PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

LEASEHOLD AND FREEHOLD REFORM BILL

Eighth Sitting

Thursday 25 January 2024

(Afternoon)

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Monday 29 January 2024

The Committee consisted of the following Members:

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

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

Huw Yardley, Katya Cassidy, *Committee Clerks*

† attended the Committee

Public Bill Committee

Thursday 25 January 2024

(Afternoon)

[Clive Efford *in the Chair*]

Leasehold and Freehold Reform Bill

Clause 26

Extension of regulation to fixed service charges

2 pm

The Minister for Housing, Planning and Building Safety (Lee Rowley): I beg to move amendment 46, in clause 26, page 42, line 19, leave out ", and subsection (2)".

This amendment is consequential on NC6.

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

Clause stand part.

Government new clause 6—*Notice of future service charge demands.*

Lee Rowley: The amendment is consequential on Government new clause 6, which introduces a requirement for landlords to provide a future demand notice under section 20B of the Landlord and Tenant Act 1985 if the landlord has incurred costs and cannot issue a demand for those costs within 18 months. The new clause makes it clear that a future demand notice applies only in respect of variable service charges; as a result, there is no longer a need to include the reference to section 20B(2) in clause 26, which otherwise seeks to provide clarity on what measures apply to all service charges and what measures apply only to variable service charges. I commend the new clause to the Committee.

I turn to clause 26. It is important that all leaseholders have access to appropriate information on what they are paying for and the condition of their building. That will help them to determine whether their landlord is providing an adequate service or whether they are being overcharged. Many landlords already provide a good service; however, some do not, and that must change. The existing regime is geared up to protect leaseholders who pay variable service charges. There are some leaseholders who pay fixed service charges, and those leaseholders do not enjoy the same protections. Leaseholders who pay fixed charges have a right to receive a good-quality service, which means having a better understanding of how their funds are being used, as well as having access to key information on matters that are important to them, as we discussed before we adjourned.

Clause 26 extends part of the regulatory framework on the provision of information to cover leaseholders who pay fixed service charges. Subsection (2) amends section 18 of the Landlord and Tenant Act 1985 to create separate definitions of "service charge" and "variable service charge". That enables the Government to provide clarity on which provisions in the 1985 Act apply only to variable service charges. Subsections (3) and (4) amend the 1985 Act to ensure that parts of the regulatory regime continue to apply only to leaseholders who pay variable service charges—that includes, for example, the ability to challenge the reasonableness of the service charge under section 19 of the Act. The measure will ensure that leaseholders paying fixed service charges are entitled to receive information of relevance to them. I commend the clause to the Committee.

I return to Government new clause 6. When section 20 major works are undertaken, landlords may require a leaseholder to pay for costs up front or pass on costs to the leaseholder once the work has been carried out. Where leaseholders are charged after work is completed, the leaseholder must be issued with a demand for payment within 18 months of the costs having been incurred or, alternatively, be notified in writing within the 18-month period that they will be liable to pay the costs in the future. Failure to meet one of those two conditions will mean that leaseholders are not liable.

There is no prescribed form or content of a notice under section 20B(2) of the Landlord and Tenant Act 1985, which has led to confusion regarding the meaning and effect of the section, and much case law has followed. It has also left leaseholders with uncertainty on whether they will be required to contribute, the amount of their contribution and when the demand for payment could be served; the new clause seeks to provide clarity on all of those. New clause 6 introduces new subsections (3) to (9) into section 20B of the 1985 Act, which will require landlords to specify the amount of costs incurred, the leaseholder's expected contribution and the date by which the demand will be served. The intention is to give leaseholders certainty on costs that have been incurred by the landlord, their own individual liability and when they are likely to receive the demand.

The changes to subsections (2) and (3) require landlords to issue a future demand notice when they will be passing costs through the service charge more than 18 months after the costs have been incurred. Subsection (3) defines "future demand notice" as a notice in writing that relevant costs have been incurred, and that the leaseholder is required to contribute towards the cost by payment of a variable service charge. Subsection (4) sets out that the Secretary of State and Welsh Ministers can, by regulations, specify the form of the notice, the information to be included in it and the manner in which the future demand notice must be given to the leaseholder. Subsection (5) details that regulations by the Secretary of State and Welsh Ministers may specify that information to be included in the future demand notice should include an estimate of the costs incurred; an amount that the leaseholder is expected to contribute to those costs; and a date on or before which it is expected that the service charge will be demanded. We will work with landlords, managing agents and leaseholders to set out what a future demand notice may contain, to ensure that regulations require the right level of information.

Subsection (6) sets out that regulations may provide for a relevant rule to apply where the leaseholder has been given a future demand notice and the demand for payment is served more than 18 months after costs were incurred. Subsection (7) sets out the relevant rules and the leaseholder's liability to pay the service charge where a future demand notice contains estimated costs, an expected contribution or an expected demand date.

Subsection (8) also allows the landlord to extend the expected demand date in cases specified by regulations. That might be because of unexpected delays in completing the work, for example. The measures seek to provide leaseholders with more certainty on costs. I commend the new clause to the Committee.

Amendment 46 agreed to.

Clause 26, as amended, ordered to stand part of the Bill.

Clause 27

SERVICE CHARGE DEMANDS

Matthew Pennycook (Greenwich and Woolwich) (Lab): I beg to move amendment 11, in clause 27, page 43, leave out line 12.

This amendment would remove provision for the appropriate authority to exempt certain categories of landlord from the requirements relating to service charge demands set out in subsection (1) of the clause.

Clause 27 replaces provisions in the 1985 Act with a new provision that imposes a simple requirement on landlords to demand payment of a service charge using a specified form, rather than, as is presently the case, in accordance with the terms under the lease in question—or, in the absence of any such provisions, in any manner that suits them. We very much welcome the clause, which should ensure that service charge demands and annual reports are provided to leaseholders in a standardised format. If it works well, the clause is likely to have the most widespread practical impact of any provision in the Bill, given that many hundreds of thousands of service charge demands each year will have to be in a prescribed form.

The clause will also ensure, by means of inserting proposed new section 21C into the 1985 Act, that where the demand for service charge payments is not in the specified form, containing the specified information and provided to the leaseholder in the specified manner, the lease provisions relating to late or non-payment do not apply to the charge in question, and there is no obligation to pay until they are met. There is also a new sanction for non-compliance, which we will consider in due course. The effectiveness of the provisions in the clause will ultimately rely on enforcement, but new section 21C should ensure that the majority of freeholders and managing agents comply with the requirement to issue a service charge in the standardised form.

We do, however, have two concerns about aspects of the clause. Amendment 11 addresses the first of those concerns, which relates to exemptions from the requirements being introduced. New section 21C(3) confers powers, by regulations subject to the negative procedure, on the appropriate authority to exempt certain landlords. We have reservations about the inclusion of such powers, because they could be used to exempt entire categories of landlords from the requirements set out in subsection (1), and thereby deny large numbers of leaseholders the benefits that they would otherwise secure as a result of their application. Amendment 11 simply deletes subsection (3)(a) to remove the power to provide exemptions from subsection (1) for certain types of landlords. We hope the Minister will consider accepting it. If not, we would be grateful for some clarity on what kind of landlords the Government believe might need to be legitimately exempted from the relevant requirements, and some reassurance that the power will be used sparingly and in an extremely limited manner.

Lee Rowley: I thank the shadow Minister for his amendment. We will resist it for reasons that I will give, and I hope I can reassure him to the extent that he does not seek to push it to a vote. I am happy to give at least one instance of a good reason for exempting landlords now or in future: there are cases where it may be too costly or disproportionate to expect a landlord to provide this degree of information, or where doing so is unnecessary. An example that I was not aware of before I was told is a freeholder of two flats who resides in one of them; that is known as a Tyneside or criss-cross lease, which became common in the north-east of England in the 19th century. Given the limited number of people who live in there, and the reason for that structure, we would deem it unnecessary to provide this form, hence the ability to exempt.

However, to address the hon. Gentleman's key point, notwithstanding individual exemptions, I am happy to place on record that once we have consulted, understood people's views, taken on the broad range of views about this, and potentially found other things like criss-cross leases, we would expect any list to be very small indeed. We share the clear hope that the power will be used only where it is absolutely necessary, and certainly not to the extent that the hon. Gentleman fears. I hope that, on that basis, he may consider withdrawing his amendment.

Matthew Pennycook: I thank the Minister for that response. I was also unaware of criss-cross or Tyneside leases, although the Opposition Whip, my hon. Friend the Member for North Tyneside, indicated to me during the Minister's remarks that she used to live in one, so she will have some familiarity with them. On the basis of the Minister's response, and given the reassurances that he has provided, I am happy to withdraw the amendment. It is our hope that the measure will apply to very limited categories of landlord, and I think that the Minister indicated as much, so very few leaseholds will be exempt from the requirements. On that basis, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Lee Rowley: I beg to move amendment 47, in clause 27, page 43, line 24, after "1987" insert "('the LTA 1987')"

This amendment and Amendment 54 align references to the Landlord and Tenant Act 1987 with other references to Acts.

The Chair: With this it will be convenient to discuss Government amendments 54 and 124.

Lee Rowley: Amendments 47 and 54 are required because of new clause 9, which amends the Landlord and Tenant Act 1987. They ensure that references to the Landlord and Tenant Act 1987 are aligned with other references to Acts, by adopting the abbreviated reference. Amendment 124 is consequential on amendments 47 and 54; it aligns references to the Landlord and Tenant Act 1987 with other references to Acts in the Bill. I commend these amendments to the Committee.

Amendment 47 agreed to.

Matthew Pennycook: I beg to move amendment 12, in clause 27, page 43, line 38, at end insert—

"(c) in section 48 (notification by landlord of address for service of notices), after subsection (3) insert—

'(3A) Subsections (2) and (3) do not apply in relation to a written demand for payment of a service charge if section 21C of the Landlord and Tenant Act 1985 requires the demand to include information which subsection (1) also requires to be provided to the tenant.'"

This amendment would ensure consistency between the information requirements provided for by Clause 27 and specific contractual requirements set out in leases.

Amendment 12 addresses our second concern with clause 27, which relates to consistency between it and existing contractual requirements. This issue came to our attention purely as a result of written evidence—actually, to be precise, I think it was as a result of a blog post—from Mark Loveday of Tanfield Chambers. He drew attention to the fact that the amended provisions in this clause are likely to supplement, rather than replace, contractual requirements in some existing leases about the form of demands for payment. There is therefore potentially a risk of confusion and duplication. Mr Loveday also highlighted the overlap between provisions in the 1987 Act relating to the information to be furnished to tenants, and the fact that clause 23(4) does not disapply the information requirements of section 48 of the 1987 Act.

I throw my hands up: this is far from my most elegantly drafted amendment. It is simply an attempt to probe the Government on the consistency between the information requirements provided for by this clause and provisions in 1987 Act relating to specific contractual requirements set out in leases. I look forward to hearing the Minister's thoughts on the amendment, and on the general need to ensure complete consistency between the measures being introduced by clauses 26 to 30 and those in the 1985 and 1987 Acts that set out the main limitations on variable service charges in residential leases.

Lee Rowley: I thank the hon. Gentleman for his amendment. The advice that I have received is that the amendment is unnecessary. Sections 47 and 48 of the 1987 Act already prescribe that landlords must give details of their name, and an address in England or Wales where they can be served with notices, when making a demand for rent or other sums, including service charges. Clause 27(4) provides clarity on the fact that if there is an overlap between information required under proposed new section 21C of the LTA 1985 and the obligations under the 1987 Act, proposed new section 21C takes precedence. For example, if the new standardised service charge demand form requires a landlord to give the same information as is provided under sections 47 and 48 of the 1987 Act, proposed new section 21C would take precedence, and failure to provide the information would be dealt with by the provisions of the proposed new section.

Critically, the new standardised demand form will not restrict the amount of information that must be provided with a demand. Landlords will be able to provide additional information on the demand form if they wish. That may include any information set out in the lease. Unless we have missed something, we believe that, for that reason, the amendment is unnecessary, and request that it be withdrawn.

2.15 pm

Barry Gardiner (Brent North) (Lab): I think the Minister referred to section 47 of the Landlord and Tenant Act 1987. Is he entirely confident that that is effective? I have a case in my constituency, in Wembley Central Apartments. The co-developers have sold on and on, and the owner is now in the Cayman Islands. The UK address to which one can apply is that of the managing agents, Fidum, but Fidum says, "We have asked our principals, and they say that they have asked their principals," and it goes all the way to the Cayman Islands, and one gets nothing back. The leaseholders have been desperately trying to access the information for months. They have served the correct notice to the correct address in the UK, but they still cannot get the information that they require.

Lee Rowley: I recognise that in some instance it is an incredibly frustrating process to go through. As I know the hon. Gentleman will appreciate, this is a pretty technical element of policy. The assurances that I have received from officials and experts involved is that the legislation should cover those bases. There will always be challenges around finding people and going through operational processes. There will be challenges in finding people who do not want to be found easily, but ultimately the law is clear that they need to be found. From that perspective, I think that the law is sufficient. We do not think anything has been missed, but if something has, we will happily receive further correspondence and consider it.

Matthew Pennycook: I will be brief. My hon. Friend the Member for Brent North raises an interesting point. Can the Minister—if not now, then perhaps in writing—expand on whether, where a landlord has not complied with the relevant requirements, proposed new section 21C means that the provisions relating to late or non-payment do not apply? Does it provide that level of protection? The hope is that it does.

On the general point, I welcome the clarification and assurances that the Minister has provided. On that basis, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

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

Lee Rowley: Service charge demands are one of the most important ways in which leaseholders receive information from their landlord, as we have been discussing. Under current arrangements, landlords are required to issue any service charge demand in accordance with the terms of the lease, or otherwise in a manner that suits them. That has led to variable practice in the sector, which has often been to the detriment of the leaseholder, who then gets confused about what they are paying for and has to spend time chasing the landlord for more information.

Proposed new section 21C enables the Secretary of State and Welsh Ministers to prescribe a standard form and the information that it should contain. We will work closely with leaseholders, landlords and managing agents to ensure that we prescribe both the right information and the right level of detail. Proposed new section 21C(2) makes it clear that a failure to provide information in the new standard format will mean that the leaseholder does not have to pay the charge until the failure is remedied, and any provisions in the lease for non-payment will not apply. The Secretary of State will also have the power to create any exemptions if our work with stakeholders demonstrates that there is a good case for any landlord being excluded, either now or in the future.

Clause 27(2) omits existing legislation relating to obtaining information on a summary of costs, as well as other unimplemented legislation surrounding service charge demands. Those measures will be superseded by the provisions we are implementing in part 3 of the Bill, so it is not necessary to retain them. That measure, alongside others, should ensure that landlords provide relevant information to leaseholders, and I commend the clause to the Committee.

Question put and agreed to.

Clause 27, as amended, accordingly ordered to stand part of the Bill.

Clause 28

ACCOUNTS AND ANNUAL REPORTS

Barry Gardiner: I beg to move amendment 130, in clause 28, page 44, line 17, at end insert—

"(iii) a statement of all transactions relating to any sinking fund or reserve fund."

This amendment would require the written statement of account which the landlord will be required to provide to a tenant to include a statement of all transactions relating to any sinking fund or reserve fund in which their monies are held.

This amendment would require the written statement of account, which the landlord will be required to provide to a tenant, to include a statement of all transactions relating to any sinking or reserve fund in which their moneys are held. Sinking or reserve funds in England and Wales contain literally millions of pounds. Even the smallest block of flats will have a fund of tens of thousands of pounds, yet leaseholders find that they cannot get information about what is happening with it. A landlord may be raiding it to meet their cash-flow problems, in the hope—which is not always fulfilled—of putting the money back later. If millions of pounds is held in a reserve account, leaseholders want to know what interest they may be earning on those funds or whether it is being quietly siphoned off by the landlord.

The amendment would require the written statement of account, which the landlord will be required to provide to a tenant, to include a statement of all transactions relating to any sinking or reserve fund in which their moneys are held. As colleagues will remember from the evidence session that we had before we started our line-by-line scrutiny of the Bill, Martin Boyd of LEASE—the Leasehold Advisory Service—and Andrew Bulmer of The Property Institute said that this provision was really important to include; indeed, it is now part of their voluntary code. They pointed out that it was originally included in the Commonhold and Leasehold Reform Act 2002 but was never brought into force.

The provision is particularly dear to me because it is what started my campaigning for leasehold reform 26 years ago. A group of leaseholders in Mountaire Court came to me and explained that they had each paid £23,000 to their landlord, who was the head leaseholder. They lived in a block of 30 flats, so the total was well over £600,000. They said that the head leaseholder had gone into liquidation and that their money had gone. At that point, the freeholder came to them and said that they were prepared to do some of the work. The leaseholders had been arguing that the work should be done. The freeholder then came to them and said, "Yes, we'll do the roof and the windows, but we need you to pay us £6,000 each to do that," in addition to the £23,000 they had already incurred. They came to me and asked, "What guarantee do we have that our moneys are not going to be filched away in the same way as the original funds?"

I tracked back through Companies House—I think there were 156 different companies, which were ultimately registered, through Daejan Holdings, to Freshwater—to find out that the head leaseholder, who had gone into liquidation, had signed form 397, which allowed Freshwater to take any moneys that were left with the head leaseholder. All that money had gone back to Freshwater, and there was no way of accounting for it. The debate that I held with the then Minister at that time started the campaign. He said, "This is outrageous. These moneys should be held in some sort of escrow account." They were not, however, and the leaseholders had no access to what was happening. It is important that there is real accountability for reserve funds, because at the moment it is being held blind from the people who are paying the money.

Lee Rowley: I am grateful to the hon. Member for his amendment. When I was a councillor in a location not too far away from him a number of years ago, I had similar experiences with the challenges of sinking funds, so I completely appreciate the point he makes. The amendment would prescribe that landlords provide specific information to leaseholders. I agree that they should have access to relevant information. My pushback is merely about where we put this as opposed to what we do, subject to consultation. I am very sympathetic to many of the points he made.

Clause 28(2) does give the appropriate authority the power to prescribe other matters that should be included as part of a written statement of account. We need a consultation to give relevant parties the ability to debate and discuss that and give their views. We must ensure that it is proportionate and cost-effective, but once we have gone through that consultation, I think there is a strong case for ensuring that there is sufficient information as he has outlined to some extent.

Barry Gardiner: I am grateful to the Minister for what he has said, but the strongest protection would be to have it on the face of the Bill. Even when it was on the face of the 2002 Act, the Government never brought it into force. So this is not something we have not had previously. It is right there in legislation for a leaseholder to have access to this information, but we have never brought it in. What the Minister is suggesting is actually a regressive step, taking leaseholders further away by saying, "We'll do it through secondary legislation now."

I really do think it is important to have this on the face of the Bill. We know how Committees work. I know the Minister cannot accept the amendment now, but I would ask him to go away and come back on Report. If he comes back with his own amendment to achieve the objective, I will be delighted.

Rachel Maclean (Redditch) (Con): Will the hon. Gentleman give way?

The Chair: Order. I am not surprised the hon. Lady has mistaken that intervention for a speech. It was a very long intervention—

Eddie Hughes (Walsall North) (Con): It's like those leases he keeps talking about; they just keep rolling round.

Barry Gardiner: Oh yes, I was intervening.

Lee Rowley: Thank you, Mr Efford. Would my hon. Friend the Member for Redditch like to intervene on me?

Rachel Maclean: I thank my hon. Friend the Minister. Perhaps he would like to ask whether, given his extensive history and detailed knowledge on the subject, the hon. Member for Brent North knows why those provisions were not brought in following the 2002 Act. Or perhaps the Minister would like to update us if he has that knowledge for the Committee.

Lee Rowley: Sadly, I confess to not having that knowledge from back when I was at university; I probably was not studying the right things. I appreciate the point from my hon. Friend the Member for Redditch that there has been an opportunity for this to be implemented under Governments of both parties and it has not been done. I am always happy to listen to the hon. Member for Brent North, and I do appreciate the point he is making. It is this Government's intention to move forward with this, albeit through secondary legislation, which I know he has concerns about. I am happy to put that on the record on the assumption and hope, at least on the Conservative side, that we are in government when this happens. I hope he will not press his amendment.

Barry Gardiner: I will press the amendment to a vote because I think it is important that we have it on the record.

2.30 pm

Question put, That the amendment be made.

The Committee divided: Ayes 5, Noes 7.

Division No. 6]

AYES

Amesbury, Mike	Pennycook, Matthew
Gardiner, Barry	
Glindon, Mary	Strathern, Alistair

NOES

Davison, Dehenna	Mohindra, Mr Gagan
Fuller, Richard	Rowley, Lee
Hughes, Eddie	
Maclean, Rachel	Smith, rh Chloe

Question accordingly negatived.

Barry Gardiner (Brent North) (Lab): I beg to move amendment 131, in clause 28, page 44, line 34, at end insert—

"(4A) Any of the contributing tenants, or the sole contributing tenant, may withhold payment of a service charge if the tenant has reasonable grounds for believing that the payee has failed to comply with the duty imposed by subsections (1) to (4); and any provisions of the tenancy relating to non-payment or late payment of service charges do not have effect in relation to any period for which a service charge is withheld in accordance with this subsection."

This amendment would enable leaseholders to withhold service charge payments where the landlord has failed to comply with the obligation to provide a written statement of account in the specified form and manner within the six month period from the end of the financial year.

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

Amendment 13, in clause 28, page 45, line 4, at end insert—

"(8) Where a landlord of any such premises fails to comply with the terms implied into a lease by subsection (2), any rent, service charge or administration charge otherwise due from the tenant to the landlord shall be treated for all purposes as not being due from the tenant to the landlord at any time before the landlord does comply with those subsections."

This amendment would require courts and tribunals to treat the landlord's compliance with the implied term requirement for annual accounts and certification as a condition precedent to the lessee's obligation to pay their service charges.

Amendment 14, in clause 28, page 45, line 40, at end insert—

"(9) Where a landlord fails to comply with subsection (1), any rent, service charge or administration charge otherwise due from the tenant to the landlord shall be treated for all purposes as not being due from the tenant to the landlord at any time before the landlord does comply with that subsection."

This amendment would require courts and tribunals to treat the landlord's compliance with the implied term requirement for annual accounts and certification as a condition precedent to the lessee's obligation to pay their service charges.

Barry Gardiner: Amendment 131 would enable leaseholders to withhold service charge payments where the landlord has failed to comply with their obligation to provide a written statement of account in the specified form and manner within the six-month period from the end of the financial year that is specified in the legislation. Arguably, it is more important for leaseholders that the accounts are presented in time than that they are presented in a specific form. I welcome what the Government have done to make sure that accounts are presented in a specific form, but the real crux of the matter is: are they presented in time? The amendment would enable leaseholders to have redress if they were not.

We heard in the evidence sessions of that huge imbalance of power in the leasehold system. Given that the Government already accept the principle of leaseholders withholding service charge moneys where they have not been demanded by a landlord in the right way, surely we should rebalance that imbalance of power in the landlord-tenant relationship in leasehold by permitting them to withhold service charges when they are not forthcoming within that allotted time. I believe that policy was also in the 2002 Act, but again, as with the provisions on sinking funds, it was not brought into force.

I also welcome amendments 13 and 14. Certainly, the former achieves something similar—maybe even better. If the Minister were able to give me an assurance that he were willing to accept amendment 13, tabled by my hon. Friend the Member for Greenwich and Woolwich, I might even be persuaded to withdraw amendment 131.

Matthew Pennycook: I rise to speak to speak to amendments 13 and 14. As I think my hon. Friend the Member for Brent North just touched upon, clause 28 inserts new sections 21D and 21E into the 1985 Act to

create a new requirement for a written statement of account to be provided by landlords within six months of the end of the 12-month accounting period for which variable service charges apply. It also places an obligation on landlords to provide an annual report to leaseholders. We welcome the clause, as did my hon. Friend the Member for Brent North, for the reasons discussed in the evidence sessions last week. The 2002 attempt to mandate a form of regular service charge accounts and statements was ultimately unsuccessful, with the replacement section 21 of the 1985 Act never brought into force. As a result, service charge processes remain unstandardised.

A staggering range of different procedures are being used across the country. Some leases specify the form that annual budgets and accounts must take, while others do not. Some require certification by the freeholder, managing agent, management company, accountant or auditor, while others do not. Some prescribe deadlines by which budgets or accounts must be produced and make adherence to those conditions a precedent to liability to pay a service charge, while others do not.

Clause 28 clearly seeks to overhaul this fragmented patchwork of arrangements by introducing the new section 21D, making annual accounts and certification by a qualified accountant a mandatory requirement and, through new section 21E, introducing a statutory duty to provide leaseholders with an annual report about their service charges. By introducing the mandatory requirements that it does, new section 21D(2) implies a term into leases of dwellings with variable service charge provisions.

In our view, the decision to imply terms raises a number of questions and concerns. First, do the implied terms of new section 21D replace any equivalent existing provisions in the lease? If not, landlords and managers will potentially be forced to prepare two sets of accounts: one under the existing terms of the lease and the other under the new implied terms in section 21D. Secondly, why are no express sanctions for non-compliance included in new section 21D? That point was raised by Amanda Gourlay in the Committee evidence sessions.

Given that the implied terms are not covered by the enforcement provisions in new section 25A—provided for by clause 30—surely it is not the Government's intention to require leaseholders to apply for specific performance through the courts when it comes to this matter. Thirdly, despite the clause including no right to recover implied costs, there is a risk that some landlords will nevertheless seek to recover the extra costs of complying with these requirements through service charges. Can we be sure that leaseholders will not find themselves picking up the bill for complying with the new mandatory requirements? I would welcome the Minister's response to each of those questions and concerns, in writing if he is not able to address each in detail today—they are very specific and technical.

Perhaps the more significant question that arises from the decision to imply terms by means of new section 21D is whether the landlord's compliance with those terms will be treated by the courts and the tribunal as a condition precedent to the lessee's obligation to pay their service charges. We believe it is important that it is made clear in the Bill that compliance with the implied terms in question is a condition precedent to the lessee's obligation to pay their service charges and that, by implication, leaseholders are not required to pay if the landlord does not comply with the implied terms. Amendments 13 and 14 would have that effect, with the same desired outcomes as the welcome amendment 131, in the name of my hon. Friend the Member for Brent North, but without the tribunal potentially having to arrive at a judgment on the state of mind of the leaseholder who is withholding their charge. I hope the Minister will accept those amendments as a means of providing the necessary clarification.

Lee Rowley: I thank the hon. Members for Brent North and for Greenwich and Woolwich for their amendments.

Amendment 131, in the name of the hon. Member for Brent North, seeks to enable leaseholders to withhold payment of their service charges when accounts are not provided within six months. I absolutely agree with the sentiment that information must be provided in a timely manner, and that there have to be consequences for not doing so. However, the question is whether withholding the service charge is a proportionate and effective means of doing so; the effective question is whether the risk of doing so creates unintended consequences. For example, were a leaseholder to withhold payments in circumstances where it is found that section 21D had been complied with, that may render the leaseholder liable to pay their landlord's litigation costs, depending on the terms of the lease. Withholding payments also creates consequences for other leaseholders and may eventually mean that works are not carried out. I recognise that that is not the intention or the point that the hon. Gentleman is making, but in the portion that we are looking at, it is important that we consider all potential unintended consequences.

Services of certified accounts will, for most landlords, be a necessary step for a landlord to identify whether they have spent more than estimated during the accounting period and, where the costs incurred during that period are more than was estimated, the landlord will wish to serve a further demand to recover the shortfall. It is in the landlord's interest to do that, but I recognise that not all landlords act in a completely rational way or a way that necessarily follows logic. Should a landlord, however, fail to issue a demand for costs within 18 months of those costs having been incurred, then through new clause 6, the leaseholder would not be liable to contribute towards those costs at all.

I realise that that answer will probably not address every part of the concern expressed by the hon. Member for Brent North; it is the same as when I applied that logic to the amendment in the name of the hon. Member for Greenwich and Woolwich. However, I hope it demonstrates both that we are clear that it should be done—that there is a logic, an incentive and a rationale for it to be done—and that there is ultimately a cliff at the end of it, a cut-off point in the event that they do not do it. I hope that provides some assurances; I will see whether that is enough to tempt the hon. Member for Brent North to withdraw his amendment.

Barry Gardiner: I appreciate what the Minister has said about that cliff edge of 18 months. We have talked about cynicism in this Committee before, but let me tell the Minister what I believe may happen. I think a landlord who is withholding information will decide that they can now do so with impunity for 17 months and

[Barry Gardiner]

28 days, and then they will serve the required information up on a plate. The provision is almost tempting them to do that. If the Minister is going to rely on that, rather than looking at the question again in further detail, I urge him to reduce that timeframe substantially. I will not put a figure on it—I do not say that it should be 12 months, or nine months—but it should be reduced substantially. However, I am very happy to withdraw my amendment in favour of amendment 13.

The Chair: That was an intervention; I will come back to you.

Lee Rowley: I am grateful to the hon. Gentleman for his comments in that regard. To save time, the same logic applies from our perspective to amendments 13 and 14, and I hope that at least in part reassures him—I will wait to hear his comments, but I encourage him to withdraw his amendment if it does.

Barry Gardiner: I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Matthew Pennycook: Mr Efford, may I respond to the Minister's comments on amendment 13?

The Chair: No, you have missed that chance, I am afraid. We are in the votes.

Matthew Pennycook: In that case, I will press the amendment to a vote without justifying it.

Amendment proposed: 13, in clause 28, page 45, line 4, at end insert—

> "(8) Where a landlord of any such premises fails to comply with the terms implied into a lease by subsection (2), any rent, service charge or administration charge otherwise due from the tenant to the landlord shall be treated for all purposes as not being due from the tenant to the landlord at any time before the landlord does comply with those subsections."—*(Matthew Pennycook.)*

This amendment would require courts and tribunals to treat the landlord's compliance with the implied term requirement for annual accounts and certification as a condition precedent to the lessee's obligation to pay their service charges.

Question put, That the amendment be made.

The Committee divided: Ayes 5, Noes 7.

Division No. 7]

AYES

Amesbury, Mike	Pennycook, Matthew
Gardiner, Barry	
Glindon, Mary	Strathern, Alistair

NOES

Davison, Dehenna	Mohindra, Mr Gagan
Fuller, Richard	Rowley, Lee
Hughes, Eddie	
Maclean, Rachel	Smith, rh Chloe

Question accordingly negatived.

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

Lee Rowley: We have already talked about this, but in summary, most landlords are required under the terms of the lease to provide leaseholders with a written statement of accounts. Where leaseholders feel they have not been provided with sufficient information, they may ask for a written summary of costs for the past accounting period or, if the accounts have not been made up, for the period of 12 months ending with the date of the request.

We know that the current arrangements, as we have just discussed, do not provide adequate statutory protection. Although many landlords provide their leaseholders with sufficient information, others fail to do so. Subsection (2) of clause 28 introduces two new measures to address that. Proposed new section 21D of the 1987 Act implies into leases a new requirement for landlords who charge variable service charges and manage blocks of four or more dwellings. The threshold reflects existing arrangements for the preparation of a summary of costs. We are placing an obligation on such landlords to provide a written statement of account to leaseholders within six months of the end of the 12-month accounting period. This statement must be certified by a qualified accountant.

Matthew Pennycook: The Minister provides me with the opportunity to get my justification in, but, without going through it, he can answer the question that underpinned amendments 13 and 14 by simply telling me whether the decision to imply terms, as new section 21D does, means that a landlord's compliance with them is to be treated as a condition precedent to the lessee's obligation to pay their service charges.

Lee Rowley: I am grateful to the shadow Minister for his question, and, because of its specifical legal and technical nature, I will write to him. I know that members of the Committee may wish to seek assurances about the word "arising", which was referenced in evidence last week. I am happy to give the assurance that we will consult accountants on to how to present these service charge accounts, which I hope will mean that there is a process to ensure that any necessary clarification of particular terminology will be clear to those who operate within it.

2.45 pm

Rachel Maclean: In the same evidence session, we also heard Amanda Gourlay's concern about the nature of the accounts being mandated, and she said that it is not something that she would recognise as a set of accounts because it does not have a balance sheet or expenditure. I think the Minister said that a chartered accountant will have to sign off on them. Can he reassure members of the Committee that that will address the concern raised with us by Amanda?

Lee Rowley: I thank my hon. Friend for her question. Yes, that is my understanding, and, as part of the response in writing, we will clarify that.

To conclude, new section 21E places an obligation on landlords to provide an annual report in respect of service charges and other matters likely to be of interest to the leaseholder arising in that period.

Barry Gardiner: Could the Minister clarify a point for me? Obviously, there are different forms of accounts, such as short-form accounts and audited accounts.

In what he is proposing, as I understand it, there is no compulsion to have an audit of the service charges shown in those accounts. The certified accounts happened in blocks already, but they are pretty meaningless because the freeholder appoints the accountants and tells them what form they want them in. Surely the key is having not just the accounts but the service charges audited as proper.

Lee Rowley: I am going to include that in my written response, too, because I know that the specifics of the definition of audit are quite different from other aspects of this question. My understanding is that we will prescribe in secondary legislation what needs to be provided. Given that an accountant will be a part of that, they will have to ensure that the audit conforms to their usual codes of practice. I will write on the specifics to ensure that I have given sufficient information.

Richard Fuller: As the Minister is contemplating what he will put in his letter, including a response to the hon. Member for Brent North, could I gently remind him that auditing is an expensive procedure? There will be a number of instances where these accounts might fall short of what would be required under existing Companies House legislation. There are some metrics and things out there that the Government could use, but he should bear in the mind the cost of auditing.

Lee Rowley: My hon. Friend is absolutely right. One of the reasons why I want to write is that I want to ensure that the specific elements and substantive parts of the concept of audit are represented to the Committee in the most accurate way. We have to strike a balance by ensuring that sufficient information is made available for decisions to be made, but equally we cannot create a process that is so involved, for what I am sure are very good reasons, that it would be disproportionate, and then create a whole heap of new consequences on the other side, which is what we are trying to avoid.

To conclude, new section 21E places an obligation on landlords to provide an annual report. For service charges, that report must be provided within one month of starting a 12-month accounting period, although it can be provided earlier if it is expedient to do so. Both new sections allow the Secretary of State, as we have already discussed, and Welsh Ministers to prescribe the detailed content in secondary legislation. We will work closely with interested parties when we come to do that. Subsections (3) and (4) make consequential changes to the definition of "qualified accountant" under sections 28 and 39 of the 1985 Act to reflect these new sections. I commend the clause to the Committee.

Question put and agreed to.

Clause 28 accordingly ordered to stand part of the Bill.

Clause 29

Right to obtain information on request

Matthew Pennycook: I beg to move amendment 15, in clause 29, page 46, line 19, at end insert—

"(3) Information specified for the purposes of section (1) must include accruals and prepayments and digital copies of service charge accounts."

This amendment would ensure that regulations made by the appropriate authority must provide tenants with the right to accruals and prepayments and digital copies of service charge accounts.

As things stand, leaseholders only enjoy the right to request a summary of relevant costs and inspect supporting documentation in relation to such a summary. Barring a disclosure order made during tribunal proceedings, there are few direct means for leaseholders to secure relevant information. Clause 29 makes a series of changes to the 1985 Act to provide for a new stand-alone right for leaseholders to request information from their landlord, and we welcome it.

Precisely what such a right will entail will largely be set out in regulations that will presumably not only specify the relevant categories of information that can be requested and obtained, but the relevant timelines for compliance. We take no issue in principle with the detail being brought forward by statutory instrument—for obvious reasons—but we have tabled amendment 15 to ensure that the information that ultimately can be lawfully requested by leaseholders under clause 29 includes accruals and prepayments, as well as digital copies of service charge accounts.

We feel that statutory access to accruals and prepayments is vital because they are prepared on a true and fair basis and are necessary to understand most service charge accounts. The case for ensuring that service charge account information can be accessed by leaseholders in a digital format is, we hope, self-evident. I hope the Minister will consider accepting the amendment or, if he feels that he cannot, will at least provide the Committee with robust assurances that the relevant regulations will in due course specifically include accruals and prepayments and digital copies of accounts in the categories of information that can be requested.

Lee Rowley: I do not seek to detain the Committee, and I hope the hon. Gentleman will accept my short response. I am not disregarding the substantive points of the amendment, but some of them we have discussed before. I accept that this is an important area and we have to get it right. We must make sure that the information prescribed in the process works and is comprehensive enough for people to get a true understanding of what is going on and proportionate enough to make it meaningful and not incur unnecessary costs. I agree with the hon. Member that leaseholders should have access to the relevant financial information and that that information should be clearly understood and articulated so that people can derive decisions and comfort from it.

The Government prefer that the detail is prescribed in secondary legislation and are committed to consulting. It is fair to say that the details will be key parts of a discussion about the feasibility of inclusion in the final decision when it is made.

Matthew Pennycook: I welcome that response from the Minister. On that basis, I am happy to beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Matthew Pennycook: I beg to move amendment 16, in clause 29, page 48, leave out lines 1 to 8 and insert—

"(4) P may not charge R any sum in excess of the prescribed amount in respect of the costs incurred by P in doing anything required under section 21F or this section.

(5) The prescribed amount means an amount specified in regulations by the appropriate authority; and such regulations may prescribe different amounts for different activities.

(6) If P is a landlord, P may not charge the tenant for the costs of allowing the tenant access to premises to inspect information (but may charge for the making of copies)."

This amendment would make the appropriate authority (i.e. the Secretary of State or the Welsh Ministers) responsible for setting a prescribed amount for the costs of providing information to leaseholders. That prescribed amount would be the maximum amount that freeholders and managing agents employed by them could seek to recover through a service charge.

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

Amendment 132, in clause 29, page 48, leave out lines 1 and 2.

This amendment would prevent a landlord from recovering the costs of complying with the requirements to provide information imposed by new sections 21F and 21G.

Amendment 133, in clause 29, page 48, line 3, leave out "But,".

This amendment is consequential on Amendment 132.

Matthew Pennycook: Arguably of more importance in ensuring that clause 29 is beneficial to leaseholders than the type of information that they will henceforth have the right to request and what form it is shared in is the need to protect them from excessive charges levied for providing that information. As it stands, subsection (4) of new section 21G of the Landlord and Tenant Act 1985 would allow person P to charge person R for the costs of doing anything required under new section 21F or this new section, while subsection (6) renders those costs relevant for the purposes of a variable service charge. In other words, new section 21F includes an implied right for landlords to recover the costs of supplying the relevant categories of information to leaseholders through the service charges, with penalties for non-compliance under clause 30.

We obviously do not take issue with the right to recover reasonable costs of complying with the mandatory requirements introduced by the clause, but there is an obvious risk, given everything we know about how some landlords in the market operate, that some will charge excessive fees for supplying that information. We have tabled amendment 16 to give the Secretary of State the power, just as the Bill provides for in other respects, to set prescribed amounts with a view to ensuring that leaseholders are not subject to unreasonable costs should they feel they need to request certain categories of information. I hope the Minister can understand the very simple point that the amendment is driving at and will consider accepting it.

Lee Rowley: I am grateful to the hon. Gentleman for moving amendment 16. He does not deny that landlords will incur a cost for answering information requests. The level of cost will vary, depending on the volume of information, the complexity, the period, the timeline and a number of other factors. There may be difficulties in obtaining all that information. Landlords may also incur a cost in chasing other people who hold the information required to answer a leaseholder's request, notwithstanding our earlier conversations about the reasonableness of the costs for talking to other parties.

Given the variety of different scenarios, we start from a place in which it is very difficult to set a cap that would not create another unintended consequence somewhere else. None the less, I note the hon. Gentleman's concern and am happy to confirm that we are listening very carefully on this matter, but I hope he might consider withdrawing the amendment.

Barry Gardiner: Amendments 132 and 133 would prevent a landlord from recovering the cost of complying with a requirement to provide information imposed by new sections 21F and 21G of the 1985 Act, which is very much in line with what my hon. Friend the Member for Greenwich and Woolwich said.

Given that the Government are rightly focusing on reducing costs to leaseholders, these amendments would ensure that a landlord cannot charge leaseholders for giving them information about their home and their charges. We do not charge voters or taxpayers for complying with freedom of information requests, so I am not clear why there should be a distinction here. Many requests and information transfers will now be made electronically. The days when people had to go to the office to pull out hordes of receipts are, I hope, a thing of the past. These requests and transfers should not involve a great deal of expense.

Again, I do not want the Minister to think I am a cynical chap, because I am not, but I know what will happen. There will be the same hierarchies that we talked about earlier. Landlords will create arm's length companies to hold this information in tiers and categories, and they will charge for providing information at each level. That is what they do. We have to understand that it is not a mistake or one bad apple. Many landlords adopt this practice as a way of securing revenue. Painful though it is to admit that our fellow citizens do this sort of thing to each other, they do. We are passing this legislation to try to protect people.

Lee Rowley: I will not detain the Committee, because my response will be similar to the one I gave to the hon. Member for Greenwich and Woolwich.

We accept the broad point made by the hon. Member for Brent North but, for the reasons I outlined previously, we think it would be difficult to do this. There is at least an argument that proportionality has to be considered. However, I am happy to confirm that we are listening very carefully. On that basis, I hope the hon. Member for Greenwich and Woolwich may be willing to withdraw amendment 16.

Matthew Pennycook: I appreciate what the Minister has said, both about the variety of circumstances that need to be covered and about the difficulties with imposing a flat cap. I take on board what he said about the Government listening carefully.

I am minded to press the amendment to a vote purely to indicate how strongly we feel about this issue. The thrust of the five provisions is, "Let's increase transparency and let's increase the enforcement measures," all ultimately to ensure that leaseholders have a better ability to bear down on unreasonable costs, and it is of great concern to us that while we are trying to do that, we are opening up other routes whereby unscrupulous landlords can start to introduce unreasonable costs in relation to the very things that we are trying to clamp down on. We will press the amendment to a vote simply to put on the record our concern in respect of leaseholders needing some protection—even if it is not a flat cap—from unreasonable costs being passed on through this mechanism.

Question put, That the amendment be made.

The Committee divided: Ayes 5, Noes 7.
Division No. 8]

AYES

Amesbury, Mike	Pennycook, Matthew
Gardiner, Barry	
Glindon, Mary	Strathern, Alistair

NOES

Davison, Dehenna	Mohindra, Mr Gagan
Fuller, Richard	Rowley, Lee
Hughes, Eddie	
Maclean, Rachel	Smith, rh Chloe

Question accordingly negatived.

The Chair: Mr Gardiner, is it your intention to press amendment 132 to a vote?

Barry Gardiner: Mr Efford, it is the definition of insanity to do the same thing over and over again, expecting a different result. Therefore I am happy not to press amendments 132 and 133.

3 pm

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

Lee Rowley: As I outlined in relation to clause 28, the Government accept that the current arrangements do not provide adequate statutory protection. In addition to the measures set out in clauses 26 to 28 to drive up transparency, clause 29 introduces new provisions to enable leaseholders to request information from their landlord or a third party who holds relevant information. Subsection (2) introduces proposed new section 21F of the Landlord and Tenant Act 1985, which sets out provisions that enable leaseholders to receive information on request. That information may relate to

"service charges, or…services, repairs, maintenance, improvements, insurance, or management of dwellings."

One example might be a stock condition report for the building. Landlords will be obliged to provide information that they have in their possession, and where they need to ask another person for it, that person is required to do the same.

Proposed new section 21G provides further details on information requests under section 21F. It allows a leaseholder to request that they inspect a document and make and remove a copy of the information. Section 21G also provides that landlords may not charge the leaseholder for providing facilities for access, although they can charge for the making of copies. Alternatively, the landlord can pass the reasonable costs of any inspection through the service charge. This section allows the Secretary of State and Welsh Ministers to specify the time period for providing such information, circumstances in which that period may be extended and how the information is to be provided.

Proposed new section 21H provides that where the lease is assigned, the obligation to provide the information requested under section 21F must still be complied with. However, the person obliged to provide the information is not required to provide the same information in respect of the same dwelling more than once.

Question put and agreed to.

Clause 29 accordingly ordered to stand part of the Bill.

Clause 30

ENFORCEMENT OF DUTIES RELATING TO SERVICE CHARGES

Matthew Pennycook: I beg to move amendment 19, in clause 30, page 49, line 15, leave out "damages" and insert "penalties".

This amendment, together with Amendments 20 to 25, would make clear that the sum to be paid to the tenant in circumstances where a landlord failed to comply with duties relating to service charges is a punishment rather than a recompense for loss to the leaseholder thus ensuring it is not necessary to provide proof of financial loss. See also Amendments 17 and 18.

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

Amendment 20, in clause 30, page 49, line 27, leave out "damages" and insert "penalties".

See explanatory statement to Amendment 19.

Amendment 21, in clause 30, page 49, line 30, leave out "Damages" and insert "Penalties".

See explanatory statement to Amendment 19.

Amendment 22, in clause 30, page 49, line 34, leave out "damages" and insert "penalties".

See explanatory statement to Amendment 19.

Amendment 23, in clause 30, page 49, line 39, leave out "damages" and insert "penalties".

See explanatory statement to Amendment 19.

Amendment 24, in clause 30, page 49, line 41, leave out "damages" and insert "penalties".

See explanatory statement to Amendment 19.

Amendment 25, in clause 30, page 50, line 2, leave out "damages" and insert "penalties".

See explanatory statement to Amendment 19.

Amendment 134, in clause 30, page 49, line 29, at end insert—

"(4A) An order under subsection (2)(c) or (4)(c) may include an order that the landlord remedy any breach revealed by the application in respect of any other leaseholder.

(4B) Where the tribunal makes on order under subsection (4A), the tribunal may make an order that the landlord, or (as the case may be) D, pay damages to any other leaseholder in respect of whom a breach revealed by the application must be remedied."

This amendment would enable a tribunal to order the remedy of a breach in respect of, and damages to be paid to, a leaseholder affected by a breach revealed by the application to the tribunal, even if that leaseholder is not a party to the litigation.

Matthew Pennycook: Clause 30 substitutes existing section 25 of the 1985 Act, which includes penal provisions dealing with any failure to comply with the relevant provisions, with proposed new section 25A, which decriminalises the sanctions and applies a new enforcement regime. The new enforcement regime will allow a tenant to apply to the appropriate tribunal in instances in which their landlord did not demand a service charge payment in accordance with section 21C under clause 27, failed to provide a report in accordance with section 21E under clause 28, or failed to provide information in accordance with sections 21F and 21G under clause 29. The tribunal will have the power to issue an order that

[Matthew Pennycook]

the landlord comply with the relevant provision within 14 days and that they pay a fine of up to £5,000 to the applicant, or other consequential orders.

We welcome the new enforcement regime, but we have three main concerns about how it will operate in practice. With amendments 19 to 25, we seek to address the first of those concerns, which is our fear that the use throughout clause 30 of the term "damages" may imply that leaseholders are required to provide proof of financial loss for the tribunal to order that the landlord pay a fine for failing to comply with one or more of the modified requirements introduced in clauses 27 to 29. The risk that the tribunal takes that view, and thus stipulates that proof of financial prejudice is required, is real, as we have seen with the reforms made to section 20 of the 1985 Act. We tabled this group of amendments to encourage the Government to consider replacing "damages" throughout the clause with "penalties" to make it explicit that an order for failing to comply with requirements under sections 21C, 21E, 21F or 21G of the 1985 Act requires no proof of financial loss on the part of leaseholders. I look forward to hearing the Minister's thoughts.

Lee Rowley: I thank the hon. Gentleman for amendments 19 to 25, with which, as he indicated, he seeks to adds clarity that any sums paid to the leaseholder where there is a failure to comply are a punishment rather than a recompense for loss. As the Committee is aware, clause 30 will replace the existing and ineffective enforcement measures for failure to provide information with new, more effective and more proportionate measures. That includes allowing the leaseholder to make an application to the appropriate tribunal in cases where landlords have failed to provide the necessary service charge information.

It is the Government's view that the tribunal is the appropriate body to handle such disputes and to determine whether the landlord has failed in their duties, and whether subsequently they are required to pay damages to the leaseholder. In reaching its decision and ordering that damages be paid, the tribunal need only be satisfied on the balance of probabilities that the landlord breached the relevant section. If a financial penalty were applied, the appropriate tribunal would need to be satisfied beyond reasonable doubt that the landlord had breached the relevant section.

While I understand the hon. Gentleman's point on the use of the term "damages", I am advised that its use does not mean that evidence of financial loss is required. Therefore, in aggregate, we consider that financially recompensing the affected leaseholder by way of the payment of damages is both a suitable incentive for the leaseholder to bring the application and a suitable deterrent for landlords, while aligning with the tribunal's powers.

Richard Fuller: The Minister speaks quickly and is knowledgeable about this matter; I just want to put it into everyday speak that the rest of us can understand. I think that the intention behind the Opposition's amendment is to be clear that there is a difference between penalties and damages. They do not want the burden of proof to be on leaseholders, in this case, and there is tremendous merit to that. Whatever we put into law has to be accessible to people. I think the Minister said that if we change the word from "damages" to "penalties", that would raise the hurdle. Can he assure us of his objection to the proposed amendment in everyday speak,? As the Bill is drafted, the hurdle will be lower, and there will be no burden of proof on the leaseholder for the penalties/damages to take effect.

Lee Rowley: As best as I understand it, the situation is exactly as my hon. Friend describes. The threshold is lower, and therefore the provisions are more proportionate, and evidence of financial loss is not required. On that basis, I hope that the hon. Member for Greenwich and Woolwich will withdraw the amendment. I will come to amendment 134 in due course.

Barry Gardiner: Amendment 134 would enable a tribunal to order the remedy of a breach in respect of, and damages to be paid to, a leaseholder affected by a breach revealed by an application to the tribunal, even if the leaseholder is not party to the application. Let me explain why that is appropriate. In an estate in my constituency, Chamberlayne Avenue and Edison Drive, FirstPort was the estate manager. It failed in the case that went to the leasehold tribunal, which was brought by one member of the estate. The tribunal quite correctly found in favour of the leaseholders. However, everybody else on the estate was equally affected, and they are now all having to bring a separate tribunal case against FirstPort in order to receive the same benefits and relief. It seems to me that where that is the case, it would make sense for the tribunal to be able to instruct the landlord that where there has been a failure affecting all the leaseholders, they should remedy that breach to all the leaseholders, not just the one who brought the case, if there are damages.

I was heartily gratified by the explanation that the Minister and the hon. Member for North East Bedfordshire gave about "damages" not being the legalistic sense of damages, because I was beginning to worry that the second part of my amendment might fall foul of exactly what my hon. Friend the Member for Greenwich and Woolwich said. However, if we want to free up and speed up the tribunal system, that would be one way of doing so that would afford great relief to the very many people trapped in that situation.

Lee Rowley: I thank the hon. Gentleman for his amendment, which he has just outlined. The Government are sympathetic to the intention of the amendment. It is not that we do not understand the point that he has made or the point that he articulated in relation to Chamberlayne Avenue; where freeholders behave badly, it should apply across the board, and that is the kernel of the point he makes. The challenge—and I am sorry to be difficult about it—is that, as I know the hon. Gentleman will appreciate, there is a potential ramification to asking a tribunal to make a read-across from one case to every other one. Even though it is highly likely that it will apply to all or almost all of those cases, there is the difficulty of creating the link that makes the assumption that it must apply. For that reason, we do not think we can accept the amendment, although I am sympathetic to the point made by the hon. Gentleman.

Barry Gardiner: I am grateful to the Minister, because it is really good to know that he will consider those points further. Let me therefore make a suggestion:

if the tribunal were given powers through secondary legislation on estate cases where the matter is remedying something about the estate that applies equally to everybody, it should be obvious to the tribunal that anybody living on that estate is equally affected.

Let me give an example. If the managing agent, FirstPort, says that it has mended a fence, and it has charged everybody for mending that fence, but it is found that it did not mend the fence and it was not its fence to mend—this is the actual case. Everybody on the estate received those charges, and everybody on that estate was due therefore to be compensated for them. That will happen in some cases, but I accept what the Minister says. Would it make sense to consider giving the tribunal the power to instruct the managing agent to remedy the breach for any of those similarly affected, such that, if they did not, there was an additional penalty when that case was brought to the subsequent tribunal to prove that they were affected?

Lee Rowley: I am happy to ask the Department to look into that in further detail. I have no personal understanding of whether that would be possible or reasonable and proportionate and not have a series of other consequences, but it is reasonable to look into it further.

Matthew Pennycook: Briefly, I welcome what the Minister said on the issue of damages versus penalties. It could be another word than "penalty", but I hope the point that the amendment tried to make was understood. I am not certain, because I, like him, do not have expertise in the area, whether "damages" could be misinterpreted by a tribunal, notwithstanding what he said. I encourage the Minister to go away and ensure that the reassurance he has given—it is on the record and can be referred to, which is helpful—is understood and cannot be misinterpreted. I think we share the same end: this must be punishment rather than recompense, and leaseholders cannot be expected to provide proof of financial loss. If, as the Minister has indicated, that is the shared intention, I am happy to ask leave to withdraw the amendment, but I hope he will go away and reassure himself further that the tribunal can have no confusion on that point. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

3.15 pm

Matthew Pennycook: I beg to move amendment 17, in clause 30, page 49, line 30, leave out "£5,000" and insert "£30,000".

This amendment would raise the cap on penalties under this section (see explanatory statement to Amendment 19) for a failure to comply with duties relating to service charges to £30,000.

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

Amendment 142, in clause 30, page 49, line 30, leave out "£5,000" and insert "£50,000".

This amendment would increase from £5,000 to £50,000 the maximum amount of damages which may be awarded for a failure on the part of a landlord to comply with the obligations imposed by new sections 21C (service charge demands), 21E (annual reports), or 21F or 21G (right to obtain information on request) of the Landlord and Tenant Act 1985.

Amendment 18, in clause 30, page 49, line 30, at end insert—

"(6) Penalties under this section must be at least £1,000."

This amendment would insert a floor on penalties under this section (see explanatory statement to Amendment 19) of £1,000.

Matthew Pennycook: Amendments 17 and 18 address our remaining main two concerns about the clause. The first concern, to which we will return when we consider penalties in relation to part 4 of the Bill, is that we are not convinced that a penalty cap of £5,000 is a sufficient deterrent against non-compliance with the requirements in question. For many—not all, but many—landlords, a penalty of £5,000 will be very easily absorbed. The degree to which the sanctions in proposed new section 25A to the Landlord and Tenant Act 1985 bite would obviously be improved if the penalty cap of £5,000 applied to all leaseholders partaking in any given application, rather than them having to share an amount up to £5,000 between them. My reading of proposed new section 25A(5) is that the fine would apply to each person making an application on grounds that the landlord has failed to comply with a relevant requirement, but I would be grateful if the Minister would clarify that point. Is it a single fine, or is it a fine that would apply to each leaseholder involved?

However, even if a fine of up to £5,000 could be awarded to multiple leaseholders, we still question whether it is sufficient—I think that is a point that is worthy of debate. Labour is minded to believe a more appropriate threshold for penalties paid under proposed new section 25A—I remind the Committee that penalties are awarded at the discretion of the tribunal, so they are not automatic—would be £30,000, thereby aligning penalties in the Bill with other leasehold law, such as financial penalties for breach of section 3(1) of the Leasehold Reform (Ground Rent) Act 2022. Amendment 17 proposes such a cap, although we would certainly consider an even higher limit, such as the £50,000 proposed by the hon. Member for North East Bedfordshire.

Secondly, Labour thinks that the functioning of the new enforcement regime would be improved by specifying a floor on penalties in the Bill. In making clear that non-compliance with the relevant requirements will always elicit a fine, landlords will be incentivised to comply. Amendment 18 proposes that penalties under this section must be at least £1,000, with the implication that the tribunal would determine what award to make between the range of £1,000 and £30,000 for each breach. I look forward to the Minister's response to each amendment.

Richard Fuller: I am tempted to frame page 25 of today's amendment paper, because it includes the shadow Minister's amendment 17, which would increase the penalties from £5,000 to £30,000, and my amendment 142, which would increase them from £5,000 to £50,000. I thought it was usually the Conservative party that is pro-business and tries to keep costs on business low, but then I recalled that these penalties apply to people doing something wrong, and of course the Labour party is always soft on criminals.

Seriously, though, the shadow Minister and I have a clear intent, which I am sure is shared by the Minister. A lot of the measures in this part of the Bill are trying desperately to unpick complicated things and rebalance them in favour of people who own their own home but do not run a large business, or people with small financial

[Richard Fuller]

interests, where there are 30 or 40 of them against one person with a significant financial interest that covers all those people. In trying to rebalance things here, we all want to ensure that these measures are as effective as possible and that there is enough encouragement to ensure that the good practice the Government want to see can be done effectively.

The concern that I share with the shadow Minister is that the current levels of penalties just look like a cost of doing business. *[Interruption.]* Indeed! The hon. Member for Brent North has just slapped himself on the wrist, which is probably how many businesses will see it.

Can I gird the Minister's loins and encourage him to take up his shield and his sword of righteousness in defence of individual leaseholders and say, "This amount is too low. We shall change the legislation. This party and this Government stand to make the intent of what we will do to truly bite on those who are doing wrong"?

Lee Rowley: I am grateful to my hon. Friend the Member for North East Bedfordshire and the hon. Member for Greenwich and Woolwich for tabling their amendments. I share their basic conceptual desire, and that of other Committee members, for people or organisations that have done the wrong things to be held to account. There should be penalties that recognise that they have done the wrong thing. The challenge is always going to be where we draw the line.

I recognise that there are multiple parts of the menu on offer. Notwithstanding the very valid points that have been made, it is important not to lose sight of the fact that the Government are doubling the number from £2,500 to £5,000. Individual right hon. and hon. Members will take different views throughout this process and beyond on whether that is proportionate or whether it should be higher or lower. We think we have struck a proportionate balance.

I will add to the record, for consideration, the importance of the potential for unintended consequences. The response will quite rightly be that it will ultimately be for the tribunal to determine how much to apportion and how to use any changed option. There is a scenario in which the potential penalty on the freeholder, or the party being taken to the tribunal, becomes so great and the hazard becomes so visible that the freeholder starts to oppose it with even more objections, difficulties and the like.

I am making quite a nuanced argument, and Members may feel that I am overthinking this, but we have to be cautious not inadvertently to create a process that emboldens freeholders to fight even harder because of the potential hazard and because they feel that they may be exposed to a fine larger than would be reasonable and proportionate. However, I take the point about the challenge of setting the penalty in the right place. The Government's view is that the increase from £2,500 to £5,000 is a step forward. That is what we are proposing to this Committee. As a result, we will resist the amendments.

Matthew Pennycook: To clarify whether my reading of proposed new section 25A(5) of the Landlord and Tenant Act 1985 is right, is the penalty a single amount that is shared, or an amount per challenge? This is important.

Lee Rowley: I apologise for not covering that point; I intended to do so. It is £5,000 per challenge. There is the ability to bring forward multiple challenges. Should that be the case, similar amounts of damages may be awarded.

Richard Fuller: Sorry, I am such a pedant, but "per challenge" could relate to person A making the challenge that report x was not done on time, and then person B making the challenge that report x was not done on time. Do those two challenges count as two separate challenges because they are brought by two different people, although they are for the same objection, or as one challenge because they are for the same objection, although they are presented by two different people?

Lee Rowley: They are two separate challenges. If a challenge goes to the tribunal and it is deemed that a penalty should apply, for whatever reason or whatever poor behaviour, and a penalty of up to £5,000 is apportioned, and then another person makes the same claim about exactly the same instance, one would logically expect the tribunal to allocate the same penalty. Multiple challenges get multiple fines.

Barry Gardiner: Could the Minister elaborate on something? Where a group of leaseholders brings the challenge—let us say that 30 leaseholders in the block all club together and bring the challenge—is it one challenge that pays one set of £5,000, or is it 30 challenges that pay £5,000 each? Otherwise, we risk leaseholders bringing one challenge and then everybody thinking, "Okay, if I've got to, I will now do it," and making the same challenge over and over again, clogging up the tribunals. That is not what we want. If they all come together and make that application, surely they should all get the damages that the tribunal feels is proportionate.

Lee Rowley: The hon. Gentleman is making a number of important points. As it is currently structured, one challenge of n people gets up to £5,000; if it is multiple challenges of one person or n people within challenge 2, challenge 3 or challenge 4, that would be £5,000. As it is structured at the moment, one challenge equals £5,000, irrespective of the number of people within that challenge.

Barry Gardiner: Does the Minister appreciate that that could lead to a situation in which we are multiplying challenges unnecessarily?

Lee Rowley: I absolutely appreciate the point that has been made. There is a balance to be struck here. Obviously we will need to go through the justice impact test, or whatever it is called, to check the volume of challenges that would potentially come into the tribunals system as a result of the changes in the Bill. Again, it is about trying to balance those very challenging concepts, making sure that there is a penalty—it is important to recognise that the penalty is doubling—but also that people have the ability to choose to do things or not do things. I know that members of this Committee will have different views about how to structure that balance.

The Chair: Order. We are getting a bit conversational in the exchanges we are having. Can Members make either interventions or speeches, please? It is difficult to follow what is going on up here.

Matthew Pennycook: The Minister's response was quite disappointing. I think he has made it clear that it is per challenge per group, so what is the incentive for a large group of leaseholders to press the dispute if the potential amount of the share that they are going to get is £100, or even £50? It might be a low amount. *[Interruption.]* No, it could be. It is a share of the challenge; if there are 100 leaseholders in the challenge, they get a maximum of £5,000 to share between them unless they make multiple challenges. That is my reading of what the Minister has just said.

Richard Fuller: Bearing in mind that this is an intervention—

The Chair: It is, so let it be short.

Richard Fuller: I think the shadow Minister is mixing two things up when he says that people get a share. The issue here is about changing the behaviour of the person who is doing wrong, not "I'm going to get this much money out of it." The incentive is for the person who is doing wrong. Does the shadow Minister agree with the point made by the hon. Member for Brent North about clogging up the system: why would 150 people put one challenge in when they could put 150 challenges in?

Matthew Pennycook: I take the point, and I understand what the hon. Gentleman is driving at: there is the very real risk of clogging up the system with multiple challenges if leaseholders are sophisticated enough to understand the provisions of the clause and work out that the best thing they can do is submit multiple challenges. I do not think that most will. There is therefore a detrimental impact on the incentives for leaseholders to try to dispute these matters.

Coming back to the fundamental point of whether this will change the behaviour of landlords when it comes to compliance, though, I think the hon. Gentleman is right: the figure of £5,000 is too low. I have had this debate so many times with Government Ministers. We had it on the Renters (Reform) Bill: the maximum that local authorities can charge for certain breaches of that Bill is £5,000. Most landlords will take that as a risk of doing business.

Barry Gardiner: An operational cost.

Matthew Pennycook: It is operational. It can be absorbed on the rare occasion that it will be charged, so we think that amount should be higher. Ultimately, as the hon. Member for North East Bedfordshire said, we have to make clear that we are very serious about the sanctions in this new section biting appropriately. For that reason, although I am not going to push the amendment to a vote at this stage, it is a matter that we might have to come back to. It applies to part 4 of the Bill—to residential freeholders—equally, and it is important that we get it right and convince the Government to look at this matter again. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

3.30 pm

Lee Rowley: I beg to move amendment 48, in clause 30, page 50, line 14, leave out subsections (4) and (5).

This amendment is consequential on Amendment 123.

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

Lee Rowley: Amendment 48 is consequential on amendment 123, which we discussed in our debate on part 2. Amendment 123 ensures that the Bill is clear for the reader by grouping a set of related amendments that are consequential to section 26 of the Landlord and Tenant Act 1985, which clarifies that the provisions of amendment 29 do not apply to tenants of public authorities.

Clause 30 will introduce new, more effective and more proportionate enforcement measures to replace existing ineffective measures. Subsection (2) will repeal the existing enforcement provisions under section 25 of the 1985 Act, which allow a local housing authority or leaseholder to bring proceedings against the landlord in the magistrates court. This measure proved an ineffective deterrent and has hardly been used.

Subsection (3) will insert a new section 25A into the 1985 Act. It sets out routes to redress. Proposed new section 25A(2) sets out measures for situations in which landlords have failed to provide the information required to be included within the annual report or have failed to provide the service charge demand form in the prescribed format. When those circumstances apply, the leaseholder may make an application to the appropriate tribunal. The tribunal may order that the landlord must serve a demand for payment using the correct form under section 21C or provide a report in accordance with section 21E within 14 days of the order having been made. It can also order that the landlord pay damages to the leaseholder.

Proposed new section 25A(3) sets out measures for where the landlord has failed to provide information on request. In such circumstances, the leaseholder may make an application to the appropriate tribunal. The tribunal may order that the information is provided within 14 days, or that the landlord pays damages to the leaseholder, or both.

Proposed new section 25A(5) provides that the damages payable to leaseholders must not exceed the £5,000 figure that we have just debated. Proposed new section 25A(6) will confer powers on the Secretary of State and Welsh Ministers to amend this amount to reflect changes in the value of money, if they consider it expedient to do so. Proposed new sections 25A(7) to (10) contain measures to ensure that landlords cannot pass through service charge demands that they have been ordered to pay nor draw on service charge moneys held in trust and hence seek to reclaim their losses. I commend the clause to the Committee.

Amendment 48 agreed to.

Clause 30, as amended, ordered to stand part of the Bill.

Clause 31

Limitation on ability of landlord to charge insurance costs

Amendment made: 49, in clause 31, page 50, line 24, leave out from beginning to "insert" in line 25 and insert "After section 20F of the LTA 1985".—*(Lee Rowley.)*

This amendment is consequential on Amendment 51.

Barry Gardiner: I beg to move amendment 151, in clause 31, page 50, line 32, leave out from beginning to end of line 32 and insert—

"(a) exceed the net rate charged by the insurance underwriter for the insurance cover, and"

This amendment would define an excluded insurance cost as any cost in excess of the actual charge made by the underwriter for placing the risk, where such cost is not a permitted insurance payment.

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

Amendment 135, in clause 31, page 50, line 34, at end insert—

"(2A) Costs for insurance are also 'excluded insurance costs' where—

(a) a recognised tenants' association has not been provided in advance with three quotations from reputable insurance companies or brokers, or

(b) the recognised tenants' association has not had the opportunity to submit a further quotation (in addition to the quotations required by paragraph (a)), which the landlord must consider prior to placing the insurance."

This amendment would require a landlord to provide a recognised tenants' association with three insurance quotes before placing the insurance, and provide an opportunity for a recognised tenants' association to submit an alternative quotation.

Amendment 152, in clause 31, page 50, line 35, leave out from beginning to end of line 6 on page 51.

This amendment, to leave out subsection (3) of the proposed new section 20G of the Landlord and Tenant Act 1985, is consequential on Amendment 151.

Amendment 153, in clause 31, page 51, line 18, at end insert—

"(5A) The regulations must specify a broker's reasonable remuneration at market rates as a permitted insurance payment.

(5B) The regulations must exclude any payment which arises, directly or indirectly, from any breach of trust, fiduciary obligation or failure to act in the best interests of the tenant."

This amendment would require "permitted insurance payment" to include payment of a reasonable sum to a broker at market rates for placing the cover, and to exclude any payments which have arisen from wrongdoing.

Amendment 137, in clause 31, page 52, line 24, leave out third "the" and insert "a reasonable".

This amendment would ensure that the costs which a landlord can recover from tenants in making "permitted insurance payments" are reasonable.

Clause stand part.

Amendment 154, in clause 32, page 51, line 3, leave out "Sub-paragraph (2) applies" and insert

"Sub-paragraphs (1A) and (2) apply".

This is a paving amendment for Amendment 155.

Amendment 155, in clause 32, page 53, line 5, at end insert—

"(1A) Within six weeks of the insurance being effected, the insurer, or, where the insurance has been arranged by a broker, the broker, must provide all tenants with a written copy of the contract of insurance."

This amendment would ensure that tenants are provided with the contract of insurance which covers their building.

Amendment 136, in clause 32, page 53, line 12, at end insert—

"(2A) Regulations under sub-paragraph (2) must specify the contract of insurance containing the full extent of the protection afforded by the insurance, and the associated costs."

This amendment would require a landlord to provide a tenant with the contract of insurance containing the full extent of the protection afforded by the insurance, and the associated costs.

Amendment 156, in clause 32, page 53, line 22, leave out from beginning to the end of line 23.

This amendment, to remove sub-paragraph (7) of new paragraph 1A of the Schedule to the LTA 1985, would remove the landlord's right to charge tenants for providing them with information about insurance.

Amendment 157, in clause 32, page 54, line 20, leave out from beginning to the end of line 21.

This amendment, to remove sub-paragraph (7) of new paragraph 1B of the Schedule to the LTA 1985, would remove the right of a person required to provide information about insurance from charging for providing that information.

Amendment 138, in clause 32, page 54, line 21, after "the" insert "reasonable".

This amendment would ensure that the costs payable by a landlord for information requested by him from another person, under paragraph 1A(2)(a), are reasonable.

Clause 32 stand part.

New clause 41—*Building insurance and section 39 of the Financial Services and Markets Act 2000*—

"A landlord may not manage or arrange insurance for their building under the protections of section 39 of the Financial Services and Markets Act 2000."

This new clause precludes a landlord from operating as an appointed representative under the licence of Broker, where the landlord has no such licence themselves.

Barry Gardiner: Gosh, that is quite a mouthful of a group! I draw the attention of the Committee in the first instance to amendments 151 to 153. I welcome the fact that the intention behind the Bill is to improve the situation with regard to insurance charges; I make it clear to the Minister that I do recognise that. Together, however, those amendments would prevent the Bill from excluding different descriptions of the type of costs that are excluded. Amendment 151 would change the definition of the actual cost that is permitted to a much tighter one, namely that which the underwriter has charged. Amendment 153 would add that the reasonable brokerage that the broker is charging the client, who is the landlord, is recoverable at prevailing market rates.

There is also the issue of fiduciary duty. Fiduciary duty and breach of trust are important, because the leaseholder on whose behalf the insurance is being arranged by the landlord has an insurable interest in the property. That means that the landlord, in affecting the insurance, is doing so not only on his own behalf but on behalf of the leaseholders; otherwise, the leaseholders would not be paying for it. The landlord is technically an agent of the leaseholder, and the law of agency in common law is specific about the duties of an agent to their principal. In particular, they may not do anything against their principal's interest, as that would be a breach of trust. That means that should a landlord do anything improper to increase his own revenues against the leaseholder's interest, he would be guilty of a breach of trust, and the leaseholder would and should be able to recover under common law and have a remedy for it.

Together, the amendments would provide a tight circumscription of what should be permitted as the recoverable costs when placing insurance, but of course I have left wiggle room for the Secretary of State, who is still able to specify in the secondary legislation anything that he or she thinks reasonable, so it is not a straitjacket. I hope that the Minister will understand that this gives much greater clarity to the notion of permissible insurance costs and much greater clarity, which I think is what he seeks in the Bill, to that which properly ought to be

excluded. I have not constrained it so greatly that secondary legislation could not come into force to make something else permissible.

Amendment 135 would require a landlord to provide a recognised tenants association with three insurance quotations before placing the insurance, and to provide an opportunity for a recognised tenants association to submit an alternative quotation. In its multi-occupancy buildings insurance investigation, the Financial Conduct Authority found evidence of at least £80 million in insurance kickbacks going to landlords and their managing agents paid for by leaseholders. The amendment would bolster the rights of a recognised tenants association, which successive Governments have supported and sought to protect. Although it would not give the RTAs the power to place the insurance policy, it would help them to close the informational asymmetry with the landlord and pressure them to get a competitive deal by submitting their own quote.

I point out to the Minister that where capital works are being done under a section 20, that is exactly the procedure that would be in operation. The landlord would provide quotations, and the RTA would have the opportunity to submit its own quotation for the work to be done. It seems to me that introducing that same procedure for insurance would be extremely helpful.

Amendment 137 would ensure that the costs that a landlord can now recover from tenants in making permitted insurance payments are reasonable. Although the reasonableness of the cost of buildings insurance can be difficult to prove, especially in a market where brokers are often loth to quote to anyone who cannot place the insurance, the reasonableness test for service charges is the last line of defence for many. I do not think that the insurance scheme in the Bill can fail to make reference to the reasonableness of the permitted insurance payments. The Minister may well say that that will be prescribed in secondary legislation, but I seek to probe him on the point.

Amendment 136 is an important amendment that would require the landlord to provide a tenant with a contract of insurance containing the full extent of the protections afforded by the assurance and the associated costs. In the Bill, we have gone to great lengths to ensure that the leaseholder, as the assured, is able to access information from the landlord, but we heard in the evidence submitted to us by the witnesses in the evidence sessions that there should be a shortcut. The FCA rules already state that, if approached, an insurance company has to provide the information, although we then found out that the landlord did not have to tell leaseholders who the insurance company was; and we know about the difficulties in securing information from a landlord.

Would it not make sense to the Minister to have amendment 136 on the face of the Bill? This information is in the schedule of insurance. The underwriters want to know, "What is it I'm insuring?" They know exactly which units are in that block and exactly what is going on in that block. Therefore, they have the information to do it directly. It seems to me that the amendment would be a far more efficacious way of achieving the objective that the Minister has rightly set out in giving powers to acquire the information from the landlord; it would be far easier and far cheaper simply to say that the insurer has to do it.

Amendment 138 would ensure that the costs payable by a landlord for information requested by him from another person are reasonable. I am sorry that that was a lot, but it is a big grouping. Absolutely at the heart of the issue are amendments 151 to 153 and, ultimately, new clause 41, but we do not get to that until later, I understand.

The Chair: Order. We are debating new clause 41 now.

Barry Gardiner: Fine. In that case, let me speak to new clause 41, which

"precludes a landlord from operating as an appointed representative under the licence of broker, where the landlord has no such licence themselves."

The whole point of this new clause, which goes to that issue of fiduciary duty and agency, is that at the moment, landlords can operate under the licence of a broker to provide brokerage services. If we were to take away that capacity from them by passing new clause 41, we would then have circumscribed the way in which a landlord would be able to game the system, because they would not be able to operate under the protections that the Financial Services and Markets Act 2000 affords them, operating under somebody's licence when they themselves do not have those qualifications.

I am unsure whether this is a proper interest to declare, but I am an associate of the Chartered Insurance Institute. That was many, many years ago; I am not practising now, but I have mentioned it just in case. I think that landlords are getting away with murder by operating in this way, and it would be good to close that loophole to bring it all very tightly together. I appreciate that amendments 151 to 153 and new clause 41 have to be seen as a unit, but they really do give the Minister the opportunity to do what I think he is attempting to do through the Bill, but in a tighter and more effective way.

3.45 pm

Matthew Pennycook: I will be fairly brief, because my hon. Friend covered a lot of detail. He is right to do so, because these are important clauses. We welcome the intent behind them, and we think they have the potential to address a very serious problem that has plagued leaseholders across the country for many years. Not just those in buildings with fire safety defects who have seen their insurance premiums soar in the aftermath of the Grenfell fire, but across the board, we are seeing leaseholders face unreasonable and in many cases extortionate buildings insurance commissions that the property managing agent, landlords and freeholders have charged through the service charge. We discussed this in our evidence sessions last week. The Financial Conduct Authority's report of September last year on the subject of insurance for multi-occupancy buildings found evidence of high commission rates and poor practice, which were "not consistent" with driving fair value to the customer.

The FCA also found—I put this question to one of the witnesses in our evidence sessions, because I find it quite staggering—that the mean absolute value of commissions more than doubled between 2016 and 2021 for managing agents and freeholders of buildings with fire safety defects. Put simply, in far too many instances, managing agents, landlords and freeholders have been gouging leaseholders in this area with impunity. In practice, the effectiveness of this clause will hinge almost entirely on whether the definition of "excluded

[Matthew Pennycook]

insurance costs" is sufficiently tightly drawn, and how we define "permitted insurance payments" for the purposes of specifying what payments can be charged.

I appreciate fully that the Minister will be bringing the necessary detail forward through regulations and we will scrutinise them very carefully when that happens. My right hon. Friend—sorry, just hon. Friend, but it is only a matter of time—the Member for Brent North is right to try to strengthen the clauses, because although the permitted insurance payments must be attributable to a permitted insurance, there is nothing on the face of the Bill to ensure that they or the cost of providing information in relation to them is reasonable to the leaseholders. As far as we understand the clause, there is no guarantee that leaseholders will be able to transparently scrutinise quotes or the agreed contract. We fully support my hon. Friend's amendments 151 to 153, 157, and particularly new clause 41, which attempt to address some of these omissions and deficiencies. I hope the Minister will give them due consideration.

Specifically on my hon. Friend's amendment 136, clause 32 introduces a new duty to provide specified insurance information to leaseholders. Again, it will be for regulations to fill out the detail about how the new duty will operate in practice, but I would like to briefly probe the Minister on it. During our evidence session with Matt Brewis of the Financial Conduct Authority, it became clear that although the FCA's new rules mandate that a contract of insurance must be provided by an insurer or broker to the freeholder, and although the leaseholder will be able to write to the insurer to request a copy of the contract, there is nothing that we can see in either the FCA's rules or the Bill as drafted that will permit a leaseholder to know who that insurer is in the first place. I would like to press the Minister, as my hon. Friend has, to confirm that the Government's intentions when regulations are made under this clause is for the specified information to include a copy of the contract with the relevant insurer.

While we are considering these two clauses, I would like to take the opportunity to raise a separate concern, which I do not believe is covered by my hon. Friend's amendments, in relation to proposed new section 20H of the Landlord and Tenant Act 1985, as provided by clause 31 of this Bill. This proposed new section would introduce a new right to claim where excluded insurance costs are charged. Again, this has the potential to provide leaseholders with effective means of redress, but its efficacy depends on how it is implemented. I would be grateful if the Minister could confirm that there is no specific requirement for any damages awarded under this proposed new section to credit the service charge accounts of leaseholders not party to the claim, or any service charge fund generally. It stands to reason that if one has been affected—and this follows from the debate we had on a previous clause—the rest of the leaseholders in the building will be too. If so, could the Minister look at how the regime operates to ensure that all leaseholders that have paid excluded costs are reimbursed in the same manner as the claimant?

Lee Rowley: I turn first to amendment 151, in the name of the hon. Member for Brent North. As someone who has held the building safety portfolio in my Department for the past 16 months, one of my greatest frustrations is that we have not yet made the progress that I would like to see, and that I am sure we would all like to see, with regards to insurance for buildings that have been affected by cladding, having made good progress on lending and other areas.

I think we have made some progress, and the willingness of a number of brokers to come together and voluntarily cap what they are willing to take is a step forward; I would like to see other brokers doing the same. I would also like to see an industry-led solution to be brought forward for those with the greatest exposures at the earliest possible opportunity. That is something I outline to the Association of British Insurers, and other insurers, on a very regular basis—with varying degrees of frustration and emphasis. I hope we will see movement on that in the very near future.

That is a broad discussion about a more specific issue—I will turn shortly to the amendments we are currently debating—although I hope that highlights my interest in this area and my desire to get this right not just for people with remediation and cladding issues, but for the broader community of leaseholders in general. On that basis, I hope that both the hon. Members for Brent North and for Greenwich and Woolwich will appreciate that we have similar ambitions in making sure that transparency in this area is as effective as it can possibly be, and that we ensure the appropriate outcome so as to improve things from where they are at the moment.

I turn to the amendments, specifically amendment 151. We believe that clause 31, which inserts proposed new section 20G into the Landlord and Tenant Act 1985, already achieves the intent behind the amendment by providing powers that allow the appropriate authority to specify the permitted insurance costs that can be passed through the service charge to leaseholders.

From discussions held with the insurance sector itself, and with the FCA, we know that the value chain is a complicated one. Some buildings rely heavily on the reinsurance market—we have seen that increasingly with remediation issues—using a broker for access, and some do not. Some place insurance with numerous insurers splitting the risk, whereas others only use one—the hon. Member for Brent North may know this from his previous engagement with the industry.

Clause 31 is designed to constrain unreasonable costs in all scenarios by defining a payment and allowing us to then separate these costs as either permitted or excluded. Although I understand the intent of the hon. Member for Brent North, the Government's concern about amendment 151 is that in seeking to tighten the provisions, it may have pulled the strings a little too tightly and become too narrowly focused on certain elements. I hope the hon. Gentleman will consider withdrawing his amendment as a consequence.

Again, although I have great sympathy for the sentiment behind amendment 135, I hope the transparency provisions already in the Bill will help in this regard. Once implemented, they intend to enable leaseholders to have access to details of the policy and the total amount of remuneration being taken on their building's insurance placements. This can be used for a legal challenge if costs have not been reasonably incurred. Our concern with the amendment is the potential for delays in the placement of insurance, which could result in a lapse in cover to the material

risks of the building. There also may be instances—although I hope it would be a minor number of cases—where three quotes cannot be obtained, as much as that is possibly unlikely to occur.

We seek to focus the legislation on ensuring that those buildings have insurance that works, with a balance that is appropriate and supported by regulatory changes brought in by the FCA. On the basis of that explanation, I hope the hon. Member for Brent North will withdraw his amendment.

I will address amendments 152 and 153 together. Again, we have are similar ambitions, aspirations and intent, but again, there is a question of narrowness through the amendments, and our view remains that clause 31 will allow full scrutiny of what is to be a permitted insurance payment. The intention is for that to be both through consultation and then subsequently set out in regulations through the affirmative procedure, which will allow hon. Members to debate measures and highlight if there is a better way of doing it. I hope that, with those reassurances, the hon. Member for Brent North may be willing to withdraw the amendments.

Amendment 137 seeks to introduce a reasonable test to permitted buildings insurance costs. At the heart of clause 31 is the need for any costs passed on to leaseholders relating to the placement or management of buildings insurance to be fair and transparent. That is the whole point of it. Section 19 of the Landlord and Tenant Act 1985 already requires for those costs to have been reasonably incurred and for a reasonable service to have been provided. We have obviously seen a whole heap of bad behaviour in this sector; I accept that that is the case. Within the sector, there is ubiquitous use of commissions with poor or no underlying connection to the work undertaken, and I hope that some of the progress made through the Bill will hopefully reduce that.

I do not believe that the amendment would sufficiently protect leaseholders. We seek very clear requirements in the secondary legislation for how permitted insurance fees will be calculated, and that their reasonableness be included in that. We will consult on the measures in due course, and I hope that, with those reassurances, the hon. Member for Brent North will withdraw his amendment.

I turn to clauses 31 and 32, which address insurance, before turning to some further Opposition amendments. Several actors in the procurement of buildings insurance each seek to make a profit in return for their role in supplying insurance, whether they be brokers, managing agents or landlords, who can all take commissions, and that all adds to the overall cost.

Currently, as we have discussed, leaseholders do not have to be made aware of these commissions, and that can hinder the ability of leaseholders to challenge unfair costs. Inflated premiums can be paid through the service charge because there is a lack of transparency and knowledge about what is happening. Clause 31 seeks to ban the placer of insurance on residential leasehold properties from receiving any form of commission that is passed on to leaseholders as a cost, and instead uses a transparent handling fee that must be proportionate to the value of the work done.

Proposed new section 20G provides that excluded insurance costs cannot be charged and enables the Secretary of State and Welsh Ministers to prescribe a permitted insurance payment, which will be the only payment that can be charged. The detail of calculating the fee is to be set out in affirmative secondary legislation, and we will work with stakeholders across the industry and in this place to support that.

Proposed new section 20H sets out what happens should the ban be breached. There is an ability to apply to the tribunal in England and the leasehold valuation tribunal in Wales. It also removes the presumption that leaseholders have to pay their landlord's legal costs when challenging poor practices, as we talked about earlier. If the tribunal determines that the legislation has not been complied with, damages can be paid. That will be a minimum of the commission taken or the unlawful insurance handling fee, but it will not exceed three times the level of the commission or fee.

Proposed new section 20I outlines the right of the landlord to obtain a permitted insurance payment. The section clarifies how all costs for placing and managing insurance incurred by the landlord must then be charged to the leaseholder. Transparency reforms in the Bill will require the placer of insurance to disclose information about the decision-making processes when purchasing buildings insurance on behalf of leaseholders.

Amendments 154 and 155, tabled by the hon. Member for Brent North, seek to stipulate how the insurance contract is to be provided to leaseholders. We have been working already with the FCA on that area, and it has already produced a number of reports and changed its regulations. The changes allow leaseholders to receive their policy documents and information about the charges within their overall premium. Those changes are important to ensure that the relevant information is available, but they do not remove the necessity for the landlord to supply that information as the placer of the insurance. The amendments tabled by the hon. Member for Brent North remove the focus on the landlord's responsibility to undertake that activity. Clause 32 is designed to complement the work of the FCA and to provide the powers necessary to ensure that landlords supply the information that will enable leaseholders to scrutinise. With those assurances, I hope that the hon. Member will not press the amendments to a vote.

4 pm

Amendment 136 requires a buildings insurance policy be provided to the leaseholders to whom it relates. This is an important issue, which the hon. Member was right to raise both last week and today. I am happy to confirm to him that it is the intention that the insurance contract will be required to be shared and that that detail will be provided in secondary legislation. On that basis, I hope that he will have the comfort he needs not to press the amendment.

Amendments 156 and 157 seek to remove leaseholders' ability to be charged for the provision of insurance information. Obviously, there is again an interaction here with what the FCA has been doing. The changes that the FCA has made allow leaseholders to receive their policy documents and information about the overall premium. The hon. Member's amendments would remove the ability for reasonable compensation to be provided for supplying information. As we have discussed many times both today and previously, the Government's view is that costs that are reasonably incurred should be borne by leaseholders. Not allowing such costs to be

transparently recovered would be logically problematic and may lead to further attempts to transfer money in other ways, which we would not want.

Barry Gardiner: I am grateful to the Minister for the way in which he is engaging with the issue and for the points he has made. Given that it would be possible to relay the insurance contract electronically, will it be possible for secondary legislation to stipulate that any additional layers of complexity would be outwith the permitted costs? The Minister will see that I keep coming back to that theme, because unfortunately landlords add additional layers of complexity. We need to be sure that, where it is possible to do something simply, it is not permissible to recover the cost of doing it not simply, if I can put it that way.

Lee Rowley: The hon. Gentleman raises an important point. I will not try to solutionise in Committee, given the inherent dangers doing so from the Government Front Bench. We have committed to consulting, and there will be lots of experts and interested parties who will want to engage in that. As the hon. Gentleman suggests, transfers of data in an electronic form do not necessarily involve a substantial amount of time or effort, albeit that the provision and creation of the data in the first place may do. Those are exactly the kinds of things that we will want to talk about as part of the consultation, as and when it comes. On that basis, I hope that the hon. Member will consider not pressing amendments 156 and 157.

Amendment 138 seeks to require that charges made of parties where they request information from the landlord are reasonable, and I agree with the sentiment. Reasonableness is already required through section 19 of the Landlord and Tenant Act 1985. As I indicated in relation to amendment 137, reasonableness is not in itself a guarantee that costs will be constrained and proportionate, especially where the test is reliant on the assessment of normal behaviour across the sector. The Government would seek to deal with this area in secondary legislation, to ensure that the priorities of transparency and proportionality are in place. On that basis, I hope that the hon. Member will consider not pressing his amendment.

Before I conclude, I have two further points. Clause 32 confirms the importance of the intention of transparency, which is behind the Bill. The clause places a duty on landlords and managing agents that compels them to proactively provide information on building insurance to leaseholders. That should help leaseholders to better understand what they are paying for, and give them information they need to scrutinise that and take appropriate action, should that be necessary. The required information will be specified in the regulations, but it is anticipated that it should detail the insurance policy that is purchased, including a summary of the cover such as the risks insured, excess costs, premium costs and any remuneration received by the insurance broker. We also anticipate that it will include details of all alternative quotes obtained from the market and any possible conflicts of interest that arose during the procurement process.

Subsection (2) will insert new paragraph 1A into the schedule to the 1985 Act to allow leaseholders to request further information from landlords or managing agents. This could include full contractual documentation and policy wording, as well as the declaration of technical information that may have shaped the eventual premium price. We hope that giving leaseholders this improved information will allow them to challenge the reasonableness of their policy costs, if required. We expect that it will change landlord behaviour by making sure they are more price conscious, as it will be clearer that their movements are being watched. This will ensure that they do not try to pull a fast one on their leaseholders when it comes to insurance.

New paragraph 1B imposes a duty on third parties to provide landlords with any specified information requested within the specified period. Under paragraph 1A landlords will be obliged to provide information that is in their possession, and under paragraph 1B, where a landlord needs to ask another person for that information, that other person will also be required to provide the information within the specified timescales. Again, those timescales will be detailed in secondary legislation.

Clause 32 places requirements on landlords for how the handling fee that will replace insurance commissions will be disclosed to leaseholders. Again, this seeks to ensure greater transparency and allow more scrutiny where the charges are unreasonable.

Under paragraph 1C of the schedule to the 1985 Act, a leaseholder may make an application to the appropriate tribunal if their landlord fails to comply with the requirements under paragraphs 1A and 1B. I commend the clause to the Committee.

Finally, new clause 41 would preclude landlords from undertaking regulated insurance activity on behalf of a broker. Although I understand the sentiment behind this new clause, I hope the hon. Member for Brent North will recognise that the underlying point behind clauses 31 and 32, on which I hope we all agree, is transparency and fairness. These clauses will require the disclosure of fees charged for any work, as I have just indicated. We will prescribe what is a permitted cost that can be collected through the service charge, which should ensure that commissions that bear no connection to the work undertaken will not be permitted. It should also ensure that key documentation is provided.

Barry Gardiner: The Minister said that all the costs of the broker will have to be disclosed, which is absolutely right. However, where the landlord is operating under the provisions of the Financial Services and Markets Act 2000, he or she would be indistinguishable from that brokerage company and, therefore, the leaseholder will not be able to ascertain what was done by the broker and what was done by the landlord operating under the licence of the broker. What will be revealed is simply "the brokerage." Unless we can unravel that, we will never get to the issue of kickbacks. As we saw with the Canary Riverside case before Christmas, those kickbacks can be frighteningly large—£1.6 million for one block. The disaggregation of what is the landlord qua broker and what is the broker qua broker is really important.

Lee Rowley: I will try to reassure the hon. Gentleman. I think we both agree on the intention behind full transparency and clarity, so that things are not being hidden in the "value chain," to use a terrible expression from my previous life.

The secondary legislation for clause 31 will seek to define the permitted insurance costs, and we will consult specifically on issues around regulated insurance activity.

I hope that secondary legislation will cover some of the hon. Gentleman's points and allow him, and others with concerns, to make their case. We can then determine how best to approach it.

With that, I hope the hon. Gentleman will consider withdrawing his amendment.

Barry Gardiner: There is good news and bad news, Mr Efford. The good news is that I am content to withdraw amendments 135, 137, 154, 155, 136, 156, 157 and 138, but I wish to press amendments 151, 152, 153 and 157 to a vote.

Question put, That the amendment be made.

The Committee divided: Ayes 5, Noes 8.

Division No. 9]

AYES

Amesbury, Mike	Pennycook, Matthew
Gardiner, Barry	
Glindon, Mary	Strathern, Alistair

NOES

Davison, Dehenna	Maclean, Rachel
Everitt, Ben	Mohindra, Mr Gagan
Fuller, Richard	Rowley, Lee
Hughes, Eddie	Smith, rh Chloe

Question accordingly negatived.

Amendment proposed: 152, in clause 31, page 50, line 35, leave out from beginning to end of line 6 on page 51.—*(Barry Gardiner.)*

This amendment, to leave out subsection (3) of the proposed new section 20G of the Landlord and Tenant Act 1985, is consequential on Amendment 151.

The Committee divided: Ayes 5, Noes 8.

Division No. 10]

AYES

Amesbury, Mike	Pennycook, Matthew
Gardiner, Barry	
Glindon, Mary	Strathern, Alistair

NOES

Davison, Dehenna	Maclean, Rachel
Everitt, Ben	Mohindra, Mr Gagan
Fuller, Richard	Rowley, Lee
Hughes, Eddie	Smith, rh Chloe

Question accordingly negatived.

Amendment proposed: 153, in clause 31, page 51, line 18, at end insert—

"(5A) The regulations must specify a broker's reasonable remuneration at market rates as a permitted insurance payment.

(5B) The regulations must exclude any payment which arises, directly or indirectly, from any breach of trust, fiduciary obligation or failure to act in the best interests of the tenant."—*(Barry Gardiner.)*

This amendment would require "permitted insurance payment" to include payment of a reasonable sum to a broker at market rates for placing the cover, and to exclude any payments which have arisen from wrongdoing.

The Committee divided: Ayes 5, Noes 8.

Division No. 11]

AYES

Amesbury, Mike	Pennycook, Matthew
Gardiner, Barry	
Glindon, Mary	Strathern, Alistair

NOES

Davison, Dehenna	Maclean, Rachel
Everitt, Ben	Mohindra, Mr Gagan
Fuller, Richard	Rowley, Lee
Hughes, Eddie	Smith, rh Chloe

Question accordingly negatived.

Amendments made: 50, in clause 31, page 51, line 36, leave out "A" and insert "For the purposes of this section, a".

This amendment is consequential on NC7.

Amendment 51, in clause 31, page 52, line 33, leave out subsection (3).—*(Lee Rowley.)*

This amendment is consequential on Amendment 123

Clause 31, as amended, ordered to stand part of the Bill.

Clause 32

Duty to provide information about insurance to tenants

Amendment proposed: 157, in clause 32, page 54, line 20, leave out from beginning to the end of line 21.—*(Barry Gardiner.)*

This amendment, to remove sub-paragraph (7) of new paragraph 1B of the Schedule to the LTA 1985, would remove the right of a person required to provide information about insurance from charging for providing that information.

Question put, That the amendment be made.

The Committee divided: Ayes 5, Noes 8.

Division No. 12]

AYES

Amesbury, Mike	Pennycook, Matthew
Gardiner, Barry	
Glindon, Mary	Strathern, Alistair

NOES

Davison, Dehenna	Maclean, Rachel
Everitt, Ben	Mohindra, Mr Gagan
Fuller, Richard	Rowley, Lee
Hughes, Eddie	Smith, rh Chloe

Question accordingly negatived.

Clause 32 ordered to stand part of the Bill.

Clause 33

Duty of landlords to publish administration charge schedules

4.15 pm

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

Lee Rowley: We know that there is currently a lack of transparency around administration charges and that leaseholders can face high administration charges. Administration charges must be reasonable, but this can be difficult to determine due to the lack of clarity surrounding them. As a result, leaseholders are often reluctant to challenge the reasonableness of administration charges at the appropriate tribunal.

Clause 33 inserts new paragraph 4A into schedule 11 to the Commonhold and Leasehold Reform Act 2002. It will require landlords to publish an administration charge schedule. A revised schedule must also be published if a landlord revises the administration charges. The Secretary of State and Welsh Ministers will be able to prescribe the form and content of the schedule, and how it is to be provided to a leaseholder, in regulations. If a landlord has not complied with the provision of publishing an administration charge schedule, a leaseholder may make an application to the appropriate tribunal. The tribunal may order that the landlord provide an administration schedule within 14 days and pay damages of up to £1,000 to the leaseholder. This measure seeks to increase transparency, and I commend the clause to the Committee.

Matthew Pennycook: As the Minister has just made clear, clause 33 amends the 2002 Act to create a new duty on landlords to publish administration charge schedules. We welcome it but, as with clauses 31 and 32, the effective functioning of the new requirement will depend on details such as the form and content of the schedule and how it should be published, all of which is to be set out in future regulations.

I have two specific questions for the Minister. The first largely mirrors my concern about the provisions in clause 31 relating to damages. If a tenant claims damages as a result of a breach of the requirements in new paragraph 4A of the 2002 Act, is it not likely that other tenants will have been similarly affected by the failure to publish an administration charge schedule? If it is the case that the damage provisions relate only to the claimant, will the Minister look at how the regime operates to ensure that all leaseholders who may have paid costs, other than in accordance with new paragraph 4A of the 2002 Act, are reimbursed in the same manner? It is a recurring theme, but it is worth putting on the record that it applies to clause 33 as well.

Secondly, along with other measures in the Bill that add new provisions for when a leaseholder is liable to pay a charge—in this instance, where an administration charge has been levied that has not appeared for the required period on a published administration charge schedule—how do the Government intend to make leaseholders aware of their new rights in this respect and in various other places throughout the Bill? Will he consider mandating that freeholders must furnish all leaseholders with an updated "how to lease" guide?

Lee Rowley: I am grateful to the hon. Gentleman for his questions. I will write to him on the answers or the process by which he can get them.

Question put and agreed to.

Clause 33 accordingly ordered to stand part of the Bill.

Clause 34

LIMITS ON RIGHTS OF LANDLORDS TO CLAIM LITIGATION COSTS FROM TENANTS

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

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

Clause 35 stand part.

New clause 3—*Prohibition on landlords claiming litigation costs from tenants—*

(1) Any term of a long lease of a dwelling which provides a right for a landlord to demand litigation costs from a leaseholder (whether as a service charge, administration charge or otherwise) is of no effect.

(2) The Secretary of State may, by regulations, specify classes of landlord to which or prescribed circumstances in which subsection (1) does not apply.

(3) In this section—

"administration charge" has the meaning given by Schedule 11 of the Commonhold and Leasehold Reform Act 2022;

"dwelling" means a building or part of a building occupied or intended to be occupied as a separate dwelling, together with any yard, garden, or outhouses and appurtenances belonging to it or usually enjoyed with it;

"long lease" has the meaning given by sections 76 and 77 of the Commonhold and Leasehold Reform Act 2002;

"service charge" has the meaning given by section 18 of the Landlord and Tenant Act 1985;

"landlord" has the meaning given by section 30 of the Landlord and Tenant Act 1985.

This new clause would prohibit landlords from claiming litigation costs from tenants other than under limited circumstances determined by the Secretary of State.

Lee Rowley: We know that leaseholders can be deterred from challenging costs, or the services that their landlord provides, at court or tribunal for fear that they will also be charged their landlord's legal costs. The ability of the landlord to charge litigation costs will depend on whether the lease allows for that. That can mean that leaseholders have to pay litigation costs even if they win. Currently, the onus is on leaseholders to make an application to the relevant court or tribunal to limit their liability to pay those costs.

Clause 34 seeks to flip that presumption, and instead requires landlords to apply to the relevant court or tribunal for permission to recover their litigation costs from leaseholders, whether as an administration charge or through the service charge. It does that by inserting proposed new section 20CA into the Landlord and Tenant Act 1985 relating to litigation costs passed through the service charge, and inserting proposed new paragraph 5B into the Commonhold and Leasehold Reform Act 2002 regarding litigation costs recovered as an administration charge.

In the future, a landlord's litigation costs will not be payable by a leaseholder unless the landlord has successfully applied to the relevant court or tribunal for an order. The relevant court or tribunal may make such order where it considers it just and equitable in the circumstances. We have also taken a power to set out matters that the relevant court or tribunal must consider when making an order on an application. We will carefully consider the detail of these matters with stakeholders, including the tribunal.

Where the landlord is applying to pass on their litigation costs through the service charge, they will be required to specify each individual leaseholder they are seeking to recover their costs from. We have sought to further protect leaseholders by ensuring that a lease, contract or other arrangement has no legal effect if it seeks to disapply this legislation. These measures will prevent leaseholders from being charged unjust litigation costs by their landlord, and will remove barriers to leaseholders holding their landlord to account. I commend the clause to the Committee.

On clause 35, at the moment landlords can charge the costs of a legal dispute to leaseholders. This is an imbalance, as landlords are in a better position to seek legal representation and are more frequently represented than leaseholders at hearings. We understand that there is no other area of law where the parties start from such an unequal position. Clause 35 gives leaseholders a new right to apply to the relevant court or tribunal to claim their litigation costs from their landlord. It does that by implying a term into all leases, ensuring greater balance between landlords and leaseholders with regard to litigation costs. On a leaseholder's application, the relevant court or tribunal may make such an order if it considers it just and equitable in the circumstances. We have also taken a power to set out matters in regulations that the relevant court or tribunal must take into account when making an order.

Clause 35 also makes it clear that any costs that a landlord is ordered to pay to a leaseholder are considered to be litigation costs incurred by the landlord. As such, if the landlord wants to recover such costs through the service charge or as an administration charge, they will need to apply to the court or tribunal under clause 34.

In addition, we have taken a power to describe which "relevant proceedings" will be subject to the leaseholder's right to seek their costs. This is to help align the leaseholder's rights with the right to costs that landlords currently enjoy. We have further protected the leaseholder's right to recover litigation costs by ensuring that a lease, contract or other arrangement has no legal effect if it disapplies this legislation. I commend the clause to the Committee.

New clause 3 seeks to disapply terms in a lease that allow a landlord to recover their legal costs from leaseholders. It also allows exceptions for certain types of landlord to be set out by the Secretary of State in regulations. Currently, landlords are able to recover their litigation costs from leaseholders, and we absolutely agree that unjust litigation costs should not be incurred.

There may, however, be legitimate cases where a landlord may need to seek their litigation costs from a leaseholder—for example, where a leaseholder has breached their lease in a way that is affecting the other residents in the building, or where non-payment of a charge is limiting the upkeep or repair of the building. In these cases, where landlords have exhausted other means of addressing the dispute, we would want them to feel able to address such issues and be able to recover their litigation costs, if that is justified. That is why we have included measures in the Bill to rebalance the system, but we do not necessarily believe that we should go further at this time. We hope that the Bill takes a proportionate approach. I hope that I have reassured the hon. Member for Greenwich and Woolwich that we are committed to ensuring a fair approach, and that he will withdraw the new clause.

Matthew Pennycook: I must disappoint the Minister, because what he says does not reassure me. I rise to oppose clause 34 standing part of the Bill, and to argue in favour of new clause 3. As he has made clear, clause 34 amends the Landlord and Tenant Act 1985 and the Commonhold and Leasehold Reform Act 2002, with a view to limiting but not abolishing the right of landlords to claim litigation costs from tenants. Although the property chamber tribunal does not generally tend to shift the legal costs of the winning party on to the losing claimant, on various occasions landlords have been able to rely on contractual rights to recover costs against leasees. When that occurs, it is in essence a form of one-way cost shifting, and it is inherently unfair to the affected leasees. Previous attempts have been made expressly to limit these cost recovery provisions, notably by means of schedule 11 to the Commonhold and Leasehold Reform Act 2002, but despite those provisions, and the issue coming before the higher courts on several occasions, the ability of a landlord to recover costs incurred in litigating disputes persists.

We support the aim of scrapping the presumption that leaseholders will pay their freeholders' legal costs when they have challenged poor practice, as outlined in the explanatory notes to the Bill, and we believe that, apart from in a limited number of circumstances, landlords should be prohibited from claiming litigation costs from leaseholders. As I have said, clause 34 does not prohibit landlords from claiming litigation costs from tenants; instead, it merely limits their ability to do so.

The clause allows landlords in certain, at present undefined, circumstances to apply to the relevant court or tribunal for an order to pass their legal costs on to leaseholders as an administration charge, or on to all leaseholders, irrespective of whether they participated in any given legal action, through the service charge. It may be that the matters that the relevant court or tribunal can take into account when determining whether to make an order on an application for costs will be defined in such a way as to protect the vast majority of leaseholders from unjust, one-way cost shifting, but to allow for cost recovery in circumstances where it is essential—for example, when the landlord is a company controlled by the leaseholders that needs to recover its reasonable legal costs via the service charge or risk going bust. However, as we consider the clause today, we have no certainty whatsoever about that, because the matters that the relevant court or tribunal can account for, as well as the application process, will be set out in regulations to come.

Even if we had certainty about what the Government will tell courts and tribunals that they can consider in determining whether to make an order, we fear that clause 34 is an invitation to litigate. Yes, regulations will prescribe the relevant matters that can be taken into account, but given the multiple Court of Appeal cases and numerous upper tribunal cases on what "in connection with" means, we will almost certainly see disputes arising about what costs are incurred "in connection with" legal proceedings, and whether they are compatible. The risk is that the outcomes of any such cases could erode the general presumption against leaseholders paying their freeholders' legal costs that the clause attempts to enact.

We believe that it would be more prudent to implement, by means of the new clause, a general prohibition on landlords claiming litigation costs from leaseholders,

[Matthew Pennycook]

and then clearly to identify a limited number of exceptions to that general rule through regulations. As I have said, such exceptions might include cases in which the landlord is a leasehold-owned company, or in which the costs are, in the opinion of the tribunal, reasonably incurred for the benefit of the leaseholders or the proper management of the building. That would cover the example that the Minister used. Amendment 8, which would simply delete clause 34, and new clause 3 would provide for that approach by leaving out clause 34 and replacing it with a new clause that provides for a general prohibition on claiming legal costs from tenants, and for a power to specify classes of landlord who will be exempted from it.

I appreciate that this is a complex argument about the best means to achieve an agreed end, but we think that clause 34 requires further thought, and urge the Government to give serious consideration to the issues raised by amendment 8 and new clause 3. As I said, the Government's approach is a recipe for freeholder litigation, and it might mean far more leaseholders than we are comfortable with bearing the legal costs of their landlords.

Rachel Maclean: I place on record my concerns about the Government's approach to this issue, based on my experience in the Minister's role, and having listened carefully to representations made, particularly by members of the all-party parliamentary group on leasehold and commonhold reform and a gentleman called Liam Spender, who detailed his experiences at the hands of FirstPort. That was an absolutely horrific, heartbreaking and shocking abuse of a decent, honourable and hard-working person buying a flat. He described it as being treated like a "lab rat" in a laboratory maze. I will not forget the testimony that he and many others gave.

4.30 pm

Were I ever to be tempted not to follow the Whip's advice to vote with the Government, it would be at this precise juncture, and I have spent seven years in Parliament. I feel uncomfortable about what is in the clause. Having seen the behaviour of some predatory organisations, and the way that they treat the decent men and women of our country, I could not in good conscience vote with the Government at this point, unless I hear strong words from the Minister, and something to reassure me that the measure will deal with such shocking situations.

We all have doubts about the balance of power, and we recognise that landlords should be able to protect their interests, if they are decent and behave well. At this point, however, I want to hear something from the Minister to reassure me.

Lee Rowley: My hon. Friend has a huge amount of expertise and knowledge in this area. I am grateful to her for all her work in preparing for our discussion today. I am very happy to talk to her in more detail on this subject. She is absolutely right to articulate that progress must be made, and we must ensure that the correct balance is struck. I know that she will appreciate that there is a balance to strike, rather than there being movement in only one direction, but I appreciate the points that she made. I am happy to talk to her further outside the Committee, and I hope to provide her with the assurances that she seeks.

Matthew Pennycook: I thought that the Minister would provide a fuller response to our intention to remove the clause and introduce new clause 3. The hon. Member for Redditch is right to be concerned about the clause as drafted—I commend her for raising the issue. The spirit of the Committee has not been particularly party political, but I will give her the opportunity to break the Whip, because we feel strongly about the issue. Lots of leaseholders will find that they still bear legal costs because of the way in which the Government have approached this issue; it is a recipe for litigation. There is a much more sensible way to achieve the end that I think we all want: a general prohibition with a very limited number of exceptions, which could set out clearly in the Bill. We oppose the clause standing part, and will potentially move the new clause in due course.

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

The Committee divided: Ayes 8, Noes 5.

Division No. 13]

AYES

Davison, Dehenna	Maclean, Rachel
Everitt, Ben	Mohindra, Mr Gagan
Fuller, Richard	Rowley, Lee
Hughes, Eddie	Smith, rh Chloe

NOES

Amesbury, Mike	Pennycook, Matthew
Gardiner, Barry	
Glindon, Mary	Strathern, Alistair

Question accordingly agreed to.

Clause 34 ordered to stand part of the Bill.

Clause 35 ordered to stand part of the Bill.

Clause 36

REGULATIONS UNDER THE LTA 1985: PROCEDURE AND APPROPRIATE AUTHORITY

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

Lee Rowley: Clause 36 sets out general provisions that apply to regulation-making powers under the Landlord and Tenant Act 1985. Subsection (2) introduces a new section 37A, which sets out the procedure applicable to statutory instruments. It provides clarity on what is meant by regulations that are subject to the negative procedure and those that are subject to the affirmative procedure. Subsection (3) inserts a new definition of "appropriate authority" into section 38A of the 1985 Act. That defines the Secretary of State as being the appropriate authority in England, and Welsh Ministers the appropriate authority in Wales. I commend the clause to the Committee.

Question put and agreed to.

Clause 36 accordingly ordered to stand part of the Bill.

Clause 37

PART 3: CONSEQUENTIAL AMENDMENTS

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

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

Government amendments 125 and 126.

Schedule 8.

Government new clause 8—*Appointment of manager: power to vary or discharge orders.*

Lee Rowley: Clause 37 introduces schedule 8, which concerns a number of consequential amendments to the 1985 Act and other Acts of Parliament arising from the provisions of part 3 of the Bill. We will address those consequential amendments when we come to schedule 1, and I commend the clause to the Committee.

Government amendment 125 is a consequential amendment on new clause 8, which ensures that the tribunal has the ability to vary or discharge orders it makes under leasehold legislation on its own as well as on request. Government amendment 126 clarifies that a repeal of a section in the Housing (Wales) Act 2014 is to be done in both the English and Welsh language texts of the Act. I commend those amendments to the Committee.

Schedule 8, as introduced by clause 37, sets out the consequential amendments arising from the provisions of part 3 of the Bill. Part 1 of the schedule sets out the specific consequential amendments to the 1985 Act to take account of the changes in clause 36. In many cases, it makes changes to the regulation-making powers to confirm that the Secretary of State has powers to make regulations in England, and that Welsh counterparts do in Wales. It also clarifies which regulation-making provisions in the Act are subject to the negative procedure or the affirmative procedure. Part 2 of the schedule sets out consequential amendments to other Acts of Parliament to reflect the new measures introduced by part 3 and the omission of existing measures. The schedule seeks to provide clarity on regulation-making powers and to ensure that other Acts of Parliament reflect the new measures provided in part 3 of the Bill. I commend the schedule to the Committee.

Turning to new clause 8, sections 21 to 24 of the Landlord and Tenant Act 1987 provide a remedy for leaseholders in circumstances where there is significant management failure. Under current arrangements, leaseholders may apply to the first-tier tribunal to ask it to make an order to appoint a manager, who will be responsible for carrying out functions specified in the order rather than by the landlord or an agent acting on their behalf. The manager will be accountable to the tribunal, but once an order has been issued, the tribunal may only vary or cancel it if an interested party asks it do so. The current arrangements are, in the Government's view, too restrictive and limit the tribunal's authority to act if there is already an existing order in place.

New clause 8 makes a minor amendment to section 24 of the 1987 Act and gives the tribunal the ability to take action on its own as well as on request. That means that, where there is a possible overlap between orders, the tribunal can amend an existing order, if necessary, of its own accord. The discretion to amend an order will be constrained. The tribunal must be satisfied that, in all cases, any variation or discharge is just and convenient, and would not result in the recurrence of the same problems that led to the order being made in the first place. I commend new clause 8 to the Committee.

Question put and agreed to.

Clause 37 accordingly ordered to stand part of the Bill.

Schedule 8

Part 3: Consequential Amendments

Amendments made: 121, in schedule 8, page 132, line 9, at end insert—

"13A The LTA 1985 is amended in accordance with paragraphs 14 to 14B."

This amendment is consequential on Amendment 123.

Amendment 122, in schedule 8, page 132, line 10, leave out "of the LTA 1985".

This amendment is consequential on Amendment 121.

Amendment 123, in schedule 8, page 132, line 18, at end insert—

"14A In section 26 (exception for tenants of certain public authorities)—

(a) in subsection (1)—

(i) for the words from 'Sections 18 to 25' to 'do not apply' substitute 'Sections 18 to 25A do not apply';

(ii) for ', in which case sections 18 to 24 apply but section 25 (offence of failure to comply) does not' substitute '(but see subsection (1A));

(b) after subsection (1) insert—

'(1A) The following sections do not apply to a service charge payable by a tenant under a long tenancy of a landlord referred to in subsection (1)—

(a) section 20H (right to claim where excluded insurance costs charged);

(b) section 20K (right to claim where costs charged in breach of section 20J);

(c) section 25A (enforcement of duties relating to service charges).'

14B In section 27 (exception for rent registered and not entered as variable), for the words from

'Sections 18 to 25' to 'do not apply' substitute 'Sections 18 to 25A do not apply'".

This amendment would consolidate the consequential amendments to section 26 of the Landlord and Tenant Act 1985 required by virtue of clauses 30 and 31 and NC7 into a single paragraph of Schedule 8.

Amendment 124, in schedule 8, page 132, line 21, leave out "Landlord and Tenant Act" and insert "LTA".

This amendment is consequential on Amendments 47 and 54.

Amendment 125, in schedule 8, page 132, line 35, at end insert—

"(ca) in section 160 (third parties with management responsibilities), omit subsection (4)(d);".

This amendment is consequential on NC8.

Amendment 126, in schedule 8, page 133, line 22, after "(anaw 7)," insert

"in the English language text and in the Welsh language text,".—*(Lee Rowley.)*

This amendment would clarify that section 128 of the Housing (Wales) Act 2014 is to be repealed in both the English and Welsh language texts of that Act.

Schedule 8, as amended, agreed to.

Clause 38

APPLICATION OF PART 3 TO EXISTING LEASES

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

Lee Rowley: Clause 38 makes clear that the new provisions introduced by this part of the Bill extend to leases entered into before the date the section comes into force. This provides clarity that the provisions in part 3 apply to existing, as well as new, leaseholders, but only from the date the relevant section comes into force. I commend the clause to the Committee.

Question put and agreed to.

Clause 38 accordingly ordered to stand part of the Bill.

Clause 39

MEANING OF "ESTATE MANAGEMENT" ETC

Lee Rowley: I beg to move amendment 52, clause 39, page 66, line 8, at end insert—

"(e) a charge payable by a unit-holder of a commonhold unit to meet the expenses of a commonhold association.

(9A) For the purposes of subsection (9)(e)—

(a) "unit-holder", "commonhold unit" and "commonhold association" have the same meaning as in Part 1 of the CLRA 2002 (see section 1(3) of that Act);

(b) the expenses of a commonhold association include the building safety expenses of the association (within the meaning given in section 38A of the CLRA 2002)."

This amendment would exclude charges in respect of the expenses of a commonhold association from the definition of "estate management charge" for the purposes of Part 4.

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

Lee Rowley: Amendment 52 amends clause 39(9) of the Bill to clarify that any payment by a commonhold unit owner to a commonhold association is not to be regarded as an estate management charge. It is a clarificatory amendment to ensure that sums payable to a commonhold association that provides services to the common parts that it owns are not covered by part 4 of the Bill.

Turning to clause stand part, part 4 of the Bill creates a new regulatory framework to protect homeowners living on those estates where services are managed privately rather than by local authority. We know that that has been a growing trend and that homeowners on those estates have very few rights in that regard. We are determined to change that and empower homeowners to hold estate management companies to account on how they spend money and on the quality of the services they provide.

Clause 39 sets out key definitions that have effect for part 4 of the Bill. They have been drafted with the intention of providing clarity on what is and is not being regulated, and to avoid creating loopholes. For example, subsection (2) defines what is meant by estate management; subsection (3) defines an estate manager; subsection (6) defines a relevant obligation; subsections (8) and (9) define what is meant by and what is excluded from the definition of an estate management charge; and subsection (10) defines relevant costs. In aggregate, this clause helps to provide the key definitions for measures and will inform the regulatory framework in part 4, which we will discuss in due course.

Amendment 52 agreed to.

Clause 39, as amended, ordered to stand part of the Bill.

Clause 40

ESTATE MANAGEMENT CHARGES: GENERAL LIMITATIONS

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

Lee Rowley: Clause 40 sets out general limitations with regard to estate management charges. Subsection (1) states:

"A charge demanded as an estate management charge is payable…only to the extent that the amount of the charge reflects relevant costs"—

in other words, purely the costs associated with estate management—and cannot be used to fund wider activities. This means that not every cost incurred by an estate manager is chargeable; an example would be if costs arose from the award of damages against the estate manager or an activity outside the estate by the estate manager that is not regulated. Those costs cannot be passed on.

Subsection (2) goes on to set out more detailed circumstances in which costs that are relevant costs may cease to become relevant costs and hence not payable or only partially payable.

Richard Fuller: I want to probe a bit more, because of the speed with which we shot through clause 39—with your leave, Chair, I am sure you will find this in order, because clause 40 also relates to relevant costs. Clause 39(10) says that relevant costs,

"in relation to a dwelling, means costs which are incurred by an estate manager in carrying out estate management for the benefit of the dwelling or for the benefit of the dwelling and other dwellings."

As the Government were considering clauses 39 and 40, the general limitations on what might be a relevant cost, what consideration did the Minister or the Government give to the fact that there are some costs that might be covered within that general limitation that, for some people, are covered by payments they make through their council tax? Therefore, in certain circumstances it may be the case that people are paying twice for the same services covered by what are defined as estate management running costs.

Lee Rowley: I am grateful to my hon. Friend for his point. He tempts me, at this relatively late hour, to get into an extremely important conversation that we will come to in the coming days. With his leave, I will limit my response to acknowledging his broader point, which is potentially broader than simply the discussions here on this Bill. Having listened to the evidence given to the Committee last week, I recognise that this is a key area that those impacted by estate management charges would like to debate further. I know that we will come to this in due course. I am putting that down as a marker for further discussion—I am not sure if I can satisfy him with the discussion, but I will put down a marker for it none the less.

To conclude on clause 40, specifically, subsection (2) refers to the provisions in clauses 41 to 43, which cover the requirement for the reasonableness of estate management costs and broader consultation requirements. Clause 40 provides clarity that not all costs incurred by estate managers may be passed on and sets out circumstances when even chargeable costs are not payable. I commend the clause to the Committee.

Question put and agreed to.

Clause 40 accordingly ordered to stand part of the Bill.

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

4.46 pm

Adjourned till Tuesday 30 January at twenty-five minutes past Nine o'clock.

Written evidence reported to the House

LFRB57 Bowlwonder Ltd (further submission)

LFRB58 Paul Robertson

LFRB59 The Conveyancing Association (supplementary)

LFRB60 CommonholdNow