Vol. 837
No. 85

Monday
29 April 2024

PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS
OFFICIAL REPORT

ORDER OF BUSINESS

Lords wishing to be supplied with these Daily Reports should give notice to this effect to the Printed Paper Office.

No proofs of Daily Reports are provided. Corrections for the bound volume which Lords wish to suggest to the report of their speeches should be clearly indicated in a copy of the Daily Report, which, with the column numbers concerned shown on the front cover, should be sent to the Editor of Debates, House of Lords, within 14 days of the date of the Daily Report.

This issue of the Official Report is also available on the Internet at
https://hansard.parliament.uk/lords/2024-04-29

The abbreviation [V] after a Member's name indicates that they contributed by video call.

The following abbreviations are used to show a Member's party affiliation:

Abbreviation	Party/Group
CB	Cross Bench
Con	Conservative
DUP	Democratic Unionist Party
GP	Green Party
Ind Lab	Independent Labour
Ind SD	Independent Social Democrat
Ind UU	Independent Ulster Unionist
Lab	Labour
Lab Co-op	Labour and Co-operative Party
LD	Liberal Democrat
Non-afl	Non-affiliated
PC	Plaid Cymru
UUP	Ulster Unionist Party

No party affiliation is given for Members serving the House in a formal capacity or for the Lords spiritual.

House of Lords

Monday 29 April 2024

2.30 pm

Prayers—read by the Lord Bishop of Lincoln.

Lord Speaker's Statement

2.36 pm

The Lord Speaker (Lord McFall of Alcluith): My Lords, last week two people were charged with offences under the Official Secrets Act 1911. One of those individuals was a parliamentary passholder at the time of the alleged offences. This matter is now sub judice and, under the terms of the House's resolution on matters of sub judice, Members should not refer to it in the Chamber. I know that noble Lords will understand how important it is that we do say not anything in this place that might prejudice a criminal trial relating to a matter of national security.

Start-up Companies: Tax Incentives

Question

2.37 pm

Asked by ***Lord Leigh of Hurley***

To ask His Majesty's Government what assessment they have made of the pressure experienced by start-up companies arising from delays in accessing tax incentive schemes designed to support them, including the Enterprise Investment Scheme and Research and Development tax credits.

Lord Leigh of Hurley (Con): My Lords, I beg leave to ask the Question standing in my name on the Order Paper and draw your Lordships' attention to my entry in the register of interests.

The Parliamentary Secretary, HM Treasury (Baroness Vere of Norbiton) (Con): My Lords, HMRC is currently exceeding its published customer services aim to process R&D claims and EIS applications within 40 working days. In some cases, this will involve contact with a company to undertake further checks, rather than immediate approval or payment. This is necessary to ensure that relief is claimed only by those who are eligible.

Lord Leigh of Hurley (Con): My Lords, I understand the need to check claims in certain areas. I am chair of the Finance Bill Sub-Committee of the Economic Affairs Committee, and we have reported on extensive R&D fraud, but there is no history or evidence of fraud in respect of EIS. However, there is evidence of heavy-handedness by HMRC in restricting claims, so will my noble friend agree to set up a working party that includes EIS fund managers to consider best practice and to reduce costs and unnecessary delay in granting EIS relief?

Baroness Vere of Norbiton (Con): I am grateful to my noble friend. I know that HMRC regularly engages with industry and endeavours to work collaboratively with industry to improve guidance such that EIS applications can get through as quickly as possible. I hear his plea to set up a working group. I am not entirely sure whether a formal working group will be possible, but I will very happily take back his request that perhaps he and some of his colleagues can meet officials from HMRC to outline their concerns.

Lord Fox (LD): My Lords, there appears to be a dissonance between the Minister's answer and the experience that industry is reporting to us. I spoke to Tech UK this morning and it said it had recently made representations to the Treasury, with worked examples of real-life situations that absolutely uphold the issue the noble Lord has raised today. This is not just about payment; it is about retrospective payments and it really puts businesses in danger when their cash flow dries up in these situations. So I ask the Minister to harness her natural curiosity, go back to her department and dig a little deeper, because it may be publishing results, but the experience on the ground does not match that.

Baroness Vere of Norbiton (Con): I hear what the noble Lord is saying and I will very happily look at the evidence that he has provided to officials in the Treasury. Perhaps he would like to join the meeting with my noble friend Lord Leigh.

Lord Sikka (Lab): My Lords, in January the National Audit Office reported that error and fraud in SME research and development tax credits had increased to 24.4% or £1.04 billion. It added:

"There are too many examples where these reliefs either do not achieve their economic objectives or are subject to significant error and fraud costing the Exchequer billions of pounds".

Can the Minister explain why the Government have failed to monitor benefits of tax reliefs?

Baroness Vere of Norbiton (Con): The Government have actually monitored the benefits of the tax reliefs and indeed published independent reports at the 2023 Autumn Statement into EIS and SEIS. We have also published annual reports into R&D on whether the schemes are appropriately designed. However, the noble Lord raises a really important point. He is right that there has been an enormous amount of error and fraud, so HMRC has taken action and has boosted the number of people working in fraud from 100 to 500 people who are very much focused on those things. It was also the case that much of the fraud or error was happening using nominated bank accounts. HMRC has now closed the ability for companies to use nominated bank accounts, which will have an impact.

Lord Londesborough (CB): My Lords, further to the previous question, I ask the Minister: when will the Government conduct an impact assessment on both the EIS and SEIS investment schemes, specifically on the sustainability of businesses funded through these tax incentives? I ask because start-ups have a failure

[LORD LONDESBOROUGH]
rate of around 90% and we should be clear about the costs/benefits when some £30 billion—so far—of taxpayers' money has been involved.

Baroness Vere of Norbiton (Con): As I said in answer to the previous question, an independent report has been published fairly recently on the design of the two schemes. It is the case that start-up companies sometimes fail and we need to make sure that we get the best value for money for the taxpayer. The Treasury is very focused on that.

The Earl of Effingham (Con): My Lords, when these start-up companies grow, they may need additional funding. However, one of the main sources of capital for them in the past—the UK's Small Cap stock index—is shrinking as firms list overseas or go with private equity. So I ask my noble friend the Minister: what are the Government doing to reinvigorate the Small Cap index, help our start-ups and keep them here?

Baroness Vere of Norbiton (Con): London remains one of the leading financial centres in the world. The Government are incredibly focused on our domestic equity markets to ensure that they meet our ambitions of ensuring we have capital available to small companies. My noble friend will know that the noble Lord, Lord Hill, did a review into UK listings and we are taking forward his recommendations.

My noble friend will also know that the Government are proceeding through looking at all our regulation to ensure that it is fit for purpose for the UK and UK listings under the smarter regulatory framework. He will also have seen the reforms announced by the Chancellor in Edinburgh and at Mansion House. We are seized of the opportunity we have with domestic equity markets, whether they be for large cap or small cap companies. However, we recognise that there are things we can do to make them better.

Lord Livermore (Lab): My Lords, speak to any SME owner or business network and you will hear concerns about HMRC: contact wait times of over an hour, backlogs to review tax credit applications, delays of eight months to claim tax reliefs and phone lines closed for an entire summer. Tax incentives are a lifeline for many young companies. With nearly 50,000 SMEs reported to be in financial distress, does the Minister believe the problems at HMRC are now hindering economic activity?

Baroness Vere of Norbiton (Con): I think the noble Lord has conflated a number of issues there into one thing. HMRC is an enormous organisation that deals with many types of individuals and corporates. Companies can contact HMRC via the corporation tax helpline—that phone line has not been closed at all—where they can get general advice on R&D or on EIS.

HMRC has also set up non-statutory advance assurance services for both elements under debate today. It means that companies can get in touch with HMRC before they make an application to make sure that, when they do make an application, it gets through first time—and, as I said in my opening answer, HMRC is working to its aims.

Lord Cromwell (CB): The noble Baroness told us earlier that small businesses occasionally go out of business—which I think is something of an understatement. In the last 25 years of these tax-supported schemes such as EIS, can she tell us what percentage of those businesses are still in business? If she does not have the data to hand, could she write to me?

Baroness Vere of Norbiton (Con): I would very happily write to the noble Lord with that data; I do not have it to hand at the moment.

Lower Thames Crossing: Development Consent

Question

2.45 pm

Asked by ***Lord Colgrain***

To ask His Majesty's Government whether they expect to meet the statutory timeframe within which a decision on the Lower Thames Crossing Development Consent Order must be made.

The Parliamentary Under-Secretary of State, Department for Transport (Lord Davies of Gower) (Con): My Lords, the statutory deadline for a decision on the lower Thames crossing is 20 June 2024. While the department always attempts to meet its statutory deadlines, I cannot comment further on what is a live planning application.

Lord Colgrain (Con): I thank my noble friend for his reply. He will know that the Dartford Tunnel on the M25 has reached its term design life and is having to be closed for repairs with increasing frequency. In anticipation of serious delays on the M25 or around the motorway network, the lower Thames crossing option was first studied by his department in 2009, with the final route announced in 2017. There have been eight subsequent public consultations with more than 100,000 respondents, with all spending on the project to date costing over £800 million.

The largest bored tunnel in Europe is now ready for commissioning, with contractors poised and with approval from all seven Kent and Essex MPs whose constituencies are affected. Can my noble friend tell the House why there is even a possibility that this project, which is forecast to make a £40 billion contribution to GDP over the next 60 years, could not receive its long-awaited and overdue consent order?

Lord Davies of Gower (Con): My Lords, this is a large infrastructure project. By its nature, it is very complex and requires years of planning, consultation and analysis before it is ready to move into the delivery phrase. It is important that the Government plan projects properly, are open about the challenges and natural uncertainty of delivering a project of the size and scale of the lower Thames crossing, and learn the lessons of other major projects.

Lord Stoneham of Droxford (LD): My Lords, does this issue reflect the general incompetence of the Government in dealing with large infrastructure projects, or is it due to the fact that over the last 14 years, skills shortages in the construction industry have been underestimated and not dealt with by the Government?

Lord Davies of Gower (Con): As I have said, this is a very complex issue. It takes time. It requires years of planning, consultation and analysis: it is as simple as that. Further than that, I cannot comment.

Lord Haselhurst (Con): My Lords, is my noble friend the Minister ready to concede that progress with this project is of great importance and will at least provide evidence to people in East Anglia that they are part of the levelling-up programme?

Lord Davies of Gower (Con): I recognise that this is a very important project. It will be of great advantage to many people, both north and south of the Thames.

Lord Liddle (Lab): My Lords, is this not a classic case of how the planning system in Britain is fundamentally broken? It started in 2009 and we do not have a decision by 2024. How can it make sense to have spent hundreds of millions of pounds on a project when the Government have not actually given the final go-ahead?

In the 1930s, when Herbert Morrison faced opposition to the plans for Waterloo Bridge, he described the Conservatives as "Mr Dilly, Mr Dally and Mr Can't". Is that not the case with this Government—dilly, dally, can't?

Lord Davies of Gower (Con): That is a wonderful history lesson; I am most grateful to the noble Lord. The majority of decisions made by my department and applications for development consent orders have been issued within the three-month statutory deadline that starts from receipt of the recommendation report. That will hopefully be the case with this.

Lord Naseby (Con): Surely my noble friend recognises that this crossing, which complements the Dartford Crossing, is vital to our exports. After Question Time today, will he find out exactly when that decision will be made and publicise it for the nation's exporters, if for nobody else?

Lord Davies of Gower (Con): Several references have been made to the Dartford Crossing. Approach roads from the west and the east are already heavily congested, so traffic would not be able to reach a new crossing provided at Dartford. The approach roads and the M25 are in a heavily built-up area; increasing their capacity would be massively expensive and require the demolition of many houses and other buildings. All options at Dartford require rebuilding junctions and widening the A282 and the M25, which would be very disruptive over a long construction period.

Viscount Stansgate (Lab): My Lords, has the Minister been over the Dartford Crossing recently? Does he know how difficult and congested it can be? I agree with the comment that it is very damaging to the economy to have a massive collective traffic jam day after day. If the Government fail to make the statutory decision by the due date that the Minister has given, what will happen? Have the Government taken into account the economic damage done by the existing situation at the Dartford Crossing and the benefits that the new Thames crossing will bring?

Lord Davies of Gower (Con): I know the crossing well and I am very conscious of the issues around it. It is a large infrastructure project, so we must get it right.

Lord McLoughlin (Con): My Lords, the simple fact is that this is one of the largest planning applications that has been put before this country; I believe it runs to more than 359,000 pages of requirements. Perhaps my noble friend can reassure us that, following this project, there will be a review of the way in which planning applications are handled. It is very reassuring to hear people from Liberal and Labour Benches say that it should be facilitated much faster. I am not sure whether the local Liberal party has been as supportive of this project as the Liberal Benches in this House seem to be today.

Lord Davies of Gower (Con): It is a huge project at £800 million, and the current most likely cost of the project is estimated to be £8.3 billion. I will take the noble Lord's comments regarding planning back to the department.

Baroness Watkins of Tavistock (CB): My Lords, can the Minister comment on the situation with regard to the Hammersmith Bridge, which is a much smaller project but is creating great difficulties for emergency vehicles in reaching hospitals and for police in reaching people living in certain parts of south-west London?

Lord Davies of Gower (Con): I am very conscious of the issue around the Hammersmith Bridge, but it is of course an issue that concerns the local authorities; it is a matter for them to resolve.

Lord Grocott (Lab): My Lords, will the Minister reflect on a more recent history lesson relating to the present Question—the experience of HS2? The planning application was delivered, the parliamentary procedures were concluded and considerable—if not vast—expenditure was made on the purchase of properties and costs involved in the route. Yet this Government—at a minute to midnight of the project's completion—pulled the plug, on a Prime Minister's whim. What hope is there for any other major infrastructure policy being completed under this Government when that lesson has not been learned?

Lord Davies of Gower (Con): I note the noble Lord's frustration over planning, but HS2 is outside the scope of this Question.

Lord Harries of Pentregarth (CB): I have a question about the Hammersmith Bridge. The Minister quite rightly referred to Hammersmith and Fulham's responsibility, but the Government also have a major responsibility and they set up a task force. Can the Minister say when that task force last met?

Lord Davies of Gower (Con): I recall answering this question from the noble and right reverend Lord some time ago. I cannot remember the date, but I will certainly look it up and write to him.

Lord Davies of Brixton (Lab): My Lords, for the avoidance of doubt, I am not currently answering Questions from the Front Bench, although I hope that it is simply a matter of time.

A noble Lord: The annunciator is wrong.

Baroness Wheatcroft (CB): Can the Minister tell the House how many people in his department are currently working on this important project and how many of them he fears might lose their jobs to pay for the increased defence spending?

Lord Davies of Gower (Con): No, I am afraid that I cannot.

Lord Watts (Lab): My Lords, does the Minister remember that, when the Conservative Government took power, they ended the concept of a national policy group that would look at major infrastructure schemes and make sure that Britain was able to deliver those schemes in a quick and meaningful way? Does he agree with me that that was a massive mistake and that they should look at this issue again?

Lord Davies of Gower (Con): I hear what the noble Lord says and will take his views away to the department.

Road Pricing

Question

2.55 pm

Asked by ***Lord Young of Cookham***

To ask His Majesty's Government what consideration they have given to replacing excise duty on fuel with road pricing.

The Parliamentary Secretary, HM Treasury (Baroness Vere of Norbiton) (Con): My Lords, the Government have no plans to consider road pricing. As set out in the letter to the Transport Select Committee in January 2023, the Government are focusing on delivering their core priorities.

Lord Young of Cookham (Con): My Lords, road pricing clearly touches a raw nerve in the body politic. The OBR has recently said of the Government's policy on electric vehicles that it is

"rapidly eroding the £39 billion"

a year

"revenues from petrol and diesel"

taxes. That will leave a large hole in the Budget. The Transport Select Committee in the other place, with a government majority, said that work on road pricing should start straightaway. When I was Transport Secretary 30 years ago, I floated the idea, which is now much more feasible because of technological progress. If taxes made through the fuel duty are not replaced with something else, public transport will become much more expensive, undermining a sustainable transport policy. Should the Treasury be quite so hostile?

Baroness Vere of Norbiton (Con): The Treasury sees that there are many options going forward for the fuel duty and many broader motoring taxes—and indeed for all taxes. As we transition to net zero, the Government will need to ensure that the tax system encourages more EV uptake and that revenue from motoring taxes keeps pace while remaining affordable.

Lord Carlile of Berriew (CB): Does the Minister agree that the introduction of road pricing with modern technology would mean that vehicles could be priced on the basis of their consumption of fuels and that differentiation could be made between goods vehicles and passenger vehicles, so that it would be a much fairer system? Does she also agree that road pricing would enable the police very much more easily to detect vehicle crime, particularly on motorways, which has raised car insurance premiums so much recently?

Baroness Vere of Norbiton (Con): I recognise what the noble Lord says. Many think tanks and other groups have done a lot of work on road pricing. Jurisdictions around the world are looking at it; however, as yet, very few have managed to introduce it successfully. From the Treasury's perspective, we welcome work from external stakeholders on road pricing and all other taxes.

Lord Oates (LD): My Lords, the Minister has done good job of telling us what the Government are against but a less good job of telling us what they are in favour of. In light of the reduction in fuel duty revenues that will arise from the UK's ambitions to shift to electric vehicles, can she tell us what concrete plans the Treasury has to replace those losses in a way that is positive for the environment and fair to rural communities?

Baroness Vere of Norbiton (Con): At the moment, fuel duty raises around £25 billion annually. That is forecast to increase in nominal terms to £30.5 billion over the scorecard period to 2029. The change in fuel duty is a medium-term to long-term problem which will allow everybody who has an interest in this to have their say—including taking into account the shift to electric vehicles—and an appropriate solution will be found.

Lord Kirkhope of Harrogate (Con): My Lords, many of our motorists feel badly done by, with the extra cost of motoring all the time and the extra cost of insurance for motorists. If the Government have any idea of road pricing, would it not be fairer to look at all those who use our roads apart from those who merely pay the vehicle excise duty?

Baroness Vere of Norbiton (Con): My noble friend raises an important point about the cost of motoring. That really is top of mind for the Government. It is why we have frozen fuel duty since 2011 and had a 5p cut on fuel duty since March 2022. We recognise that for many people—particularly those in rural communities—using their car is essential, and it can be quite costly.

Baroness McIntosh of Pickering (Con): My Lords, will the Minister assure the House that, were the Government ever minded to introduce road pricing, rural communities and those who drive on rural roads—particularly in North Yorkshire, where we have the longest transit routes for people on their way to work or pleasure—would be protected?

Baroness Vere of Norbiton (Con): As I said at the outset, the Government have no plans to consider road pricing. Therefore, I cannot give my noble friend that assurance, because it would be purely hypothetical.

Lord Livermore (Lab): My Lords, the state of Britain's roads has been described as being at breaking point. A recent survey suggests that local roads are in their worst condition for more than 30 years, and the backlog for repairs has risen to a record high. The AA estimates that pothole damage is costing Britain's drivers nearly £500 million every year. Is the Minister aware of figures compiled by the LGA that show that Labour councils invest 83% more per head on road maintenance than Conservative councils?

Baroness Vere of Norbiton (Con): What I can say is that this Government have invested significantly in local highway networks. For example, since 2015, we have invested £11 billion and, as part of Network North, £8.3 billion has been earmarked for local road maintenance over the next 11 years.

Lord Kamall (Con): My Lords, I refer noble Lords to my interests as set out in the register. Many economists like road pricing because it relies on the principle of "polluter pays". As we shift from polluting vehicles to EVs, hydrogen, et cetera—more environmentally friendly vehicles—we might move from "polluter pays" to the principle that those who contribute to the wear and tear of our national infrastructure have to pay as drivers. I know that the Government have ruled it out at this stage, but in the longer term, have they done any planning on how we pay for upkeep of the roads? Perhaps those who contribute to wear and tear could make a contribution.

Baroness Vere of Norbiton (Con): I am not aware of any work in that area, but, of course, my noble friend raises a very important point. There is the issue of wear and tear on the roads, which all vehicles contribute to, but what is sometimes overlooked is the impact of particulates that come from tyres. That might be from an internal combustion engine vehicle or from an electric vehicle—it is another source of pollution.

Lord Dubs (Lab): My Lords, over the years, Ministers frequently say that they have no plans to do anything, and then, within a short period, they change their minds. This may well be one of those instances. Does the Minister agree that road pricing would have another benefit, in that it could be used to ease congestion on motorways? There would be different charges for peak times and for off-peak times. Would that not be helpful?

Baroness Vere of Norbiton (Con): As I said in my opening remarks, the Government have no plans to consider road pricing. I really cannot say more than that.

Baroness Goldie (Con): My Lords, I find it difficult to fault the analysis of my noble friend Lord Young of Cookham, because he points to an inescapable gap in revenue receipts for the Treasury from fuel duty receipts. I have a difficulty in understanding the Treasury's opaqueness in responding to this analysis, for which I do not blame my noble friend the Minister. Is that opaqueness attributable to fiscal timidity or dogmatic blindness?

Baroness Vere of Norbiton (Con): My Lords, it is not opacity. What is going on here is simply that a number of options can be taken forward as taxes shift and change over time. All taxes shift and change over time with regard to the amount of money they bring into the Exchequer. The Government have forecasts as to what will happen to fuel duty and are considering all sorts of ideas as to how that would be plugged. For example, noble Lords will have seen that electric vehicles will start to pay VED from April 2025. It will not be at the same level as for an ICE vehicle, but it is right that EVs start to pay their way.

Baroness Blackwood of North Oxford (Con): My Lords, putting aside road pricing for a second, average car insurance costs in the UK have neared £1,000 after prices rose by 58% this year. Does the Treasury intend to look into whether these increases are justifiable?

Baroness Vere of Norbiton (Con): It is concerning to see such large rises in insurance. Officials are monitoring it. The Treasury is unlikely to intervene in what is a private market. However, I will write to my noble friend, because there are various helplines and advisers who can sometimes help people to find cheaper car insurance.

Lord Harris of Haringey (Lab): My Lords, the Minister is impressive in her attempts to explain away the huge fiscal holes that this Government are digging for themselves and for future Governments. Can she comment on the rather strange leaflet that many residents of London have received, apparently from the Conservative mayoral candidate, purporting to be a penalty notice for a road pricing scheme that does not exist and is not planned by the current Mayor of London? Given that the Government are so opposed to this, does the Conservative mayoral candidate in London not know what Conservative policy is, or is it that she has enormous faith in the ability of the London government to deliver something that the Minister has said is incredibly complicated?

Baroness Vere of Norbiton (Con): I am seeking out the question in all that, but I think that all noble Lords will be aware that transport in London is devolved. Whether the current mayor will introduce road pricing within the Greater London area has been a matter of speculation for some time. If there was a Conservative mayor, the current candidate would certainly rule it out and ensure that the extension to ULEZ was rolled back, because that is causing significant hardship towards the outer boroughs of London.

Indeterminate Sentences

Question

3.07 pm

Asked by ***Lord Moylan***

To ask His Majesty's Government how many (1) women, and (2) persons who were under 18 years of age when their index offence was committed, are serving an indeterminate sentence for public protection and have never been released on licence.

The Advocate-General for Scotland (Lord Stewart of Dirleton) (Con): My Lords, as of December 2023, there were nine women serving an IPP sentence and 33 prisoners serving a detention for public protection sentence, who are in custody having never been released on licence. The IPP action plan aims to promote sentence progression for all those serving the IPP sentence. Provisions in the Victims and Prisoners Bill will give more offenders the opportunity to have their sentences terminated, so that they can move on with their lives.

Lord Moylan (Con): My Lords, I congratulate the Government on having achieved some reduction in these numbers over the last two years, although noble Lords will, in some cases, still be surprised that there are women serving IPP sentences who have never been released and that there are people who committed their crime aged under 18 who have never been released; the majority of the latter are now 10 years or more over their tariff. In that light, does my noble and learned friend agree that while it is perfectly reasonable to have a Parole Board public protection test for prisoners serving a definitive sentence, since they will be released into the community at the end of their sentence, it is less appropriate for IPP prisoners, as the alternative for them is remaining in custody indefinitely, potentially for decades more? Should not this test, advanced in the current Bill, be modified for IPP prisoners?

Lord Stewart of Dirleton (Con): My Lords, the IPP action plan, which the Government have promulgated, remains the best vehicle to deliver support to all IPP and DPP prisoners, so that they can progress towards a safe release—safe for them and for the community into which they will be released. The IPP action plan provides continued focus on supporting those serving IPP and DPP sentences in custody and in the community, ensuring that each has an effective sentence plan tailored to their individual needs by supporting those in the community on licence to comply with their conditions.

Lord Woodley (Lab): My Lords, I am delighted to follow the noble Lord, Lord Moylan, in his crusade for justice for these prisoners. The Government rejected resentencing of DPPs and IPPs, as the Minister knows, arguing that the Parole Board has consistently not backed these prisoners so therefore they should just lie in prison and rot there. However, the former head of the Parole Board, Martin Jones, now the Chief Inspector of Probation, is one of many experts calling for resentencing to end the nightmare injustice of imprisonment without end. What is the Government's real reason for rejecting resentencing? Is it because they do not want to be seen as soft on crime ahead of a general election?

Lord Stewart of Dirleton (Con): My Lords, it is not the case that the Government are acting out of that reason—the position on resentencing has been rejected twice by the Government at different times. Instead, we take the view that as there is a public protection aspect to these sentences, it is apt that they continue to be treated in the current way. I reject the noble Lord's proposition that people are being left to "rot" in prison. The action plan has achieved the extension of the scope of the psychology services so that they can continue to support some of the more complex IPP cases. The safety team in HMPPS has developed and issued a safety toolkit concentrating on the needs of IPP prisoners and HMPPS has also commissioned new IPP delivery plans to roll out in May 2024. The Government are not inactive in this area.

Baroness Burt of Solihull (LD): My Lords, these 33 DPPs referred to by the Minister are 33 people who have never had a shot at adult life in the community. They are all well past their original tariff, as the noble Lord, Lord Moylan, said, and passing one's tariff date is a time when mental health often drops off a cliff edge. Does the Minister agree that we should give them the same kind of holistic and multidisciplinary wraparound care that Section 117 prisoners get to help them get through the gate and out into supported life in the community?

Lord Stewart of Dirleton (Con): My Lords, provision of just such multidisciplinary approaches is precisely what the Government are accomplishing in their approach to these people. I fully accept the noble Baroness's considered point that persons who have not experienced freedom will suffer extreme and acute mental health difficulties from time to time. With that in mind, I can advise the House that the Government remain committed to improving outcomes for individuals with mental health needs, including such IPP prisoners. The IPP safety team has devised a dedicated safety briefing. A special IPP toolkit has been issued so that persons dealing with such prisoners across the level of the prison system can concentrate on their needs. There is also a national partnership agreement on health and social care in England, published in 2023, which sets out a shared priority work plan to deliver safe, decent and effective care, improving health outcomes for people in prison and on probation. To conclude, I congratulate the noble Baroness, my noble friend and all noble Lords on their concern for this often-overlooked group of prisoners.

The Lord Bishop of Lincoln: My Lords, recently in Lincoln prison I met a man who has been continuously in the prison system for the last 48 years—since I sat my A-levels. He is not mentally ill in any obvious way. He told me that he keeps sane by keeping God between himself and the other prisoners—that was the gist of what he said anyway—but that he is so socialised by being in prison for so long that he has almost forgotten what he was in there for. He asked that if he were to be released could there be specialist units in nursing homes where there would be the proper care for someone who has not known freedom in his entire adult life?

Lord Stewart of Dirleton (Con): My Lords, the right reverend Prelate's example will strike a chord with noble Lords across the House and engage their sympathy. The work the Government are carrying out to establish psychology services is, as I said, multidisciplinary in nature and involves not only expert psychologists but dedicated probation officers, specialists in their field and those who have looked at the problems of suicide in prison. We are working in particular with a group called UNGRIPP and a Mrs Donna Mooney, who has done great work in this field. We are engaged with the Howard League for Penal Reform. There is also a commitment to working with the Samaritans to provide further assistance for persons coming out of the prison estate.

Lord Hastings of Scarisbrick (CB): My Lords, do the Government not feel ashamed of the obvious injustice of the continuing 16,000 former IPP residents in prison who are still on IPP sentences? This is a gross injustice that lingers in people's lives, who are in a place of permanent panic and unable to get on with their day-to-day existence because they are looking over their shoulder, wondering whether they be tapped for a recall. In the past 10 years I have visited 73 prisons up and down the UK and met hundreds of IPP people inside prison, and I have not encountered a single one who was not worthy of release tomorrow. The system is so badly broken. It needs a kind of approach that we had for the Post Office that clears out the residue of this long, unjust sentence, which was described as a great evil by two former Home Secretaries.

Lord Stewart of Dirleton (Con): My Lords, the number of IPP prisoners are down to 1,312 as of 30 June 2023, from a maximum of 6,000. I hear the noble Lord's views on the worthiness for release of those whom he has met, but it is not something which can be consigned to an individual; it is a matter for consideration by persons holding a wide range of specialisms and experience. I do not share the view that the Government should be ashamed of their response. The latest review by the inspectorate found that His Majesty's Prison and Probation Service is taking "proportionate" and "necessary" decisions to recall offenders on an IPP licence for public protection.

Lord Ponsonby of Shulbrede (Lab): My Lords, to be clear, the Labour Party does not support the resentencing of IPP prisoners. Our view is that it would put the resentencing judges in an impossible situation when there have been multiple recent reviews of those IPP prisoners. Nevertheless, the Government constantly tell us that there is a review of the sentencing plans for those IPP prisoners. Can the Minister tell us how many of the IPP prisoners have had their sentencing plans reviewed?

Lord Stewart of Dirleton (Con): My Lords, I cannot provide the noble Lord with that information directly, but I will be able to do so in a very short space of time. I gratefully acknowledge the statement he gave on behalf of his party relating to the approach that has been proposed of resentencing such offenders. His views are at one with those of His Majesty's Government.

Commonwealth Parliamentary Association and International Committee of the Red Cross (Status) Bill

First Reading

3.18 pm

The Bill was brought from the Commons, read a first time and ordered to be printed.

High Streets (Designation, Review and Improvement Plan) Bill

First Reading

3.19 pm

The Bill was brought from the Commons, read a first time and ordered to be printed.

Paternity Leave (Bereavement) Bill

First Reading

3.19 pm

The Bill was brought from the Commons, read a first time and ordered to be printed.

British Nationality (Irish Citizens) Bill

First Reading

3.19 pm

The Bill was brought from the Commons, read a first time and ordered to be printed.

Genocide (Prevention and Response) Bill [HL]

Order of Commitment

3.20 pm

Moved by ***Baroness Kennedy of The Shaws***

That the order of commitment be discharged.

Baroness Kennedy of The Shaws (Lab): My Lords, I understand that no amendments have been set down to this Bill and that no noble Lord has indicated a wish to move a manuscript amendment or indeed to speak in Committee. Unless, therefore, any noble Lord objects, I beg to move that the order of commitment be discharged.

Motion agreed.

Leasehold and Freehold Reform Bill

Committee (3rd Day)

3.21 pm

Relevant document: 16th Report from the Delegated Powers Committee. Welsh Legislative Consent sought.

Amendment 64

Moved by ***Baroness Taylor of Stevenage***

64: After Clause 50, insert the following new Clause—

"Power to establish a Right to Manage regime for freeholders on private or mixed-use estates

In Section 71 of the CLRA 2002, after subsection (2) insert—

"(3) The Secretary of State may by regulations make provision to enable freeholder owners of dwellings to exercise a right to manage in a way which corresponds with or is similar to this Part.

(4) A statutory instrument containing regulations under subsection (3) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.""

Member's explanatory statement

This new Clause would permit the Secretary of State to establish a Right to Manage regime for freeholders of residential property on private or mixed-use estates.

Baroness Taylor of Stevenage (Lab): My Lords, the amendments in this group concentrate on yet another aspect of the regime that fleeces home owners with unexpected and extortionate charges, but in this case, they are levied on residential freeholders living on private and mixed-tenure estates.

I had one or two such encounters as a councillor. In one case, there was a five-year battle to get an estate through-road adopted as a public highway because the residents were facing extraordinary and unaffordable costs for highway repairs; and in another, a series of children's play spaces were abandoned by developers as soon as their sales were completed, with no provision made for maintenance, health and safety checks or upgrading to meet the latest safety standards. But it was not until I campaigned for my honourable friend Alistair Strathern, now the excellent MP for Mid Bedfordshire, that I saw the volume of housebuilding that had gone on with the assumption that new residents would be responsible for a wide range of maintenance to highways and public spaces, and other exceptional costs that had clearly not been set out in a transparent way at the time of purchase.

As my honourable friend put it,

"Across the country, homeowners in a state of adoption limbo are being left exposed to exploitative and often unaccountable management companies. Despite their warm words, sadly the Government did not take any of the actions that the Competition and Markets Authority urged them to take in order to end the issue of fleecehold once and for all".—[*Official Report*, Commons, 4/3/24; col. 631.]

My honourable friend pointed out that residents of estates across the constituency are trapped in extortive relationships with unaccountable private management companies, while their estates go unadopted.

Of course, this sharp practice is not limited to Bedfordshire. The Conservative MP Neil O'Brien has written of this:

"Across the country many people are moving into new build homes, only to discover something nasty which they didn't expect.

Often the first they know of it is when a large bill comes through the door, from an obscure company they've never heard of.

The bill demands that they pay a large sum for the maintenance of their new estate, and warns them that they could lose their house if they don't pay up.

These bills can be of a scary size, and the bills often escalate sharply over time.

To add insult to injury, residents often find that the work they are paying for isn't actually done, and then find that trying to get any redress is impossible: the firm sending the bills is opaque and uncontactable. People are sometimes billed for baffling things".

Mr O'Brien went on to look at the large numbers of those affected. The estimate is about 20,000 housing estates, so this could affect up to 1.5 million home owners. The Competition and Markets Authority has examined this in great detail, and commented on the fact that

"over the last five years 80% of the freehold properties built by the 11 largest housebuilders … are likely to be subject to such charges".

Our amendments in this group seek to address the fleecehold issues still outstanding, which we believe the Bill must address to avoid a continuation of this escalating trend, which is simply providing another method of extorting money from hard-pressed home owners, effectively making them leaseholders of the public space on their estates. As my honourable friend the shadow Secretary of State for housing said in the other place,

"Underpinning all those issues of concern is a fundamental absence of adequate regulation or oversight of the practices of estate management companies".—[*Official Report*, Commons, 13/7/23; col. 193WH.]

and the fact that residential freeholders currently do not enjoy statutory rights equivalent to those held by leaseholders.

There was cross-party support for the fact that this situation is untenable, so I hope the Minister will be able to respond positively to amendments in this group so that we can make some progress. Our Amendment 64 would give residential freeholders on private and mixed-tenure estates the same right to challenge the reasonableness of estate management companies and their charges as leaseholders have. As Matthew Pennycook said in Committee:

"We also believe that it is right in principle that there is parity between residential leaseholders and freeholders when it comes to the right to manage".—[*Official Report*, Commons, Leasehold and Freehold Reform Bill Committee, 30/1/24; col. 436.]

Our Amendment 87 would prevent developers building to a lower standard. The government amendment would remove estate charge costs that should be borne by local authorities, and then expect private management companies to pay for them themselves, as they can no longer pass the costs on to the occupants. However, this would motivate developers to leave degradation of buildings rather than repairing them. Further, our amendment would put the onus on the developer to ensure high standards are in place from the moment they pass the estate over.

Amendment 93 asks the Government to carry out a review of such non-standard terms and charges included in freehold deeds, including those relating to estate management companies. The alternative is that the Government implement the recommendations so clearly set out in the report of the Competition and Markets Authority.

We support the other amendments in this group tabled by the noble Baroness, Lady Thornhill, which are essentially driving at the same issue of tightening up on those dreadful fleecehold practices. The amendments in the name of the noble Baroness, Lady Finn, relate to the kind of issue I mentioned earlier, when developers sometimes provide public amenities that are not of an adoptable standard. It is not reasonable for leaseholders to be required to make up the difference. The noble Baroness's second amendment refers to the money-for-nothing culture of leaseholders being charged for services that they do not receive. We would support both of those amendments, and we look forward to hearing from the noble Baroness, Lady Thornhill, and the noble Baroness, Lady Finn, and to hearing the Minister's reply. I beg to move.

Baroness Finn (Con): My Lords, it is a pleasure to follow the noble Baroness, Lady Taylor. I shall speak to Amendments 87A and 87B, in my name. The first amendment seeks to prohibit future freehold "fleecehold" estates, where freehold home owners can be tied into expensive maintenance costs for public amenities and open space, without recourse. I recognise and welcome the provisions in the Bill that currently provide additional redress for people trapped in fleecehold, but it is important to make sure that no more people become accidental fleeceholders. Fleecehold has become prevalent not because of any policy decision by an elected Government but rather as a way for developers and managing agents to make more money at the expense of unsuspecting home owners. My honourable friend Neil O'Brien has spoken out many times about the fleecehold estate scandal. He has compared it to the Post Office scandal, in that it is an injustice that has ruined so many people's lives, yet nothing has been done.

The way that the fleecehold system works is now well known. In recent decades, the builder would normally build a new estate, make sure that the roads and other facilities were up to spec and pay a Section 106 charge, and the council would then take over the running of it. Under the fleecehold model, however, the developer agrees to hand over the company to another company, which it may or may not own, to run many parts of the estate, such as roads, open spaces, play areas and even sewers. The developer thus pays less in Section 106 charges and the council abdicates the responsibility to maintain the road and other amenities but not, of course, council tax. The developer and council, in essence, split the profits while the residents and new tenants get the bill. This is not only collusion between the council and the developer but an extremely inefficient way to run things. Many of the people on these estates end up with a huge bill to sort problems that have arisen because the amenities were not sorted properly in the first place.

3.30 pm

There are numerous examples of abuse, from residents being charged terrorism insurance for a fence or charged for work that never happened. The problems of the fleecehold model are all too apparent. We need to solve these problems for existing residents, which is why I welcome the current measures in the Bill, but we also need to prevent this model from being used in the future or we will be deliberately piling up problems for the new home buyers of tomorrow.

Amendment 87A would end fleeceholds; development should be only private estates, where that is a deliberate, known choice on the part of buyers. It builds on the CMA report on housebuilding, which called for new adoptable standards for amenities and mandatory adoption by the relevant authorities. Subsections (2) to (4) of the proposed new clause would give the Secretary of State the power to prescribe those standards and for local authorities to vary them in relation to open spaces, which is the recommendation of the CMA. Subsections (5) and (6) would give powers to prohibit councils from granting permission, unless public amenities meet those standards and are to be adopted. Subsections (1) and (7) would make clear that a tribunal can invalidate any demands for estate management fees that people receive in relation to services that should be adopted.

We need to end this outrageous fleecehold model, which has brought misery to the lives of so many. We need to protect them against extortion and corruption, which is essentially what fleecehold is. I hope that my noble friend the Minister will be able to reassure your Lordships that the matter is being considered carefully and that the Government will bring something forward on Report to address it.

Amendment 87B aims to give leaseholders stronger powers over their estate management services. Residents who pay a service charge have a contract with a freehold management company to oversee problems in their properties. However, while consumers, under the Consumer Rights Act 2015, have the right to request compensation if a service is not delivered to a reasonable standard within an adequate timeframe, the same principles do not apply to leaseholders and the services that they should be able to secure from estate management companies. This amendment seeks to redress the imbalance. The amendment would give leaseholders a right to financial restitution or a proportion of their service charge should the management companies not, within an acceptable time period, address concerns that leave their properties uninhabitable. It would therefore create a financial impetus for management agents to act more quickly to address problems and fulfil their contractual obligations.

There are numerous examples of managing agents failing to fulfil their obligations, thereby leaving leaseholders without crucial facilities for weeks on end. In one new 31-home development, the residents were left without lift access, fire safety, security measures and basic amenities for over a year. The managing agent failed to issue demands for the service charge, resulting in a severe lack of funds to maintain essential services. As a consequence, residents were left paying for services that never materialised and liaising with

[Baroness Finn]
service providers themselves to try to rectify the problems. It was only when the police and fire brigade intervened that the management company finally engaged. In consumer legislation, consumers have the right to the contracted service being provided with reasonable care and skill and in a reasonable timeframe; estate management companies should be required to abide by similar obligations.

There is also evidence of consistent poor communication between managing agents and leaseholders, who often have no clear channel by which to contact their managing agent when a service is broken or when they wish to raise concerns. This lack of communication often leads to basic amenities, such as intercoms and fire doors, being left unfixed for years. Equally, leaseholders have faced sharp increases in building insurance and service charge costs, but managing agents rarely provide cost breakdowns of the increased charges, despite being contractually obliged to do so.

The financial redress that the amendment would offer would place pressure on managing agents and freeholders to deliver an adequate service to leaseholders and provide a financial incentive for transparency to leaseholders on service charge cost breakdowns. Acting otherwise would lead the managing agent to incur costs. I hope that my noble friend the Minister will take back this amendment for consideration.

Baroness Thornhill (LD): I am pleased to say the good news is that we are all on the same page in this regard. The noble Baronesses, Lady Taylor of Stevenage and Lady Finn, have set out the context and the evidence for this. Like the noble Baroness, Lady Taylor, I too had many meetings in my former role about the fact that this issue affected individuals, whether with regard to roads or, in one particular acrimonious case, to playgrounds. So I think we all know which way we are going.

I shall speak to the amendments in my name and make a few general comments about this whole set-up. Amendments 86 and 91 deal with what we now know as the fleecehold issue. As has been said, we all know exactly what that entails. The commercial substance of the arrangement that is eventually arrived at really is a leasehold. Homeowners are often fleeced by the management company, which charges exorbitant fees for maintenance, and may be unable to force directors to hold annual general meetings or provide proper accounts, which I feel should be a basic right. However, leaseholders do not want to publicise the issue because it will reduce their ability to sell the property when they leave, a matter that has not been touched on. You do not want to tell a potential buyer what they are letting themselves in for, which is why the transparency measures in the Bill are important.

Management companies are often non-profit-making, passing on costs of maintenance to owners of homes, but are controlled by the original developer and outsource maintenance work to businesses connected to that developer. There is a body of evidence showing that that leads to increased costs, as local companies could often do the work far more cheaply. A significant problem is that homeowners do not have the resources to take the company to court or force it to hold meetings or to get competitive quotes for required work. In many cases their conveyancing solicitor was recommended by the developer, so the initial advice given was not truly independent.

Amendment 91 would ensure that residents could take ownership of an estate management company if the company had not provided residents with a copy of its annual budget, invited residents to an annual general meeting or acknowledged correspondence from residents. There are existing provisions that allow leaseholders to gain control of their freehold or the right to manage their own lease, but freeholders are assumed not to need that kind of provision. This amendment seeks to address circumstances where freeholders are trapped in a situation where they are being taken advantage of. Crucially, it would allow them to take control of the assets that are vital for the proper enjoyment of their homes.

I say to the Minister that I note the Government are bringing forward the appointment of a substitute manager, which I think is very similar, beginning in Clause 88. However, the householders in that situation would have to prove to a tribunal that the existing management was at fault, which can be difficult. It is the complexities in getting a substitute manager appointed that my amendment highlights. They may be up against the other side's lawyer, and it is not unusual for KCs to be brought into tribunals in circumstances like this. It is indeed a fault-based policy, and it is a very complex matter to get redress. You cannot just sack the company if you want to take control with your own residents' management company. Simply put, the amendment is a short cut to being able to take control without such complexities and is less adversarial.

Similarly, Amendment 86 would mean that services or works that would ordinarily be provided by local authorities were not relevant costs for the purpose of estate management charges. I make no apology for saying that this amendment is our statement of principle; we believe it is a matter of principle. The amendment would prevent freeholders being charged twice, first through council tax and then through their management company, for essential services such as roads and pavements. We are aware that there are significant issues as to how and why this situation has arisen, and we urge the Government to look into it further.

Among the other amendments, I single out Amendment 87 from the noble Baroness, Lady Taylor, which seems entirely sensible. It seeks to ensure that householders are not bailing out private developers for shoddy construction or defective homes. It is not right that someone who has paid a premium for their home is then expected to pay maintenance costs to sort out the mess left by the original developer cutting corners or, in some instances, breaching building regulations.

On the other amendments in this group, the Minister is well aware of the thrust and direction that we are all pushing in. I am aware that the business models for development are predicated on whether or not these assets remain the responsibility of the freeholder, the developer or the local authorities. The arguments for

this are very varied, ranging from—and I have heard this said—"Local authorities are strapped for cash and we do not want to maintain these amenities" to "Local authorities are asking for impossible standards that are not set centrally and that will add to our costs", or "Local authorities set standards that mitigate against creating decent workplaces that people want to live in". A similar example that I had to deal with was there being no trees on the pavements because the local authority felt that they were too difficult to maintain and added cost for looking after both the pavements and the trees. Who wants to live on an estate with no trees?

We need to return to this issue on Report, as the noble Baroness, Lady Finn, said—otherwise, we are piling up problems for tomorrow.

The Earl of Lytton (CB): My Lords, the themes that have been touched on by the three noble Baronesses who have spoken to this group are familiar to me as a professional. They all pivot around these common realm assets—if I can call them that—that are left behind or, at any rate, put into some sort of park mode when the rest of the estate has been built out. These are things that have not been adopted and are placed in the care of an estate management company.

Local authorities may have all sorts of good reasons, within their own scope, for not wanting to adopt novel surfacing, additional lighting, planters or special features. But alongside this there are allied issues because, if they do not adopt, the construction cannot be guaranteed to meet adoption standards—by that I mean roads, drains and all the other things that would normally meet standards that are very often laid down in legislation.

This is an open goal for corner-cutting, which goes on. I cannot tell your Lordships how many times I have been asked to advise on the fact that there are defective drains outside the property, somewhere in the common realm—under the road, common parking areas or landscaped areas—and nobody knows what has happened. It can be not only drains and road construction but engineered embankments, landscaping and ponds: these do not necessarily get constructed to the right standards either, but it can be hugely expensive to try to fix them after the event, and that is where the problem is. The question of just parking them in a management company that then charges whatever it likes goes to the heart of standards, responsibility and the funding of the maintenance of them.

The accountability of management companies seems to be in many instances next to zero. The burden on the freeholders, where the costs charged to them reach that magic figure at which lenders start putting their ears back and question whether they want to lend, results in the sort of lock-in that we well know affects leasehold flats subject to remediation.

I very much support this group of amendments, although they probably need to go further in establishing responsibility and funding. That is something of which the Government really need to take notice, because this is an absolute scandal—not just for the fact that it has gained this moniker of "fleecehold" but because it affects people in their own homes and cannot be allowed to persist.

3.45 pm

The Parliamentary Under-Secretary of State, Department for Levelling Up, Housing & Communities (Baroness Scott of Bybrook) (Con): My Lords, I thank noble Lords for their various amendments on the freehold estates and for the thoughtful debate.

Amendments 86 and 87 tabled by the noble Baronesses, Lady Thornhill and Lady Taylor of Stevenage, seek to prevent costs being passed over to home owners. Amendment 87 from the noble Baroness, Lady Taylor, seeks to prevent home owners having to pay any contribution towards the costs where work is required to rectify defects during the estate's original construction. I fully agree that it is important that communal areas, whether a new road, a playground or open space, are built out to a proper and reasonable standard.

In some cases, elements of construction and maintenance that are subject to an estate management charge may have been delivered via a Section 106 planning obligation or through a planning condition. The local planning authority has enforcement powers to ensure that the relevant infrastructure is built out to the required standard, and it will discharge the obligation when it is satisfied that it has been properly delivered. Some Section 106 agreements may have in them a remediation clause, which will confer responsibility to rectify any problems back to the developer. When there is no remediation clause and management of the estate has been transferred to an estate manager, it will be for that manager to resolve the issue and take legal advice as to the best way forward, when appropriate. This may involve recourse to legal challenge in the courts.

In some cases, it may be relevant if the estate manager has an extant insurance policy that covers the particular issue—for example, subsidence—in which case the insurer might pay for the remediation works then pursue the developer itself. There may be some facts and circumstances where the home owner is not directly liable even though the costs of insurance, for example, may ultimately be passed on to the home owner. However, in cases where remediation or construction issues are not dealt with in a Section 106 obligation and this is not covered by building insurance, it will be for the home owners to pursue any claim for negligent construction through the courts. Furthermore, the potential financial and reputational damage of being challenged through the courts should provide a deterrent so that the developer delivers construction of the site to the required standard.

There are also some unintended consequences that mean I will not be able to accept this amendment. The first concern is the burden of proof. It may be very difficult to prove that the construction defect is the responsibility of the construction company, especially if it has been signed off by the local authority. Secondly, during the period of a dispute, what is expected to happen to the alleged defect? Without any means to raise funds to remedy it, there is a risk of those defects remaining unattended to until the estate manager has concluded the dispute with the construction company. While this litigation is under way, it could mean that the defects on the estate are not being rectified, potentially pushing the estate into further disrepair. This in turn

[Baroness Scott of Bybrook]
could intensify the problem, creating more disputes between the home owner and the estate manager over whether costs are payable, because they are not relevant costs.

We also need to consider the safety of all those who use the estate. There may be a higher risk of injury to members of the public during a period in which defects are not resolved and, in the event of an incident, the estate manager may be liable. This liability could also sit with the residents themselves where they are members or directors of an estate management company. I recognise that there are, sadly, cases in which initial work is not of the expected quality. However, I hope that the noble Baroness, Lady Taylor, is aware that there are significant challenges to consider with regard to preventing estate managers reclaiming costs from home owners.

Amendment 86 from the noble Baroness, Lady Thornhill, would clarify that an estate management charge is a relevant cost only if it covers services or works that ordinarily would not be provided by the local authority. The impact of this amendment is that home owners on a new or existing managed estate would not be liable for any costs that a local authority would normally carry out. This might include maintenance and the improvement of roads and public open spaces. However, this term is difficult to define. For example, would it include insurance costs of the local authority?

I recognise the many concerns expressed here and in the other place about the fact that local authorities are not required to adopt new developments. I know that mandating adoption of new estates is a key recommendation of the Competition and Markets Authority as part of its recent market study into housebuilding. The question of adoption is very important, but unfortunately it is not something that this Bill can fully address. This is because legislation governing public amenities, such as roads, drainage and open space, is covered by other legislation outside the scope of the Bill.

Furthermore, on its own this amendment has considerable implications. For example, while it may stop payments by existing home owners, it does not take away responsibility for the upkeep of the area under the terms of the property deeds. These home owners would not have any means of raising funds to pay for such upkeep, because they would cease to be treated as relevant costs. This would prevent home owners complying with their legal obligations.

It would also be detrimental to existing home owners, as the condition and upkeep of communal areas may rapidly diminish, impacting on the condition of the area and the well-being of all the residents. This could make it very hard to buy or sell these properties. I should also stress that there would be no contractual obligation for local authorities to take on the management of an existing estate. They are extremely unlikely to do so unless they can ensure that they have sufficient finances to manage and maintain it.

Amendments 64 and 91 from the noble Baronesses, Lady Taylor and Lady Thornhill, seek to achieve the laudable aim of empowering home owners to take over management of the estates on which they live. While I support every effort to drive up the accountability of estate managers and empower home owners on existing estates, I hope I can persuade the noble Baronesses not to press these amendments.

We recognise the benefits of Amendment 64 from the noble Baroness, Lady Taylor. It would mean that a new right for home owners on freehold estates could be introduced in legislation to take on the obligations and liabilities associated with running an estate. There would, though, be many detailed practical issues to work through to deliver a right-to-manage type regime, particularly as estates contain different tenure types, such as leasehold and freehold houses, leasehold flats and commercial units. These issues would all require careful handling as they affect not only property rights but existing contract law.

I would like to reassure Members that we are listening carefully to the arguments being made for the Bill to go further to empower residents on existing freehold estates and, before Report, I would welcome further contributions on this, if noble Lords have them.

Amendment 91, tabled by the noble Baroness, Lady Thornhill, would enable residents to take ownership and possession of the estate management company where an inadequate service is being provided. The grounds presented to invoke this, although well-intentioned, seem unreasonably narrow. Many of these failures are company law issues or are already being dealt with through the Bill. Furthermore, there would need to be solutions for important issues, such as how to address the legal costs of transfer, as well as consequences for the company's solvency if its equity is removed and it is assessed at a nominal value.

I do not consider that the reasons set out in the proposal from the noble Baroness, Lady Thornhill, provide sufficient basis for a nil-cost transfer. We are concerned that this very simple and broad power is not an appropriate way to address the significant substantive policy issues involved in transferring responsibility. As Members of the Committee will know, we are introducing measures in the Bill to empower home owners and make estate management companies more accountable to them for how their money is spent, including the ability to apply to the appropriate tribunal to replace a failing managing agent.

Amendment 93 from the noble Baroness, Lady Taylor of Stevenage, would require the Government to carry out a review of the extent and impact of non-standard terms and charges imposed by estate managers in property deeds and leases. We are aware that there are many different types of language in deeds and leases, but I do not think this review is necessary. First, home owners will face different obligations depending on what amenities the local authority is or is not responsible for. Secondly, where home owners are responsible, we are driving up the accountability of estate management companies with regard to how they spend the money they charge home owners. These reforms bring in significant protections to prevent exploitation of home owners, and we will of course keep these arrangements under review. I fully recognise the noble Baroness's desire to provide further support to help home owners living on these estates, particularly in light of the Competition and Markets Authority's recent report.

However, I do not believe that these amendments are the right way of delivering the desired outcome, for the reasons I have explained, and I ask the noble Baronesses not to press them.

My noble friend Lady Finn's Amendment 87A seeks to deliver the recommendation in the Competition and Markets Authority report that the Government prepare common adoption standards and mandate local authorities to take over responsibility for these public amenities once these standards are met. These are very important issues that must be carefully considered, but, as I mentioned previously, they are not things the Bill can fully address. Legislation on planning considerations and liability for governing public amenities are covered elsewhere and are outside the scope of the Bill. The Government's thinking on this issue will be set out in our response to the CMA report.

On Amendment 87B, also tabled by my noble friend Lady Finn, it is right that estate managers should be held accountable for the poor delivery of services they provide. However, I do not think this amendment is necessary, as the Bill already contains adequate protections for home owners. Clause 72 makes it clear that any estate management costs must be reasonable and that services or works should be of a reasonable standard. Clause 75 grants home owners the right to apply to the appropriate tribunal for a determination on whether those charges are reasonable. Taken together, these clauses will incentivise estate management companies to charge the correct fees from the outset, thereby reducing the number of home owners being overcharged for works and services on their estate. However, I understand my noble friend's concerns and those of other noble Lords who have spoken in this debate, and I can reassure them, as I said before, that we are carefully listening to these arguments. Given these considerations, I ask my noble friend not to press her amendments.

4 pm

Baroness Taylor of Stevenage (Lab): My Lords, I listened carefully to the Minister's response, and I am grateful to her for going through each amendment in detail. However, having spent many hours in this Chamber debating what is now the Levelling-up and Regeneration Act before this Bill, we hear the same refrain again: things are either too complex to deal with, they are the subject of another Bill or they need further work.

Today's debate has indicated yet again—and I am sure there will be later debates in a similar vein—that these types of Bills need very effective pre-legislative scrutiny so that the great expertise contained within this Chamber can be used to make the Bill better before it comes to the House. It would mean that we are not faced with being told something should be in another Bill or needs further work. The subject of this Bill has been a manifesto commitment of the Government since 2017, so there has been plenty of time to do the other work before the Bill came before the House. That said, I beg leave to withdraw the amendment.

Amendment 64 withdrawn.

Amendments 65 to 65B not moved.

Clause 51: Extension of regulation to fixed service charges

Amendment 66

Moved by ***Baroness Scott of Bybrook***

66: Clause 51, page 59, line 15, leave out "as follows" and insert "in accordance with subsections (2) to (6)"

Member's explanatory statement

This amendment is consequential on the other Government amendment to this clause.

Baroness Scott of Bybrook (Con): My Lords, I will now speak to Amendments 66, 68 and 70 in my name. I start by noting that I fully recognise the challenges facing leaseholders, with rising service charges caused by the increased costs in managing and maintaining buildings. The Government are clear, however, that any increase in charges must always be reasonable. We also recognise that the existing statutory protections leaseholders have do not go far enough, which is why we are introducing measures in the Bill to empower leaseholders and help them better scrutinise and challenge the costs they are asked to pay.

Amendment 68 is a technical amendment to Clause 51. It provides further clarification on which parts of the regulatory regime should continue to apply only to landlords who charge and leaseholders who pay variable service charges. These are charges which will vary year on year, depending on the actual cost of providing services.

As currently drafted, the Bill provides such clarity only in respect of measures in the Landlord and Tenant Act 1985. This amendment makes it clear that certain measures and protections in the Landlord and Tenant Act 1987 and the Commonhold and Leasehold Reform Act 2002 should also apply only to leaseholders who pay variable service charges. These include, for example, the ability to appoint a manager and the requirement to hold service charge contributions in trust. Amendments 66 and 70 are minor consequential amendments because of these further changes to Clause 51.

I turn to Amendments 71 to 75 in my name. Amendment 71 clarifies what steps are required to ensure that the written statement of accounts is prepared properly. It follows feedback from and discussions with expert stakeholders after publication of the Bill. We are grateful for their observations. The amendment places an obligation on landlords to provide leaseholders with a report prepared in line with specified standards for the review of financial information. This report must also include a statement by the accountant that the report is a faithful representation of what the report purports to represent.

The amendment also makes it clear, for the avoidance of doubt, that leaseholders must make a fair and reasonable contribution towards the costs of the report. This permits landlords who are unable under the terms of the lease to recover such costs through the service charge to do so, to avoid financial difficulties. This may include right to manage or resident management companies.

Amendment 72 implies a term into the lease where the cost of the preparation of the report is to be payable through the variable service charge.

[Baroness Scott of Bybrook]

Amendment 73 is a consequential amendment required because of the change to new Section 21D(2)(b).

Amendment 74 allows for the appropriate authority to expand the definition of

"the necessary qualification"

in Section 28(2) of the Landlord and Tenant Act 1985. This will allow the Secretary of State and Welsh Ministers to widen the description of people who are deemed capable of preparing the written report. Amendment 75 makes it clear that any regulations made will be subject to the affirmative procedure.

We will work closely with leaseholders, landlords and professional bodies to ensure we prescribe the right standards to be applied and the right level of detail. I beg to move Amendment 66 and hope noble Lords will support the other technical and essential amendments in my name. I look forward to hearing from noble Lords on their amendments relating to service charges.

The Earl of Lytton (CB): My Lords, I do not think I am actually the next in line to speak on this, but I have Amendments 78C to 78G and 80A and 80B standing in my name. The intentions behind the Bill in relation to greater transparency and fairness are welcome, but, in my view, they do not go far or fast enough to deal with the current crop of egregious monetising schemes, where there seems to be no end to the inventiveness of the worst offenders.

My amendments go further than the Government's proposals, for this reason. Some of what is in the Bill will take time to work through and, during that time, the same old abuses—or variants of them—will continue. I want the worst ones to stop immediately the Bill receives Royal Assent. It is part of an essential consumer protection package.

Amendments 78C to 78G, which I will deal with first, seek to close loopholes in the current law, require landlords to achieve value for money in the management of their buildings, promote competition in the property management sector and clamp down on the charging of unnecessary ancillary fees. Amendment 78C clarifies that the costs are to be treated as incurred as soon as there is an unconditional obligation to pay them, even if the whole or part of the cost is not required to be paid until a later date.

The moment when costs are incurred is particularly important in relation to Section 20B of the Landlord and Tenant Act 1985. That section prevented tenants being charged costs incurred more than 18 months before a demand for payment was made, unless they were informed that costs had been incurred and therefore would be payable.

Surprising as it may seem to your Lordships, there are conflicting decisions as to when costs are incurred for the purposes of Section 20B. In Jean-Paul v Southwark London Borough Council in 2011 in the UK Upper Tribunal, Lands Chamber, reference 178, it was held that costs are incurred only when payment is made; but, in OM Property Management Ltd v Burr in 2012, in the UK Upper Tribunal, Lands Chamber, reference 2, it was held that costs are incurred on the presentation of an invoice or on payment. Both leave it open to landlords to ask a supplier to delay the presentation of an invoice, or themselves to delay payment, to postpone the commencement of the 18-month time limit. I do not see this amendment as controversial, as it prevents abuse of the system and brings landlord and tenant law into line with accepted accounting practice.

Amendment 78D covers a situation under Section 19(1)(a) of the Landlord and Tenant Act 1985, where service charge costs are payable

"only to the extent that they are reasonably incurred".

This amendment replaces the "reasonably incurred" test in relation to service charges with a stricter one of providing "value for money".

It is established case law that, if a landlord has chosen a course of action that has led to a reasonable outcome, the costs of pursuing that course of action are reasonably incurred even if there was another cheaper outcome that was also reasonable. This wide margin of appreciation leaves leaseholders at risk of overcharging. A value for money test would require landlords to interrogate all options before spending leaseholders' money. It is not an unreasonable test; it is one that most people use in daily life when considering any significant purchase.

Amendment 78E requires landlords to provide tenants with a range of information, and to update it regularly. It goes further than the Government's Clause 55, under which landlords are required to provide information only on request. If leaseholders are to be encouraged to take greater interest in the management of their buildings, I do not think we should place obstacles in their way. It should not be difficult for a landlord of a well-manged building automatically to provide and keep up to date a data room of information.

Amendments 78F and 78G continue the consumer protection theme of these amendments by promoting competition in the property-management sector. Amendment 78F prevents landlords contracting with related parties or connected purposes, thus removing an obvious conflict of interest. The danger for leaseholders if a landlord company places contracts with its subsidiary is well illustrated by the Charter Quay case, in which the managing agent, which happened to be owned by the landlord company, was roundly criticised by the tribunal for placing onerous service contracts with other subsidiaries.

In the same vein, to promote competition through regular retendering, Amendment 78G places a maximum contract duration of five years. Although under current law landlords must consult leaseholders before entering into a qualifying long-term agreement—that is, a contract of more than 12 months—there is no limit on its duration. In practice, even limited consultation requirements are relatively easily avoided. Contracts between a holding company and one or more of its subsidiaries, or two or more subsidiaries of the same company, are not qualifying long-term agreements; neither are contracts for a year or less, even if they have been regularly renewed.

Amendment 78H seeks to reduce costs on leaseholders by setting out in statute details of cosmetic works that can be undertaken without approval from a landlord. Most leases contain very tightly drawn provisions in this respect, which are against undertaking virtually

any type of work, no matter how insignificant, without the landlord's consent. Provisions such as a prohibition of the

"cutting, maiming or injuring, or suffering to be cut, maimed or injured, any roof, wall or ceiling",

are very common. The fees for consenting to some minor works often run into hundreds of pounds, so this amendment attempts to find a way to streamline that.

One may debate at length the areas where a more relaxed regime might impair the amenity of other residents, but I seek to establish the principle of getting away from the monetisation of consent for every mortal thing—from pets to paint colour, and light fittings to lino floors—and putting it in the past. There ought to be greater freedoms for leaseholders but, in noting that the Law Commission report implied that consent for floor coverings should be relaxed, I would only observe from experience that engineered timber floor finishes in particular are often a potent source of noise transmission affecting other residents—so the matter is nuanced. At this stage, I simply wish to sound out the Government's willingness to draw up, say, a code of practice, or otherwise take steps to free up this area.

I now turn to Amendments 80A and 80B, which are really rather different. I would have had them disaggregated had I been a bit more alert on Friday afternoon, because they relate to insurance moneys. Amendment 80A requires landlords to pay the proceeds of a building insurance policy into a separate fund that is held on trust for leaseholders. It also requires landlords, on receipt of insurance proceeds, to begin immediately to repair or rebuild a building, as far as reasonably practicable.

Service charge funds already have to be held on trust for leaseholders and I contend that building insurance payouts should be treated in the same way. As noble Lords are aware, I have raised my concerns about the risk of landlord insolvency. It has been suggested to me that, if a landlord became insolvent, any insurance proceeds held by the landlord on entering insolvency would form part of the company's insolvent estate, leaving leaseholders in a damaged or destroyed building as unsecured creditors. Holding insurance proceeds on trust would go some way to protect them from risks relating to landlord borrowings—of which more in relation to Amendment 80B.

Most leases require landlords to reinstate damaged buildings—as, I think, does statute in the case of damage caused by fire. Subsection (3) of the proposed new clause in Amendment 80B places that duty beyond doubt. It requires landlords to move quickly to repair or rebuild the damaged or destroyed building. It goes some way to closing a loophole commonly found in leases that gives landlords the right to terminate where it is not possible to reinstate a building within a certain period. That is often three years, which is likely to be insufficient time to effect reinstatement of a larger or complex building.

Amendment 80B closes what I consider to be another loophole for insurance. Most leases require that the landlord insures the building, with the cost charged to leaseholders. However, what concerns me is the ability of landlords to assign the proceeds of insurance policies as security for their borrowings.

4.15 pm

For instance, leaseholders in properties owned by subsidiaries of the three Long Harbour fund holding companies—a landlord to over 103,000 homes—are likely to be concerned that their subsidiaries have assigned the

"rights in each Insurance Policy, including all claims, the proceeds of all claims and all returns of premium in connection with each Insurance Policy"

to the Irish holding companies as part of an intercompany loan agreement. They will be even more concerned to learn that, according to the same standard insurance contract:

"All monies received or receivable by a Borrower under any insurance policy maintained by it (including all monies received or receivable by it under any Insurance Policy) at any time (whether or not the security constituted by this deed has become enforceable) shall at the option of"

the holding company

"be applied in making good or recouping expenditure in respect of the loss or damage for which those monies are received or"—

this is significant—

"towards … discharge or reduction of the Secured Liabilities".

Similar assignment provisions can be found for companies with loans from Rothesay Life. When leaseholders challenged those provisions, the excuse was that they formed part of a standard form of finance agreement. Lenders apparently insist on the provision so that they can have control of the funds and stop the landlord taking the insurance proceeds and walking away. In this case, somebody else walks away with the money, but the leaseholder still does not get the benefit of that being paid to their building. Some insurance policies note a lender as the priority payee so that it will receive the insurance proceeds instead of the insured party—you could not invent this stuff.

It seems to me that such provisions conflict with the terms of most leases that require a landlord to reinstate a building. Lest leaseholders in a damaged building are forced to fight a holding company or lender, possibly overseas, for the funds needed to repair, this clearly needs addressing. Even if the funds were made available to leaseholders, the holding company or lender could withhold that element of the proceeds relating to its subsidiary's or borrower's interest in the building, leaving leaseholders with a shortfall. I am sure that noble Lords will agree with me that this situation cannot be allowed to persist.

I will make one more comment on—

Lord Gascoigne (Con): Time.

The Earl of Lytton (CB): I will be very brief. Some of the costs that have arisen are as a result of Fire Safety Act and Building Safety Act provisions set up by the Government. Some time ago, I asked the people I work with to set up an online resource, which I commend to noble Lords. It is www.buildingsafetyscheme.org. I hope that it will help a number of people to unpick what is a very complex situation.

Baroness Jones of Moulsecoomb (GP): My Lords, the number of amendments discussed today highlights just how many issues there are with the exploitation of leaseholders. The noble Baroness, Lady Taylor, mentioned the option of some pre-scrutiny with people who have

[Baroness Jones of Moulsecoomb]
expertise in this area—although I am not suggesting that I am one of them. That might have benefited this legislation.

Normally, with leasehold properties, people think that they are buying a house or a flat, but then they are laden with decades of financial obligations to a landlord who can charge a ridiculously long list of things to the leaseholders. That does not seem to be a very fair system. There are far more problems than your Lordships' Committee will be able to resolve, so there is clearly a need for further legislation when a new Government come to power. I hope that the new Government will consider the issues raised in Committee, including my Amendment 78B, which shines a light on the growing trend of public assets being funded by leaseholders. For example, green spaces, play areas and roads are often being charged to leaseholders, even when they are freely accessed by the wider community.

These leaseholders are facing a double taxation: they are paying their council tax, which is used to fund play areas and roads provided by the local authority, and they are also being charged by their landlord for play areas and roads that are within the estate. There seems to a case for these publicly available assets to be brought into local authority management, ownership and funding. I would appreciate it if the Minister, and any budding future Ministers, could give their thoughts on the issue and perhaps undertake to look at it further.

Lord Bailey of Paddington (Con): My Lords, my main focus so far has been boosting leaseholder control over service charges by removing barriers to the right to manage. However, we must dramatically reform the law for leaseholders who cannot gain this control and who wish to stand up to their freeholder on service charges. It is positive that the Government are enforcing service charge transparency and disclosure with the new right-to-inform scheme in Part 4, Clause 55, which makes changes to the Landlord and Tenant Act 1985, but I believe we need to go further and make it easier for leaseholders to challenge rip-off freeholders with their service charge.

Tribunals are very stressful: they take a long time and often do not have the power to enforce their decisions. This leaves leaseholders in a very strong predicament. Leaseholders normally have to file another application with the county court to get their money back for any overcharging, at least as they see it. My Amendment 78A is all about enforcement and giving teeth to tribunals' decisions, where it has been determined that the service charges that the leaseholders have paid were not payable or were unreasonably incurred.

Various rules in Parliament have been passed in an attempt to regulate this behaviour of freeholders; again, I mean poor freeholders—the whole market is not like this. Often, these work only when leaseholders have the time, money and energy to enforce them at tribunal, which then is not always guaranteed when residents are up against armies of layers. Freeholders often hold many freeholds and have a big financial backing behind them and can just tire out leaseholders—they can work them into the ground and threaten them with forfeiture, for instance, should something go wrong. The Secretary of State was right to say that we need to put the squeeze on freeholders, but that means making freeholders actually fear leaseholders bringing cases against them at tribunal.

In my Second Reading speech, I mentioned that research from Hamptons has shown that leaseholders paid £7.6 billion in service charges. Many of those service charges were overcharge, and we want to create a situation where leaseholders can fight back. The annual service charge for flats in England and Wales has increased by 8.4% since the beginning quarter of 2023. Around 270,000 leaseholders are now paying more than £5,000 a year in service charges, which could quickly become a second mortgage for many leaseholders.

My Amendment 78A seeks to amend the Landlord and Tenant Act 1985 regime for service charge disputes to try to make service charge tribunals against freeholders more serious by taking three important steps. One is by providing an opt-out. At the moment, leaseholders have to sign up for a case to benefit. Even if the tribunal determines that they have been overcharged, unless they have signed up their neighbour may receive a payment but they will not because they did not sign up. That is unfair in modern life: you could be elderly; you could have children; you could just be away when all these things are going on. Your neighbour would receive benefit and you would not, even though you would also have overpaid. That is why we need an opt-out, not an opt-in, to make it more serious.

Secondly, after a successful Section 27A challenge by any leaseholder in a block, the freeholder would be under a duty to account to all leaseholders within a two-month period of the decision being handed down. This means that any money overpaid would have to be paid back within two months, because leaseholders—many of them owning a place for the first time, many of them young people, many of them elderly people on fixed incomes—have paid out this money which they often could not afford. They should get it back in a speedy fashion.

Thirdly, there should be interest after a two-month period if the freeholder has not paid back money owed to the leaseholders. This is to give the sanction some bite and to make sure that a freeholder does not just wait out hapless leaseholders because they have all the power and the financial power.

I would like to see some more action in this Bill to deter and punish bad behaviour by freeholders and ensure that leaseholders can swiftly get their money back where overcharging has been determined by a tribunal. My Amendment 78A gets us closer to that position.

Baroness Fox of Buckley (Non-Afl): My Lords, Amendment 78 is about one part of service charges that sometimes gets neglected: the lack of consultation about major works that remain uncapped, opaque and difficult to challenge. This mainly affects those who have brought homes where the landlord or freeholder is a council. The amendment is also about the failed attempts by the law to help them in the past and whether we can use the Bill to rectify that.

In Committee last Wednesday it was implied that leaseholders are mainly wealthy home owners of luxury flats. These leaseholders deserve fair treatment, however

wealthy they are, and they should not be ripped off, but many leaseholders do not fall into that category, with 49% of leaseholders being first-time buyers. We also have right-to-buy leaseholders who bought their own council homes, and leaseholders who bought former council homes because they were cheaper and therefore home ownership was within their grasp, rather than them being priced out of the market. I declare an interest as one of those people.

Leaseholders living in former council homes now face enormous refurbishment bills of tens of thousands of pounds, despite a legal cap being introduced 10 years ago, which is being circumvented by local authorities. The reason for major works is no doubt exacerbated by years of weak investment and cuts. Social housing estates do need to be maintained, and I understand that councils have difficulty doing that. However, neglect builds up and leaseholders end up being the ones who pay the price. The bill for entire blocks has been divided between the local authority and individual leaseholders because council tenants cannot be charged. Therefore, we end up with situations such as that of George and Alma, a couple who were suddenly landed with a £45,000 bill for windows in the roof of the estate, which do not even affect them, making them sick with worry. As has already been discussed, the disrepair that accumulates on estates ends up not just increasing service charges but coming as one large bill. George said, "I pay a service charge and I have not seen any work being done on a yearly basis—then suddenly we get this big bill".

I am a Haringey leaseholder of a maisonette. I noted one extreme case that came to light during lockdown, when 76 leaseholders in Wood Green were told to find between £56,000 and £118,000 to cover Haringey repairs and improvements. One young woman, when she bought her maisonette in 2015, was told that major works planned would cost £15,000. Instead, after losing her job because of lockdown, she ended up with a bill of £110,000. Another couple, when buying their property, were given an estimated bill for major works of £12,500. Mid-completing buying their house, that had swelled to £25,000 with no explanation whatsoever for the increase, and they could not find out why. There was then stalling for five years, again with no explanation. Haringey then added in some other major works—roofs, windows and door replacements—so now the final bill is a whopping £108,450. To quote them, "We will be ruined". The bill will be a third of what they paid for their home.

This is happening all over London, and councils' responses have been complacent. Lambeth Council said: "We appreciate that major works can place a financial burden on leaseholders, which is why we offer a number of repayment options". However, even those which break it down over five years, for example, which is one of the options available, can almost double some people's mortgage, and this is even beyond increasing service charges.

4.30 pm

What is frustrating about all this is that the shocking problem has been known and, indeed, legislators tackled it 10 years ago. In 2014, the then Communities Secretary, the noble Lord, Lord Pickles, introduced Florrie's law. It was named after pensioner Florence Bourne, who was mortified by a £50,000 repair bill from her local authority landlord and panicked about the noisy works which—and this is key—a tribunal later ruled were completely unnecessary. Sadly, Florence Bourne died of a heart attack. Florrie's law introduced a £15,000 cap on major works in London and a £10,000 cap outside London over a five-year period. But it applies only if central government money is involved. Guess what? There has not been much central government money involved in helping councils with their social housing stock. It is not clear at all whether Florrie's law has ever been used, but I would like the Minister to look into a dormant law that was meant to tackle a problem that is still going on.

This amendment seeks to deal with the narrower matter of local authority leaseholders being completely shut out of any consultation about major works. Unlike leaseholders in privately owned buildings, local authority leaseholders have no right to decide on the scope or timing of proposed works or to request alternative quotes from contractors. They have the right only to make observations on plans. We local authority leaseholders live in dread of a series of letters containing estimates for the next high capital expenditure, often for works that do not directly improve our own home, sometimes not even our own block. We cannot do anything but sit in fear of the final bill, knowing that it will not be value for money.

Most council landlords use qualifying long-term agreements with contractors. They are not required by law to find alternative quotes, and with only one tender there is no incentive to compete on price. Worse, contractors often use their own surveyors to determine the scope of works and costings, costs can be inflated, and the work carried out is often not essential. Workmanship can be shoddy—poorly fitted windows, leaks in new roofs and so on. Local authority leaseholders have no say and are forced to foot the bill for substantial work. There is a huge amount of waste, sloth and lack of accountability, as I realised when I was evicted from my own block of flats after fire and water damage. It took three years for us to be returned to that block, and much public money was squandered. Of course, that money is now being recouped from other leaseholders in the local area and, indeed, us.

Leaseholders are the very people who care enough to ensure that major works are efficient and of a high standard. The council has no interest in controlling costs if, indeed, leaseholders cover the bill. That is why the proper consultation called for in this amendment would improve the situation.

Again, this has already been tackled by legislators before us. In the Commonhold and Leasehold Reform Act 2002, Parliament wanted to ensure that proper consultation on major works was introduced into law. It was part of a drive to provide leaseholders with transparency back then, so that they would have the opportunity to influence the cost of a project and have input into who would get the contract. Unfortunately, in 2013, the Supreme Court thwarted the will of Parliament by undermining a key provision, often referred to as the Daejan ruling from the Daejan v Benson court case. This means that freeholders can

[Baroness Fox of Buckley]
push through major works by calling them an emergency, or by filing an S20ZA order which, since the Daejan ruling, tribunals generally nod through.

This lack of leaseholder consultation on major works means that freeholders almost always have carte blanche to choose what works need doing and determine their cost. As Professor Sue Bright of the University of Oxford says, with leasehold reform as a political priority, it is a good moment to reflect on the Supreme Court decision in Daejan. Professor Bright also notes that this lack of consultation goes against the spirit of the Building Safety Act and the Hackitt review, which tried to address the problem of residents needing more opportunities to have a strong say and voice and offer their views in decision-making processes. That is why both Barry Gardiner MP and Matthew Pennycook MP raised the problem of the Daejan ruling in the other place. The Housing Minister, Lee Rowley, admitted that he did not know about Daejan but promised to look into the problem and come back to Parliament. Maybe the Minister can respond to this here and we can get on with ensuring that Parliament's will as expressed in 2002 actually happens.

All this amendment tries to do is restore the intention of the Section 20 major works regime in the 2002 Act to what it was before the Supreme Court's unhelpful intervention. I hope the Minister will help ensure that occurs.

Lord Thurlow (CB): My Lords, I congratulate the noble Earl, Lord Lytton, on his high-speed gallop through a large number of his Friday afternoon amendments. They were quite technical, and anyone who managed to keep up with them all deserves a prize. It was very good indeed. I will address one of them, Amendment 78F. It is very short but very important.

Much of this Bill is designed to protect leaseholders from freeholders and their managing agents acting in concert in any attempt to inflate service charges. These in-house relationships are ripe breeding territory for dishonest behaviour and abuse, of which the noble Earl gave an example, in the opaque realm of service charges—something we look forward to being reversed or changed by this Bill. It is a money-making business model, albeit morally and actually dishonest. We should ban any close links of this kind between managing agents and their freehold clients, and inflict suitable penalties that are strong enough, or high enough in financial terms, to be a deterrent. If the Government really want to protect leaseholders, connected relationships giving rise to such potential abuse must be banned.

Baroness Thornhill (LD): My Lords, I will speak to my Amendment 77 and make a few brief comments on other amendments. Amendment 77 would allow leaseholders to apply to the appropriate tribunal to ensure that freeholders who do not provide the agreed estate management services and allow a block to become run-down can be subject to a penalty at the sale of the freehold. There is clearly an issue of absent freeholders and little penalty when a managing agent is not appointed or adequate estate management services are not provided. The amendment would create a mechanism by which a penalty could be placed on the enfranchisement value and mean that leaseholders who have suffered from freeholder failures and consequently had to take the step towards acquiring the freehold should pay a lower cost for the collective enfranchisement of that freehold. This would reflect the freeholder's dereliction of duty if a tribunal deemed it was warranted.

The Bill aims to remove barriers and rebalance legal costs for leaseholders to challenge freeholders at tribunal. Clause 56 addresses the enforcement of freeholders' duties relating to service charges, and it includes provisions for tenants to make an application to the appropriate tribunal and the measures tribunals may put in place. As such, the amendment would just add to that. As well as having a power to make a landlord pay damages to a tenant for failure to carry out duties related to service charges, a tribunal would also have the power to apply a penalty to the enfranchisement value at the sale of the freehold to leaseholders. It does not seem fair, after having taken action to gain control of the freehold due to an absent freeholder, that leaseholders then have to compensate the freeholder with no penalty for that dereliction of duty. This is a modest amendment that would leave the judgment in the hands of the appropriate tribunal as to whether a penalty was warranted.

On Amendments 67 and 69, in the name of the noble Baroness, Lady Taylor of Stevenage, it is only right that leaseholders with old leases that have fixed service charges can challenge the reasonableness of those fees at tribunal. Evidence of costs being passed on in service charges is evident. This also ties in with Amendment 98D from the noble Earl, Lord Lytton.

We on these Benches support Amendment 69. We do not agree with the Government having a power to remove certain landlords from being subject to basic service charge transparency rules; all leaseholders are owed clarity on what they are paying for. We do not understand why that should not be the case.

I turn to Amendment 78 from the noble Baroness, Lady Fox of Buckley. We agree that leaseholders should be fully consulted on major works that they pay for; the noble Baroness showed that some of these costs are eye-watering. We agree with her proposal to restore the major works scheme in the Commonhold and Leasehold Reform Act 2002, which was eviscerated by the Daejan ruling by the Supreme Court in 2013, which the noble Baroness mentioned. We agree with the dissenting Lord Wilson in that decision, who said that the majority had subverted the intention of Parliament. It is not right that landlords no longer have to involve leaseholders in the decision-making process. We should use this Bill to at least restore the position to pre-Daejan so that transparency and accountability on major works are increased for leaseholders.

Amendment 78A, from the noble Lord, Lord Bailey of Paddington, would require a landlord who had lost a service charge determination, and who was meant to return the money to the leaseholders, to pay up in two months or else face compound interest. While Section 19(2) of the 1985 Act requires that overcharges be returned to leaseholders, landlords can and do ignore this. The same applies to similar provisions in leases. Where a tribunal has determined that a service charge or portion of it has been excessive, it should be

relatively straightforward for leaseholders to get that money back. We on these Benches support that part of the thrust of the amendment—to ensure that landlords are under pressure to account to leaseholders in a timely manner, or otherwise experience financial penalties, as debtors in other parts of our economy do.

I turn to the mighty avalanche of amendments from the noble Earl, Lord Lytton. For us, Amendments 78D and 78E stand out. Amendment 78D provides for a new, tighter and more objective test of value for money to replace the current test of "reasonably incurred", which could be open to a wide range of interpretation—obviously, this is in relation to service group charge costs. Amendment 78E pushes the Government to go further in the entitlement of leaseholders to have more and better information. Given the rationale behind the amendments from the noble Earl, Lord Lytton, we believe it is worth the Government giving them serious consideration.

Finally, although we have not yet heard from the noble Lord, Lord Moylan, we are minded to agree with his amendments, as right-to-manage and residential management companies are thinly capitalised. Unlike big freeholders, they will not have lending facilities, so would be unable to pay legal costs up front to take non-paying leaseholders to tribunal or county court. Right-to-manage and residential management companies are non-trading companies and have nothing except the service charges in their coffers. I look forward to the Minister's responses.

Lord Khan of Burnley (Lab): My Lords, I rise to speak to Amendments 67, 69, 76, 78I and 78J, in the name of my noble friend Lady Taylor of Stevenage. Noble Lords across the House have been emailed and briefed in relation to some very troubling real-life examples in the area of service charges—in fact, we heard earlier from the noble Baroness, Lady Fox of Buckley, about an unscrupulous situation.

In the other place, honourable friends have shared some horrific casework examples which clearly expose the unfit and unjust system leaseholders have been subject to. My honourable friend Matthew Pennycook MP, said:

"Soaring service charges are placing an intolerable financial strain on leaseholders and those with shared ownership across the country. Among the main drivers of the eye-watering demands with which many have been served over recent months are staggering rises in buildings insurance premiums and the passing on of significant costs relating to the functioning of the new building safety regime. Given that many leaseholders are being pushed to the very limits of what they can afford, do the Government now accept that the service charge transparency provisions in the Leasehold and Freehold Reform Bill … are not enough, and that Ministers should explore with urgency what further measures could be included to protect leaseholders better from unreasonable charges and give them more control over their buildings?"—[*Official Report*, Commons, 22/4/24; col. 636.]

4.45 pm

Only last weekend, the Mayor of London, Sadiq Khan, wrote about

"Sky-high service charges … financially crippling for people living in flats or who are shared owners … they amount to the everyday extortion of leaseholders and a shameful abuse of power by landlords and freeholders".

I thank the Minister for introducing further government amendments, which we welcome. We very much welcome the intention behind them. Much of the detail will await the statutory instruments required to bring them into force, but those measures have the potential to improve tangibly what is without doubt one of the most contentious and, for leaseholders, difficult aspects of the feudal leasehold tenure.

Speaking to leaseholders recently, I heard the clear frustration caused by the setting of service charges. They have been subjected to unreasonable costs, and costs artificially inflated as a result of outright error, such as duplication of charges for the same service. There are large periodic increases that are rarely justified and abusive practices such as the deliberate misuse of funds. Even when leaseholders do not believe that there is a specific problem with the amount of their service charges, most nevertheless feel that they are not particularly aware of, or informed about, what their charges are spent on, or what their future liabilities might be, leading to uncertainty and a lack of clarity.

The noble Earl, Lord Lytton, introduced his amendments eloquently and made perfect sense. We shall listen very carefully to the Minister's response to what he proposes, especially about consumer protection, closing loopholes and exploring all options to avoid leaseholders being burdened.

I now turn to our amendments. Amendment 67 is an attempt to probe the Government's decision to exempt fixed service charges from the test of reasonableness. Such charges can and do include all sorts of unreasonable costs, and it strikes us as wrong that leaseholders who are obliged to pay them—not least those living in for-profit retirement developments without care, where they are a particularly prevalent arrangement—will not be able to challenge those costs if they feel that they are unreasonable. We are also concerned that exempting fixed service charges from the test of reasonableness may incentivise unscrupulous freeholders to create more of them, rather than relying on variable service charges, which will be made more transparent by the other changes being made in this part of the Bill. The amendment would delete subsection (4)(a) to ensure that the test of reasonableness applied to fixed service charges, to afford greater protection to leaseholders subject to them.

Our Amendment 69 addresses concerns around new powers that allow negative regulations to exempt certain landlords from the requirement to demand payment of a service charge using a specified form—a requirement that we welcome. The requirement will also ensure, by inserting 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 it until the requirements are met. We very much welcome this, which would ensure that service charge demands and annual reports were provided to leaseholders in a standardised format. If it works well, the provision is likely to have the most widespread practical impact of any provision in the Bill, given that many hundreds of

[Lord Khan of Burnley]
thousands of service charge demands each year will have to be in a prescribed form. We have reservations about the inclusion of exemption powers, because they could be used to exempt entire categories of landlords from the requirements in subsection (1), thereby denying large numbers of leaseholders the benefits they would otherwise secure as a result of their application. If the Government will not consider this, we would be grateful for clarity about what kind of landlords they believe might need to be protected.

Amendment 76 would give the Secretary of State the power to set prescribed amounts, with a view to ensuring that leaseholders are not subject to unreasonable costs should they need to request certain categories of information. The Bill introduces the right for leaseholders to request information and, while it is right for landlords to be able to recover reasonable costs from complying with these requests, this comes with a risk that excessive fees will be charged. This amendment would protect against that risk.

The purpose of our Amendment 78I is to prevent landlords passing on costs from a service charge imposed on them by Ofgem or the Energy Ombudsman in relation to their mismanagement of communal heating systems. This includes Ofgem fines and redress orders, Energy Ombudsman awards and statutory compensation to customers for service failures. Without this amendment, tenants and leaseholders face having to pay their own compensation payments and the fines imposed on their landlord for failing to provide them with a compliant service.

Our final amendment in this group is Amendment 78J. Housing is responsible for more than a 10th of the UK's emissions, so reform across every tenure needs to be accelerated to meet our net-zero commitments. While progress has been slow across all housing tenures, the rate of progress in Britain's leasehold buildings has been practically non-existent. Leaseholders and landlords are usually prevented by the terms of the lease from carrying out any works to the building that are considered improvements. That is an important leaseholder protection. Landlords can repair and maintain the existing building but cannot improve it—say by installing cavity wall insulation, a heat network, or double-glazed or triple-glazed windows. Similarly, a leaseholder is prevented from altering common parts within their demised flats—for example, walls or windows—to improve their home's energy efficiency and reduce their energy bills. This amendment would provide for terms to be implied into leases that permit qualifying energy-efficiency and retrofitted improvements to a building. Furthermore, it would provide a start to ensuring that leaseholders can improve their homes by retrofitting them or allowing them to make energy-efficiency changes. It would allow a variation of leases to allow for a net-zero improvement and would protect leaseholders at the same time.

These Benches appreciate the broad support of noble Lords from across the Committee for a number of the amendments in the name of my noble friend Lady Taylor of Stevenage. Various contributions today have illustrated the depth and breadth of concern that we all feel around service charges.

In concluding on the wider issue of charges, I will share the example of a 90 year-old elderly woman, whom I have been told about today. The important point is that the ground rent charges in her building changed from £25 to £2,350 annually. What is even more shocking about this example is that the increased charges were backdated to more than 10 years, which meant that her charges were £17,000. Furthermore, within two weeks, this elderly woman was threatened with legal action. What advice would the Minister give to that 90 year-old woman with this demand from her landlord?

When will the Government announce the results of the ground rent consultation? There seem to be policy announcements and leaks in the media in relation to ground rent policy, but this has happened without the ground rent consultation even being published. This is severely disappointing, as we are approaching Report in the next few days. How can we possibly scrutinise the consultation now? I look forward to the Minister's response in addressing the numerous concerns raised in your Lordships' House.

Baroness Thornhill (LD): My Lords, before the noble Baroness takes the Dispatch Box, I apologise to the Committee and to the noble Lord, Lord Moylan, in particular. Due to lots of pieces of paper, I commented on two amendments that are actually in group 4, so I reassure the Committee that I will not be repeating those comments.

Baroness Scott of Bybrook (Con): My Lords, I apologise in advance for the length of my response. This is a large group so I might go on for quite a long time. I apologise for that, but I think it is important that I respond to all the amendments.

I thank the noble Lord, Lord Khan of Burnley, who spoke to the amendments from the noble Baroness, Lady Taylor. Amendment 67 seeks to give the right to challenge the reasonableness of a service charge to leaseholders who pay a fixed service charge. I recognise that leaseholders who pay fixed service charges do not have the same right to challenge the reasonableness of their service charges as leaseholders who pay a variable service charge. However, there are good reasons for that. The main sectors where fixed service charges exist are the retirement and social housing sectors, where households are often on limited or fixed incomes; certainty over bills is paramount for these homeowners. Leaseholders, especially on low incomes, who pay a fixed service charge have more certainty over the amount of their service charge compared with those who pay a variable service charge. They will know about and understand the level of the charge before they enter into an agreement.

Landlords benefit from not having to consider tribunal applications, but in return they have a clear imperative to provide value for money: if they underestimate the costs, they will have to fund the difference themselves. They will still need to provide the quality of service as set out in the lease since, if they do not, they may be taken to court for breach of that lease.

By giving the right to challenge fixed service charges in a similar way to how variable service charges can be challenged, there would likely be operational and practical

challenges. For example, if landlords underestimate costs in one year but overestimate them in another, it is feasible and reasonable to be able to challenge the unreasonableness only in the year when costs are overestimated. It is not proposed to give the landlord an equivalent right to apply to seek to recover the balance of an underestimated cost on the basis that it would be reasonable to do so. There is a possibility that landlords may move to variable service charges, and that could have unintended and undesirable consequences for leaseholders with a fixed income who benefit from the certainty of fixed service charges.

Through the Bill, leaseholders who pay a fixed service charge will be given additional rights. Landlords will be required to provide the minimum prescribed information to all leaseholders. I consider that the additional rights given to leaseholders who pay fixed service charges will allow them to better understand what their service charges pay for, and to hold their landlord to account. I hope that, with that reassurance, the noble Lord will not move the noble Baroness's amendments.

I thank the noble Lord for Amendment 69 in the name of the noble Baroness, Lady Taylor, which seeks to remove the provision that enables the appropriate authority to exempt certain categories of landlords from the requirement to provide a standardised service charge demand form to the leaseholder. I recognise the importance of all leaseholders receiving sufficient information from their landlord to enable them to understand what they are paying for through their service charge. Requiring landlords to provide leaseholders with a standardised service charge demand form contributes to increased understanding. However, I am aware that there could be instances now or in the future where it is necessary to exempt landlords from that requirement. It could be too costly or disproportionate to expect certain categories of landlords to provide that level of information. As the Minister for Housing mentioned in the other place, one example might be the Tyneside leases.

Prior to any exemptions being agreed, we will consult with stakeholders to determine whether an exemption is justified. I emphasise that the list of exemptions is expected to be small—if it is needed at all, in fact—and full justification will be required for any agreed exemptions. I note the noble Baroness's concerns but I hope that, with this reassurance, the noble Lord will not move the amendment.

I also thank the noble Lord, Lord Khan of Burnley, for Amendment 76, which would create a power for the appropriate authority to prescribe the maximum costs that landlords may pass on to leaseholders for providing information. I recognise that leaseholders can face increasing service charge costs and that not capping costs for providing information could drive landlords to charge unreasonable amounts.

5 pm

However, introducing a cap would be difficult, as landlords will incur varying costs that are dependent on the information requested and the difficulty of obtaining it. By law, service charges must be reasonable, and measures within the Bill strengthen the requirement for costs included within the service charge demand to be transparent. I consider that these provide sufficient protections for leaseholders to ensure that landlords do not charge excessive amounts and that the costs are reasonable. I hope that, with this reassurance, the noble Lord will not move Amendment 76.

Amendment 77 tabled by the noble Baroness, Lady Thornhill, would allow the First-tier Tribunal in England or the leasehold valuation tribunal in Wales to award damages against landlords at the point that leaseholders buy the freehold of their blocks. We do not think that this amendment is appropriate, and we also think that it is unworkable. Clause 56 expressly refers to consequences for failure to provide information. These damages are awarded following an application to the appropriate tribunal and on the basis of the information available. Therefore, it is not appropriate or consistent with judicial proceedings to delay any award. Any poor behaviour by the landlord during enfranchisement is best dealt with through the normal process for doing so.

Amendment 78 from the noble Baroness, Lady Fox, seeks to clarify when a landlord may seek dispensation from the need to consult leaseholders when major works need to be undertaken. Currently, a landlord can make an application to the appropriate tribunal for a dispensation from the requirement to consult on major works or before entering into a qualifying long-term agreement. The tribunal will make a judgment on whether a dispensation from the consultation requirements is reasonable. This amendment would require landlords to prove that there is an urgency behind the need for dispensation from the consultation and would place the onus on the landlord. This would enhance the rights of leaseholders and empower them to have greater influence over major works.

However, there are potential unintended consequences. It might overly narrow the scope of the discretion given to the tribunal since, for example, it may be desirable to carry out works sooner rather than later, in the interests of managing the building. Furthermore, where it is unnecessary, under this amendment landlords would be required to carry out more consultation for no real benefit, and this could come at an increased cost to leaseholders. I believe that the appropriate tribunal is best placed to consider the circumstances of each application for dispensation. The tribunal is able to consider a wide range of matters when deciding whether it is reasonable to dispense with consultation requirements, and we would not want to narrow the grounds for dispensation.

There are already protections for leaseholders, in Section 19 of the Landlord and Tenant Act 1985, that ensure that service charges payable by leaseholders, whether or not they are for "major works", must be reasonable. There are also measures in the Bill to drive up service charge transparency, including leaseholders being given greater notice of anticipated major works and being provided with more information about the major works that will be carried out on their properties.

I admire the noble Baroness's commitment to protect leaseholders from unreasonable costs from major works, and I hope that, with this reassurance, she will not move her amendment. I shall certainly look at *Hansard*

[Baroness Scott of Bybrook]
tomorrow, because she brought up a number of other issues, which I would like to discuss further with her, if she is willing.

I thank my noble friend Lord Bailey for Amendment 78A, which seeks to strengthen the service charge disputes regime by introducing proposed new Sections 27B to 27E to the Landlord and Tenant Act 1985. Proposed new Section 27B would introduce a requirement for a landlord to notify all leaseholders in their block of any application under Section 27A of the Landlord and Tenant Act 1985 and to assume that all leaseholders in that block are party to the application for a determination unless they opt out.

Proposed new Section 27C would introduce a duty on landlords to reimburse leaseholders for any costs deemed to be unreasonable, if a determination made in favour of the leaseholder is made by the appropriate tribunal. The landlord must account to all leaseholders within two months of the determination. Proposed new Section 27D would introduce a power to enable the appropriate tribunal to award interest on any determination in favour of the leaseholder, when a leaseholder has made an application.

I fully agree with the intention behind the proposed scheme that there must be a robust regime in place to challenge service charges. We are aware that the existing statutory requirements to protect leaseholders do not go far enough, which is why we are introducing measures in the Bill which will enable leaseholders to account for the money they spend. However, I cannot accept the amendment as it stands.

First, this is due to the role of the tribunal itself. Decisions made in the First-tier Tribunal in England and the Leasehold Valuation Tribunal in Wales are subject to the principle that a decision of a lower tribunal is persuasive only in another application. This means that it does not bind another tribunal as an appellate tribunal decision would. Each decision must depend on its own circumstances, even when considering facts similar to those of another application.

Secondly, while in some circumstances it may be beneficial for as many leaseholders as possible to become party to a claim, it may not be appropriate to do so all the time. Leaseholders may have their own reasons not to join the proceedings, so it is not right that the default is to make all leaseholders party to a claim. There is nothing to stop neighbouring leaseholders joining together in the first place using formal means, such as a resident tenants' association being a party to proceedings, or informal means, such as knocking on doors.

There are also risks in a leaseholder involuntarily becoming a party to proceedings. By joining, they will be bound by the decision of that tribunal and also risk being made liable to pay the landlord's legal costs of those proceedings where the landlord wins and is permitted by the tribunal to pass on its costs. This will be the case even when the leaseholder does not play a substantive role in the proceedings. There is also a risk that this approach would slow down the system somewhat. Landlords would be required to notify all affected leaseholders, which may hinder the whole process and make tribunal case management unnecessarily cumbersome.

The appropriate tribunals already have adequate case management powers to either add parties to a single set of proceedings or, in England, to direct that one or more cases be specified as a lead case. This is set out in Rule 29 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. For these reasons, while I share the underlying sentiment put forward by my noble friend, I cannot accept his proposal and therefore ask him not to move his amendment.

I thank the noble Baroness, Lady Jones of Moulsecoomb, for her amendment, which calls for a review of the municipalisation of public assets funded by leaseholders. However, I do not think these measures are necessary. As the noble Baroness is aware, the services that leaseholders must pay for are set out in their lease, alongside their expected contribution towards such costs. This may cover not only issues directly relating to buildings but, in some circumstances, may include a contribution to the common parts of the wider estate. This may also be the case in respect of social landlords.

The Landlord and Tenant Act 1985, as amended by Clause 51 of the Bill, sets out what is meant by a service charge and what it may cover. By law, the relevant costs that are taken into account in determining the amount of any service charge must be reasonably incurred and the works or services must be of a reasonable standard. Leaseholders may challenge the reasonableness of any such charges in the First-tier Tribunal in England or the Leasehold Valuation Tribunal in Wales. Furthermore, leaseholders may apply to the county court for damages where they consider that the landlord has breached the terms of the lease.

Leaseholders with social housing landlords are also able to complain to their landlord or, if unhappy with their landlord's response, to the Housing Ombudsman Service if they have concerns about the behaviour of their landlord. This right includes complaints about the calculation, collection or communication of service charges.

Through the Bill, we are introducing measures to empower leaseholders to better scrutinise and challenge unreasonable landlord fees. We consider that these measures provide sufficient protection to ensure that service charge money is used for its intended purposes. I therefore request that the noble Baroness does not move her amendment.

I thank the noble Earl, Lord Lytton, for his Amendments 78C to 78H. Taken together, these measures would represent a total overhaul of the way in which we regulate how buildings are managed and paid for. This overhaul would also introduce in many cases a standard approach for doing so. As the noble Earl is aware, the Government have recognised that the existing statutory regime around service charges does not offer sufficient protection to leaseholders. That is why we are introducing measures to address this and to enable landlords to be better scrutinised and challenged in relation to any charges considered unreasonable.

While I am very keen to listen to ideas on how to improve the regime, I question the merit of doing so at this time. Leasehold law is complex and there are many interactions between various sections that need

to be fully understood and considered to ensure that there are no unintended consequences. I will take the amendments in turn.

Amendment 78C seeks to introduce a requirement for costs to be treated as incurred where there is an unconditional obligation to pay them. We do not think that this amendment is necessary as case law has already been established as to when relevant costs have been incurred.

Amendment 78D seeks to replace the "reasonably incurred" test of a service charge with a value for money assessment. I am not convinced that this is an appropriate judgment to make, as "reasonableness" is a well-defined term, with considerable case law, whereas value for money is a subjective term that would still be open to considerable debate on the interpretation of the given definition. The use of "reasonableness" already allows the tribunal to consider value for money when determining whether or not a relevant cost is reasonable, while also allowing for wider issues to be considered. I do not think that we should be changing one of the fundamental pillars of the service charge regime at this stage.

I have just been told that time is up. I am very happy to answer all noble Lords' questions, which will take me another five minutes, or to sit down. I did warn noble Lords that there were a lot of questions and I think it is worth answering them all.

5.15 pm

Amendment 78E seeks to require a landlord to provide leaseholders with information and to update the information regularly. I agree that providing more information to leaseholders is vital in order to help them hold landlords more easily to account. However, this is already what Clauses 53 to 55 seek to achieve.

Amendment 78F, supported by the noble Lord, Lord Thurlow, seeks to prevent landlords entering into a contract for the provision of goods or services with a related party or connected person. The landlord is best placed to manage their building, but I do agree that any connections should be well understood. I am particularly aware that this is often an issue regarding "captive insurance". Under Section 20 of the Landlord and Tenant Act 1985, landlords are required to notify leaseholders if a tender for a major works contract or qualifying long-term agreement is from a connected party. This amendment is therefore not necessary, as appropriate measures are already in place.

Amendment 78G seeks to prevent landlords entering into a contract that is for more than five years. Long contracts are particularly common with local authorities, which tend to procure major works programmes under public procurement legislation. There are measures in place to ensure that leaseholders are consulted in cases where contracts are over 12 months and the cost to a leaseholder exceeds £100. This measure is therefore not necessary, although I recognise the risks associated with long-term contracts.

Amendment 78H seeks to enable a leaseholder to undertake cosmetic work without approval from their landlord. I assume that the noble Earl is referring to works within a leaseholder's property. Works that leaseholders may or may not carry out to their premises are set out in their lease, and having a prescribed list may not be appropriate in all circumstances. It may also disadvantage some leaseholders and I therefore ask the noble Earl not to press the amendment.

Amendment 78I, spoken to by the noble Lord, Lord Khan of Burnley, seeks to prevent landlords passing on costs imposed on them, whether by the regulator, under a consumer redress order or following an outcome in an alternative dispute resolution, in relation to the landlord's mismanagement of communal heating systems. Where communal central heating systems are used in leasehold buildings, the obligations of the landlord and the rights of leaseholders will be set out in the terms of individual leases. However, where fines, penalties or compensation payments are imposed on the landlord because of their mismanagement, they are already prevented from passing them on to leaseholders. This is because they are not a relevant cost within the meaning of Section 18 of the Landlord and Tenant Act 1985.

Through measures in this Bill to drive up transparency, we will make it even harder for unscrupulous landlords to pass on unjustified and unlawful costs. Furthermore, where a landlord fails to comply with obligations under the lease, the leaseholder can bring a claim for damages in the county court for the landlord's breach of the terms of the lease. Leaseholders may also consider applying to the appropriate tribunal for a manager to be appointed in place of that failing landlord. I therefore ask the noble Lord not to press this amendment.

Amendment 78J, also spoken to by the noble Lord, Lord Khan of Burnley, seeks to enable leasehold estates to reduce their carbon emissions and increase their energy efficiency as part of the net zero targets. It would be done through introducing qualifying energy efficiency or retrofit improvements measures to buildings. These improvements would be paid for by leaseholders through the service charge. Improving energy efficiency in our homes is important for keeping homes warm, dry and cheaper to heat. Our ambition, as stated in the 2021 heat and buildings strategy, continues to be that homes should meet EPC 1 by 2035 where reasonable cost-effective practicalities allow. We have been working across government to make the ambition a reality.

I fully support the intention behind the amendment—to help improve the energy efficiency of homes—but introducing statutory improvement work provisions would require careful consideration in order to avoid unintended consequences, not least in relation to costs. While I appreciate that the amendment would enable the Government to set more detail through secondary legislation, there are a range of factors to consider, including potential caps on improvement projects, who pays for ongoing maintenance, and the mechanism through which leaseholders may challenge costs or works if they consider them unreasonable. The amendment could lead to significant additional costs being passed through to leaseholders. It would impose a significant change on all parts of the sector, and we must carefully consider the implications for landlords and managing agents, but mainly for leaseholders.

Of course, the Government support energy efficiency, as I said. Our reforms in the Bill of the right to manage and enfranchisement will empower leaseholders

[Baroness Scott of Bybrook]
and provide them with greater leverage over their buildings to make alterations in support of net zero. I therefore ask the noble Lord not to press the amendment.

Amendment 80A, tabled by the noble Earl, Lord Lytton, seeks to require that insurance proceeds are held in a separate and dedicated fund. I assure the noble Earl that the landlords' duties to their leaseholders regarding maintenance, repair and insurance apply regardless of whether moneys are held in a separate fund or not. The amendment also aims to ensure that insurance proceeds for the destruction of or damage to a building be used to carry out repairs and maintenance on the building as soon as reasonably practical. I agree with the noble Earl's intention to ensure that landlords fulfil their duties in a timely manner. Landlords' obligations to repair or renew are set out in the lease, and failure to act within a reasonable period would usually amount to a breach of the lease. A leaseholder could apply to the court for an injunction requiring their landlord to perform their contractual obligations and seek damages from them for their failure to do so. However, the amendment as drafted, although well meaning, would not lead to landlords complying with their obligations more quickly.

I also thank the noble Earl, Lord Lytton, for his Amendment 80B, which aims to prevent the misuse of insurance proceeds in the event of a claim. The noble Earl may have a particular case in mind, and I agree with his intentions, but I am of the view that such misuse is already prohibited. The creation of a new statutory offence, therefore, is not necessary. The amendment as drafted, although well meaning, would not lead to rogue landlords changing their behaviour. I hope that, with these reassurances, the noble Earl will not press his amendments.

Lord Khan of Burnley (Lab): My Lords, I know that the Minister has been speaking for a while, but I want to press her on this important point as we are talking about charges. There is a huge, fundamental area of concern in that the ground rent consultation has yet to be published. I know that it is unreasonable for me to ask the Minister to talk about any leaks or media announcements. However, how will this House be able to scrutinise it at this late stage of the Bill's passage?

Baroness Scott of Bybrook (Con): We debated ground rents last week, and I do not have anything to add. If there are any changes to the Bill, we will give sufficient time for all noble Lords to consider them.

Amendment 66 agreed.

Amendment 67 not moved.

Amendment 68

Moved by ***Baroness Scott of Bybrook***

68: Clause 51, page 60, line 19, at end insert—

"(7) The Landlord and Tenant Act 1987 ("the LTA 1987") is amended in accordance with subsections (8) to (10).

(8) In the provisions referred to in subsection (9), in each place they occur—

(a) for "service charge" substitute "variable service charge";

(b) for "service charges" substitute "variable service charges".

(9) The provisions are—

(a) in section 24 (appointment of manager by tribunal), subsections (2) and (2A);

(b) in section 35 (application by party to lease for variation of lease), subsections (2) and (4);

(c) in section 42 (service charge contributions to be held in trust), the heading and subsections (1), (2), (3), (4), (6), and (8).

(10) In section 35(8), for ""service charge" has the meaning" substitute ""service charge" and "variable service charge" have the meaning".

(11) In section 167 of the CLRA 2002 (failure to pay small amount for short period)—

(a) in subsection (1), for "service charges" substitute "variable service charges";

(b) in subsection (5), for "service charge" substitute "variable service charge"."

Member's explanatory statement

This amendment would, in light of the amended definition of "service charges" in section 18 of the LTA 1985, make amendments to provisions in the LTA 1987 and CLRA 2002 that use that definition so that they refer to "variable service charges" (and accordingly preserve the current effect of those provisions).

Amendment 68 agreed.

Clause 51, as amended, agreed.

Clause 52 agreed.

Clause 53: Service charge demands

Amendment 69 not moved.

Amendment 70

Moved by ***Baroness Scott of Bybrook***

70: Clause 53, page 62, line 28, leave out "the Landlord and Tenant Act 1987 ("the LTA 1987")" and insert "the LTA 1987"

Member's explanatory statement

This amendment is consequential on the Government amendments to clause 51.

Amendment 70 agreed.

Clause 53, as amended, agreed.

Clause 54: Accounts and annual reports

Amendments 71 to 75

Moved by ***Baroness Scott of Bybrook***

71: Clause 54, page 63, line 21, leave out paragraph (b) and insert—

"(b) that, on or before the account date for an accounting period in respect of which a statement of account is provided, the landlord must provide the tenant with a written report about the statement prepared by a qualified accountant, which—

(i) is prepared in accordance with specified standards for the review of financial information, and

(ii) includes a statement by the accountant, in a specified form and manner, that the report is a faithful representation of what it purports to represent;

(c) that the landlord must provide adequate accounts, receipts or other documents or explanations to the accountant to enable them to provide the report;

(d) that, if the landlord incurs costs in obtaining the report, the tenant must pay the landlord a fair and reasonable contribution to those costs."

Member's explanatory statement

This amendment would clarify that the obligations of the landlord are to obtain a report from a qualified accountant as to the accuracy of the statement of account and to provide adequate documents to the accountant, and would require the tenant to contribute towards the costs of the report.

72: Clause 54, page 63, line 36, at end insert—

"(4A) An amount payable under the term implied by subsection (2)(d)—

(a) is a variable service charge for the purposes of section 18, and the provisions of this Act relating to service charges apply accordingly;

(b) is payable irrespective of whether a lease, contract or other arrangement provides for it to be payable as a service charge."

Member's explanatory statement

This amendment would subject any costs payable under the new section 21D(2)(d) to the restrictions relating to variable service charges.

73: Clause 54, page 65, line 7, leave out "certification of" and insert "report on"

Member's explanatory statement

This amendment is consequential on the amendment to new section 21D(2)(b).

74: Clause 54, page 65, line 8, at end insert—

"(aa) for subsection (2) substitute—

"(2) A person has the necessary qualification if the person—

(a) is eligible for appointment as a statutory auditor under Part 42 of the Companies Act 2006, or

(b) satisfies such other requirement or requirements as may be specified in regulations made by the appropriate authority.";"

Member's explanatory statement

This amendment would allow an appropriate authority to expand the meaning of "the necessary qualification" in section 28(2) of the LTA 1985.

75: Clause 54, page 65, line 10, at end insert—

"(c) after subsection (6) insert—

"(7) Regulations under this section—

(a) are to be made by statutory instrument;

(b) may make provision generally or only in relation to specific cases;

(c) may make different provision for different purposes;

(d) may include supplementary, incidental, transitional or saving provision.

(8) A statutory instrument containing regulations under this section (whether alone or with other provision) is subject to the affirmative procedure.""

Member's explanatory statement

This amendment would make provision about regulations about the meaning of "the necessary qualification" in section 28(2) of the LTA 1985.

Amendments 71 to 75 agreed.

Clause 54, as amended, agreed.

Clause 55: Right to obtain information on request

Amendment 76 not moved.

Clause 55 agreed.

Clause 56: Enforcement of duties relating to service charges

Amendment 76A

Moved by ***Lord Bailey of Paddington***

76A: Clause 56, page 67, line 38, leave out subsection (2) and insert—

"(2) In section 26(1) (Exception: tenants of certain public authorities), omit the words "but section 25 (offence of failure to comply) does not"."

Member's explanatory statement

This amendment seeks to preserve the ability to crowdfund private prosecutions of rogue landlords, which should help get section 24 orders for abused blocks. It also extends the protection of the criminal sanction to council leaseholders.

Lord Bailey of Paddington (Con): At Second Reading, I said that leaseholders should not be expected to become serial litigators in the same manner that the sub-postmasters had to in order to get some justice for themselves. We should seek to increase the rights of leaseholders, not strip them of existing rights and protections.

My amendment seeks to preserve the criminal sanctions against landlords withholding critical information about service charges. The Bill in its current form does away with these sanctions, which function as a backstop for the current scheme of service charge accountability. The Bill instead introduces a new scheme of service charge regulation, superior in many respects but lacking the critical ability for leaseholders to prosecute landlords who refuse to provide evidence that the services they have charged for were actually delivered.

Currently, under Section 25 of the Landlord and Tenant Act 1985, leaseholders have the right to pursue a private prosecution against their landlord if their request for service charge accounts or receipts has been refused or the landlord denies them the ability to inspect and copy the relevant documents. Without criminal sanctions, landlords will comply with the law only if it suits their financial interests to do so. A Bill capped at £5,000 of damages will not deter many and may mean that leaseholders now have to spend time and effort proving how much money they have lost.

I am not precious about this amendment, but I want to probe the Government on this and urge them to ensure that leaseholders will continue to have the right to bring private prosecutions against perpetually bad landlords under this legislation. I have mentioned Section 25 of the Landlord and Tenant Act 1985 a few times; it criminalises breaches of Sections 21, 22 and 23 of the same Act. These Sections 21, 22 and 23 are repealed by the present Bill, so my amendment would make a practical difference only until these repeals were brought into force.

5.30 pm

It has been more than 20 years since the Commonhold and Leasehold Reform Act 2002, and some of the sections about service charges have not yet been brought into force. It may yet be some time before the present Bill is fully in force; in the interim, my amendment would extend the backstop of criminal sanctions, protecting private leaseholders and, indeed, council leaseholders as well.

[Lord Bailey of Paddington]

Some would argue against decriminalisation because that stick leaseholders have as a last resort to force bad landlords to give them information to defend themselves is very important. The Government should support leaseholders in having a strong place to start from.

Baroness Thornhill (LD): We fully understand the passion expressed by the noble Lord, Lord Bailey of Paddington, about criminality and having a last resort. We must think of it in regard to the worst rogue landlord offences, of which there are many, and I am sure several noble Lords have seen things worthy of that description. While we do not entirely go along with the noble Lord, we are interested to understand why the Government are using the Leasehold and Freehold Reform Bill to do away with a long-standing leaseholder right to bring a private prosecution against a landlord who has refused service charge and accounts transparency; it is surely a sign that they are trying to hide something.

The Government are bringing forward a new regime for service charges, under which landlords' failure to comply with the requirement will be subject to damages of no more than £5,000 per leaseholder, which to us feels too low. Why does this policy have to strip leaseholders of a right to pursue a persistently abusive landlord with a private criminal prosecution? If the right was poorly drafted in the first place, surely it should be retained and made effective in the Bill?

We agree to a certain extent with the amendment's attempt to bring local authorities into scope. As we know from past tragedies, local authorities are often treated far too leniently by leaseholder legislation, receiving exemptions from basic requirements. We broadly agree, but I look forward to the Minister's response to the amendment.

Baroness Taylor of Stevenage (Lab): My Lords, I thank the noble Lord, Lord Bailey, for his passion on this matter, as the noble Baroness, Lady Thornhill, said. It is appropriate to bring a probing amendment on this, to seek out some clarification from the Government about their intentions. It is clear that service charge accountability sits right at the heart of much of the Bill, and we would not want to do anything against that. It does seem a little odd that part of the Bill's intention is to remove that right of private prosecution, so I look forward to the Minister's reply.

The other point raised by the noble Lord was that we are going to have a hiatus when the Bill is passed, because it is not going to come into force until 2025-26. Can the Minister comment on what leaseholders can resort to in that interim period, in order to get matters justified if they have a persistent rogue landlord? Otherwise, we will have a gap where the original provisions are repealed and these ones have not yet come into force.

I agree with the noble Baroness, Lady Thornhill, about council leaseholders. There are other protections in force for council leaseholders. The health and safety Act and its provisions should sit there to protect council leaseholders from any poor landlord practice from councils—I know they have not always done so, but they should.

I am interested to hear the Minister's response to this very good probing amendment.

Lord Gascoigne (Con): I thank my noble friend Lord Bailey of Paddington for Amendment 76A, which seeks to retain the existing enforcement provisions concerning a landlord's failure to provide information to leaseholders. I am grateful to other noble Lords who took part in this very brief discussion.

I fully agree with my noble friend that it is important to have effective enforcement measures in place where a landlord fails to provide relevant information to leaseholders. The existing measures, including the statutory offence under existing Section 25 of the Landlord and Tenant Act 1985, have historically proven to be ineffective. Local housing authorities, as the enforcement body, are reluctant to bring prosecutions against landlords, and the cost and complexity of doing so are a significant barrier to leaseholders bringing a private prosecution. That is why we are omitting Section 25 and replacing it with the more effective and proportionate proposals set out in Clause 56 of the Bill. Therefore, I am afraid that we cannot accept the amendment. Not only does it require—

Lord Bailey of Paddington (Con): In regard to the cost of leaseholders bringing a case, people are now using modern technology, such as crowdsourcing, to raise the funds to take on a landlord. When you have a persistently rogue landlord, this could be your last roll of the dice. It is not an entirely strong argument to talk about leaseholders not having the means; that is often the case, and what most of the discussion has been based on. For leaseholders in these very extreme cases—and they are extreme—this is a last resort, and that is why the word "backstop" was used, but people can club together to deal with these situations.

Lord Gascoigne (Con): I am very grateful to my noble friend. I will address the rest of the issues, and hopefully I will pick up some the points he made. Like others, I am grateful for the passion with which the noble Lord speaks about this issue and his own experience of it.

I am afraid we cannot accept this amendment. Not only does it require us to return to the previous arrangements; I would respectfully say that it is not workable. This is because a local housing authority cannot take action against itself; they are one body. That said, I can assure my noble friend and others in the Chamber that there are very strong merits in his argument about the appropriate tribunal not being able to make an order for damages where the landlord is a non-compliant local authority. As has been said, it is not right that local authorities should be exempt from the same standards expected of other landlords. Both the department and the Minister are carefully considering this issue.

I will respond to a couple of points raised by noble Lords, including my noble friend. He raised the issue of damages; we believe that £5,000 strikes the right balance between a deterrent and an effective incentive. I believe it is higher than the existing provisions that a court can award on a summary conviction. The noble Baronesses, Lady Taylor and Lady Thornhill, asked about the hiatus, or interim, period; I assure noble

Lords that it will not change until the new regime is ready. Therefore, with these reassurances, I ask my noble friend to withdraw his amendment.

Lord Bailey of Paddington (Con): I beg leave to withdraw the amendment.

Amendment 76A withdrawn.

Amendment 77 not moved.

Clause 56 agreed.

Amendments 78 to 78J not moved.

Clause 57: Limitation on ability of landlord to charge insurance costs

Amendment 79

Moved by ***Lord Bailey of Paddington***

79: Clause 57, page 70, line 10, 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."

Member's explanatory statement

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.

Lord Bailey of Paddington (Con): A lot of the Bill relies on secondary legislation coming through at a later date, meaning that we must all wait for many of the details of individual policies and cannot fully scrutinise them now. Last week we heard from the Minister that the commencement will be in 2025-26. In January last year, the Secretary of State, Michael Gove, announced his intention to ban freeholder and managing agent insurance commissions—or "kickbacks", as they are colloquially known—that fatten leaseholders' insurance premiums and pad their service charges. He was right to do so.

In recent years, there has been a series of truly horrific stories about leasehold building insurance, including bribes, kickbacks and commissions galore. When the Financial Conduct Authority did its investigation into this recently, it found that broker remuneration had increased by nearly 40% in three years, with at least 80 million leaseholder-funded commissions going to other parties. Brokers passed on more than half the commission to the freeholder, or the managing agent in 39% of cases. Brokers could not provide any evidence to support the claim that those payments were fair value. The FCA says:

"The level of commission is high, with typical commissions of 30%-49%, and … up to 62%. We have also seen that remuneration is shared with the freeholder or property managing agent (PMA) in many cases, with 37-42% of commission being paid away".

That is damning. The commissions are clearly excessive and totally out of kilter with other classes of business.

The total commission going to freeholders or managing agents can be as high as 60% of the cost of the premium paid by leaseholders. This comes back to my core problem with leasehold: the people paying the bills do not have control over those bills and lack the ability to fire the rip-off companies they have to deal with—unlike flat owners under different arrangements almost worldwide, who have far more power and control. As the FCA observed, policies are being

"selected on the basis of commission rather than product quality. There is a lack of pressure on freeholders, PMAs and insurance brokers to search for the policy that offers the best value-for-money or to switch to better-value policies which may benefit leaseholders. This is because they can recover costs from leaseholders. We have seen instances of freeholders, property managing agents and insurance brokers having commercial arrangements with particular insurers which benefit them but not leaseholders".

That brings me to my concern. I am doing this on behalf of leaseholders countrywide and campaigning for insurance professionals who have a conscience. The crux of this matter is: are the Government not inadvertently entrenching commissions by rebadging them as "transparent fees" and having them disclosed?

I am no lawyer, but I understand that if a secret profit has been made, every penny is owed to the wronged party—the principal under the law of agency. If the Government were to force all the kickbacks to be disclosed, as the Bill proposes, would that not just weaken the position of leaseholders, because they would no longer be secret profits? Another point is that freeholders hold money on trust for leaseholders, so if they have made a secret profit they open themselves up to legal challenge on breach of fiduciary duty.

How will the Government decide the level at which the permitted insurance payment is set? How will that be set and who will be in charge? What will be the mechanism? Will it be someone's will, or will we have an algorithm that does that? Is this not just a backdoor for freeholders to extract more money from hapless leaseholders?

5.45 pm

In theory, a broker should do the legwork and get the best quotes for buildings insurance. Managing agents are already remunerated through the annual management fee that leaseholders pay, and they will usually also do the claims handling. So why do freeholders then get any money from the leaseholders' insurance? My Amendment 79 would ensure that there is a backstop so that, if freeholders are getting any income from wrongdoing, leaseholders could still challenge it, despite the fees having been compulsorily disclosed to them. Having disclosure should not reduce the legal rights that leaseholders already have to challenge fees. All I am doing is providing clarity to the eventual definition of "permitted insurance payments", so that

"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"

is excluded from the scheme. That will ensure that freeholders can no longer abuse their position of power—as the one placing the insurance policy—to profiteer from captive leaseholders who must pay the premium.

The Deputy Chairman of Committees (Lord Ashton of Hyde) (Con): Does the noble Lord wish to move his amendment?

Lord Bailey of Paddington (Con): I beg to move. Excuse me—I am dyslexic, and procedure is massively hard for me. One day I will get it all right—and all at the same time.

Baroness Thornhill (LD): The problem is evident and not disputed, but the solutions are clearly debatable.

We support the amendment from the noble Lord, Lord Bailey of Paddington, as we share his concerns. The insurance scheme in the Bill, without the permitted insurance payment being set at something nominal such as £5 or £10 a year, could become another cost centre for freeholders. We know how difficult it is for leaseholders, especially on larger developments, to get like-for-like quotes. Often, brokers will not even quote, which makes challenging at tribunal very difficult, especially when the freeholder claims that their fees are for works done and not pure commission. It is good for there to be a backstop in the insurance scheme in the Bill, so that brokers are fairly remunerated, while ensuring that other parties in the distribution chain, including freeholders, are banned from profiteering from the captive leaseholders who pay but do not get to choose the policy.

Amendment 82 in the name of the noble Baroness, Lady Taylor of Stevenage, and signed by my noble friend Lady Pinnock,

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

Clause 60 puts limits on the right of landlords to claim litigation costs from tenants. When the Bill was in the Commons, the Minister said that

"unjust litigation costs should not be incurred"—[*Official Report*, Commons, Leasehold and Freehold Reform Bill Committee, 25/1/2024; col. 347.]

by leaseholders—and we agree—but the Bill as drafted does not go far enough in preventing that happening. There will be circumstances in which it is appropriate for leaseholders to bear those costs, but we believe that Amendment 82 makes provision for that. The presumption should be that the costs are not borne by the leaseholder, unless in circumstances specified by the Secretary of State.

My noble friend Lady Pinnock's Amendment 80 would require the Financial Conduct Authority

"to report on the impact of the provisions in the bill around insurance costs in order to monitor progress on reducing costs passed on to leaseholders".

I am pleased to say that the Law Society also supports the amendment. Rising insurance premiums have sent service charges soaring in the last few years, mostly due to the costs associated with remediation works following the tragedy of the Grenfell Tower fire. That means that even the leaseholders who can access funding to help them pay for vital works to their buildings are still paying the price to remedy a problem that they did not cause.

Clause 57 places a limitation on the ability of landlords to charge insurance costs to leaseholders. This is a very welcome step in the right direction. It is essential that this provision works as intended to protect leaseholders from extortionate costs. The Financial Conduct Authority's report into insurance for multi-occupancy buildings, published in September 2022, found not only that premiums were rising, with mean prices increasing by 125% in the period from 2016 to 2021, but that the level of commission rates for brokers was

"an area of significant concern",

with eye-watering rates of up to 60% being seen.

The FCA also found that brokers were sharing commission with the freeholder or the property management agent, meaning that they were unfairly profiting from leaseholders. Commission—and not cover or costs—was therefore the driving factor in the choice of policy. The provisions in the Bill to limit the ability of landlords to charge insurance costs to leaseholders, alongside the Bill's increased transparency requirement, should—one hopes—go a long way to protect leaseholders. We also note that as of 1 January this year, the regulator will force insurance firms to act in leaseholders' best interests and to treat them as a customer when designing products. They will be banned from recommending an insurance policy based on commission or remuneration level. It is clearly very early days, but we hope to see some improvement from that.

There is, of course, the argument that the Government should go further. A cap on service charges for leaseholds, especially at a fixed amount rather than as a percentage, has been suggested as a way to properly protect leaseholders from unreasonable costs. We would, therefore, want to place a requirement on the FCA, whose thorough report provided the impetus for these provisions, to assess whether it has had an impact in reducing costs for leaseholders and preventing freeholders and managing agents profiting off them. We hope that the provisions of the Bill will provide the necessary relief for leaseholders, who are clearly facing exorbitant costs. It will, however, be essential that the Government keep a close eye on the impact of Clause 57 and take action if it is not going far enough.

Finally, the noble Lord, Lord Moylan, does have some amendments in this group—I looked very worriedly at this point. On the surface, they appear to be about making the process simpler and easier, which is probably a good thing and worth consideration. I look forward to hearing what the noble Lord says.

Lord Moylan (Con): My Lords, I had assumed that the noble Baroness had risen to speak to the amendment standing in the name of her noble friend Lady Pinnock. I will speak to the amendments in my name in this group. Although there are eight of them, they fall into three broad topics, so I hope to dispose of them fairly quickly.

The first are Amendments 81 and 81A. These relate to the ability of right-to-manage companies to bring legal proceedings and charge the costs to the service charge. The effect of the Bill is that freeholders will not be able to charge legal costs to the service charge unless they obtain a ruling from a tribunal. In the case of right-to-manage companies exercising the functions of the freeholder, they have no source of income apart from the service charge. If they are not able to charge

their legal costs to the service charge, then they will not be able to bring legal action at all. In fact, without that ability, they would not even be able to initiate legal action unless the directors of the company were willing to fund the preliminary legal activities from their own pockets. If they were willing to do that, and they proceeded to court, they might find that the court or tribunal did not find that they were entitled to recover their costs or find that they could recover only part of their costs as a result. Again, they would have no recourse to any source of funds apart from their own individual pockets in such circumstances.

The second amendment, Amendment 81A, would extend this provision not just to right-to-manage companies but to residential management companies. Right-to-manage companies were established under the Commonhold and Leasehold Reform Act 2002, but there are other residential management companies that exist that are not right-to-manage companies under that Act. These two amendments are alternatives; they are both probing.

I have heard that the Government are aware that this is a problem and are willing to do something to address it, so I hope that this particular probe will find a positive response from my noble friend on the Front Bench, because it cannot seriously be the Government's intention to make it virtually impossible for anyone to become a director of a right-to-manage company without having to face serious personal financial risks that were never envisaged when RTM companies were established in 2002.

Amendments 81B, 81C, 81D and 81E all work together. They relate to a different problem, which is that the Bill allows a court or tribunal to award costs to a freeholder in certain circumstances specified in the Bill. However, if these costs are not paid, the only recourse the freeholder has is to go back to the court and seek a new judgment to have the costs awarded to them, whereas the normal method of dealing with such a matter is to make a simple online claim for a judgment in default. That course of action is precluded, as I understand the Bill, in the case of freeholders seeking to recover the legal costs that have been awarded to them. All this will do is burden the courts with more applications, which can and should be, and are normally, dealt with through an online process that takes a few weeks to go through. That surely should be available to freeholders.

The third topic in this group relates to Amendments 82A and 82B. These, again, are probing amendments to understand why the Government are extending the protection in relation to legal costs to all leaseholders, when surely the intention must be to extend it to those leaseholders who are home owners—that is, who own the property that is the subject of the legal dispute. The Bill has the effect of giving this protection also to investor leaseholders—those who hold the property entirely as an investment. I do not understand the Government's logic in doing this, and these amendments probe that by suggesting that it should benefit home owners only.

Lord Khan of Burnley (Lab): My Lords, I thank the noble Lord, Lord Bailey of Paddington, for introducing this group, setting the context for this debate about insurance payments and asking for clarity in relation to his amendment, which I am sure was also the intention of the noble Lord, Lord Moylan, in asking for clarity with one of his amendments and probing efficiency in his other amendments. I agree with the noble Baroness, Lady Thornhill, about the extortionate increases in insurance charges passed on to leaseholders. We found that the risk price that insurers charged between 2016 and 2021 pretty much doubled. The brokerage charge increased by more than three times. The service charges added on increased by about 160%, so they more than doubled, and those charges were passed on to leaseholders.

I will quickly speak to Amendment 82, in the name of my noble friend Lady Taylor of Stevenage. This new clause would prohibit landlords from claiming litigation costs from tenants other than in limited circumstances determined by the Secretary of State.

6 pm

We support scrapping the presumption that leaseholders will pay their freeholders' legal costs when they have challenged poor practice but, in merely limiting the ability of landlords to do so, the Government are creating an incentive for freeholders to litigate in a way that is likely to erode the general presumption that they are seeking to implement. As we argued in the other place, a far more sensible approach would be to legislate for a general prohibition on claiming litigation costs from leaseholders and then to provide for a limited number of defined exceptions to that general rule by means of regulations; for example, in cases where the landlord is a leasehold-owned company or the costs are, in the opinion of the tribunal, reasonably incurred and for the benefit of the leaseholders or the proper management of the building. Our Amendment 82, which would create a new clause to replace Clause 80, provides for a general prohibition on claiming legal costs from tenants and for a power to specify classes of landlord who would be exempt from it.

I look forward to the Minister's response and, I hope, to some positive engagement in relation to these amendments.

Lord Gascoigne (Con): My Lords, I thank my noble friends Lord Bailey of Paddington and Lord Moylan, and the noble Baronesses, Lady Thornhill and Lady Taylor of Stevenage, for their amendments in this group. I will take them in turn.

Amendment 79, moved by my noble friend Lord Bailey, aims to ensure that insurance brokers' remuneration is linked to market rates. It also aims to prevent wrongdoing. We share the intent of this amendment and are committed to introducing a fair, transparent and enforceable approach to insurance remuneration. We also recognise that insurance brokers are an important party in the provision of insurance. Given that, this amendment pre-empts the content of secondary legislation. Following Royal Assent, we will consult on what would constitute a permitted insurance payment, then lay the necessary secondary legislation before Parliament. This will clarify what remuneration will be permitted by those involved in the arranging and managing of insurance. My noble friend Lord Bailey spoke with his customary passion. We continue to welcome his views and the

[Lord Gascoigne]
Minister remains keen to meet. I hope that, with that reassurance, my noble friend will withdraw his amendment.

Amendment 80 was tabled by the noble Baroness, Lady Pinnock, and spoken to by the noble Baroness, Lady Thornhill. I assure all noble Lords that this Government are committed to banning building insurance commissions for landlords and managing agents and replacing these with transparent handling fees, to address excessive and opaque commissions being charged to leaseholders. The amendment seeks that within one year of the day on which Clause 57 comes into force, the FCA conducts a report into the impact of this clause in reducing instances of unreasonable insurance costs being passed on to leaseholders.

We agree in principle with monitoring the impact of the clause and, more widely, that insurance costs must be reasonable. The FCA has been closely monitoring the multi-occupancy buildings insurance market in recent years, has strengthened its rules on fair value, and provides regular updates. The most recent update to the Secretary of State was published on 29 February. We will continue to work closely with the FCA and other stakeholders to develop our secondary legislation and in monitoring buildings insurance. Please be assured that this is an area on which we, and the FCA, are keeping a close eye. I hope that with this reassurance, the noble Baroness will not move this amendment.

Amendments 81 and 81A were tabled by my noble friend Lord Moylan; I will take them together. Amendment 81 seeks to exempt right-to-manage companies from the requirement for landlords to apply to the relevant court or tribunal to recover their litigation costs from leaseholders through the service charge. This amendment would apply where the right-to-manage company is exercising the functions of the landlord. Amendment 81A seeks to exempt "non-profit entities" from the requirement for landlords to apply to the relevant court or tribunal in order to recover their litigation costs from leaseholders through the service charge. The amendment provides examples of types of "non-profit entities", including resident management companies and right-to-manage companies.

Clause 60 seeks to protect leaseholders from being charged unjust litigation costs from their landlord. It does this by requiring landlords to successfully apply to the relevant court or tribunal in order to recover their litigation costs, either through the service charge or as an administration charge. The court or tribunal will make an order that it considers just and equitable in the circumstances.

We understand the intention behind my noble friend's amendments. The Government recognise the position of resident-led buildings. That is why the reforms also include provision to set out in regulations those matters which the relevant court or tribunal must consider when making an order on an application. The Government will carefully consider the detail of these matters with stakeholders and the tribunal, including where a building is resident-led. We would be concerned that the exemption provided by Amendments 81 and 81A would leave leaseholders with little protection from paying unjust litigation costs where a resident management company or a right-to-manage company is in place. I ask my noble friend not to move his amendments. However, it goes without saying that this is a complex area of reform and we are considering the issue carefully.

Lord Moylan (Con): It is unsatisfactory if this is to be left to secondary legislation. Bearing in mind that the directors of the right-to-manage company are elected by the leaseholders, and can be replaced by them, and that they are really one entity, what is to happen if the tribunal decides not to make an award of costs? How are the directors to recover that money and who would become a director in those circumstances if they did not have that assurance in advance?

Lord Gascoigne (Con): I will have to pick that up at a later date. There are a number of variables in that circumstance. I hope that my noble friend will forgive me for not having an answer to hand. I will certainly take this up with the department, rather than saying something that is incorrect at the Dispatch Box. My noble friend is absolutely right to raise it as an issue. It is under certain circumstances that those individuals find themselves in that situation, but I am more than happy to take that away and then write to my noble friend.

I turn to Amendments 81B to 81E, also in the name of my noble friend Lord Moylan. As I have previously said, Clause 60 seeks to protect leaseholders from unjustified litigation costs by requiring landlords to successfully apply to the court or tribunal to recover their litigation costs from leaseholders. This replaces the right that leaseholders currently have to apply to the courts to limit their liability for landlords' litigation costs. The relevant court or tribunal will make an order on a landlord's application that is just and equitable in the circumstances.

Amendments 81B and 81D seek to amend the provision that allows the court or tribunal to make a decision on the landlord's application for their litigation costs that it considers

"just and equitable in the circumstances".

Instead, the amendment stipulates that where a landlord is successful in relevant proceedings, the court or tribunal will allow the landlord to recover their litigation costs from leaseholders—unless the landlord has acted unreasonably. We understand the intention behind my noble friend's amendments—to minimise the amount of court or tribunal hearings. However, the Government have a few concerns with the amendment.

The amendment would mean that the court or tribunal would always need to make an order that the landlord can recover their litigation costs from leaseholders where the landlord had been successful in proceedings in whole or in part. The only exception is where the landlord has acted unreasonably. Of course, where a landlord is successful in bringing or defending a claim, we would expect that the court or tribunal would allow them to recover their litigation costs from leaseholders. However, there may be a range of variables and nuances that occur in disputes which need consideration on a case-by-case basis.

The Government think the relevant court or tribunal is best placed to assess applications for costs, taking into account the circumstances of each case. In addition, the measures currently provide for regulations to set matters which the court or tribunal will consider when making a decision on costs applications, which we will consider carefully with stakeholders and the tribunal.

Amendments 81C and 81E seek to allow landlords to recover their litigation costs, where allowed under the lease, without needing to make an application to the relevant court or tribunal in certain circumstances. These circumstances include where proceedings before the county court are subject to a judgment in default, where litigation costs have been incurred in relation to forfeiture proceedings or where proceedings against a landlord have been struck out or are settled before the first hearing. Again, the Government have concerns about these amendments. For example, if a landlord is unsuccessful in proceedings of forfeiture against a leaseholder, this amendment would allow them to recover their litigation costs from a leaseholder regardless. These amendments would also make the provisions more complex, with different rules applying to different scenarios. We completely understand the intention behind my noble friend's amendments. However, for these reasons, I ask that he does not press them.

Amendment 82, tabled by the noble Baronesses, Lady Taylor and Lady Pinnock, and spoken to by the noble Lord, Lord Khan of Burnley, seeks to prohibit landlords from recovering their litigation costs from leaseholders apart from in excepted circumstances to be set out in regulations. Clauses 60 and 61 already seek to rebalance the litigation costs regime for leaseholders in an effective and proportionate way. As I have previously noted, Clause 60 will require a landlord to successfully apply to the relevant court or tribunal in order to recover their litigation costs from a leaseholder. This applies whether the landlord is seeking to recover their litigation costs as a service charge or an administration charge. I also note that Clause 61 gives leaseholders a new right to apply to the relevant court or tribunal to claim their litigation costs from their landlord. For both landlord and leaseholder applications, the relevant court or tribunal will make a decision on costs in the circumstances of each case. Taken together, these measures will rebalance the litigation costs regime and remove barriers to leaseholders challenging their landlord. We believe the Government's approach strikes the balance of being robust but proportionate. Therefore, I respectfully ask that they do not press this amendment.

Finally, I turn to Amendments 82A and 82B from my noble friend Lord Moylan. Currently, in the tribunal and for particular court tracks, leaseholders can claim their litigation costs from their landlord only in very limited circumstances even when they win. This may deter leaseholders from being legally represented or from challenging their landlord in the first place. As I have previously said, Clause 61 gives leaseholders a new right to apply to the court or tribunal to claim their litigation costs from their landlord where appropriate. As with the landlord application for costs, the court or tribunal will make an order that it considers just and equitable in the circumstances.

Amendments 82A and 82B seek to amend the new leaseholder right so that it applies only to home owners rather than investor leaseholders. Amendment 82B provides the definition of a "homeowner lease" so that the leaseholder right applies only to a leaseholder of a dwelling which is their only or principal home. Exempting certain leaseholders from this right would restrict access to redress where we are seeking to remove barriers. For example, there may be instances where a leaseholder who privately lets their flat needs to take their landlord to court because they are failing to maintain the building, which is impacting their property. In these circumstances, we would want the leaseholder to feel able to hold their landlord to account. Providing leaseholders with rights, regardless of whether they are home owners or investors, is in line with the approach we have taken throughout the Bill. Such an exemption would be out of step and will add complexity to the measures. Therefore, I ask my noble friend not to press his amendments.

Lord Moylan (Con): May I ask the indulgence of the Committee? I should have declared when I spoke—as I did earlier in debate—that I live in a building which is run by a right-to-manage company of which I am a director, as is shown in the register of interests. I should have said that in my opening remarks, but I hope I will be forgiven for adding it now.

6.15 pm

Lord Bailey of Paddington (Con): I beg leave to withdraw the amendment.

Amendment 79 withdrawn.

Clause 57 agreed.

Amendment 80 not moved.

Clause 58 agreed.

Amendments 80A and 80B not moved.

Clause 59 agreed.

Clause 60: Limits on rights of landlords to claim litigation costs from tenants

Amendments 81 to 82 not moved.

Clause 60 agreed.

Clause 61: Right of tenants to claim litigation costs from landlords

Amendments 82A and 82B not moved.

Clause 61 agreed.

Clauses 62 to 65 agreed.

Amendment 82C

Moved by ***The Earl of Lytton***

82C: After Clause 65, insert the following new Clause—

"Building trustee

(1) A prescribed building must have a building trustee.

(2) In this section a prescribed building is—

(a) a higher-risk building as defined by section 65 of the Building Safety Act 2022, or

(b) a building where—

(i) 50 per cent or more of the internal floor of the building (taken as a whole) is not occupied for residential purposes, and

(ii) the total service charge payable for the building exceeded £250,000 in the last financial year, or

(c) a building where a recognised tenants' association has requested the appointment of building trustee, or

(d) a building where a court or tribunal has ordered the appointment of a building trustee.

(3) The Secretary of State may by regulations amend the definition of prescribed building.

(4) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

(5) In this section—

"building" means a self-contained building, or self-contained part of a building, in England that contains at least two dwellings;

"prescribed" means prescribed in regulations made by the Secretary of State;

"recognised tenants' association" has the same meaning as in section 29 of the Landlord and Tenant Act 1985."

Member's explanatory statement

This amendment requires higher-risk buildings (over 18m), and buildings where 50% or more of the floor space is not residential and with a total service charge of more than £250,000 to have a building trustee. A building trustee may also be appointed at the request of recognised tenants' association, or by a court or tribunal.

The Earl of Lytton (CB): My Lords, I move Amendment 82C and will speak to Amendments 82D to 82M standing in my name. These draw on good practice in the management of multiunit developments in Australia, Europe and North America and seek to replicate best practice here. They are also designed to address some of the concerns raised in earlier debates, particularly in the context of the proposed change to the threshold for enfranchisement in mixed-use developments from 25% to 50%. I suggest that similar amendments to a future commonhold Bill would go some way to meeting concerns that have been expressed about the risks associated with a wholesale move to that tenure.

The amendments provide for the appointment of a building trustee. It is proposed that this should apply in the largest and most complex developments. Building trustees might also be appointed at the request of a recognised tenants association or by the courts. The building trustee will be an independent and impartial figure whose primary role of auditing performance would ensure that interest rights, responsibilities and performance of the landlord were properly balanced with those of leaseholders and, more importantly, that the building is properly maintained and the service charge provides value for money. I noted in our earlier discussions the Minister's comments to me about value for money, but it is the benchmark used by the National Audit Office for local authority finance, I believe—I eyeball noble Lords who have experience in that line of business.

Amendment 82C sets out the buildings this would apply to, and Amendment 82D outlines the trustee duties—I will rattle through the amendments at some speed. Amendment 82E is about the appointment process of the building trustee. Amendment 82F sets out the trustee entitlement to documents and information.

There is, of course, the question of who pays for the building trustee. It would be unreasonable—particularly during a cost of living crisis—to burden leaseholders, especially as many of the buildings covered by Amendment 82C are already facing increased service charges owing to the new safety requirements under the Building Safety Act. Instead, Amendment 82G provides that the costs of building trustees would be covered by a levy on providers of commercial and residential mortgages and block landlords, excluding enfranchised building and tenant right-to-manage companies.

Amendment 82H sets out what would be the baseline value-for-money benchmark. This is necessary because there is a risk of inevitable bias in the management under the auspices of a party to the leasehold arrangements. This might be perfectly reasonable in terms of the person instructing the management, but still fall well short of the optimal.

One of the Bill's key aims is to make it cheaper and easier for leaseholders to enfranchise. I welcome that. My amendments are designed to augment these plans by providing a light-touch oversight to ensure effective, efficient and economic management of a building. This backstop would require reassurance to lenders, leaseholders and other stakeholders that a freeholder-managed or resident-managed building will be properly looked after.

The reassurance offered by the building trustee is needed, as there is strong evidence that, monetising policies by a few freeholders apart, leaseholders themselves are often reluctant, unable or lack the skills to take on the responsibility and liabilities for the management of increasingly complex buildings, or to direct the professional managers adequately. Indeed, some complaints reaching my mailbox are about residents' own management companies, and the Government's own research found that leaseholders were concerned about issues of working with neighbours, lack of time and reluctance to take on additional responsibilities beyond those necessary as a home owner.

That touches on a point raised by the noble Lord, Lord Moylan, in a previous group, because although most leaseholders will appoint a managing agent to undertake the day-to-day running of a building, they themselves remain responsible for key decisions and setting priorities, such as service charge levels, authorising maintenance schedules and dealing with arrears. It can be difficult to get collective agreement on these issues, with resultant detriment to the management of the building fabric. According to data from the Scottish

House Condition Survey, half of all housing is in what it describes as "critical disrepair", and almost half demands "urgent attention". The situation is most acute in tenements, so I appreciate that this probably relates to older buildings, but paying for common repairs or maintenance was the most frequent cause of disputes in these buildings.

By taking a whole-life view of the building, the building trustee can seek to avoid that Scottish experience by providing an independent assessment of maintenance needs and condition, and ensuring sufficient provision is put aside to maintain the building properly. Amendments 82I and 82J would require landlords to provide a 10-year plan of anticipated expenditure on capital works and building maintenance, and to establish a sinking fund to avoid leaseholders facing large, unanticipated bills. The plan and the fund would be subject to an independent audit and assessment by the building trustee to ensure that necessary works, and only necessary works, were planned for and adequately funded.

In an open letter to lenders on taking commonhold as a security, dated 21 July 2020, the Law Commission recognised that

"the value of a lender's security is inherently linked to the management and maintenance of the building in which a flat is located. A failure to keep the building in repair, to insure it properly, or to keep sound finances all have significant potential to jeopardise the value of a lender's security".

The same is, of course, true for leasehold buildings. That is why I believe that professional landlords and lenders should cover the cost. It is the banks and the building societies whose capital is at risk. The building trustee should provide a cost-effective way of reassuring them that the flats they have lent on are being properly managed, and of maintaining the value of the security. The same is true of commercial lenders on mixed-use developments. I envisage that the Secretary of State would outsource the appointing of building trustees to an external body, as provided for in Amendment 82E.

Two significant further powers would be conferred on the building trustee through Amendments 82H and 82K. Amendment 82H would allow the building trustee to apply to the tribunal on behalf of leaseholders to seek refunds of expenditure that does not provide value for money. Amendment 82K would allow the building trustee to adjudicate in disputes between landlord and leaseholder, and between leaseholders. One of the main areas where I see this provision being used is service charge arrears. It is particularly important in leaseholder-managed blocks that do not have the wider financial resources of the major landlord groups that service charges are paid promptly. Failure to do so prevents a building being managed properly, and in extreme cases places all residents at unnecessary risk. If essential safety works could not be undertaken or building insurance obtained, that would create real problems.

Evidence from other parts of the world suggests that condominium statutes do not have sharp enough teeth to recoup outstanding contributions efficiently and effectively. In England and Wales, we currently fall between two extremes. I have sympathy with those noble Lords who argued in a previous debate that forfeiture, with the exorbitant windfall that it can offer landlords, is inherently unreasonable. Equally, I recognise the point the Minister made in previous discussions that civil debt recovery proceedings can be lengthy. The building trustee's power to adjudicate offers a faster and less formal route of dispute resolution than the court, and supports the building's cash flow.

Amendment 82L would provide for the building trustee to take over the management of a building if its landlord becomes insolvent. Historically, this has happened to very few landlords. However, the Committee will recall that I have previously raised concerns that not all landlord groups have the funds needed to meet the building safety remediation liabilities and could therefore become insolvent. The financial position of these groups may get significantly worse, depending on the Government's decision on ground rents. Some of the country's largest landlord groups—I refer to E&J Estates, which is landlord to around 40,000 homes, Long Harbour, which is landlord to around 193,000 homes, and Regis Group, which is landlord to around 30,000 homes—have significant borrowings that are due to be repaid from ground rent income over the next 40 to 60 years.

To the best of my knowledge, the Government's final position is still unknown but, based on press comments on the Secretary of State's own preference, it is reasonable to assume that the finances of landlord groups dependent on ground rent income to repay their borrowings will come under further, if not fatal, stress. This is not just my view; it is also that of the Government, whose own impact assessment states that

"there may be potential insolvencies/forfeiture and associated costs where the freeholder defaults on contractual obligations as a result of the cap".

However, it does not seem that there has been further assessment of just exactly what this would mean in practice.

The collapse of a major landlord group would be without precedent and could cause tens of thousands of leaseholders in hundreds of buildings to be in serious trouble. In blocks subject to intermediate leases, it is likely that contracts covering everyday management and maintenance would be at risk because there would be no landlord to provide instructions. Conveyancing and lending transactions, which are already under stress, would be paused as there would be no one to process essential documents such as notices, deeds of covenant, landlord certificates and leaseholder deeds of certificate. The ability of the building trustee to assume the management of a building in such circumstances, and prevention of possible management contract termination, is an essential backstop that prevents leaseholders being left in limbo for months while they try to set up an alternative arrangement for managing their buildings and/or await the outcome of the administration or liquidation.

Finally, Amendment 82M would simply ensure that the building trustee has relevant qualifications for the task.

I hope your Lordships will see the merit in these arrangements, and that the Minister will be able to agree that measures such as this are a necessary complement to the Bill's intentions. While I commend these amendments to the Committee, I simply say that

[The Earl of Lytton]
I am not set on this particular structure, but the principle needs further examination to provide the point that I have constantly been on about—namely, consumer protection. On that basis, I beg to move.

Lord Foster of Bath (LD): My Lords, I will speak to Amendment 95A. The Long Title of the Bill is very clear. It includes the phrase

"in connection with the remediation of building defects".

Much of the debate has been on the management and funding of remediation and maintenance, but the early identification of defects is clearly really important in order to avoid some of the problems that can occur, as, tragically, we have seen, for instance, in the Grenfell Tower fire.

That fire was caused by a faulty electrical appliance, but there is also a large number of fires caused by faulty electrical installations. Indeed, the charity Electrical Safety First has calculated that there are around nine such fires every single day in England and Wales. On average, they cost about £32,500, but they have in many cases ruined lives, and on a few occasions have meant, tragically, that people have lost their lives. Quite clearly, it makes a great deal of sense to identify faults at the earliest possible opportunity.

6.30 pm

I have talked previously in your Lordships' House about the dangers of faulty electrical appliances, but this amendment relates specifically to electrical installations—the wiring, the fuse-box, the sockets and so on. I am absolutely delighted that when I have raised these issues in the past, the Government have concluded that action should be taken. I am delighted that we now either have already in place, or will shortly have in place, measures that ensure that, in all forms of rented accommodation, there is a requirement for a five-yearly inspection of electrical installations. Indeed, there is a requirement that they have an electrical installation condition report produced, which will identify any potential faults and suggest ways of dealing with them, to avoid a major fire occurring.

Unfortunately, so far there is absolutely nothing in place for the 17 million properties in England and Wales that are owner-occupied; nothing similar is currently planned. About a year ago, I introduced a Private Member's Bill in your Lordships' House to address that issue; I am grateful to many noble Lords, as well as the fire brigades and a large number of outside organisations, who supported me and enabled that Bill to get through your Lordships' House. Unfortunately, the Government did not find the time in the other place for the Bill to be considered. As a result, that Bill—something that was supported across your Lordships' House, with huge support outside, including from organisations that represent owner-occupiers—has not gone through, sadly.

This amendment is simply to replicate and put the measures I proposed at that time in place. Quite simply, it would require not a five-yearly check, because that would be difficult to do, but, at the point of sale of an owner-occupied property, that an EICR—electrical installation condition report—be produced and made available to the new purchaser. It would cost between £150 and £250; they are already being carried out around the country in rented properties by qualified electricians, and have been saving lives and money. Something similar should be happening in the owner-occupied sector.

This is a relatively simple amendment. It would mean, based on the rate of sale of properties in England and Wales, that about 1 million properties a year would have the benefit of this electrical installation condition report being carried out. It is something I hope your Lordships will accept.

I will add one caveat. When you look at the details of this issue—during earlier deliberations on the Bill, high-rise properties have been talked about a lot. I recognise that there are a number of high-rise properties that have a mixture of tenure; there are some rented and some owner-occupied properties there. There is a good case for arguing, in the case of such properties, that there is a requirement for a five-yearly check on the owner-occupied properties within a high-rise building.

Certainly, if the principle of my amendment is accepted by the Government today—I hope very much that it will and they will be willing to have further discussions about it—perhaps at a later stage we could also look at a slightly different approach in respect of owner-occupied properties in such multi-tenure high-rise buildings.

Baroness Fox of Buckley (Non-Afl): My Lords, my Amendment 104 is very much part of the amendments I have—both today and on other days—that look at the way the law, as it was previously made, might not be doing what it is intended to. I am interested in restoring Section 24 management for leaseholders suffering at the hands of some predatory freeholders, suffering sky-high service charges and run-down buildings—some of the things we have been talking about.

Like many other noble Lords here, I still have the scars from scrutinising the Building Safety Bill when I first arrived here. It was the most hugely complicated piece of legislation, but it went through the House relatively quickly because of the importance of the topic. As I think we are all aware now, that speed probably led to a number of unintended consequences that have since come to light. One surely unintended consequence of the Building Safety Act is the way that its accountable person regime undermined Section 24 of the Landlord and Tenant Act 1987. Due to the wording of the Act's accountable person policy, Section 24 court-appointed managers are barred from assuming their duty-holder role. Until that point, these tribunal-backed managers would be entrusted with all of the building's management, when it was determined that the freeholder could not be trusted to remain in control of a development and leaseholder service charges.

I am not commenting in general on the accountable person policy per se, although there are problems with it. But it is odd that there is such a wide range of entities that can be the accountable person, including leaseholder-controlled resident management companies and right-to-manage companies, yet strangely, the Act prohibits a Section 24 manager from taking on the role, despite the fact that a Section 24 manager would

have been appointed by a tribunal panel, which was satisfied that they had the credentials and experience needed to steward a development that had fallen foul of a poor freeholder. I do not understand how this happened, or why.

It is important to note that Section 24 has been a lifeline right for ripped-off leaseholders unable to buy their freehold or claim the right to manage because of costs or strict qualifying criteria. This is an attempt to ensure that Section 24, which is the ultimate backstop scheme, is restored in the Bill, to give leaseholders a clear route to remove freeholders and their management agents if it has been shown that they have actually been ripped off and it is the only route open to them.

This issue came to my attention in February, when Melissa York in the *Times* reported a devastating story of Canary Riverside in Tower Hamlets. This story really made an impact on me, because there the leaseholders have benefited from court protection, with Section 24 management, since 2016. A Section 24 manager was installed because the freeholder, a Monaco-based billionaire, John Christodoulou, had lost the confidence of the tribunal due to his company's seeming financial mismanagement and poor estate maintenance. After years of fighting by the leaseholders, in March this year the Upper Tribunal found that the freeholder had used a related firm to overcharge the development by £1 million in secret insurance commissions—the kinds of issues we were discussing earlier today.

Yet despite this and other well-evidenced service charge abuses, and the fact that the leaseholders have benefited from independent Section 24 management, *The Times* reports that

"an oversight in the new Building Safety Act means the same court that removed his management company could put Christodoulou back in control of service charge moneys and safety works, including £20 million for cladding remediation".

It seems to me that the Building Safety Act's seemingly arbitrary exclusion of Section 24 managers from its accountable person regime did not intend to do this, but its effect is that those Canary Riverside leaseholders, among others, are faced with the prospect of their landlord staging a comeback and regaining control over block management, even though the leaseholders' work over years, accumulating evidence to prove fault, has been accepted at tribunal level. That work is now undermined because a statutory right that leaseholders relied on for years is now blocked by the Act.

This is so frustrating, and it needs to be tackled in Parliament, as the courts are bound by the laws we make here. In December, in the first test case on this—Canary Riverside—the First-tier Tribunal confirmed that the Building Safety Act does not allow a Section 24 manager to be the accountable person. In March the Upper Tribunal agreed. Despite those tribunal decisions going against them, I commend the leaseholders at Canary Riverside, and say all power to them. They are still appealing in order to keep their Section 24 protection.

This is heroic work, which should remind us all of the real-life toll of the sort of issues leaseholders have to take on. They are ordinary people who bought leasehold flats, and who have ended up going in and out of court regularly—and there is not just the toll, but the costs. Nearly £200,000 has been committed in legal fees already. This is a sharp reminder that the unintended consequences of laws we make here can have wide-reaching, even devastating, effects on real people's real lives.

We need to put right this wrong, here in Parliament, and to use the Bill to do so. The Section 24-accountable persons clash was raised in January with MPs on the Public Bill Committee by Free Leaseholders, End Our Cladding Scandal and Philip Rainey KC, who all drew this to our attention. As a consequence, the MPs Nickie Aiken and Barry Gardiner moved amendments on this issue in the other place. I would really appreciate it if the Minister looked into fixing this, because I do not think it is what we ever intended to do with the Building Safety Act. It is a loophole, and it has the most devastating consequences for leaseholders, which I am sure we could simply put right.

Baroness Thornhill (LD): My Lords, I admire the persistence of my noble friend Lord Foster of Bath in his indefatigable pursuit of the perhaps unsexy but very important issue of electrical safety defects, as evidenced in his Amendment 95A.

The first group of amendments relates to building safety—a subject that we have debated many times in this Chamber in recent years, following the tragic events of the Grenfell Tower fire. Amendments 82C to 82M, in the name of the noble Earl, Lord Lytton, relate to a proposal that higher-risk buildings should have a building trustee. The trustee would be an impartial figure, whose role would be to ensure that the interests, rights and responsibilities of the landlord and leaseholders were balanced, that the building was properly maintained, and that the service charge provided value for money—a practice that exists elsewhere. We find the noble Earl's proposal interesting, and certainly worthy of consideration in the future. However, it is quite a detailed proposal which may not have the chance to be scrutinised further in the context of the Bill.

6.45 pm

Other amendments tabled by the noble Earl would make provision for what would happen in the event of insolvency of the landlord, particularly to prevent the termination of service contracts or insurance policies. Redressing the balance between the rights and responsibilities of tenants and landlords is a key aspect of the Bill, and it is important that we explore the different approaches to achieving this. The noble Earl also raises an important question about what happens in the case of insolvency to ensure that there is a person able to take responsibility for key aspects of building management.

Amendments 98 and 101, which were not moved by the noble Lord, Lord Young of Cookham, interestingly also relate to the accountable person and responsible actors. This was a key theme in the passage of the Building Safety Act, and it is clear from these amendments and others that there are unresolved issues. This was highlighted positively by the noble Baroness, Lady Fox, in her Amendment 104, when she talked about the unintended consequences of the lack of a Section 24 manager. I look forward to the Minister's explanation of what seems to me an important and relevant question.

[Baroness Thornhill]

Amendment 101, tabled by the noble Lord, Lord Young, is particularly important as it makes the case for a new body to oversee and accelerate remedial works. We are particularly concerned about the pace at which remediation is happening, with the latest building safety remediation data highlighting the fact that only 23% of buildings have completed remediation works since the Grenfell tragedy. In the meantime, residents are either living in unsafe buildings or being forced out of their own homes. Reporting in yesterday's *Sunday Times*, Martina Lees outlined how 15,000 people have been ordered to leave their homes because of safety risks. Many of those people are living in hostels or paying rent alongside a mortgage on a flat they cannot se-ll.

The costs faced by leaseholders is also the subject of Amendment 103, tabled by the noble Baroness, Lady Taylor of Stevenage, which would impose a cap on the charges that can be passed on to leaseholders as a result of the Building Safety Act. The Act introduced important changes to the regulatory framework, but it has had a knock-on effect on the charges leaseholders face. As my noble friend Lady Pinnock has said time and again, it is the leaseholders, who have done nothing wrong, who are paying the price of this crisis. We welcome amendments that would protect leaseholders from those costs, and we look forward to assurances from the Minister that the Government are taking action to ensure that all leaseholders affected by the building safety crisis get the support they need—sooner rather than later.

Baroness Taylor of Stevenage (Lab): My Lords, I shall speak to our Amendment 103, and comment on others in this group. I thank the noble Earl, Lord Lytton, for his careful and thoughtful consideration of how we might use the Bill to rectify some of the glaring building safety omissions that are an unfortunate legacy of the Building Safety Act. His proposals on building trustees warrant close consideration, especially as he has carefully set out how they might be funded. Taken together with proposals in later amendments for a property regulator, this could deal with a number of the loopholes that have caused an overall descent into property chaos, which has been the subject of much debate in this House, by matching independent local oversight with a national property regulator.

The noble Earl set out in his customary forensic way his justification for the amendments. I respect his professional expertise in this area, and I do not think I need to say any more than to welcome the issues he has covered. As the noble Baroness, Lady Thornhill, said, those could have been subject to pre-legislative scrutiny—but sadly, they were not. As was said earlier today, it is a mark of how your Lordships' House can contribute to legislation that we have them before us today. It is a shame they could not have been incorporated at an earlier stage, because it is late now to debate such detailed proposals. I look forward to the Minister's response, and I hope she will, as she always does, take the amendments seriously and tell us what the Government are going to do when they consider them.

Noble Lords would have received the excellent briefing, as I did this morning, from the National Residential Landlords Association. It says that "it is more critical than ever, in the context of the Government's Leasehold and Freehold Reform Bill" that the building safety remediation scheme "is implemented without further delay to resolve the failings of the Building Safety Act's leaseholder protections". The noble Earl, Lord Lytton, said that he is not particular precious about this structure but, if we do not have it, what will the Government put in its place to do that?

We are now seven years on from the dreadful tragedy at Grenfell. It is shameful that so many leaseholders are still living with the fear of fire risks and the unbelievable pressure from the uncertainty around the financial commitments that they will face for their building remediation. It is the most terrible indictment of this Government's failure to recognise the unconscionable impact on the lives of those affected, let alone the issues raised so many times in this Chamber of those who live in non-qualifying buildings but, nevertheless, have the leasehold sword of Damocles hanging over them.

The noble Baroness, Lady Thornhill, already mentioned the excoriating article in the *Times* this weekend. Martina Lees gives an incredibly thorough and well-researched account of the impact of the cladding scandal. Her investigation points out that

"15,000 residents have been forced to leave homes due to fire or fire safety defects",

and that escalated last year with the evacuation of at least 21 buildings. She also says:

"Despite £9.1 billion of government grants being set aside to help fix homes, only £2.1 billion has been spent. The building safety crisis has trapped 700,000 people in dangerous homes and left almost three million owners with flats they cannot sell. Almost all are properties built or refurbished since 2000, with defects such as flammable cladding systems, combustible balconies and faulty fire barriers".

I am familiar with faulty fire barriers from Vista Tower in Stevenage. She also points to government manipulation of figures, in that they

"cite a total of 4,329 buildings or 248,000 flats over 11 metres high with unsafe cladding. Of these, 23 per cent have been fixed".

However, as Ms Lees points out,

"previous government data added up to 375,000 flats over 11m, making the number fixed just 8 per cent. The new total excludes more than 1,000 buildings where the developer must pay for repairs but does not know whether work is needed. It also precludes hundreds of blocks that did not get taxpayer help because they had the wrong type of fire risks … or were deemed below 18m … It leaves out up to 7,283 mid-rise buildings that the government had previously estimated to be unsafe".

I am sure that the Minister will tell us that she does not respond to press stories in the Chamber, but the headline issues raised here are that affected leaseholders continue to endure this misery, with some having to pay rent for properties that they have been evacuated to, on top of the thousands of pounds of service charges that they face. Amendments in this group would at least provide some longer-term solutions to these issues.

My Amendment 103 seeks to recognise that financial pressure and ensure that there is at least a cap on the charges that leaseholders are expected to bear. Our preference going forward would be that developers are held ultimately accountable for any fire or other safety defect remediation in the buildings. In future, we hope that even greater consideration is given to how that might be achieved.

We also support the amendment of the noble Lord, Lord Foster; it is surprising only in that it is not already the case that buildings with electrical defects cannot be sold. If that is the case, surely this should be urgently rectified through the building regulations regime. I hope that we do not have to wait another two years to implement that.

Amendment 101 is in the name of the noble Lord, Lord Young, although he did not speak to it. It seeks to impose a deadline of June 2027 for remediation of fire safety defects. That is not an unreasonable target, as it would mean that an entire decade had passed since the Grenfell tragedy.

The noble Baroness, Lady Fox, made a very powerful case for the unintended consequence of the removal of the Section 24 manager. Her amendment and that of the noble Lord, Lord Bailey, seek to improve accountability. As this is one of the stated aims of the Bill, we look forward to the Minister's response to their proposals.

Baroness Scott of Bybrook (Con): I thank noble Lords for their various amendments on building safety and for the debate. I will respond to the amendments in turn.

I thank the noble Earl, Lord Lytton, for his amendments relating to a building trustee. Amendment 82C requires some buildings to have a building trustee, while Amendments 82D to 82M cover the process of appointment, duties, rights to information and how these trustees will be funded. The building safety trustee will either replace or complement the functions carried out by the landlord or a managing agent. I fully agree with the view that landlords and managing agents must manage and maintain buildings for which they are responsible and provide a good-quality service to tenants. However, I believe that this proposal would create additional complexity with little relative gain. The proposed mechanisms for funding these trustees increase the risk of pushing more landlords into escheat and it is hard to see how the levy proposals can be delivered. Secondly, we consider that there are better ways to deliver the desired outcome. As I have previously mentioned, we are bringing measures forward in the Bill that will drive up the accountability of landlords and their agents, so we do not agree with the noble Earl's amendments.

I thank the noble Lord, Lord Foster of Bath, for his amendment, which seeks to improve electrical safety standards in buildings by identifying whether there is an electrical defect prior to sale, and for his continued interest in this very important issue for housing safety. This amendment would require a specified person to acquire an electrical installation condition report or electrical installation certificate prior to marketing the property, unless it is being sold for demolition or a full electrical rewire has been completed in the last five years. This is an important issue; we know that improving electrical safety is paramount to helping prevent fires and making sure that occupants feel safe in their homes.

As the noble Lord said, the Government have already taken firm action in the private rented sector by requiring PRS landlords to acquire an EICR at least every five years and to organise remediation works where necessary. We have also consulted on equivalent electrical safety standards in the social housing sector through our 2022 consultation and call for evidence. Here, we examined proposals to require social landlords to obtain an EICR for their rental tenants at least every five years and then to carry out remedial works within a set timescale. Our call for evidence also explored extending the proposed requirements to owner-occupier leaseholders within social housing blocks, so that the whole block is subject to these increased standards. We are aware of the noble Lord's concerns about the sector that we have not yet hit—the owner-occupied sector. The Government are still considering responses to the consultation and the call for evidence, and we will update this House in due course.

I thank the noble Baroness, Lady Fox of Buckley, and the noble Lord, Lord Bailey of Paddington, for their Amendments 104 and 105B—I will also speak to Amendment 98, although my noble friend Lord Young of Cookham is not here—relating to changes of the definition of accountable persons under Section 72 of the Building Safety Act 2022 and other changes protecting the position of managers appointed under Section 24 of the Landlord and Tenant Act 1987.

I trust that noble Lords will understand that the Government cannot accept the proposed amendments. First, defining a Section 24 manager as an accountable person would move financial and criminal liabilities away from the existing accountable person to the Section 24 manager. It was the intent of the Building Safety Act that financial and criminal responsibilities for certain aspects of maintaining the building should always remain with the accountable person, and the accountable persons cannot delegate this responsibility to a third party. As drafted, the amendments could also mean that Section 24 managers would not be able to recover funds from the accountable person for the incidents of remediation works. I assure noble Lords that the Government are looking closely at this issue and at options to ensure that Section 24 managers can take forward building safety duties and get funding, where needed, from the accountable persons.

7 pm

Amendment 103 would cap the amount that leaseholders had to contribute to the ongoing management of building safety in their buildings. I trust that the noble Baroness, Lady Taylor of Stevenage, will understand that the Government cannot accept this proposed amendment. Those costs are related to the ongoing management of the building. It is appropriate, and indeed the long-standing legal position, that the management of a building is funded by leaseholders through service charges. Capping the fees that leaseholders pay towards the management of the safety of their building would mean that the freeholders would be unable to recoup the cost of meeting their legal obligations, or would be put in a position where vital safety works may be delayed for long periods of time. It is likely that this would mean that some freeholders would not be able to manage building safety effectively, putting residents at risk.

The amendment would also create the precedent that leaseholders should not be expected to contribute fully to the ongoing management of their property. It is a fundamental principle of leasehold property that

[Baroness Scott of Bybrook]
leaseholders are liable to pay through the service charge for the ongoing management of their property. I hope that, with these assurances about the action that the Government have taken and are taking, noble Lords will agree not to press their amendments.

The Earl of Lytton (CB): My Lords, it is my privilege to thank all noble Lords for their contributions to the debate on this group. I pay tribute to the noble Lord, Lord Foster of Bath, for his contribution. As the noble Baroness, Lady Thornhill, said, he has been a doughty campaigner on this issue without pause for breath. It is absolutely right to consider electrical safety in buildings.

I also particularly mention the noble Baroness, Lady Fox of Buckley, for her important contribution. It raised something that has bothered me for a long time—namely, that I do not see a long queue of people wishing to be the accountable person. Indeed, I do not think this has been correctly thought out. There is an assumption in the Building Safety Act 2022, and again in this Bill, that somehow these things are going to be accepted and fall into place. When it comes to liabilities, they do not automatically happen and they do not just fall into place.

I thank the Minister very much for her comments on my amendments. She said they would create additional complexity for very little gain and that there were better ways to deliver the outcomes. I am not sure what she thinks those better ways are, given that we are dealing with a situation that is a legacy of the Building Safety Act—which is getting on for two years old—but has not been fixed, and meanwhile people are in great difficulties in their homes as a result. There needs to be legal responsibility, proper accountability without gaps and resource in terms of funding, from wherever that will come. There is a necessity to identify that secure and adequate resource, but we do not have that at present.

I will very likely return to these amendments—or these subjects, anyway—at later stages on the Bill. In the meantime, I beg leave to withdraw the amendment.

Amendment 82C withdrawn.

Amendments 82D to 82M not moved.

Clauses 66 to 68 agreed.

Schedule 10: Part 4: consequential amendments

Amendment 83

Moved by ***Baroness Scott of Bybrook***

83: Schedule 10, page 227, line 11, leave out "subsection (4)" and insert "subsections (4) and (7)"

Member's explanatory statement

This amendment is consequential on clause 67 repealing section 172(1)(a) of the CLRA 2002, which is amended by section 112(7) of the BSA 2022.

Amendment 83 agreed.

Section 10, as amended, agreed.

Clause 69 agreed.

Amendment 84

Moved by ***Baroness Fox of Buckley***

84: After Clause 69, insert the following new Clause—

"Marketing of residential leasehold property

(1) Within six months of the day on which this Act is passed, the Secretary of State must make regulations to regulate the marketing of residential leasehold property.

(2) Regulations under subsection (1) may—

(a) require residential leasehold property without a share of the freehold to be marketed and sold as "lease-rental",

(b) require that residential leasehold property without a share of the freehold be advertised with a disclaimer containing the words that "leasehold is a lesser title and management and service charges at this property are controlled by a third-party entity that is not subject to democratic resident control",

(c) provide information about the rights and responsibilities of leaseholders and landlords under a long lease to be given to prospective home buyers by sellers and property agents in the form of a document produced by the Secretary of State or another person,

(d) require sellers and property agents to clearly state material information, including lease length, ground rent and service charge, in the marketing of residential leasehold property,

(e) define "prospective home buyers", "sellers" and "property agents",

(f) provide that the document to be given is the version that has effect at the time the requirement applies, and

(g) specify cases where the regulations do not apply.

(3) Regulations under subsection (1) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament."

Member's explanatory statement

This amendment would provide for a scheme to regulate the marketing of residential leasehold property. The scheme involves requiring leasehold homes without a share of the freehold to be marketed and sold as "lease-rental", which adopts a key recommendation of the leasehold report by the House of Commons' Levelling Up, Housing and Communities Committee, published on 11 March 2019.

Baroness Fox of Buckley (Non-Afl): Last week, after I spoke in the debate, I received a message from someone I know quite well. It said:

"I'm currently in the final stages of trying to buy a leasehold flat and am pretty worried about what I'm getting myself into. The freeholder, a Housing Association, has increased the service charge by 27% since I had my offer accepted and there seems to be nothing to stop them doing so again. They claim they just do it to cover costs … I get the impression this is a rentier business pretending to be something else".

The aim of the amendment, which in some ways might appear to be quite glib, is that everyone should stop pretending this is something it is not. When you become a leaseholder you are not actually buying a home, and I want to clarify that to say so is mis-selling.

Of course, I am hopeful that the Government will accept my earlier amendment for a sunset clause on leasehold and that commonhold will become the new normal, but in the meantime those buying homes on leasehold should be frankly told what they are buying into. I have noticed in this Committee, and in the

wider debate on the issue, that developers and big freehold often defensively retort when we complain about treatment of leaseholders, "You knew you were buying a leasehold property. You knew the rules. Why didn't you read the small print?" It is a form of victim blaming—"This is what leasehold is"—but it is disingenuous.

I want to tackle that by regulating the marketing of residential leasehold properties so that they are sold as lease rentals, which in fact was a key recommendation of the leasehold report by the House of Commons Levelling Up, Housing and Communities Committee that was published in March 2019. I stress that when you buy a leasehold property, you think you are buying a house or entering into the home-owning classes. That is how it is sold to us by politicians. For example, a DLUHC spokesperson, defending the mess that is shared ownership, stated:

"Shared ownership has a vital role to play in helping people onto the property ladder, and since 2010 we have delivered 156,800 new shared ownership homes".

The whole idea, when you buy into shared ownership or you buy a leasehold flat, is that you are joining the property-owning classes. You think of it as the aspiration to own your own home, and all that that entails. That is what you are buying.

We need to consider the ideology of home ownership. I thought about that particularly when watching an excellent lecture entitled "Making our homes our own" by Professor Nicholas Hopkins, a Law Commissioner for property, family and trust law. When you are renting somewhere to live, there is a sense of dependence on a landlord. You have no conception that you own the property, and it is all very clear. I remember my father saying to me, "It's time to grow up and stop renting", and eventually I bought a flat—not until I was 40, mind. It was a leasehold flat, and I thought, "I'm all grown up now. I'm taking responsibility. No landlord—it's up to me". Little did I know.

When you buy a home, you think you are buying independence, autonomy and control. Yes, it provides greater security, stability and permanence, but what about what Professor Hopkins calls the "x-factor" benefits—the idea that you buy a property, make it your own and personalise it? Do noble Lords remember those symbolic new front doors that everyone put on their council flats after right to buy came in? It was like saying, "I bought mine, so I've got a red door"—it meant something. I am not saying that in a sniffy way; it did mean something. It was about saying, "I'm going to take pride in maintaining this. I'm going to improve it". People were in control over their houses, how and when to dispose of them, and so on—they had taken that grown-up responsibility. The notion that there is no landlord controlling your home is very important, but it is an illusion in relation to leasehold.

When the Commons Select Committee did an inquiry into leasehold in 2018 to 2019, it

"found a system which stacked the odds in the favour of developers, freeholders and managing agents, leaving leaseholders with all the financial responsibilities and without matching safeguards to protect them. Leaseholders were too often treated not as homeowners or customers, but as a source of steady profit".

That is exactly what it feels like, but they do not tell you that at the estate agents. They do not say that the leasehold form of home ownership means that, while you pay for the maintenance of your home, you have no control over the amount, quality or cost of work undertaken. The whole experience is disempowering. You are being done to—the object of other people's decisions.

I will give an example. When Storm Eunice battered Britain a few years ago, the roof of one lady's top-floor two-bedroom leasehold flat started to leak badly. She said that rain was coming down through the light sockets and switches. Most home owners would try to get someone in as soon as possible to identify the leaks and get the problem fixed urgently via a claim on their buildings insurance—there is a storm, there are leaks and it is dangerous, so you get it fixed properly. But, because Liz's flat is leasehold, she had to rely on a managing agent to sort things out. Despite countless calls and emails, she could not get anything done. Eventually, the water stopped—they stemmed the flow—but that failed and mould started to grow in the increasingly sodden flat, so Liz had to move out. There was more pleading with the managing agent to find suitable temporary accommodation, and eventually they did, albeit to a dodgy area in which Liz said she did not feel safe.

The Minister said earlier that one reason she was nervous about giving consultation rights to leaseholders in relation to local authorities was that the leaseholders might hold up works and that, somehow, the freeholders would be rushing to get them done. Is there a historic example of that ever happening? Generally, what has happened is that leaseholders are in a rush to sort out problems in their own homes and would know how to do so, but the freeholders, or their managing agents, are less inclined to.

Mis-selling leasehold properties as property ownership is, in my opinion, a con in so many ways. People who save hard for a deposit, and who budget and work hard to get a mortgage, see their new home as a financial asset: a home to pass on. But, as Professor Hopkins explains, the effect of leasehold, in essence, is to put financial value in the landlord's hands at the expense of the leaseholders, and

"the more a person's home is used as a financial asset to benefit their landlord, the less it is an investment for the individual. The more a leaseholder's money is providing an investment for their landlord, the less their money is providing an investment for their own future, their family and their next generation".

So, for leaseholders, the question is: would they buy that flat if their home was actually a source of investment for someone else—a profit for someone else—and not even something they could easily pass on to their family?

When you look in an estate agent's window, there are two sections: for sale and for rent. There is no mention, under "for sale", that there is a two-tier system of property and that leaseholders do not get sold their homes outright but are tenants of a freeholder who owns the land. Would-be buyers may hear their solicitors mumble the word "leasehold", but the implications are not spelled out. For example, Natalie Walton explained in an article that, when she bought her new-build two-bedroom flat in Wakefield for £105,000, she had no idea that, on top of her £1,600 annual service charge—uncapped—her ground rent would be increased every 20 years. She said:

[Baroness Fox of Buckley]

"It's not easy when you're a first-time buyer to understand all of the implications of ground rents. I had a copy of the lease but the solicitor didn't go through any of it with me".

So, yes, I know that the paperwork exists, but, without signposting it, and a regulated demand for honesty and frankness through the buying and selling process, many more people will be hoodwinked until we get rid of leasehold for good.

7.15 pm

The Minister might reply that the Government's *How to Lease* guide has been updated, and I was delighted to read that it had, because it was very unclear before but is now clear and honest. It says, on the Government's own website:

"When you 'buy' a leasehold property, you do not become the owner of the property: you acquire the right to occupy it for the amount of time that is remaining on the lease … If the property you are interested in is leasehold, this means you, as the buyer (i.e. the 'leaseholder') will be signing a contract which grants you the right to occupy a property for a fixed number of years … (i.e. the 'lease'). The building structure and any common parts will be owned by the freeholder who is likely to be your landlord".

Hurrah for that—for once, the Government are totally clear. But who in the public reads a GOV.UK publication before they buy a house or a flat? It just does not happen.

I am suggesting that this definition should become the standard for well-advertised descriptions, used by estate agents, freehold and development sellers, and solicitors. I am not suggesting that estate agents all go off and do degree courses, as somebody did recently, but updating them, so that they know what "leasehold" means, would be helpful. This amendment ensures that this will happen, until we at last move away from this iniquitous tenure and commonhold becomes the norm. In the meantime, at least let us be honest. I beg to move.

Baroness Thornhill (LD): My Lords, I support Amendment 84, in the name of the noble Baroness, Lady Fox of Buckley. There is no doubt that mis-selling of leasehold homes is going on. Indeed, some developers insist that you can buy a flat from them only if you go with one of their approved solicitors. These solicitors will most likely not alert you to the negative aspects of that lease. Public awareness and understanding are low, as the noble Baroness showed from personal experience. The noble Baroness mentioned estate agents. I went on to Rightmove's website and found that it provides buyers no search function to differentiate between freehold and leasehold homes, which I mention because, apart from this feeling disingenuous, it highlights that the problem starts at the very beginning of the process.

As has been mentioned, the Levelling Up, Housing and Communities Committee did an inquiry into leasehold in 2018-19. Its report said:

"Many leaseholders reported that they were surprised to learn that they did not own the properties they had purchased in the same way as they might have owned a freehold property. One leaseholder, Jo Darbyshire of the National Leasehold Campaign, told us there was 'a fundamental lack of understanding about what leasehold tenure means to consumers out there.' Shula Rich, from the Federation of Private Residents' Associations, described leasehold as 'the fag end of a timeshare … it is not owning anything' and called for greater clarity from the Government and industry that purchasing a leasehold should not be sold as the 'ownership' of a property in the same way as freehold".

They are leaseholders, not home owners, and they did not get help to buy or anything other than the right to live in a building for the term of the lease.

It is important that key information is provided in ways that are accessible and easily understandable for consumers. We believe that managing agents and landlords should provide key information about leasehold properties at the marketing stage in a standardised format. The information should include the lease length, estimates of enfranchisement costs, the ground rent and service charging information, as required by National Trading Standards for marketing a property.

There are clearly significant differences between freehold and leasehold tenures, but these are not always apparent to prospective purchasers at the point of sale. It has been mooted that it would be more appropriate to refer to this tenure as "lease rental". We agree with that—it would at least be honest.

Lord Khan of Burnley (Lab): My Lords, I rise briefly to thank the noble Baroness, Lady Fox of Buckley, for introducing Amendment 84. The arguments that the noble Baroness made were the very reason why we should end leasehold and move towards commonhold. I hope the Minister can clarify some of the important concerns that she has raised.

Lord Gascoigne (Con): My Lords, I thank the noble Baroness, Lady Fox of Buckley, for her Amendment 84, which seeks to ensure that potential property purchasers understand the ongoing obligations of a leasehold property they are thinking of purchasing. I share the noble Baroness's concern that purchasers should know about service charges and ground rent before they move into their home. Speaking personally, I completely understand the stress and frustration when you receive a bill that you knew nothing about.

The National Trading Standards Estate and Letting Agency Team has developed guidance for property agents on what constitutes material information when marketing a property. This information should be included within property listings to meet their obligations under the Consumer Protection from Unfair Trading Regulations 2008. The guidance specifies that tenure and the length of the lease are material and therefore should be included in the property listing. Ongoing charges, such as service charges and ground rent, are also considered material, as they will impact on the decision to purchase. This means that purchasers get information on the lease and expected level of ongoing financial obligations when they see the property particulars, so before they have even viewed the property, let alone made an offer. In addition, the measures that we are including in this Bill to require leasehold sales information to be provided to potential sellers mean that conveyancers acting on behalf of sellers will be able to quickly get the detailed information they need to provide to potential purchasers. This would include information about service charges and ground rent, as well as other information to help a purchaser make a decision, such as previous accounts.

The Government support significant provision of advice for leaseholders through the Leasehold Advisory Service, an arm's-length body providing free, high-quality advice to leaseholders and other tenures by legally trained advisers. The Government have also published a *How to Lease* guide aimed at those thinking of purchasing a leasehold property, to help them to understand their rights and responsibilities, providing suggested questions to ask and suggesting how to get help if things go wrong. This guide will be updated to reflect the provisions in this Bill.

Lord Bailey of Paddington (Con): Is my noble friend the Minister comfortable that that information is freely distributed? It would take only a very cursory conversation with leaseholders to find out that they know nothing of most of leasehold law—anything from ground rent to the fact that your service charge can be changed from underneath you. That means that the information that is there has clearly not been absorbed. What attempt will be made to make that information universal? People are talking about changing what leasehold is called, but this is the first time that I have heard that. I think it is a good idea—but all that information is good for nought if people are not compulsorily seeing it before they sign to buy the property.

Lord Gascoigne (Con): My noble friend asks for clarity. I can completely understand some of the circumstances that people face; that is something on which we share the concerns of the noble Baroness in what she is trying to do, and it is something that we will continue to look at—ways of ensuring that people are aware of the information when they are purchasing a property. We will continue to look forward to engaging with all noble Lords in this House. With that reassurance in mind, I hope that the noble Baroness, Lady Fox, will agree with me that this proposed new clause is not necessary, and I respectfully ask that it is withdrawn.

Baroness Fox of Buckley (Non-Afl): My Lords, the proposed new clause is totally necessary—I disagree with the Minister on that—but I understand the need to withdraw. The only thing that I would just clarify is that all the organisations that are run for leaseholders are no good to people who do not know what a leaseholder is when they buy their flat and then find out that they are leaseholders. You do not think of yourself as a leaseholder; you think that you are a home owner. The only people who call themselves leaseholders any more are activists who have discovered how awful it is to be a leaseholder, who then get a different identity. That is what I am getting at.

The Government's information is very good, and they should make more of it. That is what the noble Lord, Lord Bailey, was saying—why do they not plaster it around a bit? It is not fair on first-time buyers, who are the people who are being sold out by this. I know that the Government do not want to do that, but they should do something about it. I beg leave to withdraw.

Amendment 84 withdrawn.

Amendment 85

Moved by ***Baroness Fox of Buckley***

85: After Clause 69, insert the following new Clause—

"Prevention of leaseholder abuse in retirement housing

(1) Within one year of the passing of this Act, a Minister of the Crown must publish a report assessing the state of the United Kingdom's retirement leasehold sector with special regard to the treatment of elderly and vulnerable leaseholders.

(2) The report must consider whether the government should introduce legislation on retirement housing to address consumer detriment while encouraging downsizing, a larger, healthier retirement housing sector and a better functioning property market.

(3) The report must also include—

(a) an assessment of the extent to which the following factors harm leaseholders in retirement housing—

(i) service charges not subject to resident control;

(ii) inability to easily switch managing agents to remove predatory or poorly performing service providers;

(iii) license and permission fees;

(iv) short leases;

(v) shared ownership structures;

(vi) exit and event fees;

(vii) resale values, and

(b) an update on the government's implementation of the recommendations in the Law Commission report "Event Fees in Retirement Properties", published on 30 March 2017,

(c) the Older People's Housing Taskforce report and a statement on the government's implementation of its findings,

(d) legislative options to address the significant financial loss and emotional distress of leaseholders in retirement housing and those of their families, and

(e) a recommendation as to whether the housing-with-care model, license to occupy schemes and commonhold developments should be promoted by the government as preferred alternatives to leasehold tenure in the retirement sector."

Member's explanatory statement

This new Clause would require a Minister of the Crown to publish a report to establish the experience of leaseholders in retirement housing and to outline legislative options to improve consumer outcomes in this sector.

Baroness Fox of Buckley (Non-Afl): My Lords, I am bored of my own voice, too, so bear with me. It is just that I think that this is an important issue. Through this amendment, I am asking the Government to bring out a review of the specific leasehold property market for pensioners and the elderly, which I would have thought would be of particular interest to all of us in this House who might be looking in that market area.

To be serious about it, I became interested in the issue after watching a "Pensioners Against Leasehold" video, one excellent example in a series of investigative campaign films produced by Free Leaseholders. Jane, who presented the video, made me realise that leasehold is especially devastating for those selling their family home and downsizing into a flat then realising that, rather than doing the sensible thing, they have potentially

[Baroness Fox of Buckley]

bought into a debt trap. I have just been talking about first-time buyers, and I am now talking about buyers who are very experienced home owners but who are buying into a new type of home. For example, there is Nick from Bournemouth, who is in the film, who bought into a retirement block of 61 flats and who described having a toxic relationship with management agents.

The other reason why I raised this was that the mother of a friend of mine made that big decision to move later in life and into an Anchor property—and Anchor's motto is "later life is for living". All I can say is, "If only". Having made that big decision to move into a special category of living accommodation and selling up her house, she is faced suddenly with huge service charges and the burden of worry. One resident facing all this said, "We just feel as though they're waiting for us to die, because we've become a nuisance". Somebody else made the point, "The whole point of selling up and moving into this retirement home was because I didn't want the burden of worrying about things—and now we spend all of our time checking on our management committee, because they keep ripping us off". So I think there is something going on.

Retirement properties in Britain are typically made up of individual flats with communal areas and access to emergency health support. They are almost always sold as leaseholds by builders, who then sell the freehold to a management company. Those companies are entitled to charge leaseholders fees for upkeep along with ground rent. They are a novel form of tenure, which I am quite enthusiastic about in some ways, but the system is open to misuse—and, over recent years, there have been a number of scandals, suggesting that we need a close look at this sector. It is taken as a given that retirement homes should be granted exemptions from leasehold reforms in a lot of the discussions, but actually a lot of the problems in this sector are created in exactly the same way as leasehold creates problems.

Newspapers have been full of tales of exploitation of those buying retirement homes. They are sometimes seen as easy targets, perhaps because they are older and suffering bereavement or illness. They certainly see these homes as appropriate for the latter part of their life, and we would be scandalised in any other circumstances if older people were being exploited.

7.30 pm

It is shocking to hear of some of the scandals. Exploitative service charges and ground rents feel that much worse when they are imposed on the elderly. Families have reported that their elderly relatives have been persuaded to use solicitors proposed by a housebuilder, rather than an independent one, to advise them on a purchase. There are stories, for example, of a retirement home bought for £197,000 in 2009 from a FTSE 250 company being sold for £26,000 six years later; by the time the flat owner died, she was paying the management company almost £8,000 per year in service fees. There are residents who need to borrow against their new homes to fund further care only to discover that no bank will assist them because their asset is so depleted in value. There is even the story of a resident who was told that she had to pay £300 to put up a satellite dish, in addition to a £95 annual maintenance fee, even though Sky installs the dishes free of charge. We have disdain for the kind of people who knock on elderly people's doors and rip them off, but this is happening in the housing sector and needs to be looked at.

Such stories are giving the sector a bad name, but it is worth noting that Michael Voges, the chief executive of the Associated Retirement Community Operators, rebutted his own members' criticism of the media for reporting these scandals, saying:

"Unfortunately, these stories are largely true".

The situation was summed up in the *Times* in an editorial in 2019.

"If the measure of a civilised society is the way it treats its vulnerable citizens then our investigation into the experiences of elderly people when they purchase retirement homes from certain developers paints a depressing picture of modern Britain".

The *Times* notes that this is not just a rebuke of bad practice by bad apples and so on. It suggests that the Government need to intervene to regulate. My amendment suggests that we do not leave investigations up to the media, but that we actually commission a detailed analysis and, rather than simply revealing scandals, we look at the systemic problems associated with leasehold and this specific part of the housing sector.

The Government are already involved in one way, because the noble Lord, Lord Best, has done invaluable work in the past drawing attention to the problem of retirement homes sold as shared ownership—specifically, how private sector developers have received billions in taxpayer grants via Homes England towards the cost of building new retirement flats. There have been some egregious abuses in terms of blocking staircasing and so on.

I assume that the Government, like many of us, are broadly enthusiastic about specifically built retirement homes. These retirement homes, on paper at least, are an ideal situation to downsizing, allowing valuable housing stock to be freed up for new generations, and to allow people as they get older to have access to a new community and support, while retaining independence and autonomy. At present, including social housing, the retirement sector is around 300,000 units.

As far as I can tell, everyone wants the sector to expand, because living in retirement housing is potentially an excellent option for many older people. That is why tackling problems should be a priority for us. We know there is a problem, as only 2% of the over 65s live in designated retirement properties in the UK, compared with 12% in the US and in Australasia. This figure was noted in an article in *This is Money* titled "Retirement home scandal that wipes out life savings"—surely a clue as to the barrier to the growth of the sector. Indeed, as ARCO concluded:

"Reputationally, our members recognise that this sector can never grow if we can't offer the customer a product that they can really trust".

A YouGov poll recently revealed that one of the main impediments for the elderly in terms of buying designated retirement housing is a lack of control over ongoing costs, such as uncapped service charges, and a fear of sudden unavoidable capital expenditure

demands—such as our old friend major works, which I mentioned earlier, recouped from leaseholders. Michael Voges from ARCO explained:

> "They want control over these costs, that they are not going to be hit by things like expensive new electronic phones, new roof or whatever. … people do not want to take on that risk … the leasehold system does not provide what older people really want, which is control over ongoing costs".

I think an increasingly important barrier is the fear of causing problems in the future for their families too. Bear in mind that many choose retirement homes precisely because they do not want to be a burden on their offspring. How depressing if that very decision causes problems for their children after their death. One son dealt with his father's flat, which was bought for £163,000 in 2007. He started trying to sell it in 2015 after his dad died, and it took five years to sell. Buyers were put off by the extortionate and rising service charges and it eventually sold for only £30,000. What is more, during those frustrating five years, the son had to pay the climbing service fees of £560 a month, while still paying his own mortgage. He commented bitterly about the irony of his father putting his life savings into a retirement home, only for it to become a huge financial millstone around his son's neck.

I want to note that I do not want to be prescriptive about the conclusion of the review in this amendment. I am happy to see what we come up with, and there are lots of positive ideas flowing from the sector itself. There are solutions to this. The LKP and betterretirementhousing.com have been campaigning for an improved retirement housing sector since 2012. The Associated Retirement Community Operators is also brimming full of innovative solutions. That is what this review should look at, rather than just the problems. I think that we can find a way of solving this. I like the intergenerational idea of students living with older people; I like many of the suggestions. I certainly think that we should look at a particular piece of legislation on this. Whichever way we go, there are lots of ideas.

This review will be a good positive start to identifying both the problems and how to resolve them. The main thing is that older people are being ripped off, and we are not able to develop a potentially lucrative housing sector because of our friend leasehold once more. Let us sort it out, do a review and see if we can come up with something better.

Lord Best (CB): My Lords, I support Amendment 85 in the name of the noble Baroness, Lady Fox. This amendment calls for a government review of the retirement leasehold sector, covering a range of issues of special relevance to elderly and vulnerable leaseholders.

It is possible that some of the questions raised in this amendment will be covered by the forthcoming report from the Older People's Housing Taskforce referenced in the amendment. This report is expected to be published in the summer, but I understand that it will be ready for Ministers to consider in the next few days. This government-initiated report, which fulfilled a promise to the All-Party Parliamentary Group on Housing and Care for Older People, which I co-chair with Peter Aldous MP, may answer some of the questions implicit in the noble Baroness's amendment.

The amendment enables us to put on record the need for special support for leasehold housing designed and managed exclusively for older people. For example, I am hoping to see a recommendation in the task force report to tighten up on consumer protection for older people's shared ownership leasehold schemes. Our APPG has heard horrifying stories of leaseholders, and their heirs and successors, finding themselves trapped into liability for fees and charges that make sales of the property impossible.

It would also be good to hear this evening of any news the Minister can bring us on implementing the recommendations of the Law Commission's 2017 report *Event Fees in Retirement Properties*, aimed at developers which have been less than transparent in informing leaseholders of the exorbitant charges for which they would be liable.

A number of the issues highlighted by the amendment could be addressed by my later amendment on the regulation of property agents. The need for a regulator is of particular relevance to leasehold schemes for older people, who may be especially vulnerable to bad behaviour and incompetence of property agents. For all existing leaseholders, creating a properly regulated managing agent sector would weed out cases of poor conduct and ineptitude. The list of factors within Amendment 85, listing possible harms for older leaseholders, provides a helpful checklist for the issues which should be covered by a new regulator.

Meanwhile, those working in this field see a need to go further than the establishment of a regulator of property agents. ARCO—the Associated Retirement Community Operators organisation—which we heard about earlier, points to the different legislative structures in other countries. A Bill to switch future schemes from leasehold to what might be termed commonhold plus would enable new models of retirement housing to flourish; for example, there is a system of licences to occupy that has worked well in New Zealand, Australia and several US states. Indeed, an arrangement of this kind has worked extremely well for the retirement village in York created 25 years ago by the Joseph Rowntree Foundation, for which I had some responsibility.

After the Retirement Villages Act in New Zealand, which heralded a new framework for older people's housing and care, production rose threefold, achieving all the well-known benefits from encouraging rightsizing: bringing previously underoccupied family homes into use for the next generation and providing an environment for older people that is sociable, affordable, safe and secure. Similar legislation in this country could achieve comparable results.

Sadly, at present, progress towards a major expansion of older people's housing, preferably with care services on tap, is moving very slowly in the UK. Potential demand is estimated by Professor Les Mayhew at up to 50,000 homes per annum; but actual output is around 7,000 homes this year. The Older People's Housing Taskforce should raise the profile of the relevant issues, and the review recommended in the amendment of the noble Baroness, Lady Fox, would take the matter forward. It would be great to hear from the Minister that, in the context of this Bill, elderly leaseholders can expect positive and specific changes for the better in the months ahead.

Baroness Thornhill (LD): In the interests of time, I shall be very brief. I agree with much that has been said by the noble Baroness, Lady Fox, and, of course, by the noble Lord, Lord Best, who has, as always, put his finger right on the key issues with his considerable expertise. We look forward to the task force report he mentioned. Successive Governments have, quite rightly, promoted downsizing: the freeing up of a house for families who desperately need a larger family property. However, we have not done anything like enough to investigate the state of retirement housing in this country and certainly not yet got policies right.

Many of the problems in the retirement housing sector have already been mentioned: high service charges and management fees actually hit elderly residents hardest. They are also suffering withdrawal or reduction of the in-house resident manager, who is frequently now off-site. Their property is more difficult to sell because prospective buyers are obviously a smaller target group, but mainly because of the so-called exit fees or event fees charged when the house is sold. So people can find themselves in a position where a retiree's heirs are locked in to paying for the flat years after their parent has died, because they simply cannot sell it. Ultimately, all this is related to the iniquities of leasehold tenure, which should and must be abolished.

Baroness Taylor of Stevenage (Lab): My Lords, I agree with the noble Baroness, Lady Thornhill, that this will not finally be resolved until we get rid of this leasehold regime. Some of the most heart-rending cases I dealt with as a councillor were from older leaseholders, often on fixed incomes and subject to the most extraordinary hikes in service charges, ground rents and all sorts of other charges that were imposed on them. I have cited cases in previous debates in your Lordships' House. The experience of the 90 year-old cited by my noble friend Lord Khan earlier today was from Hitchin in my local area.

7.45 pm

Surely these practices, difficult enough to deal with at any age, when imposed on the elderly, who should be treated with the greatest dignity and respect, are really shocking. The fact that this financial stranglehold is placed on older people by the very specialist providers which market themselves as contributing to the security and safety of older residents is totally unacceptable. I hope the extent of this can be explored in detail, either through a commission such as the noble Baroness, Lady Fox, is proposing, or by an alternative route. It is way past time that this legalised preying on older and vulnerable residents was brought to an end once and for all, and I hope that the Older People's Housing Taskforce report will be taken with the utmost seriousness. Retirement housing needs to benefit from our attention and from the sharing of international best practice referred to by the noble Lord, Lord Best.

Baroness Scott of Bybrook (Con): My Lords, I thank the noble Baroness, Lady Fox of Buckley, for her Amendment 85, which seeks to commit a Minister of the Crown to publishing a report assessing the state of the UK's retirement leasehold sector within one year of the passing of this Act.

The Government recognise that leaseholders make up a significant proportion of the retirement sector, and are committed to ensuring that older people have access to the right homes in the right places to suit their needs. That is why the independent Older People's Housing Taskforce was established in May 2023. The task force has been asked to look at the current supply of older people's housing, to examine enablers to increase supply and to improve housing options for older people later in life. The task force has been commissioned to run for up to 12 months, and over this period has undertaken extensive engagement with stakeholders and gathered a great deal of evidence to inform its thinking and recommendations. The task force, as we have heard, will make final recommendations to Ministers this summer. I say to noble Lords who say we already have the review that I am not aware of that.

In addition, the Government have previously agreed to implement the majority of the recommendations in the Law Commission's leasehold retirement event fees report. This includes approving a code of practice as soon as parliamentary time allows, to make event fees fairer and more transparent. The code will set out that these fees should not be charged unexpectedly, and developers and estate agents should make all such fees clear to people before they buy, so that prospective buyers can make an informed decision before forming a financial or emotional attachment to a property.

More widely, the Bill already introduces many elements that will help leaseholders, including those who live in retirement properties. As we move forward, the Government will continue to be mindful of the needs of leaseholders in retirement properties. The Government's aim is to make sure that older people can live in the homes that suit their needs, help them live healthier lives for longer and, crucially, preserve their independence and their connections to the communities and places they hold dear. To reiterate, we have committed to making event fees fairer and more transparent and will bring forward legislation as soon as parliamentary time allows. With these reassurances in mind, I hope the noble Baroness, Lady Fox, will agree with me that this proposed new clause is no longer necessary, and I ask that the amendment be withdrawn.

Baroness Fox of Buckley (Non-Afl): Briefly, I thank those who have spoken, as it is the last group of the day. The noble Baroness, Lady Thornhill, has made some excellent contributions throughout, but really summed up why I tabled this amendment in the first place. The noble Baroness, Lady Taylor of Stevenage, has obviously been reflecting on this issue too, as has the Minister. Particular thanks go to the noble Lord, Lord Best, who made the speech I wish I had made and obviously understands the issue in far greater depth than I do: I appreciate it. I hope that, none the less, the amendment has been useful in raising the profile of the issue.

I want to clarify one other thing. There is always a danger when we talk about the elderly as vulnerable people who might be preyed upon. We here are in a situation in which we might notice that people who are older can be the most ferocious and active, and not remotely vulnerable. In the film from the Free Leaseholders I was talking about, it was more that the elderly people

interviewed said they had made a decision to be less active in fighting for their rights and maybe relax a bit and go into a lovely flat. They then found themselves in a situation where they had to become civil liberties fighters all over again, or lawyers or whatever, and that took up all their time and drained them. I do not want to want in any way to sound patronising. I want the sector to grow, but I do not think it will with leasehold. I beg leave to withdraw my amendment.

Amendment 85 withdrawn.

Clauses 70 and 71 agreed.

Clause 72: Limitation of estate management charges: reasonableness

Amendment 86 and 87 not moved.

Clause 72 agreed.

Clauses 73 to 75 agreed.

Amendments 87A and 87B not moved.

Clause 76 agreed.

Clause 77: Annual reports

Amendments 88 and 89

Moved by ***Baroness Scott of Bybrook***

88: Clause 77, page 97, line 6, leave out "provides" and insert "carries out"

Member's explanatory statement

This amendment would align the terminology used with terminology used elsewhere in Part 5.

89: Clause 77, page 97, line 8, leave out "provided" and insert "carried out"

Member's explanatory statement

This amendment would align the terminology used with terminology used elsewhere in Part 5.

Amendments 88 and 89 agreed.

Clause 77, as amended, agreed.

Clauses 78 to 80 agreed.

Clause 81: Meaning of "administration charge"

Amendment 90

Moved by ***Baroness Scott of Bybrook***

90: Clause 81, page 100, line 25, at end insert—

"(1A) But "administration charge" does not include an amount payable by a tenant of a dwelling in a case where all of the following conditions are met—

(a) the tenant's lease specifies that only a person who has attained a minimum age may occupy the dwelling;

(b) the amount is payable under a term of the tenant's lease or is otherwise payable in connection with the tenant's lease;

(c) the amount is payable if—

(i) the tenant's lease is granted, assigned or terminated,

(ii) a lease of the dwelling which is inferior to the tenant's lease is granted, assigned or terminated, or

(iii) there is a change in the person or persons occupying the dwelling;

(d) the amount is fixed or is calculated by a method determinable in advance;

(e) any other conditions specified in regulations made by the appropriate authority."

Member's explanatory statement

This amendment would provide for "administration charge" in clause 81 to exclude "event fees" (which will generally be "fixed" service charges subject to the provisions regulating those charges inserted by Part 4).

Amendment 90 agreed.

Clause 81, as amended, agreed.

Clauses 82 to 95 agreed.

Amendment 91 not moved.

House resumed.

Child Poverty

Question for Short Debate

7.53 pm

Asked by ***Lord Bird***

To ask His Majesty's Government what plans they have to address the root causes of child poverty across the United Kingdom.

Lord Evans of Rainow (Con): My Lords, as dinner break business is now the last business of the day, the allocation of time is now 90 minutes. Therefore, the Back-Bench speaking time has increased from four minutes to eight minutes.

Lord Bird (CB): I welcome the chance to sort out the problems of poverty in an hour and a half. I welcome the idea that, in such a short amount of time, we can sort out the problem that a third of all our children are in or around poverty—that is 4 million children in the United Kingdom.

I alert people to my belief that, in the seven or eight years I have been in the House of Lords, I have never come to a debate or discussion where the root causes of things are dealt with. I believe strongly that one of the main problems we have is that Governments, Oppositions and people who have worked for many years in and around poverty are always dealing with the effects of poverty; they do not deal with the root causes of poverty. So when I proposed this small debate, I was actually trying to be revolutionary. I was trying to move the House of Lords—and, I hope, the House of Commons—towards the idea that instead of continuously dealing with the effects of poverty, we move the argument towards the root causes of poverty.

Throughout the world—it is not just the United Kingdom—in the region of about 80% of all money spent on social intervention is spent on dealing with the emergency and problems of coping with poverty. There is very little money spent on prevention or cure—the two opposites. Since the time I came into the House, I have been like a scratched record; I have gone on, again and again, asking when we are going to spend our time on eradicating poverty rather than ameliorating it and trying to accommodate it. That has been my real argument.

[LORD BIRD]

I think that His Majesty's Government and His Majesty's Opposition, and the previous Governments and Oppositions, have always dealt with the terrible reality poverty throws up. Tonight, I want to be a revolutionary and ask why we do not all look at something quite real. Why is it that, for all our efforts over decades—my decades go back to the end of the Second World War—we have always tried to deal with the obnoxiousness that is thrown up by poverty but we have never done a scientific analysis of the root causes of poverty? We have never had a Government or an Opposition, or an argument within our universities and charities, or among those who get involved in the struggles of the poorest among us, ask when we are going to do something about eradicating poverty.

I am sorry if I sound a bit Joan of Arc. I came into the House of Lords with one strict instruction from the people who encouraged me to come here, which was to help to dismantle and get rid of poverty, not to shift the deckchairs on the Atlantic. My instruction was not to make the poor more comfortable but to actually get rid of the concept of poor people.

I come from poverty, and maybe that is what drives me on. I come from people who came from poverty, who came from poverty and who came from poverty. The interesting thing is that when I grew up, I realised that they were surrounded by poverty; they could not get away from it. The mind-forged manacles that go with poverty meant that they perpetuated it. I have done my best within the lives of my own children to get rid of poverty in their futures, but the larger part of my family is still perpetuating poverty. Why? Because the root causes of poverty were never dealt with in the course of their lives.

To me, the big problem with poverty is the inheritance of poverty. In the United Kingdom, about 4 million children—a third of our children—are in poverty. It is interesting that a third of our children are in and around the problems of poverty, and in spite of all our efforts they remain so. What are we, the Church, the charities or the political parties going to do about it? Will they wake up one day and say, "Actually, we're getting no nearer"? We know that in the last year, 100,000 more children have arrived in poverty.

We need an enormous mind shift, but I do not see it happening. I do not see anybody building the intellectual appliances or the university courses to find out why we are always trying to address the problems of poverty as if a bit more to the poor will actually change anything.

I came into the House of Lords and was astonished at the number of people who wanted me to get involved in agitating to give poor people more. I was determined, however much it would damage my reputation, not to do that. If the only thing you inherit is poverty, how do we break that situation so that you do not inherit it?

Can I just check: if we have more time, does this mean I can speak for another five minutes?

Baroness Bottomley of Nettlestone (Con): Speak for ever, as long as you let me speak for ever too.

Lord Bird (CB): God bless you, because I was running out of time.

Lord Evans of Rainow (Con): My Lords, I announced at the beginning of the debate that rather than an hour, we have an hour and a half. That extends Back-Bench speeches, but the noble Lord may have a few more moments above the 10 minutes for which he has spoken now. He can carry on.

Lord Bird (CB): I love democracy.

I was born in the London Irish slums of Notting Hill, but we moved to Fulham. On my road, I fell into being a friend of a guy whose family, like mine, came from Ireland. His father had accumulated a number of jobs. He was a very clever guy, even though, like my family, he was ill educated. He became very wealthy and bought his house, so he had a house in Fulham Broadway at a time when my family were living around the corner in social housing—what was called council housing. He became very prosperous and employed 20, 30, then 50 Irish people to make money for him, so that he could buy a house, then a bigger one. There were two kinds of poverty. That guy did not inherit poverty, but my family inherited it and made damn sure that we and other members of my family inherited poverty and the mind-forged manacles that go with it.

What do we actually do to break that situation so that people in poverty are given something—a "je ne sais quoi", a little thing—that will mean they do not imitate the inherited poverty of their own family? To me, that is the big issue: Patrick Crowell and his mum and dad built a business, made money and became middle class and prosperous, but my family remained in poverty. Their children and their children's children are still in poverty and stuck in social housing, having all sorts of problems.

I want to know how the House of Lords and the House of Commons, with all their great brains, can help us dismantle the mind-forged manacles that come with poverty and its inheritance. That is my passion. Over the next few months, as we move towards a general election, I will be campaigning through my work in the *Big Issue*, and in Parliament in general, for a reinvention of social housing.

Do noble Lords know that there are so many people in this world who are defenders of social housing? These people absolutely love it and think it is absolutely brilliant. But do noble Lords know that the children of people who live in social housing rarely finish school, get their qualifications, get skilled and move out of poverty? Do noble Lords know that a fraction, an infinitesimal number of people in social housing, ever get to university or college so that they can then start living a fuller life away from poverty? Do noble Lords know that in housing associations, on average 70% of people are unemployed? I do not want to be interpreted as rude or insensitive, but if you really wanted to condemn somebody to poverty for the next 100 years, you would give them social housing.

Baroness Bottomley of Nettlestone (Con): You have had 15 minutes.

Lord Bird (CB): Forgive me—I am now going to stop—but I wanted to move on to say that this is why I am campaigning to change the way we deal with poverty. We have a situation in which eight government

departments are dealing with poverty, but we do not have a convergence to dismantle it. Some 40% of government expenditure is spent on poverty; we really need to change it. I am calling for the creation of a ministry of poverty prevention. I thank noble Lords very much for their time.

8.09 pm

The Earl of Effingham (Con): My Lords, I thank the noble Lord, Lord Bird, for securing this important debate.

As we have heard, by the Government's own estimate there are 4.3 million children—or to put it another way, 30% of all children in the UK—living in relative low-income housing, after housing costs. That is clearly a most alarming statistic. I truly believe that by addressing child and parental ill health, in addition to child and parental qualifications, we have the ability to solve long-term worklessness and low earnings.

The key to solving child poverty is to get people into work, and the data backs this up. Children living in workless households are more than six times more likely to be in absolute poverty, after housing costs, than those in households in which adults work.

Step one would be to empower children and parents to make the right food choices, which is the building block to eradicating child poverty. Many of your Lordships will be familiar with the phrases "gut instinct" and "you are what you eat". What we put into our bodies is what drives us. If we put unhealthy food that is high in calories and saturated fat into our system, it is highly likely that we will be overweight, feel ill and lack motivation, positivity and the will to succeed. We have to find a way to educate both children and their parents on healthy eating. Fortunately, there are charities such as Chefs in Schools, whose mission is to help

"schools serve up generation-powering, mind-opening, society-changing food and food education that fuels the future—all within school budgets".

We can go much further. Feeling good is roughly 70% diet and 30% exercise. We have to encourage both parents and children to take exercise. Physical exercise and sport make a hugely positive contribution to society, to the extent that for every £1 spent on sport and physical activity, around £4 is generated in return across health and well-being, strengthening communities and the economy. "PE With Joe"—Joe Wicks—transmitted during the pandemic, proved that you do not need to go to the local sports centre to stay fit and healthy. It can be done in your flat or in the local park, and it costs no more than a pair of trainers and shorts, and a t-shirt. It is essential to get the message out about the importance of physical exercise.

To drill down on the point made by the noble Lord, Lord Bird, about inherited poverty, my third area of focus is that we can eradicate child poverty, particularly generational poverty, through financial education. Assuming that families can find success with food education and physical education, they will be back in work, feeling good and able to save even just small amounts of money. Financial education is now crucial, because it is possible to grow those small amounts into life-changing sums. Using tax-free allowances, it is feasible to turn £10 per week into £160,000, using a medium rate of return over a 50-year timeframe. That £160,000 could be enough to take the next generation of a family out of poverty and into home ownership, mortgage free. Saving £20 per week at a slightly higher rate of return can produce £645,000.

My Lords, four minutes was a narrow window; I could speak in much more detail, but please let me finish by asking the Minister what the Government will do to address food education, physical education and financial education for both children and parents currently living in poverty.

8.14 pm

Baroness Lister of Burtersett (Lab): My Lords, I too thank the noble Lord, Lord Bird, for securing this debate.

While individual circumstances and actions may represent proximate contributary causes, the root causes of child poverty are systemic and as such are amenable to government action. Unfortunately, for the most part, over the past decade or so, government actions, particularly with regard to social security, have served not to prevent or alleviate child poverty but to worsen and even deepen it.

No doubt the Minister will refer to this month's benefits uprating to defend his Government's record; we hear about it constantly from Ministers. While it is welcome that, this year, the Government are doing the right thing, it has to be understood in the context of the significant cut in the real value of working-age and children's benefits since 2010. The recent Work and Pensions Committee report on benefit levels referred to the wide range of evidence received which suggests they are "too low", and called for the development of a framework of principles, following consultation with stakeholders—and here I would include social security recipients themselves—to inform proper consideration of the adequacy of benefits.

The impact of overall cuts in real value has been aggravated by the imposition of what the Resolution Foundation described as the "catastrophic caps" of the two-child limit and benefit cap, which have been identified as key drivers of child poverty today. As such, any child poverty strategy will be strangled at birth so long as they continue.

While I welcome the six-month reprieve for the household support fund, could we not use that time to design a longer-term statutory programme that combined the fund with the existing discretionary local welfare assistance scheme—which, at the last count, 37 local authorities no longer run—so as to ensure a proper safety net at local authority level?

In the last poverty debate, led so successfully by the noble Lord, Lord Bird, the Minister reminded us that the Government's approach is based on the importance of the role of paid work in lifting people out of poverty, which was echoed today by the noble Earl, Lord Effingham. While there is general agreement that access to paid work is important, it has to be good work and have proper regard to caring responsibilities, and it should not be imposed through the use of punitive mechanisms. Unfortunately, none of those conditions applies at present.

[Baroness Lister of Burtersett]

Moreover, when two-thirds of children in poverty are in families with at least one parent in paid work, it can only be a partial solution. In response to a recent Oral Question, the Minister responded to my call for a comprehensive cross-government child poverty strategy with the rather tired argument that it could drive action that simply moves the incomes of those "just in poverty" across the poverty line,

"while doing nothing to help those on the very lowest incomes or to improve children's future prospects".—[*Official Report*, 26/3/24; col. 576.]

Yet incomes are important and have been shown to make a real difference to children's life chances. Depth of poverty indicators could, and indeed should, be included in any future targets, but the point of a comprehensive cross-government strategy—local as well as central— is that it would address the many facets of poverty that blight both childhood and children's life chances. It would include all children, including those of asylum seekers, refugees and migrants, whose poverty is the focus of a joint report to be published tomorrow by the APPG on Poverty and the APPG on Migration.

In conclusion, last week we lost a valiant crusader against child poverty, Lord Field of Birkenhead. It is shameful that the situation is worse today than it was when he and I worked at the Child Poverty Action Group in the 1970s.

8.19 pm

Baroness Janke (LD): My Lords, the share of children living in absolute poverty has risen by its highest rate in 30 years. DWP figures show that that increase was the largest since records began in 1994-95. As the Library briefing tells us, UN findings show that the UK is an outlier compared to other countries, but it is clear from those reports that, with political will, child poverty can be significantly reduced. For example, Poland, Slovenia, Latvia and Lithuania have reduced poverty by more than 30%. In contrast, five countries—France, Iceland, Norway, Switzerland and the United Kingdom—saw increases in poverty of at least 10%; for the United Kingdom, the increase was actually 20%. Perhaps we need to look more closely at what others do as part of our strategy for eradicating poverty.

In the UK, we see disadvantaged groups becoming even more disadvantaged and deprived. Some 40% of children in Asian and British Asian families were in poverty as well as 51% of children in Black/African/Caribbean and Black British families, and 24% of children in white families. Some 44% of children in lone-parent families were in poverty—they are doubly disadvantaged, having only one parent—and 34% of children living in families where someone has a disability were in poverty.

The noble Lord, Lord Bird, said that he knows what the experience of poverty is, so he wants to look more at the causes. As far as I am concerned, the urgency of the situation needs to be appreciated, including how difficult it is for so many. As a former teacher, I have seen the situation for parents, for whom anxiety about how to feed their families, choices about paying for heating or food, and depending on free school meals and food banks to feed their families all contribute to intense stress. Yet 69% of children in poverty are in working families. This is not just about unemployment and what we hear about universal credit being about making people work; those in work are also suffering intense poverty.

Benefit rates take no account of the cost of a healthy diet for children who are growing and developing. A poor-quality diet based on cheapness often results in obesity, poor health and future lifelong health problems. The Government guide to a healthy diet would cost a family on benefit around 70% of its non-housing income.

Children may be directly disadvantaged in their development through a lack of equipment, such as IT to do schoolwork and homework, and by not attending educational visits and trips. Many experience a lack of confidence through social isolation, which can continue through life, affecting levels of ambition. Not surprisingly, areas of high poverty are also the areas with lowest attainment and educational outcomes.

Hunger is debilitating: insufficient food on a continual basis affects mental and physical health, as well as the capacity to learn. The economic cost of poverty is also high, as poor children become poor adults, needing more support from public services. The Child Poverty Action Group puts the cost of that at £39 billion a year.

Many of the root causes of poverty, as the noble Baroness, Lady Lister, said, lie with the benefits system, which, as she said, actually worsens the situation for many families. The notorious two-child limit has been the subject of much research, most recently carried out by Nesta. It shows that, by 2035, 750,000 families will be affected by this policy. The two-child limit has hugely increased pressure on and mental health problems for parents and has a detrimental effect on children's development. Ending the two-child limit would take 500,000 children out of poverty.

A long-term strategy to tackle child poverty must address this as well as the inadequately financed benefit system. Public spending on families is only 60% of what it was in 2010. The strategy must also address low-paid work with zero-hours contracts, no sick pay and the lack of affordable childcare. Parents with children as young as three, even lone parents, are required to look for work. I support the aspirations of the noble Lord, Lord Bird, and thank him for his campaigning work on poverty and for securing today's debate. Sadly, there are lots of questions and although his passion is very clear, we are still seeking the solutions. I do not think that any of us has a magic cure, but we would all be willing to join him in his campaign.

8.25 pm

Lord Sikka (Lab): My Lords, I thank the noble Lord, Lord Bird, for facilitating this much-needed debate. In a country boasting a record number of billionaires and where the top 1% has more wealth than 70% of the population combined, condemning 4.3 million children to poverty is really a political choice. There is no economic necessity for it whatever. Governments have bailed out banks and energy companies and handed billions in subsidies to rail, oil, gas, auto, steel and internet companies. They can eradicate child

poverty too, if there is appropriate political will. Rescuing people from poverty will also stimulate the economy because poor people tend to spend more in the local economy, which has a considerable multiplier effect.

This Government have accelerated poverty by cutting real wages. The average real wage is now lower than in 2008. Austerity, unchecked profiteering, and the two-child benefit cap, accompanied by regressive tax policies, have deepened poverty. The poorest pay a higher proportion of their income in taxes than the richest. The richest fifth of households pay 31% of gross household income in direct taxes, compared with 14% by the poorest fifth. The richest fifth pay 9% of their disposable income in indirect taxes, compared with 28% by the poorest fifth. Can the Minister explain why the Government have not reduced indirect taxes, which would help the poorest households?

The Government actually have numerous policy options. They can reform corporate governance. For example, evidence shows that having worker-elected directors on the boards of large companies helps to secure equitable distribution of income and to lift families and children out of poverty. Since 2010, the Government have handed £695 billion of quantitative easing to capital market speculators. Will the Minister also support a call for QE to alleviate poverty? Why not?

The Government can also remove the two-child benefit cap and inflation-proof benefits by eliminating anomalies and the tax perks of the rich. For example, they can cap tax relief on charitable donations for donors at 20%. At the moment, the rich get tax relief at 40% and 45%. By capping this tax relief, the Government could generate £740 million a year extra, which could easily fund free school meals for children. By taxing capital gains at the same rates as wages, another £12 billion a year of extra revenue could be raised. Similarly, by taxing dividends at the same rate as wages, another £4 billion to £5 billion a year could be raised in revenue. By capping tax relief on pension contributions to 20% for all, the Government could generate an additional £14.5 billion a year of revenues. These are just some examples of how the Government could generate resources to alleviate child poverty, and, of course, I could offer up further options, if the Minister so wishes, either in this House or even privately. I hope the Minister will consider these things.

Finally, will the Minister acknowledge that child poverty is a political choice by the Government and not an economic necessity?

8.29 pm

The Lord Bishop of Lincoln: My Lords, I too am grateful to the noble Lord, Lord Bird, for securing this debate and for his passion and his challenge. Like the noble Lord, I come from a poor London Irish family, but from south of the river, if that is allowed. We have heard from the noble Baroness, Lady Lister, about the causes of child poverty and that they are systemic, and about the potential for changing them—not by exceptionalism, as may have applied in our cases.

As the Bishop of Lincoln, I am very conscious that in greater Lincolnshire I see vibrant resilient communities but, in the midst of a commendable spirit, there are considerable challenges. The effects of deep poverty feel widespread and tangible in a way that I have not seen since I began as a priest in the mid-1980s. Damp, low-quality accommodation, particularly in the private rented sector, has an impact felt particularly by children at crucial stages of their development. In response to this, the Archbishops' Commission on Housing, Church and Community set out five values for good housing: it should be safe, sociable, sustainable, satisfying and secure. Failure to deliver this only serves to entrench child poverty.

I worry particularly about the impact of intergenerational poverty. In many of our communities, the lack of employment and social opportunities is apparent. The industries that used to sustain towns such as Grimsby have changed. We have a fishing plant but no longer a resident fishing fleet. That affects employment prospects and a sense of pride in place. Children are profoundly affected by that context as they grow up.

The Institute for Fiscal Studies recently published a report to mark the 25th anniversary of the introduction of Sure Start centres, highlighting the extraordinary difference that these made to the educational outcomes of children who engaged with them or even those who lived near them. This second aspect explains why children living in poverty in rural areas in other parts of Lincolnshire and elsewhere did not benefit as much as those in urban areas. It is simply because those living in the countryside did not have the same access.

Partly this is a question of infrastructure—the transport links to ensure that services can be accessed. However, I wonder whether it is also a question of priorities of government and others. The recent *Hidden Hardship* report noted that disadvantaged young people in remote rural areas are 50% less likely to gain two or more A-levels or enter university than those living in major cities. A similarly ambitious approach to child poverty 25 years on from Sure Start must always keep in mind the rural context. What assessment is being made of the particular needs of rural communities as the Government assess the root causes of child poverty?

The noble Lord, Lord Bird, issued a challenge to the Church in relation to doing away with poverty, particularly child poverty. There is a crisis of capacity in the voluntary sector. Churches will continue to run toddler groups and open warm spaces where they are needed. Yet churches do not have an endless supply of volunteers. The real challenge for all of us is to think about what facilities we can make not just for children's physical and food education, not only for their access to services and schools, but to think about what access they have to relationship-building and hope. A generation of hope is one of the most important things in this—giving children the possibility of confidence. One of the hidden areas of poverty in terms of relationships is the number of children who are child carers, looking after their single and sick parent. This is not being acknowledged much at all publicly. Often, one child is responsible for all their younger siblings.

One of the most impressive places which I visited recently, having done so several times, is the St John St Stephen & Shalom youth centre in Grimsby, in East Marsh, which has been celebrating its 50th anniversary.

[The Lord Bishop of Lincoln]
I never witnessed this before, but there is a plaque on the wall outside commemorating those former members of the centre who have been murdered or have died through drug-related incidents. This is the place where, over 50 years, 5,000-plus children and young people have been offered hope and the chance to build successful relationships with safe adults outside of their immediate family. I applaud this and hope that examples such as St John St Stephen & Shalom youth centre give us an incentive and hope not to give up on these children but to work with them and for them, in that way to transform our whole society.

8.34 pm

Baroness Bennett of Manor Castle (GP): My Lords, I thank the noble Lord, Lord Bird, for securing this debate and for introducing it in his typically powerful, inimitable style. However, I am afraid that I have to disagree with him that poverty is a characteristic of individuals, families or communities. It is a condition imposed on individuals, communities, families, cities and countries by an economic system that directs large amounts of resources to the few and denies them to the many. People are robbed of the shared resources that have been created by past generations and maintained by the labour of the current generation, many of whom are now living in poverty.

If we think back to the Covid pandemic, there was a focus on essential workers such as delivery drivers, supermarket shelf stackers, and care workers, and many of their children are those who are living in poverty. I also have to disagree with the noble Lord about social housing. Decent housing is a human right. It should be an essential service provided by our society. We have almost forgotten that back in 1979 almost half the British population lived in social housing. Back then, the rate of poverty was 13.7%; in 2023, the figure was 22%. The destruction of social housing is a significant factor in that.

I want to address the term "child poverty". We have become used to "poverty" coming with a qualifier. We often talk about food poverty, energy poverty, period poverty and hygiene poverty. There is a risk with those qualifiers that we lose sight of the essential situation. We have a society that is riven with poverty, with lives right across the age groups blighted by the inability to access the basics of a decent life.

The *State of Ageing* report released last November showed that 20% of retired people do not have enough income to meet their basic needs and 25% of people aged 60 to 64 are living in poverty. That pretty well matches the figures that have already been cited for children. One in five—2.6 million in total—are living in absolute poverty before housing costs, with one in four—3.6 million—in poverty after housing costs.

Many in this House if asked to define a successful economy would use that hoary old chestnut, gross domestic product, and point to the growth from 2010 when the current governing party came to power. In 2010, the GDP was £1.87 trillion; in 2023, it was £2.27 trillion. Apparently, that is a sign of progress and success. Yet, I and the Green Party say that the job of our economy and our society is to meet everybody's basic needs, while caring for the environment on which all our lives and "the economy" depend. If we use that as a judgment, what a failure that growth has been.

Why is that the case? The noble Lord, Lord Bird, challenged us with the "why". I am going to use the "D" word—distribution. We have a society that profoundly misdistributes our resources, not to mention destroys our environment. Growth over decades has benefited the few, while the lives of the many have gone backwards. The root cause of child poverty—and poverty—is our failure to distribute fairly the goods and services of which our society has plenty. Our current economic system and our benefits system have failed. We have failed to maintain and support the basic physical and social infrastructure of our communities.

There are, however, many reasons why child poverty is a particular tragedy. Anyone now under the age of 18—a child—has had no part in creating the system they have to live in. Anyone under the age of 22 has had no say in our Westminster politics, yet they live every day with the consequences. They suffer not just from poverty and a lack of access to resources but from a lack of access to power.

That poverty is defining the shape of those children's bodies and of their lives. As the head of an education trust in east Yorkshire, Jonny Uttley of the Education Alliance, reported, what does child poverty mean? It means regularly going to school hungry. It means not having the money for lunch. It means not being able to wash your sports kit. It means being unable to sleep at night because of cold, and how do you study the next day if you have not been able to sleep?

It is important to draw on the work of the Centre for Cities, acknowledging how this maldistribution is regional as well as by household. It found that the cities where the child poverty figures are the worst are overwhelmingly concentrated in the north of England and the Midlands. A child in Burnley is four times as likely to be in absolute poverty as a child in Cambridge, and a child in Manchester is twice as likely to be in absolute poverty as a child in London—yet we have had lots of growth.

We need a plan to tackle child poverty. We need first to acknowledge a failure of our economy, the failure of our society and, at its base, the failure of our politics, not just over the last 14 years but over decades. Power and resources are concentrated here in Westminster; Westminster has failed. The politics and the ideology since the Second World War have failed. We need a new kind of politics and a new political system.

Given I have a minute more, I will focus on one issue that a number of noble Lords have already raised, which is the two-child benefit cap. Six out of 10 families affected by that have at least one member in work. Almost half are single parents. If we continue with the current plan, half of families with three or more children will be in poverty by 2028-29. That is up from a third in 2013-14, when the policy was introduced. I give as a case study Frances, who lives in London. Her third child was a baby when her relationship broke down. She now has children aged 11, six and three. She had to leave her job because she could not afford childcare. She was a business administrator. She was not in any way a classic person in poverty, yet the

two-child benefit limit is putting her in poverty. The Minister has already been challenged on this and I am afraid I am going to challenge the Labour Front Bench: surely Labour will have to abolish the two-child benefit cap in government.

8.42 pm

Baroness Bottomley of Nettlestone (Con): My Lords, I am delighted to be able to speak in the gap, because, like the noble Baronesses, Lady Lister and Lady Meacher, and many others, I worked for Frank Field for four years. I was paid a poverty wage—£12 a week. I was not born in poverty, but I spent 10 years of my life immersing myself in the issues of poverty at the CPAG, encouraging families below the poverty level to keep expenditure diaries. That revealed that if you do not know where the next penny is coming from then you cannot possibly spend economically. Of course, you can budget carefully if you have a stable income, but if you have no idea when you are going to be in work or out of work, in your house, with your partner or without your partner, and maybe you have not had the best education, it is really difficult.

Interestingly, I will remember for ever a West Indian woman working below the poverty level who budgeted and fed her children nutritiously, but she had been brought up understanding about poverty in the West Indies. She came from a culture of poverty that could cope, unlike so many others. It is an interesting point about how you can give people the equipment to manage and to cope.

This was a time of working poor. Keith Joseph, later Lord Joseph, who basically made me a Tory, introduced family income support. It was a time when the trade unions were not at all keen on family benefit. I went to the T&G with the noble Baroness, Lady Meacher, to try to persuade that union to support child benefit going to the woman—a stable income. It was very reluctant because it liked supporting income for the man, and all the trade unions then were really male dominated. The world has changed.

There were three people in my life who really cared about poverty. Lord Keith Joseph was the first to talk about the cycle of deprivation. I was at the Pre-school Playgroups Association AGM in Church House when he made his speech about the cycle of deprivation—leaving school early, having no qualifications, having your first child early, and a vicious cycle of poverty. He was criticised for it, but I think few would doubt it now.

The next person who cared about poverty was the late Lord Frank Field. He did not talk only about benefits. My noble friend—sorry, the noble Baroness; she is my friend, but I should not refer to her like that—knows all there is to know about benefits; she has a forensic knowledge. But Lord Field had a wider view. He used to talk about being a five-star parent. He felt strongly about parenting and about families.

The third person is the noble Lord, Lord Bird. Now, I do not agree with a word he says, but I absolutely agree with his passion. To say there are no university departments that take poverty seriously is daft—go to Hull, to LSE, to Essex. To say that the Resolution Foundation, the Child Poverty Action Group and the Joseph Rowntree Foundation do not know all about poverty—they do, and they are very knowledgeable. But what the noble Lord is so right about is that he is passionate, and he is not going to give up.

Now, remember the maiden speech of the noble Lord, Lord Bird. He talked about his probation officer, who basically told him to get a grip and get a job. He talked about Baroness Wootton, a great heroine of mine and juvenile court chairman. My concern is that we can be very patronising and dismissive about poverty, but why do some people get through? Last week, I was with Alan Johnson, who certainly ought to be Lord Johnson; why has the Labour Party not put Alan Johnson in the House of Lords? Please do so, urgently. He is now the Chancellor of the University of Hull, where I was for 17 years. His upbringing was appalling: he was brought up by his mother, who died very young, and then by his sister. How has he become such a success? Some of this relates to the individual, and the ability of people to get through.

I will ask the Minister two questions, because I know I have gone on for too long. A lot of this is about parental conflict, and he leads the department's Reducing Parental Conflict programme. What can the Minister tell us about reducing parental conflict? I want him to tell us about child maintenance developments, and the childcare programme.

I congratulate the noble Lord, Lord Bird, and when he grows up, I hope he will become as good as Lord Field.

8.47 pm

Lord Shipley (LD): My Lords, we should all congratulate the noble Lord, Lord Bird, on enabling us to have this debate, because it is timely, in view of the fact that within a few months, we will have had a general election and there will be a new Government. In my view, that Government must see that reducing child poverty should be a very high priority. As the noble Baroness, Lady Lister of Burtersett, said, the root causes of child poverty are systemic. She is right.

The debate has been extremely interesting, in that it has thrown out a range of ideas that we might look at. The noble Earl, Lord Effingham, for example, said a number of things about school, diet and finance that could be explored further.

The noble Baroness, Lady Bottomley of Nettlestone, talked about Lord Joseph, who knew that we had to do something about the cycle of deprivation. The problem, as the noble Lord, Lord Bird, said, is that we still have that, in that we have the inheritance of poverty. We have the inheritance of wealth on the one hand, but the inheritance of poverty on the other. How do we break out of that? Given that 10% of our young people aged 16 to 24 are not in education, employment or training, you have to intervene at an individual level to assist those who want to be in work, education or training, but who cannot be, for a variety of reasons. I would like to think that one might have individual work coaches for those not participating in the opportunities available to them.

I do not agree with the noble Lord, Lord Bird, about social housing. I understand the point he is making, but children need a secure, decent home, and for many that will only be—

Lord Bird (CB): I agree with the noble Lord. Children do need a secure home, but the real problem is that all the conditions that lead you to need social housing mean that you never have a full life. I say to anybody in this House: try living in social housing, and then try to get to university or into a skilled job. That very rarely happens; that is the only problem. For me, the problem is not that social housing is not one of the most beautiful things in creation. The question is: what are we going to do to make social housing the foundation for a growth away from poverty and need?

Lord Shipley (LD): I take the noble Lord's point, and I understand. Perhaps that is why we need a broader, longer discussion. From my perspective, housing waiting lists are so long, and the quality of so many homes in the private rented sector is so poor, that the need to build decent homes within the sector for social rent seems imperative. Without that we will never solve the housing crisis.

Social housing providers can have a responsibility for providing wider support services, particularly for getting people into work and for giving help and advice to those who suffer from ill health. Estate officers can often do things to assist families or individuals that they would not be able to do if it were not for social housing. Maybe we need to have that longer debate.

I understand totally what the noble Lord was saying about a ministry of poverty prevention. Of course, all Whitehall departments are supposed to be doing things to reduce poverty, but the main one is the Treasury. It is about persuading the Treasury to invest more in things such as social housing that might help to reduce poverty.

There is an issue around income disparity. The first thing that has to be done to reduce poverty is reducing income disparity. That is why we have to deal with low pay, and make every effort to increase the minimum wage and the living wage above the rate of inflation so that those in lower pay brackets have more.

Mention has been made of absolute poverty and relative poverty. The truth is that too many children are being brought up in households with very low incomes. That is always poverty, whether it is absolute, relative or deep. We have heard the figures of 4.3 million children living in relatively low-income households and 2.9 million children in deep poverty—a household where income after housing costs is below 50% of median income.

All those tests are based on income, whereas child poverty derives from long-term unemployment, low qualifications, ill health, poverty of aspiration and poverty of opportunity. All those need tackling by the different Whitehall departments that the noble Lord, Lord Bird, talked about.

If levelling up is to be a success for the Government, child poverty needs to be addressed. The point is that levelling up is about people, not places. It is about individual children, and hence the two-child limit seems wrong. It was introduced in 2017, seven years ago. The Resolution Foundation has told us that it increased poverty, particularly for families with three or more children. It should cease, as it is increasing poverty in poor households. All the organisations that one can think of—the National Association of Head Teachers, the Church of England, Save the Children, the Child Poverty Action Group and Barnardo's—say that it should cease.

As the right reverend Prelate the Bishop of Lincoln reminded us, Sure Start was a success. It was introduced in 1999 to improve child development. Some 250 projects were created, concentrated in places where high numbers of children under five were living in poverty. Those centres helped with play, learning, health and childcare. I recall that, when I was leader of Newcastle City Council, we had a major success with our Sure Start centres. It is about aspiration and addressing some of the issues that the noble Earl, Lord Effingham, reminded us of.

The Institute for Fiscal Studies said in a recent report that the programme of Sure Start paid for itself with better GCSE results, improved skills in literacy and numeracy, personal development, and fewer interactions with the police and criminal justice system. It is a means of achieving what the noble Lord, Lord Bird, set out asking us to do, which is to spend more money on prevention rather than on solving the problems that poverty has created. There was too short a judgment in 2010, when there was a change of Government and an end to Sure Start. Too many people thought that it had not proved itself but, if a longer timescale had been taken, they would have known that it had.

Something needs to be created in a new Government. It may be called Sure Start or something else, but we need something like that, which intervenes with those who live in poor households.

8.57 pm

Baroness Sherlock (Lab): My Lords, I thank the noble Lord, Lord Bird, for securing this debate and all noble Lords who have spoken. Before I say anything more, I add my reflection to those of my noble friend Lady Lister and the noble Baroness, Lady Bottomley, in memory of Lord Field. He was an example to all of us of what it means to take a whole lifetime and yet, at the end, never cease to be outraged by the level of child poverty in a rich country. We all owe him a debt.

Tonight's debate has highlighted the multifaceted nature of poverty. Whenever we have debates on poverty, there is always a temptation for some people to say that it is not about money and other people to say that it is only about money. Manifestly neither is correct. It is not just about money but it is not not about money either. The noble Baroness, Lady Janke, the right reverend Prelate the Bishop of Lincoln and other noble Lords made a very clear point of explaining what happens when you simply do not have enough money. If that is the case, all the strategies and all the preventive work in the world does not help you feed your kids that night; you simply cannot afford to do it.

On the basic level of access to resources, Britain is not in a good place. Over a fifth of our population lives in relative poverty. I know that the Government prefer absolute poverty as a measure, probably because it normally falls as real incomes rise, but, in the latest statistics in the document *Households Below Average*

Income, we learned that the share of people living in absolute poverty is going up again, as the noble Baroness, Lady Janke, pointed out. There are 600,000 more people, half of them children, living in absolute poverty, in what is still one of the richest countries in the world by global standards. We should not be in this space.

Look at how this cashes out. The IFS has been pointing out that the number in material deprivation rose by 3 million in the three years to last year. In that same time, the proportion of those who could not adequately heat their homes jumped from just 4% to 11%. I must say to the Minister that, although the Government chose to give people cost of living support, they gave the same amount of money to everybody, whether a single person living in a studio flat or somebody with a family living in a larger house. As a result, the official statistics said:

"Incomes for those with children reduced the most. This reflects the flat nature of the cost of living and additional support payments, meaning for larger households they are split between more household members".

Have the Government reflected on the best way to support people in these circumstances?

I fully accept that it is about not just incomes but support and opportunity. But child poverty has combined with the impact of 14 years of public service neglect, frankly, and the differential impacts of the pandemic to produce an attainment gap between children who experienced deprivation and their peers, with a lifelong impact on their life chances.

What should happen now? The last Labour Government lifted 2 million children and pensioners out of poverty. I know the noble Lord, Lord Bird, said at the start that he thinks, essentially, "A plague on all your houses. None of you has done anything", but I am proud that the last Labour Government introduced Sure Start. As the noble Lord, Lord Shipley, pointed out, not only did it have an effect at the time but children had better GCSEs later as a result of having been part of Sure Start back then. I had a privilege of being part of the Treasury team working with Gordon Brown on questions of poverty when Sure Start was being introduced.

Lord Bird (CB): I just want to say that I used Sure Start. In spite of appearances, I was a very young father, and it was the most wonderful thing. I lived on the largest housing estate in south London and Sure Start was absolutely brilliant, so I am 100% behind it.

Baroness Sherlock (Lab): I am grateful to the noble Lord for clarifying that. One of the most depressing points of my career, frankly, was coming into the Lords in 2010 and having to sit on the Opposition Benches watching everything that I had worked on introducing being dismantled stage by stage in the name of austerity. However, we are where we are.

What should happen now? If the British people were to trust Labour again in an election—and obviously I hope they will—then we would want to introduce a mission-driven Government, and one of our five key missions would be to break down the barriers to opportunity for every child at every stage, with a strategy to tackle child poverty. It would be the responsibility of all government departments to tackle the fundamental drivers of poverty. We would address that by having cross-departmental mission boards looking at exactly how that was being driven across departments.

We would focus on increasing the number of young people in education, employment or training. We would look to reform childcare and early years support, introduce free breakfast clubs, and improve school standards. I agree with the noble Earl, Lord Effingham, about the importance of the nutritional content of school food and of access to sports.

On financial education, I am split. I agree with the noble Earl about the importance of financial education. However, recently I have met people who work for charities that traditionally have given debt advice. They told me in the past they would bring people in, sit them down, look at all the sources of income and all their outgoings, and help them to manage their budgets. They are now saying that more and more—sometimes most—of the people they come across literally do not have enough money to do it. Their budgets cannot be balanced; even the charity workers cannot balance them, with all their skills in financial education and management. So we have something of a crisis here. We need people who can manage to be taught how to manage well, while those who simply cannot manage it, however good they are, need to be helped to find a way through that. We would therefore want to support our social security system, strengthen rights to representation at work, improve social security and extend sick pay. We would boost wages by removing the minimum wage bands and expanding the remit of the Low Pay Commission.

We would want to tackle the housing crisis by retrofitting homes, strengthening renters' rights and building more social and affordable housing. I take the underlying point that the noble Lord, Lord Bird, is making: decent, affordable and safe housing is a necessary but not sufficient condition to enable people to move out of poverty. It is both of those things. It is necessary because many of the people who would not be in social housing would otherwise be in bed and breakfasts, insecurely housed or, even worse, out on the streets.

We need nothing short of national renewal in this country. It will not happen overnight and will not be easy, but it should surely be the priority of any Government to guarantee opportunity to all our children. That is something I think we can all get behind.

9.03 pm

The Parliamentary Under-Secretary of State, Department for Work and Pensions (Viscount Younger of Leckie) (Con): My Lords, I am pleased to close this important debate on addressing the root causes of child poverty. It will be interesting to check with *Hansard* on whether this is indeed a first, as the noble Lord, Lord Bird, said, in focusing on root causes as a subject.

I thank all noble Lords for their valuable contributions and the noble Lord, Lord Bird, in particular, for securing this debate, as well as the debate on a similar topic in February. Once again, his s=-peech was a tour de force, reminding us why the noble Lord is in this House. I also pay tribute to my noble friend Lady Bottomley for giving us a historical perspective on this subject, with a few namechecks that went back, I think it is fair to say, several decades.

[Viscount Younger of Leckie]

I echo the words of several Peers about Lord Field of Birkenhead. The first line of the statement given out by his family, which was issued by his parliamentary office, was interesting:

"Frank was an extraordinary individual who spent his life fighting poverty, injustice and environmental destruction"—

that is rather telling. As Sir Tony Blair said in his statement, he was an "independent thinker", and we must applaud that. I would like to say that he was a thoroughly decent man and, crucially, one of our country's great influencers. That is an important point to make.

As I said earlier, this is an important topic, and I believe we all recognise that child poverty is a complex issue that can be associated with a range of factors, including worklessness, poor educational attainment, inadequate housing, parental conflict and poor mental health. Many people who experience poverty face a range of barriers, which can make it difficult for them to manage and move on with their lives. I will say more about this later in my speech, and I acknowledge the different reasons for poverty that have been spoken to.

I will mention the annual statistics published last month. On the remarks made by the noble Baroness, Lady Lister, I doubt we will ever agree, but I took note of what she said. None of us wants to see child poverty increasing, and I share the concern expressed about this. The latest statistics cover 2022-23—please note that period—when global supply chain pressures, partly linked to the war in Ukraine, led to high rates of inflation, averaging 10% over the year, and food price inflation that reached a high of 19.1% in March 2023, which is not so long ago. These factors are reflected in the latest statistics.

In response, the Government provided unprecedented cost of living support worth £96 billion over the period 2022-23 and 2023-24, including £20 billion for two rounds of cost of living payments. This additional support prevented 1.3 million people, including 300,000 children, falling into absolute poverty—our measure—after housing costs in 2022-23. Since then, we have taken further action to support those on low incomes, including uprating benefits and pensions by 10.1% last year. The noble Baroness, Lady Lister, may not like the fact that I am reminding her of this, as she said. The latest statistics show that 1.1 million fewer people were in absolute poverty after housing costs in 2022-23 than in 2009-10, including 100,000 fewer children. I will stick with those statistics.

The noble Baronesses, Lady Lister and Lady Janke, and the noble Lord, Lord Sikka, who is not in his place, asked about the two-child policy. We believe that those on benefits should face the same financial choices when deciding to grow their families as those supporting themselves solely through work. On 9 July 2021 the Supreme Court handed down the judicial review judgment on the two-child policy, finding that it was lawful and not in breach of the European Convention on Human Rights.

Baroness Bennett of Manor Castle (GP): I question the point about making a choice about having a child. People fall into poverty and need benefits after they have had a child. What do they do then?

Viscount Younger of Leckie (Con): Of course, and the noble Baroness will know that I have spoken at length on this matter and that there are a number of exceptions to this particular policy. But I stick to our view that there is a balance to be struck between helping those people in the way that we do, not having the two-child policy and, equally, being fair to the taxpayer. I know that the noble Baroness will never agree to that.

Baroness Lister of Burtersett (Lab): Does the Minister accept that many of these families are taxpayers and in paid work?

Viscount Younger of Leckie (Con): Absolutely. As I have said before, I do not think that we will agree at all on this—but, as I say, we are not minded to move on this policy. Both noble Baronesses will be well aware of our position on this.

There are encouraging signs that the economy has now turned a corner. Inflation has more than halved from its peak, delivering on the Prime Minister's pledge, and is forecast to fall below 2% in 2024-25. Food price inflation is at its lowest since January 2022, at 4%, and wages are rising in real terms. We remain committed to a strong welfare system for those families who need it, and have uprated working-age benefits by a further 6.7% from this month and raised the local housing allowance to the 30th percentile of local rents, benefiting 1.6 million private renters in 2024-25.

Some questions were raised by the right reverend Prelate the Bishop of Lincoln and also alluded to by the noble Lord, Lord Shipley, about social housing, which is an important subject. Their questions were linked to items of damp and mould; they asked what the Government were going to do about this. The Government have now introduced Awaab's law through the Social Housing (Regulation) Act 2023, which gives the Secretary of State powers to set out new requirements for social landlords to address hazards such as damp and mould in social homes within fixed time periods. We are now analysing the responses to the consultation, and then we will publish a response setting out findings and bringing for secondary legislation as soon as possible.

What I should say, which think was alluded to by the noble Baroness, Lady Bennett, is that everyone has a right to a safe and decent home. Since 2001, the decent homes standard, the so-called DHS, has played a key role in providing a minimum quality standard that social homes should meet. We are currently reviewing the DHS to ensure that it sets the right requirements for decency, and we will publish a consultation on a proposed new standard soon.

Lord Bird (CB): I am not against social housing—I am for social housing—but I want to break out of the situation whereby, if you get into social housing, you tend to fall behind everybody else. On what the Minister is saying about how they are going to change the requirements on social landlords, social landlords should be turning their tenants into people who can have a larger life and can get out of poverty. For most of them, even if they get into work, it is always in the

low-wage economy, and they stay there. What are the Government doing about breaking the low-wage economy that many people in poverty find themselves in, who are often in social housing?

Viscount Younger of Leckie (Con): Indeed, I will allude to the cross-government work that is going on. It may be that it requires a letter to write on that point, but I shall allude to it later, if I have the time.

Altogether this year we will have spent £306 billion through the welfare system in Great Britain, including around £138 billion on people of working age and children. This includes additional support to ensure the best start in life for children. For example, we have extended free school meal eligibility several times and to more groups of children than any other Government over the past half century. They are now claimed by more than 2 million of the most disadvantaged pupils. In addition, healthy food schemes provide a nutritional safety net for more than 3 million children. For those who need extra help with essentials, as inflation continues to fall, we are providing an additional £500 million for the extension of the household support fund in England, for a further six months, including funding for the devolved Administrations.

While it is right that we maintain a strong welfare safety net, we know that having parents who work, particularly full-time, plays a key role in reducing the risk of child poverty. My noble friend Lord Effingham mentioned this. In 2022-23, children living in workless households were more than six times more likely to be in absolute poverty after housing costs than those where all adults work. This is clear evidence of why, with more than 900,000 vacancies across the UK, our focus is firmly on ensuring that parents get the right support to find work and succeed in work. Our policies include: our generous universal credit childcare offer for working parents; our in-work progression offer; further increases to the national living wage to £11.44 an hour; and national insurance cuts.

The noble Baroness, Lady Lister, asked about making the housing support fund permanent. The HSF is not the only way we are supporting people on lower incomes. April's benefit uprating of 6.7% will see an average increase in universal credit of £470. Raising the national living wage will deliver an increase of over £1,800 to the gross annual earnings of someone working full-time on that wage. Uplifting the local housing allowance to the 30th percentile of local rents, as mentioned earlier, will benefit 1.6 million private renters by an average of £800 per year.

The noble Lord, Lord Bird, and the noble Baronesses, Lady Lister and Lady Bennett, asked whether we accepted that a strategy was now needed. I did promise to try to answer this. We have consistently set out a sustainable long-term approach to tackling child poverty, based on evidence about the important role of work in substantially reducing the risk of child poverty. I am very aware of the interest that the noble Lord, Lord Bird, takes in this, and I reassure the House that Ministers continue to work across and beyond departmental boundaries to ensure that we take a co-ordinated approach to supporting vulnerable and low-income households. This includes a cross-government senior officials group on poverty, as well as bilaterals and meetings with external anti-poverty stakeholders. The noble Lord, Lord Shipley, is right that Treasury input to this is vital.

I return to the question of childcare raised by the noble Baroness, Lady Bottomley. She asked what extra support we are providing to parents. The Department for Work and Pensions and the Department for Education work closely together to ensure that there is a comprehensive childcare offer that reflects different family circumstances, covering children over a range of ages.

Earlier, I mentioned some of the problems families in poverty face which mean that they can struggle to move into work and improve their financial circumstances. This Government offer a range of programmes to help people address these complex underlying challenges, so that they can take their first steps towards securing better outcomes for their families.

I applaud my noble friend Lord Effingham for making a number of interesting points. The noble Lord, Lord Shipley, put it well when he said that they were interesting contributions to the debate. I agree with many of the points that he made.

The pupil premium funds schools to help improve educational outcomes and close attainment gaps for disadvantaged children in state-funded schools in England. Funding for this is increasing to over £2.9 billion in the year 2024-25. That is £80 million more than last year.

We are taking significant action to improve children's health, which is another important point. This includes dramatically reducing sugar in children's food, investing over £600 million to improve the quality of sport for children, and encouraging healthy diets for lower-income families through schemes such as Healthy Start. We are also investing £2.3 billion a year in mental health services.

The Money and Pensions Service's *UK Strategy for Financial Wellbeing* is a 10-year framework to help everyone make the most of their money. It has set out five goals to be achieved by 2030, including to see 2 million more children and young people receiving meaningful financial education.

One example of the support that we are giving is the Supporting Families programme, which is now the responsibility of DfE. This has funded local authorities to help almost 637,000 families experiencing multiple disadvantages to make sustained improvements with their problems.

A network of 300 supporting families employment advisers, specialist DWP work coaches, work with the programme, providing employment support that is helping almost 10,000 families, resulting in around 200 job starts every month.

My noble friend Lady Bottomley mentioned Reducing Parental Conflict. This is very close to my heart—I am directly responsible for it in government—and we have £33 million-worth of funding available from 2022 up until next year, 2025. This programme has enabled local authorities to support couples to address conflict in their relationship, which has helped to deliver positive impacts for children over no less than three major

[Viscount Younger of Leckie]
evaluations at the end of last year. We are also looking to see how we can ingrain that in the Child Maintenance Service, which again is my responsibility. I feel very passionate about it, and the work we do, by the way, helps to take 160,000 children out of poverty each year, and there is always more to be done.

The noble Baronesses, Lady Janke and Lady Bennett, spoke about childcare, and I want to give a quick response. The department is aware that, for some universal credit claimants, childcare costs present challenges to entering employment. To support people to become financially resilient by moving into work and progressing in work, eligible UC claimants can claim back up to 85% of their registered childcare costs each month, regardless of the number of hours that they work, compared to 70% in tax credits.

The right reverend Prelate the Bishop of Lincoln is not in his place, and I am not sure why. I think I will write to him rather than answer him when he is not in his place. He asked about rural communities.

I shall conclude, given the hour, by reassuring the House again of the importance we place on this matter. The early years, as I am sure the noble Lord will agree, are vital to securing good outcomes for children, and that is why we continue to work across government to ensure the best start for all children, including through our early years childcare provision and funding for school breakfast clubs. We understand that many families still face challenges, we are not shying away from that, and we will continue to work to ensure that the welfare system supports families who need it. To conclude, with inflation falling towards target and the economy beginning to turn a corner—perhaps green shoots; I do hope so—it is right that we continue to support parents to meet their responsibilities towards their children by seeking employment opportunities wherever that is possible.

House adjourned at 9.21 pm.

Grand Committee

Monday 29 April 2024

Arrangement of Business

Announcement

3.45 pm

The Deputy Chairman of Committees (Lord Russell of Liverpool) (CB): My Lords, if there is a Division in the Chamber while we are sitting, this Committee will adjourn as soon as the Division Bells are rung and resume after 10 minutes.

Litigation Funding Agreements (Enforceability) Bill [HL]

Committee

3.45 pm

Clause 1: Enforceability of litigation funding agreements

Amendment 1

Moved by ***Lord Stewart of Dirleton***

1: Clause 1, page 1, line 14, at end insert—

"(ia) where the litigant is a litigant in person, expenses incurred by that litigant, or"

Member's explanatory statement

This amendment ensures that the definition of litigation funding agreements includes agreements under which a funder agrees to fund expenses incurred by a litigant in person.

The Advocate-General for Scotland (Lord Stewart of Dirleton) (Con): My Lords, I will address Amendment 1 alongside government Amendment 2 in one moment. I need not repeat in detail why this Bill is important, as we debated it so recently, just two weeks ago at Second Reading, but I want to address some of the points raised. I wrote to noble Lords—and to noble and learned Lords—but thought it important to put those matters on record here as well.

Clause 1 makes it clear that the Bill will have retrospective effect. The Government have carefully considered the point and decided that the Bill should have retrospective effect, meaning it will apply to litigation funding agreements in place before the PACCAR judgment and to any that may have been made between the judgment and the Bill becoming law. I thank noble Lords for their contributions, particularly my noble friend Lord Wolfson of Tredegar, King's Counsel, who is not in his place today.

There were concerns about the possibility of claimants who negotiated new funding agreements following the PACCAR decision, having believed their first agreement to be unenforceable, facing the prospect of two funding agreements that could be enforced once the Bill comes into effect. In addition, reference was made by the noble Lord, Lord Carlile of Berriew, King's Counsel, to a suggestion that the Bill's retrospective effect may interfere with the Government's obligations under the European Convention on Human Rights. That was raised in the context of the opinion of the noble Lord, Lord Macdonald of River Glaven, King's Counsel, which was shared among noble Lords ahead of Second Reading. On behalf of the Lord Chancellor, I thank noble Lords for raising this issue and assure them that the Government are looking into the questions raised and hope to provide a further update on Report.

I regret that I cannot say much more than that at this stage, to allow the Government to review the matter, but I welcome the continued engagement from across the House, of which this Committee is a part.

I should also like briefly to mention the forthcoming Civil Justice Council review of third-party litigation funding, which was discussed by a number of noble Lords, and to address particularly the points raised by the noble Lord, Lord Marks of Henley-on-Thames, KC, and the noble Lord, Lord Ponsonby of Shulbrede, who raised a series of important questions on potential regulation of the market and limits on funders' returns. As the Committee may be aware, since Second Reading, the Civil Justice Council published its terms of reference for the review on 23 April, which provide further detail on scope and timing. I thank noble Lords for their interest. If any noble Lords have further material they wish to share, I encourage them to contact the Civil Justice Council directly, which will doubtless welcome their contributions and expertise.

With those points addressed, I turn to the amendments. The Bill contains two clauses. Clause 1 amends Section 58AA of the Courts and Legal Services Act 1990. Its subsection (2) amends the definition of a damages-based agreement to provide that an agreement

"to the extent that it is a litigation funding agreement … is not a damages-based agreement"

—a DBA. Subsection (3) defines an LFA for the purposes of Section 58AA. Subsection (4) provides that the amendments are to be

"treated as always having had effect".

The amendment addresses only the Supreme Court's finding that certain LFAs are DBAs and does not seek to reverse the finding that litigation funders provide claims management services.

The Government have tabled two amendments to this clause. Amendment 1 remedies a perceived gap in the current draft definition of a litigation funding agreement, or LFA. As drafted, the definition of an LFA does not include reference to an agreement to pay the expenses of unrepresented litigants, which may occur where, for example, an unrepresented litigant receives funding for an expert report—a report from a skilled witness. Since the expert would not be providing "advocacy or litigation services" within the meaning of the legislation, an agreement to provide funding in this instance would not qualify as an LFA within the current draft definition.

The Government therefore believe that this should be addressed by bringing a small technical amendment to the Bill. This amendment will ensure that an LFA of the type rendered unenforceable by PACCAR, which is used to fund items of expenditure where the litigant is unrepresented, will be enforceable between the funder and the litigant. This reflects the policy objective of the Bill, which is to restore the position to that which

[Lord Stewart of Dirleton]
existed before the Supreme Court ruling in July 2023, so that those LFAs of the type affected by the judgment are enforceable.

The second amendment tabled by the Government also addresses an ambiguity in the draft definition of a litigation funding agreement. As currently drafted, the definition of an LFA includes an agreement for

"the payment of costs that the litigant may be required to pay to another person by virtue of a costs order".

However, there is a legitimate concern whether the expression

"by virtue of a costs order",

may be interpreted too narrowly, and therefore be a source of litigation around its meaning regarding LFAs which neither specifically fund court or tribunal proceedings or envisage the issue of costs being determined by the court.

This amendment, which is, again, a small technical change, is designed to make it clear that the payment of adverse costs the litigant may be required to pay to another party, which would be funded under an LFA, includes the payment of costs following court, tribunal or arbitration proceedings, or as part of a settlement.

Clause 2 explains the extent, commencement and short title of the Bill, as I specified at Second Reading. I hope that noble Lords, and noble and learned Lords, will support these technical amendments, and I beg to move.

Lord Marks of Henley-on-Thames (LD): My Lords, I will speak now because I have tabled the only non-government amendment before the Committee. It is a probing amendment.

The Minister, the noble and learned Lord, Lord Stewart, mentioned briefly the discussion about this Bill since the Second Reading debate—mostly in the context of the letter that he and the Secretary of State helpfully circulated—and the publication of the terms of reference for the review. That has been part of a wider discussion, and questions have been asked by a number of briefings. The briefing process for this Bill in relation to members of the public and interested or affected parties has been late; that has been a feature of the discussion, which has centred largely around questions on the need for regulation of the litigation funding market generally and on the issue of retrospectivity for the principal provision of the Bill, which the Minister mentioned.

I hope I will be forgiven for running through some of the arguments that were canvassed at Second Reading, largely in the light of the lateness of the briefings that we have had and the expressions of concern that there have been. A powerful argument has been advanced by some clients of litigation funders. They make the point—I foreshadowed it at Second Reading—that, in an unregulated market, litigation funders can effectively impose their terms on clients. This can mean that successful clients end up with only a very small part of the damages awarded to them, with the litigation funders taking the lion's share; indeed, in one case that was brought to my attention and that of other noble Lords, funders have been in a position, following a case that they have funded, under their contracts of not only retaining all the damages awarded to the claimants but actively pursuing those claimants—their clients, in effect—for substantial costs that they incurred over and above the damages that were recovered. The clients say that that is most unfair; one can see their point.

The same people point to the DBA regulations—the Damages-Based Agreements Regulations 2013—and say, again with considerable force, that lawyers who enter into DBAs with their clients may not retain for themselves more than a prescribed proportion of the damages awarded, and that such lawyers are bound by other prescriptive regulations as to what they can set for their clients or in the contracts between them and their clients, the litigation funders having the upper hand in any negotiations of such agreements. They ask: why should similar restrictions as are imposed on lawyers in damages-based agreements not be imposed on litigation funders? They also say that, in any event, lawyers are already limited in the terms of what they can agree and are subject to comprehensive professional regulation, whereas litigation funders are not.

Noble Lords may remember that, at Second Reading, I said that, in the absence of regulation, there was

"a bit of a jungle out there",—[*Official Report*, 15/4/24; col. 818.]

and that that should not be permitted to persist. Those expressing these concerns call for regulation of the litigation funders' market generally, the primary purpose being to ensure more of a level playing field between funders and clients and the argument being that, if regulation of DBAs is appropriate for lawyers, why is it not for litigation funders?

As is well known to this Committee, the PACCAR decision gave legal effect to the essentially political argument that litigation funders should be subject to the DBA regulations. As we all know, this was because the Supreme Court decided that, if LFAs did not comply with the DBA regulations, which they generally would not, they would be unenforceable because LFAs involve the provision of case management services.

4 pm

However, the PACCAR decision threatened to undermine the litigation funding market generally because the undenied and inescapable fact was that that market developed on the back of a belief that the DBA Regulations did not apply to LFAs. That was because a clear view had been taken that LFAs were not providing case management services. The Government's view and the justification for the Bill—and, I believe, the overwhelming view expressed at Second Reading—was that litigation funding provides an avenue to access to justice in many cases where the litigants, or potential litigants, could not afford to fund representation or advice themselves.

Of particular importance in this context are class actions, such as that of the sub-postmasters against the Post Office. I know that the House as a whole was particularly persuaded by the point that the noble Lord, Lord Arbuthnot, made at Second Reading: that without litigation funding, the sub-postmasters would not have been able to bring their case before the courts at all. To use his memorable phrase: the bloody doors would not have been blown off, had it not been for the availability of litigation funding. That would have

disabled, or made highly unlikely, all the welcome political consequences that have flowed from the decision of Mr Justice Fraser in that case.

However, class actions are not the only area where litigation funding is important. It plays, as we heard, a significant part in funding commercial litigation generally and has an important role in creating something of a balance by enabling smaller organisations or groups of individuals to fund litigation against more powerful opponents, public bodies or others who have deeper pockets than those who might be claimants. It also enables potential litigants to spread the risk of litigation over time and between themselves and litigation funders. It was in those circumstances and against that background that the PACCAR decision came as a great shock to litigation funders and the market generally and threatened to undermine it wholesale.

That brings me to the argument on retrospectivity because the other area of disquiet expressed in the briefings that we have had and the discussions that there have been has concerned the retrospectivity provision that the noble and learned Lord identified as being in Clause 1(4). The general principle is that special justification has to be demonstrated for the retrospectivity of legislation. That justification is found in the case of Finance Acts, where the Budget announces decisions that will take effect from Budget Day and the Finance Bill comes later but takes effect from the date of the announcement in the Budget. Everybody accepts that that is special justification within the terms of that principle.

The principle behind that view is that it is wrong to change the law retrospectively where such a change affects individuals or corporations who have arranged their affairs and made decisions or contracts on the basis of the law as it was, or was believed to be, and then find that law changed over their heads, in the worst case, so that what they thought was lawful when they entered into contracts or undertakings has now been found to be unlawful. It is also the case that concern has been expressed about interference with established property rights being a contravention of the European convention.

I completely appreciate that the Minister, the noble and learned Lord, Lord Stewart, has made the point that the Government are considering this matter with care—I await the results of that consideration—but I have come to the conclusion that that argument on retrospectivity is difficult to run. The case of LFAs that were entered into pre PACCAR is that pre-PACCAR LFAs were on the basis that LFAs were not DBAs and were therefore enforceable. Post commencement of this Bill, without retrospectivity, LFAs would be in the same position. Others may disagree but I have come to the conclusion that there is special justification for ensuring that, in the case of LFAs between the PACCAR decision and the commencement of this Bill, such LFAs should be in the same position as LFAs entered into in the interregnum or in the interim period. Otherwise, there would be confusion and uncertainty.

I quite take the point made by the noble and learned Lord, Lord Wolfson of Tredegar, about the difficulty of double LFAs and clients with two LFAs. In those circumstances, it is perfectly right that the Government should deal with that.

My amendment, which I described in the explanatory statement as a probing amendment, follows a number of questions that I asked at Second Reading. I am bound to say that it has been comprehensively and well answered by the letter from the Secretary of State and the noble and learned Lord, Lord Stewart, to which I referred and which was dated 24 April, as well as by the publication of the terms of reference for the review that had been announced in principle before Second Reading on 23 April.

I also make the point that I am pleased that the timetable is a speedy one: we are to have an interim report from the review in the summer of 2024 and a final review in the summer of 2025. My amendment said that the review must be completed by 31 August 2025. I do not claim that my amendment or my suggestion that the summer of 2025 should be the date for the final report influenced the Government in any way, but I am pleased to see that the Government realise that this is urgent and that the whole question of looking at the field of litigation funding is both important and urgent.

I was particularly pleased to see in the terms of reference that the questions to be addressed included whether there should be regulation and how, if there is to be regulation, it should be framed. In particular, there was the question of the funder's return—this comes to the Post Office case, where such a derisory proportion of the overall damages went to the sub-postmasters—and whether there should be a cap. This will have to recognise the point made by the noble Lord, Lord Arbuthnot, about the risk taken by litigation funders; that risk has to be recognised and raises interesting, difficult questions.

The relationship between legal expenses insurance, crowdfunding and litigation funding—or, on the other hand, third-party funding—needs to be and is to be explored, as is the role of the courts and the relationship between litigation funding and litigation costs; those will no doubt consider how far there should be recoverability. The duties of litigation funders in relation to conflicts of interest are an extremely important area, I suggest, because we are talking about a tripartite—I am sorry for overrunning my time but I am nearly finished. There are three parties here: the lawyers, the litigation funders, and the clients. It is extremely important that conflicts of interest and potential conflicts of interest are recognised and responded to. Finally, there was the question of whether specific litigation is encouraged by litigation funding.

I support the government amendments; the noble and learned Lord has explained the reasoning, which holds good in all departments. We are very pleased about the review. We will argue that there should be regulation. I would expect the review to come to a similar conclusion, but we will see what it says. I do not suppose that there is any question of the Government's not laying the review's response before Parliament when it occurs, which was also sought by my amendment.

I am sorry to have gone over my time, but I hope that may have been helpful.

Lord Carlile of Berriew (CB): My Lords, I will say a very few words that may help the debate. I wholly support the government amendments spoken to by the noble and learned Lord; they clarify the Bill in a way that was required.

[Lord Carlile of Berriew]

I will just go back to something the noble and learned Lord said about what I had said at Second Reading about the Human Rights Act consequences. I referred to the opinion that had been given to us—again, very late in the day, like most representations in this matter—written by my noble friend Lord Macdonald of River Glaven. I am sure we all understand why he is not taking part in these debates; he feels that professionally he cannot because he gave an opinion, a view that I think all practitioners here would support. He said in that opinion that the convention rights arguments with which he was presented in his instructions were "arguable"—that was his word. That is not the highest level of certainty that those of us who have written a lot of opinions would ever put at the end of an opinion if we felt sure. They may be arguable, but they are not strong, and the Government are perfectly entitled to act as they are in that regard.

Then there is the question of retrospectivity. The answer to that is very simple. The Bill would be absolutely pointless if it were not retrospective, because it was created to right a wrong that nobody expected, and it is simply restoring to people the legal rights which they already had. I hope that we will not spend an awful lot of time in other stages of the Bill talking about retrospectivity.

I note that the Civil Justice Council's new review—I agree with what the noble Lord, Lord Marks, said about its terms of reference—has had support from the Bar Council and the Bingham Centre, in a very well-argued piece that I think was circulated to most Members of the Committee. It was also supported by what we might call the interest groups: the Association of Litigation Funders and the International Legal Finance Association, which have taken a pretty objective view of the proposals in this Bill. All are of the view that the Civil Justice Council, as it is set up by the terms of reference, is the appropriate place for the review to take place. Of course, it leaves some flexibility and some obligation, because a rule-making body such as the Civil Justice Council can change the law in small ways to ensure that appropriate procedures are followed.

For reasons which some noble Lords will recognise, I am an enthusiast of independent reviewers—because I have been one—but I am not an enthusiast for an independent reviewer in this situation. Although an independent review would undoubtedly be fascinating, it would have no power whatever. We need to get nearer to the rule-making powers to ensure that the law in this area is clear, followed, applied by the judges and, above all, understood clearly by the courts.

Baroness Bennett of Manor Castle (GP): My Lords, I rise very briefly, acutely aware of the legal weight in the Room, to which I add not a gram—although I cannot help noticing the gender balance. I apologise for not speaking at Second Reading. My noble friend Lady Jones of Moulsecoomb spoke in the Second Reading debate but she is currently taking part on the Leasehold and Freehold Reform Bill in the Chamber. I listened very carefully to the words of the noble Lord, Lord Marks of Henley-on-Thames, who is satisfied with the review process that we have going forward, and I will be guided by that.

I want to stress that where we are going now is still not an adequate solution to the problems at hand. At Second Reading, my noble friend said that we need to put

"energy into thinking about a better solution".—[*Official Report*, 15/4/24; col. 810.]

We have to do that in the context where we have a crucial, huge inequality of arms—Horizon is the obvious example—in an economy dominated by an increasingly small number of oligarchic, giant, often multinational companies that are deciding how things work in our economy and society, of which people are very often the victims. We have a structural problem: the law now is not equipped to deal with the structure of our economy and society. I conclude only by noting that justice unfunded is justice denied, and there is far too much justice denied to individuals in our society when they are crushed by the weight of corporations or the state.

4.15 pm

Lord Sandhurst (Con): My Lords, like others here today, I support the Bill and the amendments which the Government have laid. Like others, certainly including the noble Lord, Lord Carlile of Berriew, I am grateful for the Bingham Centre's helpful briefing note. It sets out the issues clearly, in particular in respect of retrospectivity and the need for the Government to give good reasons for that, which I believe they have done.

What is important in this case is that before 19 July 2023, government policy endorsed the use of litigation funding agreements. There had been discussion about whether they should be regulated and how they should be managed, but the policy was absolutely clear. I referred to that at Second Reading. The Supreme Court, for good reason, did not have to address that issue of policy as it was not appropriate, but the effect of its decision is that litigants have lost much-needed support. If we are to ensure access to justice, particularly against monopolists, we now require a statute to undo that Supreme Court decision and do the best we can to restore the status quo ante. We have to hope that this legislation does not induce a spate of future litigation of the wrong satellite nature, but simply allows matters to proceed as they were until July last year.

For good constitutional reasons, retrospective provisions are not the norm, but when Parliament reaches a considered decision to pass legislation that is fully retroactive and does so for good reasons then, providing the legislation is drafted carefully, the Supreme Court has ruled that it is not contrary to our constitutional norms. In that respect, I refer to its decision in AXA General Insurance Limited and others v Lord Advocate and others, reported at [2011] UKSC 46.

I agree entirely with the noble Lord, Lord Carlile, that we should not fear challenge at some later date in the ECHR. The balancing reasons are absolutely clear: this is for access to justice. There may be no perfect answer, but this is the right route—or the least bad route. I am confident that the Government will look

further at the detail of the retroactivity provisions and will not bring this Bill to finality without taking care to ensure that it is properly addressed. In doing so, they will have weighed the public interest in access to justice and in established positions that might be damaged by the Bill. It is pretty clear to me, and I think to others here, that the overwhelming public interest is in allowing matters to be restored to the general form of what everybody thought they were in the summer of 2023.

While I am sympathetic to the noble Lord, Lord Marks, and his amendment, I am persuaded and now agree that the appropriate course is to leave this to the Civil Justice Council. It is now seized of the matter and will have the benefit shortly of the report from the European Law Institute—the noble and learned Lord, Lord Thomas, is a member—and will guide this country into making good regulations. Regulation will not be straightforward, but it has been managed with some trial and error in conditional fee agreements, and we are now without problems there. It has been managed in damages-based agreements, so I would be surprised if it could not be managed in litigation funding agreements, albeit that I am sure that some lawyers will do well out of satellite litigation in the early stages.

Lord Thomas of Cwmgiedd (CB): My Lords, I thank the Government again for bringing this matter with such expedition before this Committee. I wish to make two observations. First, I warmly welcome the Constitution Committee's report, which is helpful and will no doubt help the Government further on the retrospectivity point.

Secondly, I am glad that the noble Lord, Lord Marks, put forward his amendment because it enables us to thank the Civil Justice Council and the Government for putting the terms of reference in such broad forms. As I mentioned at Second Reading, there is a lot of experience worldwide on that, but since then I have discovered more about the position in Australia and hope that the work done by the European Law Institute will in part reflect the substantial Australian experience. The Civil Justice Council will be able to look at that. Having heard what has been said in Australia, one has to take care, as not all are as responsible as the members of the litigation funders' body. Others are tempted to enter into this area, so one might see that Australia has a lot of experience of how to deal with this, looking not to the creation of yet another regulatory body but to whether the courts themselves, through the Civil Procedure Rules, can be given the powers and guidance necessary to deal with the issues.

No doubt we will return to this in the autumn of 2025 for a very interesting debate.

Lord Etherton (CB): My Lords, I just want to probe the Government to an extent on the involvement of the House once the Civil Justice Council has finished its review. It is an independent body. It is not itself a rule-making body; the rules are made by the rule committee. While I absolutely welcome the opportunity for the Civil Justice Council, with its expertise, to carry out its review, no changes to the rules will be made without a statutory instrument. My question for the Minister is: at what stage in the process will we have an opportunity of commenting on any recommendations made by the Civil Justice Council? That includes, for example, what my noble and learned friend Lord Thomas of Cwmgiedd has just said on whether a recommendation is made to deal with the question of regulation through amendment of the civil justice rules.

Lord Ponsonby of Shulbrede (Lab): I will make the briefest of comments. I welcome the amendments put forward by the Minister. I very much take to heart the point made by the noble Lord, Lord Carlile, that the Bill would be pretty pointless unless there was an element of retrospectivity to it. I read the information that we were sent by the Bingham Centre, which was informative and interesting, and by the Bar Council. I absolutely understand the primary purpose behind this legislation.

The noble Baroness, Lady Bennett, commented on the legal balance in this Committee. I join her, as a non-lawyer; I cannot match her for gender, I am afraid. However, I can talk about the clients who are paying for this. I might have made the point at Second Reading that, by my understanding, the bulk of the people who take advantage of this type of funding would be at the sort of middle to large-sized company where I was chief executive. It is a way of cash management, in essence, because you do not know what litigation is on the horizon and you do not want to spend too much time on the litigation because that takes time away from running the business. So having these ongoing litigation funding arrangements is a way of managing risk. For me, that was the main purpose of occasionally entering into those agreements, rather than the litigation itself.

The other primary point worth repeating is that a lot competitors out there would like this business—Singapore, Australia, Dubai and elsewhere. I was very aware of that when I was running a business. I was regularly approached by people wanting to reach alternative ways of resolving any disputes that may arise.

Nevertheless, given those thoughts from a client's perspective, I welcome this legislation. The English and Welsh model should be as up to date and competitive as possible. In that sense, I welcome the Bill and the Government's amendments.

Lord Stewart of Dirleton (Con): My Lords, I thank noble Lords and noble and learned Lords for all their contributions today. I will try to respond to the substance of the points that noble Lords have raised.

The Supreme Court judgment in PACCAR rendered many litigation funding agreements unenforceable. Uncertainty around litigation funding risks having a detrimental impact on the attractiveness of the England and Wales jurisdiction as a global hub for commercial litigation and arbitration, as well as on access to justice more broadly.

Through this Bill, we will restore the position that existed before the Supreme Court's ruling in July 2023 so that litigation funding agreements affected by the judgment are enforceable. This will also ensure that

[Lord Stewart of Dirleton]
claimants can get access to litigation funding in order to bring big and complex cases against bigger, better-resourced corporations, which they could not otherwise afford. In saying that, I reflect the principled concern raised by the noble Baroness, Lady Bennett of Manor Castle, in her brief comments and echoed by the noble Lord, Lord Ponsonby of Shulbrede. It is a leitmotif that ran through much of our discussions at Second Reading; we are all seized of the difficulties to which inequality of arms can give rise.

The remarks of the noble Lord, Lord Marks of Henley-on Thames, which went over much of the history of litigation funding as we now have it—or as we had it up to the point of PACCAR—gave us a useful reminder of some of the issues at stake. It is also of use for us to consider the background to the rise of litigation funding and to bear in mind the objections that law has traditionally had against third-party litigation of this sort—the traditional objections to the pacta de quota litis, which would allow someone else a controlling hand in the manner in which litigation was carried out, perhaps to the detriment of the person in whose interest that litigation was nominally being pursued.

4.30 pm

The Bill will enhance access to justice and the attractiveness of the thriving United Kingdom legal sector, which contributes more than £34 billion per annum to the United Kingdom's economy. The Government are looking into the issues raised around the Bill's retrospective effect and will provide a further update on Report, but I acknowledge gratefully the overall views of the noble Lords, Lord Marks of Henley-on-Thames and Lord Carlile of Berriew, and my noble friend Lord Sandhurst on where retrospectivity stands in relation to the Bill.

I thank the noble Lord, Lord Marks of Henley-on-Thames, for the amendment that he put into this debate—a probing amendment, as he said—and for his helpful comments at Second Reading on the same matter. The Government do not support the amendment; I will set out why but, in addressing it, the noble Lord covered much of the same ground. I hope not to detain the Committee for too long on the point, but the amendment would require the Lord Chancellor to establish an independent review of the impact of the provisions in the Bill on the enforceability of litigation funding agreements in England and Wales; it also sets out the timing and factors that the noble Lord believes that such a review should consider. I gratefully adopt the views of the noble Lord, Lord Carlile of Berriew, on the role of the independent reviewer in these circumstances: I agree with him that, in the case we are dealing with at present and in terms of the Bill with which we are presently engaged, such a step would not be necessary.

I also note and adopt the views of the noble and learned Lord, Lord Thomas of Cwmgiedd. He anticipated the conclusions that the CJC's review might reach and addressed the view that it might be better dealt with in the context of the rules of court themselves, as opposed to by any other vehicle. As we have heard, the Lord Chancellor has already asked the Civil Justice Council—the body that oversees and co-ordinates modernisation of the civil justice system in England and Wales and is chaired by the Master of the Rolls—to undertake an independent review of the third-party litigation funding market in England and Wales. I welcome the Committee's broad support for the terms under which that review will take place.

The attention shone on litigation funding by the PACCAR judgment means that this is an opportune moment to review the status of the market. As the Committee has heard, the CJC published its terms of reference just last week, on 23 April, providing further detail on scope and timing. A working group has now been established; it will be co-chaired by Mr Justice Picken and Dr John Sorabji. In addition, a consultative group is also being established. It will directly inform the work of the review and provide a larger forum for expert discussion in support of the working group.

There are many similarities between what the noble Lord, Lord Marks, seeks to achieve via his amendment and what has already been agreed with the CJC with regard to scope. For example, the CJC will consider issues around regulation, safeguards for claimants and whether a funder's return on any third-party litigation funding agreement should be subject to a cap; again, as I said, this principled concern occupied much of our time at Second Reading. The CJC will look to provide an interim report by the summer of 2024 and a full report by the summer of 2025, aligning with the timings set out in the noble Lord's amendment. I cannot say in answer to his question that his amendment was directly responsible for those timings; I prefer to ascribe the outcome to a happy synchronicity between him and the Government on this point.

I am also grateful to the noble and learned Lord, Lord Thomas of Cwmgiedd, for his observations on the Constitution Committee's report and in relation to the work carried out by the European Law Institute, also mentioned by my noble friend Lord Sandhurst, as well as the examples he gave of the work being carried out to observe practice in Australia.

As I said at the outset of my remarks, this matter comes against a background of the historic concern of the law about third-party funding and the need to get it right in order to create a greater approximation to the equality of arms, which it should be the object of all courts to accomplish. There were concerns about the practice of claims farming, which is an example of just the sort of interruption to the appropriate processes for finding justice that the intervention of third parties in litigation can create. The CJC will provide us with a solid, researched and considered basis on which to move forward.

The noble Lord, Lord Marks of Henley-on-Thames, referred to the "jungle" in which we can be found in the absence of adequate regulation. It is perhaps appropriate—to strain that metaphor—that it is in such a jungle that leonine contracts which stand uncapped, of the sort that the noble Lord referred to in his address, should be able to prosper and flourish, and we look to the CJC to prevent that going further.

Against that background of timings and the view that much of what the noble Lord seeks is foreshadowed by the CJC in its terms of reference, I respectfully

submit that his amendment is not necessary and will duplicate efforts, so I urge him not to press it at this stage.

Lord Marks of Henley-on-Thames (LD): My Lords, I have seldom had such pleasure in not pressing an amendment. As the noble and learned Lord said, the CJC review is precisely what we were looking for. Having looked at who is concerned and how they will deal with it, I have no doubt at all that it will be thorough, and we have had some very helpful remarks from everybody this afternoon, so I will not press my amendment.

Amendment 1 agreed.

Amendment 2

Moved by ***Lord Stewart of Dirleton***

2: Clause 1, page 1, line 16, after "order" insert ", an arbitration award or a settlement agreement"

Member's explanatory statement

This amendment ensures that the definition of litigation funding agreement includes agreements under which a funder agrees to pay costs relating to litigation that arise by virtue of an arbitration award or a settlement agreement, as well as by virtue of a costs order.

Amendment 2 agreed.

Clause 1, as amended, agreed.

Amendment 3 not moved.

Clause 2 agreed.

Bill reported with amendments.

Committee adjourned at 4.39 pm.