seeks to plug some of those gaps in the protection of people who own homes, but would it not be better for us to ban the lack of adoption right at the start? Should we not go to the source and find a solution as to why councils and housing estate developers are ripping off my constituents, and I am sure many others, who own their own homes? What can be done about that in this Bill?

George Lusty: Again, in our November working paper, we pointed to that very issue of there not being enough adoption by local authorities of those facilities. We put forward possible ways for that to be fixed, either through more mandatory adoption of those amenities or through some common adoptable standards that could be followed to inform the types of amenity that were suitable for adoption more broadly. As I say, we have not issued our final recommendations, but we have already said something about the options that might be available if there was a desire to try to tackle that now.

Q290 Richard Fuller: My concern is that you are going to finish your report, quite rightly, in the fullness of time—that will be February—and this Committee will not be sitting in February; heaven help us, I hope not. Please could you go away with a piece of homework for tonight to write to the Committee about what ideas from your report so far could be put in the Bill on the adoption matter? I think all of us would find that very helpful.

George Lusty *indicated assent.*

The Chair: Thank you. A very quick question with a very quick answer, please. Barry Gardiner.

Q291 Barry Gardiner (Brent North) (Lab): In your leasehold update report 2020, you adumbrated numerous complaints and you said:

"It is a real concern that homeowners who have entered into a lease are captive consumers with very little influence over the costs incurred by landlords or their managing agents that will in due course be passed on to them."

Do you believe that the Bill will give them control or simply greater transparency and access to understand their own exploitation, and has the CMA come across any comparable part of the economy where those paying the bills have no control over the bill or the standard of service?

George Lusty: It is worth saying at the outset that we approached our leasehold investigation primarily from the framework of consumer protection law, looking at instances of mis-selling and unfair contract terms. We cannot use consumer law—

Q292 Barry Gardiner: But you are concerned with the competition, and you have rightly pointed out that these are captive consumers.

Simon Jones: You are absolutely right. We think the captive consumer problem is a real problem. We spoke to a lot of people about what the solution might be. There was not an obvious solution, but we did think that if there were better redress mechanisms, that would at least help.

Q293 Barry Gardiner: So this is not a free market as it stands.

Simon Jones: You have choice about the property you buy, but if you buy a leasehold property—

The Chair: Order. I do apologise, but that brings us to the end of the time allotted for the Committee to ask questions. I thank our witnesses very much on behalf of the Committee.

Examination of Witness

James Vitali gave evidence.

2.21 pm

The Chair: We will hear oral evidence from James Vitali, head of political economy at Policy Exchange. For this session, we have until 2.40 pm. Could you please introduce yourself for the record?

James Vitali: Thank you very much for inviting me to give evidence. My name is James Vitali. I am head of political economy at the think-tank Policy Exchange. I work on a number of areas, including economics, housing and regulatory reform. By way of quick background, I recently authored a paper entitled "The Property Owning Democracy" in which I argue for the value socially and economically of property ownership, both for democracy and capitalism. I specifically address leasehold reform in that as part of the broader question. My main interest in the Bill is the enfranchisement process.

Q294 Andy Carter: In the paper you have just talked about, you stress the importance of enabling enfranchisement for leaseholders to expand the number of people with authentic property rights. Do you believe that the Bill will make it cheaper and easier for leaseholders to buy their freehold?

James Vitali: Yes. The first point to make is that I think leasehold is effectively a simulation of ownership. Imagine that ownership comes as a sort of package of rights and responsibilities; leaseholders lack many of those rights and responsibilities. The Bill will make meaningful improvements to the situation of leaseholders, but there are some practical improvements that could be made to the Bill to give practical effect to its intent.

Andy Carter: Could you expand on that?

James Vitali: Of course. There are a couple of things in particular. One has been raised already by Mr Gardiner in the evidence sessions and concerns mixed-use buildings. I think it is great that the threshold is being increased to 50%. That will bring a lot of leaseholders into the scope of potential enfranchisement. But as it stands, there is a provision in the Leasehold Reform, Housing and Urban Development Act 1993 concerning structural dependency rules—shared plant rooms and things like that.

Effectively, as it stands, the provisions in that Act disqualify people who get to the threshold but share service and plant rooms with a commercial unit in the building. That section in the 1993 Act should just be removed. There is already a framework for co-operation between commercial units and residential units in mixed buildings when it comes to services. It should be relatively straightforward to create a framework for co-operation with the Bill.

Q295 Barry Gardiner: Policy Exchange describes itself as a conservative think-tank, so you and I might find ourselves rather strange bedfellows on this, but I welcome what you said about shared services. This whole section is really about competition and free markets and so on. Would you not agree that the leasehold system has all the hallmarks of monopolistic practices and market failure? It has a lack of choice, uncompetitive prices and high barriers to entry, and there is an inability to substitute a service, all of which are the standard accusations that a conservative think-tank might make of an unfree market, and it is against consumer interest. All credit to you, that is what Policy Exchange is supposed to be promoting: the free market and the interests of the consumer. Leasehold itself and the exploitation we have been discussing over the past few days are really embedded in a non-capitalistic structure, are they not?

James Vitali: Yes, I quite agree. One of the cases I make in the paper I mentioned is that not only is ownership becoming more concentrated in a narrow stratum of society, but the type of ownership we are offering the aspirant is being thinned out. You were just listening to the suggestion that leasehold is almost mis-sold to consumers. I think aspirant property owners are being mis-sold when it comes to leasehold. They think they are buying into a genuine form of property ownership, but in many ways, as I said at the start, they lack the rights and responsibilities that should come with an ownership tenure, so I completely agree.

Q296 Barry Gardiner: Thank you. Freeholders, in that sense—particularly in relation to ground rent—are really a rentier class because they are not providing a service in return for the revenue stream they are cashing in on.

James Vitali: Yes, charges should be connected to the provision of a service, so I think ground rents should be reduced to a peppercorn. Charges should be made through this new and very sensible regime that is being proposed in the Bill for how charges are requested and demanded.

Q297 Barry Gardiner: I cannot believe we are agreeing quite as much as this—this is wonderful stuff. That rentier class often says, "Well, we do provide a service," but of course that is to conflate and confuse what they do with the service provided by a managing agent, which of course could be equally well performed by an enfranchised community that has the right to manage their own block. The domain of the freeholder is actually simply the accumulation of the ground rent, is it not?

James Vitali: I think the key here is whether the leaseholder has a choice in who is providing the service and what service they are providing. Any functioning free market is based on strong property rights and competition. The key here is giving existing leaseholders greater choice over who is managing their building and how it is being maintained, and increasingly giving them the chance to take on those responsibilities themselves.

Barry Gardiner: Thank you very much. In order to preserve both our reputations, I will not say that you agreed with me and I trust that you will not say that I agreed with you.

Q298 Richard Fuller: Let me attempt to get back on to Conservative territory, rather than Barry's territory. There are many experts in this field, and campaigners have done some fantastic work. I am not one of them—I do not know about this—so allow me some naivety in the questions I pose. Is marriage value a real thing?

James Vitali: I think a lot of the reforms proposed in this Bill are an attempt to reflect better the fact that when the leaseholder purchases the leasehold, they are acquiring the majority value of the asset. In market terms, sure, I suppose marriage value is significant and substantive, but as it stands it seems to me that a leaseholder acquires the majority of the value of an asset when they acquire the leasehold, and that is slowly eroded. I think that is the thing that is wrong in the process.

Q299 Richard Fuller: That did not quite answer my question. My question was: is marriage value a real thing? It could be large or small. Can you describe what it is and do you perceive that it is a real thing? I read somewhere about some vases—I do not know why we have these vase analogies sometimes—and I kind of get it. There is vase A and vase B—apparently they have to be Chinese—and when you put the two together, they are more valuable than they are separately. Is that a real thing? Do you understand that as a source of value? If you do, can you explain to me the legitimacy of transferring, at a stroke, £1.9 billion of that from one group of people to another, and that not to be described as a windfall gain?

James Vitali: Tricky question. If you were to acquire some property that you have genuine rights and responsibilities for the management of, the ability to benefit from in the future and the ability to control, then that form of property would be greater than if you were subject to charges and ground rent. On the point about the £1.9 billion transfer value from freeholders to leaseholders, I did take a cursory look at the impact assessment. I do think that is a legitimate decision for you as parliamentarians to make about 10-year property rights in the UK. I think it is justified.

Q300 Richard Fuller: I have one final question, if I may. I know it is not quite at a stroke, because I think it is when they come up, but is there any way of mitigating? It seems to me that when you take something away from one person incompletely and you cannot actually say, "Well, the value wasn't there"—I understand fee-for-service but marriage value is different from that—there is no other mitigation for the loss of that party, and there is not in the Bill. We can agree that marriage value needs to go; we are finally going from class A of people to class B of people. We could, however, then put in some mitigation for those who are having a loss, which would be usual if they had not done something materially wrong. What do you think about that?

James Vitali: I think that is where the dividing line lies between you and Mr Gardiner, and perhaps you and I and Mr Gardiner.

Richard Fuller: Oh, it is much wider than that.

James Vitali: Indeed. I think a balancing act needs to be struck in this Bill between spreading genuine property rights more widely and compensating those existing freeholders. If you seek to diffuse property ownership, but in the process undermine or dilute property rights, you are undermining the thing that you are trying to spread more evenly. That is a technical question for the way that you finesse this Bill, but I do not think it is a substantive issue with the desire to give leaseholders greater control and rights over their property.

Richard Fuller: Exactly.

Q301 Barry Gardiner: On the point of marriage value, Mr Vitali, let us go back to free market principles. You and I would agree that a free market is one in which properties are sold between a willing seller and a willing buyer—would you not?

James Vitali *indicated assent*.

Q302 Barry Gardiner: Of course, the argument that Mr Fuller sought to put forward to you was based on the old cup and saucer analogy, or the pair of vases being more valuable than the one. In this situation, we do not quite have a willing seller and a willing buyer. We have an encumbered buyer, because they are trammelled by the fact that they have lived in that property for the past 30 years, and they now see it becoming worthless. When the Custins *v.* Hearts of Oak decision in 1967 went through, the Government immediately came back in primary legislation, and legislated to abolish marriage value precisely because of that purpose. If I might impair my socialist credentials even further, it was Margaret Thatcher who sought to abolish it outright, and it was only the foolishness of the subsequent Prime Minister, John Major, that brought it back in for flats in 1993. Is that not your understanding of how a free market should actually work, between a willing buyer and a willing seller?

James Vitali: I will deflect and answer a slightly different question. It is interesting that the leaseholder enfranchisement process is kind of redolent of and similar to right to buy, in that it is a no-fault compulsory purchase of an asset. The difference with right to buy is that compensating the state is a different consideration from private citizens who have property rights. All I would say is I think it is important that the compensation mechanisms in the Bill are such that it does not feel like the things we are trying to spread more equitably—property rights—are being diluted by the state.

Barry Gardiner: We will agree on that one.

Q303 Andy Carter: James, we are fortunate to have you here, as somebody who thinks a lot about the property sector. We are legislating in one area; quite often, there will be implications in the broader sector. Have you put any thought into that? Could you share any views on unintended consequences that we might need to watch out for elsewhere in the property market?

James Vitali: Delighted to. That is probably the thing that I have been thinking about the most in terms of the implications of the Bill. I understand that there is an intention for a ban on leasehold houses to come forward on Report. One thing that I am really worried about is that what will effectively be created is a two-tier system of housing or tenure types in this country, between the countryside and our cities. It is very possible, if we deal with houses and not the tenures for flats, that we will create secure, authentic property rights outside of our urban areas and create in our urban areas a slightly more precarious, maybe outdated type of tenure.

As it stands, that has not been given enough consideration, because it also does not conform with the Government's wider strategy on housing, which, broadly speaking, is to densify our urban areas and increase housing supply in our cities. There are political considerations around why they are doing that—it is a lot more deliverable to focus on the densification of cities—but there are very good economic reasons for that too: the agglomeration effects of building housing supply in a city are greater than elsewhere. We need to incentivise people living in flats in dense cities, and if we deal with leasehold as it pertains to houses, not flats, it will work against the Government's quite legitimate and justified broader housing strategy.

Andy Carter: So your solution is to deal with houses and flats.

James Vitali: It seems to me that commonhold is broadly out of the scope of the Bill now. It would be my gentle encouragement that some incentives be included in the Bill for the take-up of commonhold. The Law Commission individual who came on Tuesday said that it is very complicated and there are lots of unintended consequences that need to be taken into account, but I think some small incentives—for example, on mixed use and the threshold for conversion—could be introduced, which might incentivise the take-up of commonhold. But before that I think it should be considered whether new leaseholds come with a share of the freehold. That would be a sensible, deliverable addition to the Bill, and it would deal with the problem that I outlined of a two-tier housing market.

The Chair: Barry, very quickly.

Q304 Barry Gardiner: On mixed use, you made a very good case about the reasons for looking at the shared services previously. Would you be in favour of seeing the Bill say that the threshold should increase not simply from 25% to 50%, but maybe to 75%?

James Vitali: I have not given that too much thought, I must say; 50% seems absolutely reasonable. I think there are some practical issues in getting to that 50% threshold in itself. I have heard stories about the process by which leaseholders whip around the building trying to get together enough—

Q305 Barry Gardiner: Sorry—this is not about the number of people for an enfranchisement; this is on the shared services point that we discussed earlier. It is about if it should be where the actual commercial element of the building is more than 50%. The limit was 25%; now it is proposed to be 50%. Actually, given that the right to manage would apply only to the leasehold part of the building, it would seem fair that that should be as high as, say, 75% commercial and 25% leasehold, because at the moment it is one person—the freeholder—who is the counterparty for the shared services. In this case, it would be the managing agent of the right to manage leaseholders.

James Vitali: I must say that I have not given that a lot of thought. I think increasing it to 50% will have a significant effect itself, but you may wish to go further.

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

Examination of Witnesses

Philip Freedman CBE KC (Hon) and Philip Rainey KC gave evidence.

2.40 pm

Q306 The Chair: We will now hear oral evidence from Philip Freedman from the conveyancing and land law committee at the Law Society, and Philip Rainey from Tanfield Chambers. We have until 3.10 pm for this session. Could the witnesses introduce themselves for the record?

Philip Rainey: I am Philip Rainey KC. I am a barrister in private practice at Tanfield Chambers and, among other things, I have specialised in leasehold enfranchisement and service charges and so forth for probably 20 or 25 years.

The Chair: It is not very helpful when you are both called Philip—Philip Freedman.

Philip Freedman: I am Philip Freedman. I am a solicitor and therefore only an honorary KC. I am a member of the Law Society's conveyancing and land law committee. I am a member of the Commonhold Council. I am a consultant at Mishcon de Reya, and was a senior property partner there for many years. We act for both landlords and tenants, investors, pension funds, right-to-manage people and all sorts of people who have a vested interest in the different sides of these issues.

My wife and I live in a flat. We are leaseholders. It is a block that was enfranchised under the right of first refusal under the Landlord and Tenant Act 1987, when the developer wanted to sell the building. I am one of about five people out of about 75 people who are actually interested in participating in the running of the block. We have about 52 flats, and if you take everybody, including husbands and wives, there are about 72 people who could potentially be directors participating in the landlord company, and only about five of us are interested in doing so.

The Chair: Thank you.

Philip Freedman: May I add one thing? You may have received a briefing on the Bill from the Law Society. I have been asked to tell you about a small correction to it. May I do that?

The Chair: You may.

Philip Freedman: The parliamentary briefing from the Law Society refers in the summary to the issue of new leasehold houses and urges that the Law Commission's proposals for land obligations should be enacted—it says to enable "flats" to be sold as freehold. That should be "houses". The law about positive obligations under leases, as distinct from under freeholds, indicates that leases are much better in relation to enforcement than freeholds at the moment, and it would very much help if freehold law was upgraded so that the obligations on positive matters such as performing services and paying for services could be brought into line, so that freehold is as least as effective as leasehold. This is a case where freehold is not as effective as leasehold.

The Chair: Thank you. I remind the Committee that we have until 3.10 pm for this session.

Q307 Matthew Pennycook: Gentlemen, in our evidence sessions so far, we have had very wide-ranging discussions —let me put it that way—not just about the principle of the Bill but about property rights, the functioning of market capitalism and liberal democracy, and everything but. As the shadow Minister for the Bill, I would like to use your expertise to focus on what is actually in the Bill and how we might improve it, so my first question is a very specific one on clause 12. I think I put it more to Mr Freedman than to Mr Rainey because of that Law Society briefing. It relates to valuation, which is one of the more complex matters that the Bill deals with.

The Law Society has expressed concern that the provisions in clause 12 designed to protect most but not all leaseholders from non-litigation costs that landlords may incur when responding to an enfranchisement or lease extension claim may cause issues, because under the proposed new valuation method, the price payable may be below full open market value. Could you clarify why you believe that to be the case? The standard valuation method in schedule 5 provides for a market value element. Why does the Law Society believe that it does not represent full open market values?

Philip Freedman: This started with the Law Society's recommendation to the Law Commission that one thing that might save costs for leaseholders was if they did not have to pay the landlord's costs on a collective enfranchisement or lease extension. We put forward the view that if the enfranchisement price is market value, then each side should bear its own costs. If you were to buy a house, you would not pay the seller's costs; each party would pay their own costs. That is what happens in the market. We said that in the context of enfranchisement being at market value. The Law Commission took that on board, and its report very clearly says that its recommendation that each side should pay some costs and tenants should not have to pay the landlord's costs—

Q308 Matthew Pennycook: My question is: why do you not think that the valuation method in here is full market value?

Philip Freedman: Because the suggested notional capping of ground rent at 0.1%, in many cases, where it applies, will reduce the purchase price below what it is in the open market at the moment. At the moment, in the open market, the ground rent stated in the lease is payable. We are aware that there are proposals for retrospective legislation, as one might call it, to interfere with existing leases and to say that the ground rent should be capped at a certain amount, but at the moment those rents are lawful, and those rents are therefore reflected in the price that someone would pay to buy the flow of ground rent. Therefore, if you assessed the purchase price for the enfranchisement as if the ground rent were capped and would not be as much as it actually would, then you would be reducing the purchase price to below the market price.

Q309 Matthew Pennycook: That is very clear and very useful.

I have a second question, relating to clause 59, which concerns regulation of remedies for arrears of rentcharges. Do you agree with my view that the Government are trying to fix a historical law that is essentially beyond repair? Should we be looking to abolish section 121 of the Law of Property Act 1925?

Philip Freedman: I think yes. I had to draft some rentcharge provisions many years ago, when we were acting for clients who were selling some industrial buildings on a new estate. They wanted to sell them freehold. There was no commonhold at that time and the issue of enforcing positive covenants was difficult. We came up with the suggestion that the rentcharges legislation should be used to allow an estate company to collect service charges, maintain drainage systems and so forth. It was agreed that the Law of Property Act gave excessive remedies to landlords for non-payment. I am all in favour of limiting the remedies so that, if someone does not pay for something, they can be sued for it, just as with the amendment in relation to forfeiture. It seems to me—this is my personal view—that limiting forfeiture, as you have proposed doing through your amendment, is the right thing to do, although I do have three points to make on that.

Q310 Matthew Pennycook: I will quickly come to that, but do have anything to add in relation to clause 59, Mr Rainey?

Philip Rainey: I agree that forfeiture for non-payment of a rentcharge on an estate, which is usually a relatively small sum of money, is a sledgehammer to crack a nut. I would be in favour of replacing section 121 rather than repealing it, so that there is a coherent and measured set of remedies for rentcharges. That is bearing in mind, as Philip just said, that a lot of the estate rentcharges covered by that legislation have nothing to do with residential; they are quite common on industrial estates. That is one of the unintended consequences that might occur if you were simply to repeal section 121.

Q311 Matthew Pennycook: That is extremely useful. I wish that we had you both for more than half an hour.

I have one quick final question on the abolition of forfeiture. Would you agree that we should do away with forfeiture entirely—it sounds like you do—on the grounds that it is a wholly disproportionate response to the breach of a lease? If so, what should we replace it with? Is suing for a debt—as happens with any other debt—and an injunction if the breach relates to conduct a sufficient response or, if we abolish forfeiture, should we be looking to replace it with some other system of recompense?

Philip Freedman: My view is that there are three aspects of the proposed abolition of forfeiture for leasehold dwellings that we should look at. One is that it should apply to individual leases of single dwellings, rather like the ground rent abolition; it should not apply to leases of multiple dwellings, such as a lease of 50 flats to some lettings company, which is a commercial enterprise, effectively. It should apply to leases of individual dwellings granted at a premium.

The other thing is that the threat of forfeiture is over the top in relation to financial debt—arrears of rent, service charges or whatever. You can sue for those. There may be refinements in relation to suing, but basically you can sue for them. But if a tenant has knocked down walls that they should not have, caused a nuisance or annoyance to other tenants in the building, or used the property for some unlawful purpose, then the remedy would be to threaten an injunction, as you have indicated. An injunction is a difficult remedy to enforce: it is very costly and it is at the discretion of the court—there are all sort of hurdles about injunctions. If, in the residential sector, the first-tier tribunal was given the power and jurisdiction to order parties to a lease to comply with the terms of the lease, free from the constraints of existing law in relation to injunctions, then one could avoid the need for forfeiture. Removing forfeiture for financial payments and damages is fine, but for other breaches it presents a problem.

The only other point is that we need to look at section 153 of the 1925 Act, which is the right for tenants, if they have a very long lease, do not pay any ground rent—it is a peppercorn—and are not susceptible to forfeiture, to enlarge into the freehold. That is a whole area of unclear law. It is not clear what the effect would be if you had one tenant in a block who declares that he now owns the freehold; it would be very unclear whether the management of the block would be affected. I think these things need to be addressed if one is going along that line with regard to forfeiture.

Philip Rainey: Because I appreciate that we have limited time to answer, the only thing I would add is that forfeiture is arguably, again, a sledgehammer to crack a nut, but so can be an injunction: the remedy for breach of an injunction is essentially committal to prison. The prospect of not being able to forfeit and instead there being rafts of committal applications to fill up the jails with people who are, for whatever reason, refusing to comply with some kind of covenant—that is very annoying, but ultimately they should not be in prison—is also unattractive.

Ultimately, there needs to be some sort of measured method of removing a problem tenant from a block. We very much concentrate on the position of landlords against tenants, but one very difficult tenant in a block can ruin life for everybody else. The Law Commission proposed a replacement scheme, and I suggest that that should be dusted off and looked at. A lot of the objections to it come from the commercial sector, so bring it into force for residential leasehold first.

Matthew Pennycook: That is all extremely helpful. Thank you very much.

Q312 Richard Fuller: Our previous witness, Mr Vitali, talked about potential concerns about the effect of regulation on people's understanding of property rights. Do you have any significant concerns about how the Bill affects property rights? If you do, what should we do about them?

Philip Rainey: In a sense, that is a conceptual question.

Richard Fuller: You are a lawyer.

Philip Rainey: Yes, and one tends to avoid the philosophical points. Clearly, from a legal perspective the Bill interferes in an extremely significant way with property rights. Whether that is the right thing to do is a value judgment.

One thing that is sometimes overlooked—I am not defending the leasehold system; I am on record as being in favour of commonhold, which is inherently a more satisfactory system for holding flats—is that a lot of people will be disappointed when commonhold comes in. They will still find that they are not allowed to remove the supporting walls in their flat or to have a noisy party on a Friday night, because their neighbours do not want that. A lot of the things you find in leases and the restrictions when living in flats are because, if you live communally in a block of flats, you owe duties to your neighbours. There are responsibilities, in communal living, that do not apply if you live in a small house in a field, 500 yards from your neighbours. The restrictions in the leasehold system are not as unique to leasehold as you might think; I would suggest otherwise. To go back to your basic point, clearly the Bill alters property rights. It is a value judgment as to whether that is the right thing to do.

Philip Freedman: I have heard a number of cases where the property industry is concerned about the transfer of value that will be effected by capping ground rents, removing marriage value and so on, in relation not just to the benefit to leaseholders but to the burden on those landlords that are pension funds and other organisations that will find that they are deprived of rental income that they have banked on and have thought will be reliable income over many years. They bought leases that were perfectly lawful, were not, so far as one can tell, entered into under any mis-selling, and the provisions for the ground rent are not necessarily unconscionable; the ground rents were invested in in good faith.

We must not lose sight of the fact that if there are winners, there are always losers. Some provisions of the Bill, which are fine, are to say that if the tenants are enfranchising, they do not have to buy the commercial bits of the building. Those can be left with the landlord under a leaseback, and therefore the value remains with the landlord. Both parties win: the landlord keeps the value and the tenants do not have to pay as much money. But where you are transferring value, there is always a loser, and there are lots of investors who appear to have bought in good faith and were not expecting retrospective legislation. Lawyers always do not like retrospective legislation. It is up to Parliament to decide whether the social benefit is sufficient to outweigh the concern about pension funds, and so on, that have invested in ground rents. The Law Society does not take sides between landlords and tenants, or different types of clients. We just want to make sure that Parliament focuses on the issue and makes the decision in the public interest.

Q313 Barry Gardiner: Mr Rainey, first, thank you for what you said about the preferability of commonhold to leasehold. Is it your view, therefore, that it would be good if the Bill were to make all new flats that are constructed leasehold with a share of freehold, as a staging post, in effect?

Philip Rainey: Yes. In a sense, that is the downside. It is possible to create what you might call commonhold-lite. It is a leasehold system—it is so encrusted with restrictions and requirements, although you own the freehold, that it is very similar. It would be only a staging post, because one of the problems with the current system is that it creates a "them and us" situation. You see it even when tenants own the freehold. Somehow they still think, "Well, it's 'my' lease and it's 'them'", which is them under another hat as the freeholder. Commonhold should eliminate that.

Q314 Barry Gardiner: Yes, I was taken by your remarks earlier about the disputes that can go on even where you have an enfranchised situation.

Philip Rainey: If you go to Australia and look at the websites, you find "I hate my strata" websites. Neighbours will be neighbours.

Barry Gardiner: Unfortunately, legislation cannot make your neighbours more considerate. I often wish it could.

Philip Rainey: I think I would be inclined to agree that it would be a reasonable step forward to say that there should be a share of freehold with—

Barry Gardiner: Any new build.

Philip Rainey: With new build. You would have to have rules.

Q315 Barry Gardiner: I want to probe your thoughts on what I find a very tricky part of the way in which the pieces of legislation are now interacting with each other. One of the great freedoms for leaseholders who either cannot afford or do not wish to enfranchise themselves, but where the building has deteriorated to a terrible state under the existing freeholder, is the provision for a court-appointed manager under section 24 of the Landlord and Tenant Act 1987.

That is something that I hope we very much want to protect, because these leaseholders really require the protection of a court-appointed manager. However, the Building Safety Act 2022 bars the court-appointed manager from being an accountable person and from taking full responsibility for the necessary safety remediation works. That responsibility under the BSA '22 regulations is now being given, in effect, to the one person whose track record shows that they are incapable and not to be trusted to perform the obligations of managing that building—namely, the freeholder who let it go to rack and ruin in the first place. The leaseholders, whom the courts sort to protect, will have that former, negligent freeholder back in charge. I do not know, but I am looking to you to tell us, how one might draft an amendment to the Bill to preserve the protection for leaseholders who find themselves in an incredibly invidious position.

Philip Rainey: The first thing to say is that—as you may know—there is an ongoing piece of litigation, in which I am involved, where that question of whether a manager can be an accountable person is yet to be finally decided. The current position is that the first-tier tribunal has decided that the manager cannot be an accountable person. I therefore cannot comment on that outcome.

Barry Gardiner: I was aware that you were involved in the case, but I did not want to drag you into the specific—I wanted to keep you at the general.

Philip Rainey: If, hypothetically speaking, the law is that a manager cannot be an accountable person; if, hypothetically speaking, that restricts what a manager can do; and if you, as Parliament, wished to alter that position, then you would amend the definition of a relevant repairing obligation in section 72 of the Building

Safety Act 2022. That amendment would make it clear that a relevant repairing obligation includes an obligation under a manager order under section 24 of the Landlord and Tenant Act 1987.

Q316 Barry Gardiner: Right. You think faster than I can even listen. Are you saying that we could introduce an amendment to this Bill that amended the Building Safety Act 2022 in such a way that we could ensure that those protections continue?

Philip Rainey: The obvious answer is that you are Parliament—you can change any law.

Q317 Barry Gardiner: I suppose my real question is, would you care to write to the Committee framing such an amendment?

Philip Rainey: I could, if asked. As I say, you can amend section 72 to change a particular definition. Arguably at least, subject to the regulations, it is not actually necessary for Parliament to do it, because section 72 has a power for the Secretary of State to amend it—it is a Henry VIII clause, which I am not very much in favour of, but that probably could be done by secondary legislation.

Barry Gardiner: I have no doubt that the Secretary of State could do that, but I always feel more comfortable if things are on the face of the Bill.

Philip Rainey: I respectfully agree.

Q318 Barry Gardiner: If I can prevail on you for just a little longer, could you explain the just and convenient test, and how the BSA has affected that?

Philip Rainey: The just and convenient test is effectively an equitable test. It is a very flexible test intended to allow the first-tier tribunal to take into account all of the circumstances and, in layman's terms, to decide whether something is just, fair, convenient and going to work—the rights and wrongs and the practicalities of it. Because of the ongoing case, I do not think I can answer the second part of the question, as to how the Building Safety Act 2022 might have affected that.

Barry Gardiner: I am sure hon. Members can ponder on your words and work it out from there. Thank you; that is really helpful.

Q319 Eddie Hughes (Walsall North) (Con): Mr Freedman, you represent developers and investors as part of your job. You just referenced the possible impact on pension funds. How significant is that? I am hearing, on the one hand, that people have very diverse portfolios, so although it would be a big number, it would be broadly distributed, nobody would actually feel any real impact and this is just a bit of shroud waving by people who would rather be very rich instead of quite rich. However, there are other people who say, "Hang on a sec, this is not very Conservative, is it?" or, as has been said, that we are talking about transferring wealth from one bunch of people to another. Clearly, Parliament can do that, but the impact might be greater on one than the other. I just wondered about your thoughts on that.

Philip Freedman: I am afraid that I cannot give you the answer to that. because I am not directly acting for those particular clients. I am afraid I know no more—

Eddie Hughes: You do not have a view. We will not take your professional—

Philip Freedman: I can completely understand that pension funds have invested in part in long-term income that they believed to be secure when they did it—that is, income for 90 years, 990 years or whatever it was going to be. I am told that a number of pension funds and other types of investment entity have invested cautiously, not necessarily buying portfolios where there are hugely escalating ground rents, but either fixed ground rents or modestly increasing ground rents that people would not say were egregious. However, they are still concerned because, in many parts of the country, particularly in the north-east, for example, property prices are so low that even 0.1%—even 1,000th of the price of a flat—would reduce the ground rent. The ground rent might be £100 a year or something, but the cap would result in it being £50 a year or something like that. Obviously, the impact would be great for those portfolios that have hundreds or thousands of these.

Q320 Mike Amesbury: Your organisation has said it is disappointed that the Bill does not deal with the regulation of managing and property agents. Can you elaborate on that? What needs to be included in the Bill?

Philip Freedman: The Law Society has been participating in various working groups following Lord Best's report, trying to help with the preparation of codes of practice that were intended to sit underneath the regulatory framework for property agents of different types, whether selling agents, managing agents or whatever. We feel that, because tenants often do not know what their rights are, and if they did know what their rights were, they may not want to spend the time or money getting someone to help them enforce their rights, you come back to the people actually doing the management. They need to be proactively willing to be transparent, and to realise that they have duties to the tenants as well as to the landlord. It needs a mindset change in the people who are doing the management. You do not want to rely on tenants having to try and find out what their rights are and then enforcing them. We feel, therefore, that a lot of the changes in the Bill, and other changes that have been talked about, will be better achieved if property managers are regulated, and that the right people with the right tuition being told what their duties are would be improved by regulation.

Q321 The Minister for Housing, Planning and Building Safety (Lee Rowley): Mr Freedman, in terms of your previous but one comment, to Eddie, on how you were told about the potential impacts on pension funds and the like, can you tell us, either now or separately if you prefer, who told you that? What is the source?

Philip Freedman: It was one of the two partners in the firm I had been speaking to. Also, I have heard that various other bodies, like the British Property Federation, have been looking into these issues, and there has been a certain amount of it in the property press. It is only general awareness; I do not know any specifics.

The Chair: Thank you very much. That brings us to the end of this panel. May I thank the witnesses very much for their evidence? We will now move on to the next panel.

Examination of Witness

Jack Spearman gave evidence.

3.10 pm

The Chair: We will now hear oral evidence from our seventh panel. Jack Spearman is chair of leasehold reform at the Residential Freehold Association. For this session, we have until 3.30 pm. Could the witness please introduce himself for the record?

Jack Spearman: Good afternoon. My name is Jack Spearman. I am from the Residential Freehold Association. We are a representative organisation for the UK's largest professional freeholders. Our members represent, or have management over, about 1 million leasehold properties in England and Wales. I chair the British Property Federation's committee on leasehold reform. I am also a director at Long Harbour, which is a regulated investment manager, and we have invested in residential freeholds.

Q322 Matthew Pennycook: Mr Spearman, thank you for coming to give evidence to us. The Government's 2017 consultation on tackling unfair practices in the leasehold market, which I think attracted more than 6,000 responses, found that freeholders regularly price-gouge leaseholders on service charges, ground rents, lease extensions and freehold acquisitions, as well as making arbitrary and unjust rules about what leaseholders can and cannot do with their homes. Is it not the case that many, if not all, of your members routinely engage in rent-seeking behaviour by gouging leaseholders as a matter of course and that the concerns of the RFA about the Bill are almost entirely related in various ways to how it might frustrate them or prohibit them from doing so?

Jack Spearman: Each lease will set out the terms of what can and cannot happen under that lease, so when people talk about changing terms, you have to be quite careful about what you are actually saying. The rent is set as a rent and a review is set as a review, so you cannot just change rent arbitrarily—the same as for service charge and many other things. I think what you are talking about is some of the aspects that are frustrating, whether it enfranchisement or lease extensions. It will probably surprise a number of you that our members do support a large number of the measures in the Bill, including a number of the amendments that you have put forward in Committee.

Q323 Matthew Pennycook: Okay. I may come back to some other specific issues if we have time, but specifically on insurance, the Financial Conduct Authority's report of September last year on insurance for multi-occupancy buildings found evidence of high commission rates and poor practice, which were

"not consistent with driving fair value to the customer".

It also found that the mean absolute value of commissions more than doubled between 2016 and 2021 for managing agents and freeholders of buildings with fire safety defects. Is it not fair to say that, again, many, if not all, of your members have benefited hugely from soaring buildings insurance premiums over recent years, so do you think the Government are entirely justified in seeking by means of clause 31 to limit their ability to charge insurance costs?

Jack Spearman: In terms of insurance premiums, they have generally all risen, for a number of reasons that you will be aware of, whether that is cost inflation, inflation generally or insurance premium tax. Let us not forget that the Government benefit from a lot of these things, and they are all rising at the same time.

What I would say is that there is merit in making sure that people who are actually providing services to administer the insurance work have some form of compensation for what they are doing. If the insurance premium was to double because there is an issue with cladding, why should someone take the benefit of that? The same could be said for remediation projects, for example, where VAT is paid. But, yes, I agree that a measured form of that would be helpful. The problem with the Bill currently is that it leaves all of that to secondary legislation, as you know. It would be helpful to see the primary legislation set out how that might work, and that is one of our recommendations.

Clearly, our members do a lot of work on insurance, whether that is administering claims, dealing with inquiries or sending out invoices to collect the insurance premium over hundreds of people—it is a job that someone has to do. It could be risk management, so telling the insurer what is on the building. You would be amazed to see how many insurers that our members deal with offer to insure a building without knowing what is on it. When we tell them what is on it and what is in it, a very different type of cover can be offered. So there is value, contrary to what people will say, although I do accept, clearly, that, like in any system, there are bad practices.

Q324 Matthew Pennycook: Just briefly while we are on that, have you got any sense of whether your members are complying, or are prepared to comply, with the new FCA rules that are coming into force at the end of this month with regard to the right to request to see the insurance?

Jack Spearman: Again, our members have always been of the view that the insurance is for the benefit of leaseholders. They provide the cover, and they provide the certificates; it is something that we have all been doing for a large number of years. So, yes, we do, and those that do not will obviously have to anyway under the FCA regulations.

Q325 Andy Carter: Thank you very much for your written submission to us. You say in there: "The RFA has serious concerns that the Government's proposals to cap ground rent will lead to significant cost to the UK taxpayer…and have…negative consequences for leaseholders" What are the costs for UK taxpayers of this piece of legislation?

Jack Spearman: One of the key and largest impacts of this Bill has not even been considered yet, because it has not been introduced. Some form of restriction on ground rent is going to be introduced at some point as an amendment. You are being asked to scrutinise a piece of primary legislation that does not have a number of impacts in it—for example, setting capitalisation rates, deferment rates and dealing with ground itself. So you are scrutinising something that is incomplete, and the impact of which none of us here know.

Going to the taxpayer point, the Government say that no compensation will be paid, but unfortunately they also know that that is probably not going to be compliant with the European convention on human rights. Compensation is going to have to be paid, and it is either paid by the taxpayer or the leaseholder. That is what we mean by that.

Q326 Andy Carter: Okay. In terms of the Bill setting out regulation for property managers, we heard from the Competition and Markets Authority earlier, and it has found significant areas of concern within this sector. Do you accept that it is an area that needs regulation and that there are bad practices at play here?

Jack Spearman: One hundred per cent. We actually wrote to the then Secretary of State in 2018 and asked for a voluntary code of practice, which was in the leaseholders pledge in 2019.

Q327 Andy Carter: Do you think a voluntary code is sufficient?

Jack Spearman: Sorry, this is back in 2018 and 2019, when we were trying to get the Government to engage and we thought that the idea of some form of regulation was better than none. We fully support the introduction of the regulation of property agents working group, and Mr Pennycook's amendments would see measures within 24 months. I think that is a good start. But, yes, broadly, like everyone else, we are saying, "Regulate the sector." We are all tarred by the poor actors, ultimately.

Q328 Andy Carter: I note that you use the term, when we are talking about capping rents, that it will send "a very damaging signal" to investors. Is that still your opinion—that investors are getting the wrong message from Government?

Jack Spearman: It is hard not to get the wrong message when the Government have said that they—

Andy Carter: Is this not the right thing to do? When you look at the practice that has been going on and the evidence that is there—the mis-selling and appalling behaviour—

Jack Spearman: I think there are two things. Where ground rents are onerous and egregious, it is hard to say that there is not an argument for legislating to deal with them. When it comes to ground rents that are not doubling more frequently than 20 years, I think that is slightly harder.

The point about investments is that, in the same week the Government announced £29 billion of investment from pension funds into UK plc, they announced a consultation that could see a value transfer of £29 billion away from UK pension funds through the ground rent consultation. The general living sector, and building houses in this country, needs capital, and that needs to come from somewhere. There were reports over the weekend from Savills, for example, that £250 billion are required to meet housing demand in this country. Where is that going to come from? It is going to come from pension funds.

So this is, unfortunately, sending the wrong signal, and I think the Government are aware of that—we have certainly made those representations directly and to other Departments.

Q329 Barry Gardiner: I want to pick up on what Mr Carter said and your insistence that capping rents was sending the wrong signal to pension funds. I trust you are aware of the statement from the Pensions and Lifetime Savings Association that said that pension funds aggregate allocation to all types of property—commercial as well as residential—and that accounts for 4% of all pension holdings, and that none of their members have expressed any concerns with them about proposed changes to rules affecting leasehold and ground rents. Were you aware of that?

Jack Spearman: Yes, I know where that came from.

Barry Gardiner: Well, it came from the Pensions and Lifetime Savings Association.

Jack Spearman: I would advise you to go and ask them again, because the pension funds we are talking about have made representations directly to the Government.

Q330 Barry Gardiner: If we are talking about, "Directly to the Government", the Government's own statement noted that the pension funds held less than 1% of assets in residential property, and added that any hit to pension funds would be within normal investment and depreciation tolerances. They said:

"We do not think it is fair that many leaseholders face unregulated ground rents for no guaranteed service in return."

So the idea that you seemed to put out—"My goodness, the housing market was going to collapse because pension funds were not going to invest in property any more because they weren't going to be able to extract the ground rents"—is a nonsense, is it not? You talked about £100 ground rent, but you know what is being done here. Your members are not limiting to £25 or £100 ground rents or peppercorn rents. Over the past 15 years, they have created a rentier structure wherein they can extract revenues from the ground rent that are exorbitant—in some cases, £8,000 a year for no service. Is that not true?

Jack Spearman: You make a couple of points there. First, you seem to be suggesting that it is okay to steal the chocolate bar from the shop because it is only 1% or 2% of the stock—it is still not okay. The second thing I would say is that—

Q331 Barry Gardiner: Nonsense. Justify the word "steal". I would say the word "steal" is justified when there is no service being provided, and yet you are charging for it, even if it is only a chocolate bar.

Jack Spearman: I can come on to the service provided. Ground rent is a consideration as part of the lease and the premium. You are right to say that, technically—legally—the ground rent does not afford service. But we would say that, through our members, a huge amount of work gets done as a result of that ground rent and as a result of pension funds having invested in it. Take the Building Safety Act 2022, for example—remediation, fire safety audits and building safety audits are all undertaken at no cost.

Q332 Barry Gardiner: Remediation—because the freeholder did not ensure the proper safety of the building in the first place.

Jack Spearman: I disagree with that.

Q333 Barry Gardiner: Mr Spearman, since we have limited time, let me turn to what you are saying to the members of the public. You have engaged in a number of polling operations. You have told people that only 1 in 4 people in a block would be able to agree with each other about how to manage that block. The implication is that many leaseholders do not want to take on the burden of management and, actually, some of them are incapable of taking on that burden of management—almost as if you are providing them with this wonderful service that they would not want to get rid of. But the figure of 1 in 4 people that you quoted in your survey was 1 in 4 people in the United Kingdom, and not leaseholders at all, was it not? It included people in Scotland who are not involved in the provisions of leasehold in England and Wales. So you went out to people who had no connection as leaseholders and surveyed them, and then claimed that was an argument.

Richard Fuller: On a point of order, Dame Caroline. I am wondering whether my colleague, Mr Gardiner, is getting to a question rather than just expressing a view.

Barry Gardiner: I just did, but you interrupted.

The Chair: We do have very limited time, Barry, and other people want to ask questions, so can you bring it to a question swiftly?

Barry Gardiner: Indeed. Mr Spearman, you have misled people in the polling surveys and the conclusions you have drawn from them, have you not? Your own members—Consensus Business, Long Harbour and Wallace Estates—did surveying in which they found that 67% of residential leaseholders said that they would wish to take control of their building and get out from under you, but you suppressed that, did you not?

Jack Spearman: We have never said that people are incapable of managing their building—absolutely not. The desire to do so diminishes with the complexity of the building. I am sure you have seen the Government's own survey on living in shared buildings. You heard from Professor Steven this morning in Scotland about the issues with the system in Scotland—

Barry Gardiner: A manager who works for a freeholder can be no different from a manager who works for an enfranchised set of leaseholders, can it? So the idea that the complexity is beyond the leaseholders is simply not a fair comparison.

The Chair: Order. We have time for only one more question, Barry. Can I move on to Richard Fuller, please?

Q334 Richard Fuller: Perhaps Mr Gardiner will call a point of order on me. I have been talking about this transfer of value. There are non-monetised here, but there is £1.9 billion of transfer. I think we have accepted from previous witnesses of all types that it is a political decision, but it is essentially taking from group A to group B. You just, I think, said there were ground rents that are not enumerated here, and I think you said they were not £1.9 billion, but £29 billion or £30 billion. Could you elaborate on that?

Jack Spearman: This is a bit of an issue we have with the way the impact assessments have worked, because the impact assessment for the leasehold and freehold Bill did not take consideration of the consultation impact assessment that came out on ground rent. They are not working together. That is part of the issue of you not being able to scrutinise the impact assessment within the ground rent consultation, where the Secretary of State is on record as saying he wants a peppercorn ground rent; in that it says the impact would be £27.7 billion. If you add that to the £3.2 billion in the Leasehold and Freehold Reform Bill impact assessment, that is where you get to.

Q335 Richard Fuller: So just to be clear, as the Committee considers this Bill, including what may come from subsequent secondary legislation, it is not £1.9 billion of transfer, but £1.9 billion plus £28 billion. Is that fair? So we need to bring it all in, not just—

Jack Spearman: I think it is a bit more, actually. Is it not £3.17 billion in this one?

Richard Fuller: Exactly—you have added them all up. I just did the first section.

Jack Spearman: Indeed.

Richard Fuller: But a bit like an iceberg, the transfer of wealth from group A to group B is somewhere else; it is not here in the impact assessment.

Jack Spearman: Agreed. Also, in terms of the people it is being transferred to and from, remember that while a lot of leaseholders are homeowners, there are also a lot of buy-to-let investors in that group—over 50% in our membership, of leaseholders are buy-to-let investors. That is a transfer from business to business being overseen by this Bill.

Richard Fuller: Very good. Does anyone else want to come in? I had another question, unless we have no more time.

The Chair: We have until half-past three.

Q336 Richard Fuller: Can I ask you about the discount rates that are used? We have the deferment rate and the capitalisation rate. Those will be determined in secondary legislation as well. Do you have any thoughts about what guidance should be given to the Minister about how those should be set?

Jack Spearman: Yes. It is very important that, at the very least, the primary legislation sets out what reference the Minister should look to—something dynamic would be helpful, so that you don't have these ridiculously long periods of time where one party is out or in. I think people have talked about looking at some long-term ideas, whether that is the National Loans Fund rate or the longest Treasury gilt. You obviously don't want to make it too dynamic, so that it is always shifting around, but I think it should clearly reflect market value. It should be done on a no-act principle. It should be enabled to be dynamic so that, as I said, you do not have this problem of the Secretary of State having to arbitrarily change it—it should be able to move with the market. It should be something that is available for reference.

The Chair: Thank you. That brings us to the end of that session. I thank our witness on behalf of the Committee.

Examination of Witness

Giles Grover gave evidence.

The Chair: We will now hear oral evidence from Giles Grover from End Our Cladding Scandal. He is coming to us via Zoom. For this session we have until 3.50 pm. If the witness can hear me, can he please introduce himself for the record?

Giles Grover: My name is Giles Grover from the End Our Cladding Scandal campaign, which represents leaseholders in unsafe buildings across the country. I will tell you about the background if you don't mind. In early 2019 we formed a coalition of leaseholder resident groups across the country. I represent leaseholders in close to around 2,000 buildings. Personally, I have been a leaseholder since 2008. I became a director of the residential management company in my building in 2010. I was first told my home was unsafe in August 2017 and I have been heavily involved in the cladding and building safety scandal since then, where it has particularly been clear that the nature of leasehold law has played an intrinsic part in the delays to our homes being made safe.

Q337 Mike Amesbury: What are the main implications of the Bill for remediating residential buildings? There are some good things in it, Giles. What is missing in it?

Giles Grover: There are some good things for leaseholders in general. There seem to be some better things than there were. Part of the problem is that we still do not have full clarity in terms of what the legislation will look like in its final form, and supporting legislation, so it is quite difficult to comment.

On building safety amendments, I am afraid to say I don't really know what is in there. I have seen that the Opposition have tabled a couple of amendments—new clauses 27 and 28—as a starting point. However, we have been lobbying the Government, meeting the Government, speaking constantly almost on a daily basis, and having regular meetings pushing for further protective measures to make the Building Safety Act operate as intended; but I cannot really see anything there. I have seen a press release saying, "We will apportion leases," which is something we raised with the Secretary of State a long time ago. I am talking about enfranchised buildings as well. But as it stands, I am still waiting for the Government to bring forward some building safety amendments that will mean that the homes that are unsafe, many of them unsafe for six and a half years, will be finally fixed at pace—at the pace we need and the pace we deserve.

Q338 Mike Amesbury: There is provision to strengthen accountability in terms of remediation and freeholders and ensure that there is more accountability for liabilities. Are the provisions strong enough at the moment?

Giles Grover: Not yet. Again, I had a look at the 140-page Bill and it did not say anything about developers. It talks a lot about the freeholders, but I cannot see anything that will mean that those freeholders will now crack on with making our buildings safe at pace. I cannot see anything that says what the mechanisms will be to oversee that. I fear that the reality on the ground is that the freeholders are still focused on mitigating their own liabilities. Historically they have taken years, for example, to sign grant funding agreements. They have delayed work starting on site. We are seeing those same things happen with developers now.

On a wider point, the Building Safety Act came into play on 28 June 2022. We are now looking at amendments that will make it operate as intended. So I think there needs to be a raft of amendments from the Government. Some of the stuff we have been talking about in terms of their ongoing policy thinking, but ultimately one of the simple things is that we still have too many leaseholders ruled out of protection. We still have too much uncertainty on the ground. So in the King's Speech, the paragraph that talks about making it operate as intended has a heck of a lot of heavy lifting to do. I need to see the detail before I can say whether it will work or not. I fear, based on my experience, that it is unlikely to be the case.

Q339 Mike Amesbury: One final question. Do you think there should be an amendment to extend the scope of the Building Safety Act, because of the interplay with leaseholders? There are literally hundreds of thousands now excluded from the Act, including buildings below 11 metres and where there might be more than three properties.

Giles Grover: As I said, the new clauses that have been tabled would go some way toward ensuring that those non-qualifying leaseholds for more than three properties are treated the same as qualifying leaseholders. The buildings that the Government currently deem irrelevant because they are under 11 metres would be made relevant.

It is worth just setting the scene. I gave evidence to the Public Bill Committee on the Building Safety Bill in September 2021, and there was a lot of talk of, "We'll do this, and we'll do that. We'll definitely protect you." We then saw a raft of legislation come out from 14 February 2022. The problem is that it is all very high level and complicated. Some people might get some protection and some people might not. We are all the innocent victims of this scandal. It shocks me that despite the Secretary of State saying on 10 January 2022 that we are shouldering a desperately unfair burden and that industry will pay, two years later I am still talking to Public Bill Committees about what more needs to be done. It is all too slow.

Q340 Andy Carter: I am very conscious that you are a different type of witness to the others we have been hearing from today and we are talking about the cladding scandal. It is very helpful to get your insight on this. I would like to pick up on the questions that Mike has asked you. It would be very helpful if you could be as specific as you can. What is missing from the Bill that you think is a real priority for people who are in a position where they are in a leasehold property and cannot sell because of issues relating to cladding and remediation?

Giles Grover: There are quite a few things missing. The first thing to say is that what you should really do is say that there are no more non-qualifying leaseholders or people who are being arbitrarily ruled out of help. You could do that as an amendment to the Bill. From some of the ongoing campaigning and lobbying that we have done, particularly with the Levelling-Up and Regeneration Act 2023, we fully recognise that the Government do not necessarily want to protect everyone. The problem is that they have spent far too long apportioning liability and talking in theoretical terms. There are still too many ordinary people that are not protected.

Going into the specifics, if there is not the willingness to say, "Okay, we will protect all the victims of this scandal"—which you really should be doing—what we need to do is say, "How can we better protect the ordinary people who still aren't protected but who the Government say that they want to protect and should protect?". That goes back to the conversations being had with the Department and the amendments that have been tabled about extending property protection to the first three properties of all leaseholders, because that would mean that everyone is treated fairly, and about apportioning ownership, which the Government have said they will do in this Bill, to make sure that the marriage penalty, as it is known, will be done away with.

There is one other point about the distinction of where it is in perpetuity for non-qualifying leaseholders. It is very worrying. For the non-qualifying leaseholders we speak to, it is literally hanging over their necks for the rest of their lives. Even if the building gets remediated and even if it is assessed as safe, they are still treated as non-qualifying leaseholders. One element I forgot to mention is that there is a potential portfolio-size amendment that was tabled to the Levelling-Up and Regeneration Act that we hope the Department is looking at closely.

Again, all leaseholders should be protected. If there is not the will for that, which there really should be, we need to do more to make sure that the protections as they are protect more people. I could go into a lot more detail, but I do not know how much you want.

Q341 Andy Carter: That is very helpful. Thank you very much. Do you have any views on the requirements for regulation of building managers?

Giles Grover: I have a lot of views on that area. Part of the issue was that under the Building Safety Act there were building safety managers in place with certain duties. At the last minute, that legislation was moved away from, but those duties still exist. A lot of the high-rise buildings that have registered with the Building Safety Regulator are facing enormous costs of compliance, and there are real fears about the work that will need to be done. We are seeing bills land on our doorstep all over again. I got one—thankfully, I am a residential management company director and can challenge it more—with an estimate of £500 a year extra per leaseholder to comply with the Building Safety Regulator if we had not moved away from some of the strange costs that were in there.

I have seen that for other buildings: leaseholders who have just got the freehold have suddenly got a demand saying, "You are also going to have to pay for compliance with building safety." It is very worrying and strange that the innocent leaseholders we are meant to be protecting are now going to have to pay, but just in a slightly different way, to ensure the safety of the buildings that should have been made safe and should be maintained. Fire doors are another example that I could really get into, but I only have 20 minutes so I will hand back to you.

Q342 Matthew Pennycook: Giles, thank you for giving up your time to come and speak to us. I want to follow up on Mike's and Andy's questions. You may have said everything you can say about what you would like the legislation to do, but if you have some more detail it would be useful.

Mike and I tabled new clauses 27 and 28 to address some of the "in principle" issues we have been pushing for a long time on—qualifying and non-qualifying leaseholders and building height. Specifically, in terms of what the Government might feasibly bring forward, what is your experience from cases across the country of the operational elements of the Building Safety Act that are not working effectively? I am just trying to get from you a more realistic sense of what you might expect the Government to bring forward, in terms of extending this Bill to ensure the Building Safety Act operates as intended. What tweaks to the Building Safety Act are required, in as much detail as you can in the time you have?

Giles Grover: One of the major tweaks is on an issue we were first made aware of in November 2022 due to the residents of a building in Greater Manchester being forced to pay for interim measures. The council is now paying for those interim measures but it has been told that it cannot recover them through the Building Safety Act because the legislation is not in place. That is a simple one that could help.

You could ensure that resident management companies and right to manage companies can raise the legal costs where they might be needed in respect of building safety and relevant defects. There are some wider elements that are already in the Bill, in terms of stopping freeholders re-charging their legal fees. Our concern is whether that will protect non-qualifying leaseholders who are still being forced to pay fees.

This is where I can get into the specifics. I am no lawyer as such—you have had a lot of very intelligent people on before me—but I say this from the campaigning aspect of it. We need to see a fair bit more detail about exactly what happens when a freeholder is avoiding their liabilities and not giving a landlord certificate within the stated time period. The Government may tell us, "Oh, don't worry. That means they can't pass the costs on," but theoretically I cannot sell my flat without that certificate because the conveyancer is asking for it, so why not have an express duty for them to provide it? To be completely frank, the whole landlord certificate/leaseholder certificate process is an absolute quagmire and a nightmare on the ground. I would personally prefer it if the Government did away with that.

There are lots of issues like that. There are points about court-appointed managers, which cannot be the accountable person, which seems quite strange to me. We have been told that there is another route through the Building Safety Regulator, but that would require the special measures manager legislation to be enforced. There are issues with shared owners in complex tenures where you have a housing association as the head leaseholder. Will they be protected from all costs? Will they have the same rights as all leaseholders?

Philosophically, the simplistic approach should be that you have the full protection. New clauses 27 and 28 would be a massive relief. It is then a case of whether legislation is needed or whether you can use the current measures. With the developer scheme, where it is for over 11-metre buildings—could that be extended to under 11-metre buildings? The cladding safety scheme is now for mid-rise buildings; could that be extended for low-rise buildings? Could the cladding safety scheme be extended to become a building safety scheme?

For a lot of this the pushback will be, "There is not enough money," but there is money out there. There is money that can be got from industry. There are further parties, such as construction product manufacturers and providers, and the Secretary of State said they would make them pay two years ago; they have not paid yet. There are a lot more parties that could be brought into the pool. So operationally there is more they could do by saying, "We've got seven different funding schemes;" —or however many it is—"where is the oversight of all of them? Who is talking to each other? Are these regulators? How does DLUHC talk to the recovery strategy unit? Are they talking to the Building Safety Regulator? Is Homes England involved? The local regulators now have new money to take action; are they taking action?"

So, arguably, a lot of it is already in place; but what is needed is the comprehensive oversight and the proper grip to say, "Right: all these buildings—10,000 of them—are going to get fixed. This is how—this is where the money is coming from. Cladding costs are here. Non-cladding costs will come from there." What you really need to do is put the money up front, recover it. The Government say that their leaseholder protections mean that the majority of leaseholders won't have to pay. If they have got the confidence in their legislation then they can take over the burden from leaseholders.

Q343 Barry Gardiner: First, may I declare an interest? I am not sure whether it is necessary, but our witness Mr Grover participated in a documentary that I am making about leaseholds, so we have a knowledge of each other. First, Mr Grover, thank you for all the campaigning that you and your colleagues in End Our Cladding Scandal have done; it has been magnificent over the past few years.

You raised the issue, in response to Matthew Pennycook's questions, of section 24 of the Landlord and Tenant Act 1987 and applying for an officer of the court to be installed to do the works and turn around a building. Clearly, it would be something much to be wished, for many people who found themselves involved a building safety issue, if they were able to do that. Related to that, I know you are aware of the Building Safety Act 2022 ban on section 24 managers being the accountable person.

This is a matter we have discussed with a number of witnesses such as yourself. Are you aware that at one development, the management control regarding safety and remediation was given back to a freeholder who was the one who took, the tribunal found, £1.6 million in insurance commissions unreasonably? They will now be handed £20 million because of that BSA anomaly, by the Government. So the very people who could not be trusted with money are now being given £20 million to remedy the defects that they were responsible for in that building.

Giles Grover: I am very aware of it. I have watched some of the sessions, and I was made aware of it last year by one of the leaseholders at that building. I have looked into this. I have had various conversations with various lawyers. It still just seems bizarre that the manager who has been appointed by the court cannot be the accountable person. I am just a simple man: I do not understand why that cannot happen—why the Government, or the judge, based upon the legislation that is out there, think it is a reasonable or positive outcome for that money to go back to that rogue landlord, shall we say. I do not get it, to be honest.

Q344 Barry Gardiner: Have you come across cases like one that I have in my constituency? It was a co-development between St Modwen and Soucrest, but when the provisions that the Government put in place came into force, they changed to Wembley Central Apartments Ltd. That name was then changed to Wembley Residential Ltd, and they now have their offices at, I think, Cricket Square, Grand Cayman in the Cayman islands. Do you have other examples of the ways in which freeholders are using company law to avoid their obligations under this Act and in fact relocating to jurisdictions outwith the UK?

Giles Grover: Yes. I only have 20 minutes, so I will try to be brief. I could spend all day talking about that. I have had personal experience of that in my building. Our developer sold the freehold out from under us to an offshore freeholder who, one year before the building safety crisis took effect, said they did not want to sell the freehold because they were long-term investors. A year or so later they said, "Okay. We are transferring it to another company. Do you want to buy the freehold off us?" Because they saw—

The Chair: Order. I am afraid that brings us to the end of the allotted time for the Committee to ask questions, and indeed for this afternoon's sitting. I do apologise to the witness, but I thank him very much on behalf of the Committee. The Committee will meet again on Tuesday to begin line-by-line scrutiny of the Bill.

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

3.50 pm

Adjourned till Tuesday 23 January at twenty-five minutes past Nine o'clock .

Written evidence reported to the House

LFRB35 Jones Lang LaSalle (JLL)

LFRB36 Darren Pither

LFRB37 WIQ Residents Association

LFRB38 Residential Freehold Authority (RFA)

LFRB39 Professor Christopher Hodges

LFRB40 Free Leaseholders

LFRB41 Business LDN

LFRB42 Joint submission from Grosvenor Property UK, Cadogan, Church Commissioners for England, Related Argent, Calthorpe Estate, and John Lyon's Charity

LFRB43 PCRA (Park Central Residents Association)

LFRB45 Law Society