



HOUSE OF LORDS

Industry and Regulators Committee

Corrected oral evidence: Regulation of property agents

Tuesday 27 February 2024

11.30 am

Watch the meeting

Members present: Baroness Taylor of Bolton (The Chair); Lord Agnew of Oulton; Lord Best; Viscount Chandos; Lord Clement-Jones; Baroness O'Grady of Upper Holloway; Viscount Thurso; Viscount Trenchard.

Evidence Session No. 2

Heard in Public

Questions 8 - 15

Witness

[I](#): Sebastian O'Kelly, CEO, Leasehold Knowledge Partnership.

Examination of witness

Sebastian O’Kelly.

Q8 The Chair: Good morning. This is the Industry and Regulators Committee in the House of Lords. We are conducting an inquiry into the regulation of property agents. Our witness now is Sebastian O’Kelly, whom we welcome. He is from the Leasehold Knowledge Partnership.

Perhaps you would like to start by explaining the background to your organisation and what you do.

Sebastian O’Kelly: Yes, sure. The Leasehold Knowledge Partnership is a registered charity. It has three MP patrons: Sir Peter Bottomley, Sir Ed Davey and Justin Madders, representing the three main parties in England and Wales. It is the secretariat of the All-Party Parliamentary Group on Leasehold and Commonhold Reform. Our chairman, Martin Boyd, who I think you are interviewing later, is the newly appointed chair of the Leasehold Advisory Service. I cannot overstate how important that is. It means that this government quango, which has been so accommodating to the commercial interests of the leasehold sector, is now chaired by a consumer champion who is a leaseholder and, incidentally, chair of Charter Quay, a complicated mixed-use site in Kingston, Surrey, which has 250 flats, the Rose Theatre and various restaurants. It is worth about 300 million quid in total and is the most valuable block of flats in the country that is entirely enfranchised—owned and managed by the leaseholders.

Q9 The Chair: What do you think are the main problems and challenges that leaseholders face when they interact with property agents?

Sebastian O’Kelly: The key challenge is that, overwhelmingly, managing agents are not appointed by leaseholders, right-to-manage companies or resident management companies. Instead, they are appointed by landlords and imposed on the leaseholders, who do the paying. It would be nice, but it is secondary, to regulate managing agents, but regulation by itself will do nothing to change this imbalanced relationship. Leaseholders pay for services, arbitrarily arrived at and invariably excessive, to provide profits to a property manager who has been imposed on them by the landlord, who is often anonymous and hiding behind nominee directors offshore.

In no sense are leaseholders the customers in this arrangement; rather, they are the product to be monetised, manipulated and made to pay up, in many cases. It is not a question, by the way, of ‘there are some good landlords’. In this context, I mean landlords as freehold owners. That is a terrible cliché. Some are worse than others, but the point is that all have an imbalance of power, all use that power through the courts, and landlords are in a hugely advantageous position in the courts, as I will get on to later.

If leaseholders do not pay their service charges or ground rents, they risk lease forfeiture. I do not know whether I need to talk about lease

forfeiture, but it means the end of the lease and the end of the mortgage on any lease if a mortgage is involved. But it also can—and does—provide a considerable cash windfall to the landlord. There are only about 85 or so full lease forfeitures a year, but, none the less, I am aware of a £600,000 maisonette in north London, which, I am afraid, was entirely lost by a particularly truculent and foolish leaseholder to his neighbour, who owned the freehold, because he had broken the lease by putting in new kitchens, generally making a bit of a nuisance of himself, and, most particularly, because he entirely ignored the court process that followed his actions. Forfeiture happens but it is rare, and the threat is absolutely routine in the leasehold sector.

Leaseholders can be effective when they act collectively and pool resources, such as legal costs and professional witnesses, but then they have to be fought out in the unfair and unbalanced property tribunal. I say “unbalanced” because, at present, leaseholders will never get their legal and professional witness costs, even if they win their case, whereas the landlord always gets his legal costs under the lease and, as a consequence, can be relied on to arm up with the costliest legal team.

Additionally, it is depressing that when leaseholders win their property tribunal cases, they often have to clear another time and expense hurdle by going to the county court to ensure that the property tribunal’s rulings are enforced.

The present Leasehold and Freehold Reform Bill addresses a handful of these unfairnesses, but by no means all, like proposals to safeguard the £2 billion to £4 billion held in trust by managing agents. This would be the service charges.

I urge you to consider the case of Canary Riverside, a prime docklands site in London where the freehold is owned by a freeholder called John Christodoulou, who lives in Monaco. It was brought to the attention of the Commons a few years ago by the then MP and co-patron of the Leasehold Knowledge Partnership, Jim Fitzpatrick. After a great deal of effort, the astonishingly determined and impressive leaseholders at this site demonstrated that the site was being mismanaged. The property tribunal removed Mr Christodoulou’s management company and appointed a court-appointed manager to manage the site—a bit like a ward in court. Since then, Mr Christodoulou has fought a campaign of outright lawfare to win back control of his site. Canary Riverside has occupied well over 20 days of full court hearings.

Now, the Building Safety Act may have come to Mr Christodoulou’s salvation. A court-appointed manager cannot be a responsible person under the Act, so he is arguing to have the management returned to him. Therefore, a management that was so irresponsible it was removed by a court may return because of an unintended provision of the Act. Please consider this. The 20 days in court have devoured the time, energy and money of the leasehold leaders at Canary Riverside. Why should they have to go through all this when they simply want to live in their homes without being pushed around and monetised by an offshore landlord?

I could go into the current arrangements for self-regulation of managing agents and why that has failed, but I guess that will be the subject of a question later.

The Chair: Yes. Basically, you are saying that there is such an imbalance that nothing in the current arrangements gives proper regulation of property agents.

Sebastian O'Kelly: Correct. I would say, though, that the report by Lord Best is very welcome and has some interesting provisions in it, which I am sure we will address later.

The Chair: I am sure we will.

Q10 **Viscount Trenchard:** Can I ask you a little more about what you think about the proposals for a new regulator of property agents? As you know, for a long time the Government resisted the creation of yet another regulator, on the grounds that, arguably, we have too much bureaucratic regulation of many facets of human life and it looks more and more as if it is all one way. Who is going to pay the costs? What does it do to increase the basic problem, which, as Lord Agnew identified, is the shortage of housing? Do you think that the proposals that have been made for a new regulator will be effective without stifling the market and creating a lot of expensive bureaucracy, which will put up costs even more? Do you think that a regulator would really be able to deal with the genuine challenges, in many cases, that leaseholders face with property agents?

Sebastian O'Kelly: That is a very interesting point. To address the issue of the market, if you are suggesting that this might discourage offshore punters from purchasing freehold interests in residential blocks of flats, I am afraid that you are asking the wrong person, because I could not care less. I do not think that freeholders should be there in the first place. They have 1% to 3% of the value of a block of flats, yet they are the building owner in law, make all the decisions on the management of the block, and, as I have explained, have this uniquely and absurdly privileged position in litigation and can always get their legal costs. As for discouraging those investors, I do not care.

I do care about what is happening with property management companies. There is a disturbing trend at work here. I think that it is a very good point to ask whether regulation might deter new entrants to this market. New entrants to this market are precisely what we need. What is happening in property management at the moment is that the management groups are getting bigger and bigger. FirstPort, which is owned by the French group Emeria, and Odevo, which is owned by a Swedish private equity group, now account for more than 50% of the flats managed by the Association of Residential Managing Agents, so these two huge groups have a preponderant role in the market.

I am sure that they would love regulation to deter new entrants to this market, but we want to encourage people to come into it. Some of the

best managing agents who have come into it have been formed by professional people who were leaseholders, know its angles and want to provide an honest and efficient service. But the fundamental problem is not the managing agents and whether there are enough of them; it is the fact that they are appointed by the freeholder, and the freeholder has this privileged position in law, as I explained earlier.

Q11 Baroness O'Grady of Upper Holloway: My question is on similar territory. To what extent does the Leasehold and Freehold Reform Bill currently before Parliament address the concerns raised by the working group? Will a regulator still be needed when it is passed?

Sebastian O'Kelly: They are not introducing the regulation of managing agents. They have ignored it, which is a shame, because Lord Best did some splendid work on the regulation of managing agents. I have thanked him before, and I thank him again.

There is consensus among property managers that there should be a regulator. Two to four billion quid of service charges is held in trust by people who could put on a suit and set themselves up as a property manager tomorrow. I am more interested in the regulation of the cash, rather than being too pernickety or creating huge obstacles to new entrants to the property management business, which should be encouraged. The more competition there is the better, in my view. But let us have managing agents appointed by leaseholders, not imposed on leaseholders by people who want to monetise a site, which is what happens at the moment—uniquely in this country, by the way.

I should have said right at the outset that I am not a leaseholder at all. However, I have been a commonholder in a western European jurisdiction and am one at the moment, so I am well used to the alternative system of owning a flat. Like many continental Europeans who own flats in London, I look askance at the fact that you can spend millions of quid buying a flat, but you are a tenant in law and will be dealt with as a tenant.

Baroness O'Grady of Upper Holloway: In your view, does the Bill provide any further resource or capacity for leaseholders to enforce the new obligations that will be placed on freeholders?

Sebastian O'Kelly: One of the most important aspects of the Bill is to ensure that the landlords do not automatically get their legal costs in litigation and that this imbalance of arms in the property tribunal is ended. It is abused. It is the main reason why leasehold disputes fizzle out, because the landlord will arm up.

I will give an example of this. A woman in Onslow Square in Kensington, which is part of an aristocratic estate bought by the Wellcome Trust, refused to pay £9,000 of service charges. On the first day of the four-day hearing set aside to deal with this, the landlord conceded £3,000 and would not dispute that, so one-third of her dispute was correct. However, four days of hearing took place to examine the £6,000 that she withheld.

She was a litigant in person. The Wellcome Trust, on the other hand, employed a full legal team and barrister, and ran up £114,000 of costs, to get back £6,000. In what area of civil litigation does that make sense? It does not make sense anywhere else, but it does in leasehold because they knew perfectly well that they would get their legal costs. The result is that Onslow Square has been remarkably meek and obedient to its landlord ever since.

Q12 Lord Best: Thank you for coming, Sebastian. If a new regulator were established, what would its main objectives be? These can be very broad, but they can also be quite specific. I get the feeling that you are keen that there is an increase in the number of properties—blocks of flats—that are commonhold and that change their status, using the right to manage or enfranchisement. Are those the kinds of criteria by which you would judge whether a regulator was succeeding in the future?

Sebastian O’Kelly: I think that that would be slightly beyond the scope of the regulator, to be frank. I support a mandatory commonhold for new blocks of flats and moving over to a system where the consumer is in charge of the asset that he or she has purchased. The regulator would need to work within a leasehold system and a commonhold system and to regulate the property managers. Of course, we have consensus on this with ARMA and the IRPM. ARMA is the Association of Residential Managing Agents; the IRPM is the Institute of Residential Property Management. We have always encouraged the activities of the IRPM. We want property managers to be well qualified and competent to deal with the very complicated issues of managing a multiblock block of flats.

One of the most interesting aspects of your report was where you said, “We recommend that the new regulator takes over from the First-tier Tribunal the power to block a landlord’s chosen managing agent where the leaseholders have reasonably exercised a veto. We also recommend that the new regulator provides information on managing agent performance to allow landlord freeholders—and where relevant, leaseholders—to make an informed choice of managing agent”. That is splendid. I would only say that, if the freeholder can just run off and appoint another stooge to do his bidding, it is not a huge assistance, but at least it has put up a marker that it is not performing well.

Of course, we have a Housing Ombudsman in the form of Richard Blakeway, who oversees the housing associations, and does so with a budget of £8 million. You might have thought that you could throw in leasehold there for perhaps the same amount. That might be optimistic over the finances, but he has come up with very robust rulings and is completely independent of the sector, which is the ideal for a regulator. We have seen self-regulation in this area. It has failed. The trade bodies involved acknowledge that it has failed. The regulator who was appointed by ARMA, Sally Keeble, a former Minister, resigned and said that self-regulation is a complete failure. We have seen ARMA being sued by a managing agent when it was going to constitute a regulatory panel to deal with its abuses. The result is that ARMA has given up on it and you

simply go to one of the commercial property ombudsmen out there. That is the only obligation and regulation of managing agents, as it stands.

We also have the Royal Institution of Chartered Surveyors. We had a very serious issue with a managing agent, who was stripped of his judicial appointment and hauled before the RICS disciplinary tribunal. The first panel had to be cancelled because of procedural incompetence. At the second one, some of the allegations or charges were dropped, and he was cleared over the trifling one that remained. The Royal Institution of Chartered Surveyors has had to reinstate 317 struck-off or disciplined surveyors because of procedural failings of its regulator. This was the achievement of a very clever barrister. I am afraid that self-regulation by the trade bodies demonstrably does not work. That is why it is so important to have somebody completely independent of the sector, not somebody who has come from the leasehold sector and whose livelihood has been provided by the money involved.

Lord Best: Once the regulator was up and running, how would we all judge whether it was succeeding? What criteria would you use to pronounce on whether this was working?

Sebastian O'Kelly: I would like to see it flagging up some of the abuses. You and I know about this, but I will mention it for the benefit of others. We have published this material on our website and are fully liable for that. One of the most egregious cases I have written about recently involved a court-appointed property manager who then set about monetising the asset he had been entrusted with. He was removed for failing in his fiduciary duty. I want to pay tribute to both ARMA and the IRPM. The IRPM kicked this fellow out of the Institute of Residential Property Management and ARMA kicked his company out of that body, so they did something there and I acknowledge it.

Q13 **Viscount Chandos:** Both you and our previous witness have highlighted the imbalance of power. How do you see that affecting the ability of leaseholders to complain about or appeal against how they are being treated? If it is not yet perfect, how would you see it improved, either through a regulator or through any other means?

Sebastian O'Kelly: Most leasehold disputes fizzle out. The most sensible course that many leaseholders can take is to sell up and pass the problem on to another owner. That is what happens. I have even advised it to leaseholders who have got in touch with me. Seeing the turmoil that it is creating in their lives and knowing the expense that would be involved in going to the property tribunal, I have said, "Just sell and go. Think about something else, because it's not doing you any good".

Viscount Chandos: That is applicable to a long leaseholder who has something to sell. For many people, particularly young people entering work and independent adult life, it is about short leases. That is equivalent to saying, "I give up", and then going back into the frenetic market of multiple viewings and rent gazumping that our last witness described.

Sebastian O’Kelly: Yes. It is an awful situation, but I can tell you that many leaseholders who have taken their first step on the housing ladder bitterly regret having done so and wish that they were still in rented accommodation. They are now caught in flats up and down the country that they cannot sell and face devastating bills. This is the building safety crisis: the post-Grenfell building safety scandal that was revealed when it was demonstrated that our housebuilders have built very badly, as well as with predatory tenure. So many blocks of flats need remediation. There are waking watch bills and other bills that come through, and the leaseholders have to pay them. Let us not forget, incidentally, that at one point the Government considered making the leaseholders pay the entire costs of the remediation of those buildings by a forced loan system. Thank goodness we managed to torpedo that.

You are raising concerns that address short-term tenancy, which is not my area. However, people who have at last come off paying out rent and have bought something—who have done absolutely what society would want and have a material stake in society—find that this material stake in society is pretty much valueless and comes with a huge headache, so they bitterly regret it. That is a huge failing.

I note that one of the Members here is a residential property developer. The market in flats is at 50% of what it was in 2019. I am talking about modern flats, not Victorian conversions. The actual volume of sales is seriously impacted by the problems in this sector.

Viscount Chandos: You sound quite defeatist. Do you believe, if many or all the recommendations of Lord Best’s report were implemented, that that could not include an appeal or challenge process that would protect long leaseholders and, importantly, short leaseholders as well?

Sebastian O’Kelly: Lord Best’s report is excellent, as far as it goes—in the regulation of professionals who manage a block of flats—but it does not address the imbalance of power of having a property manager imposed on you by somebody else. That is the key issue in leasehold. Yes, these professional managers can be improved. Yes, they should be regulated. Yes, they are looking after large amounts of money, which must have oversight. But the point is that they are appointed by a freeholder whose investment in a block of flats is 1% to 3% of its total value yet who has this incredibly privileged position to impose the management on those leaseholders.

You may be hearing from the Property Institute, which is what ARMA and the IRPM now like to call themselves. It constantly refers to leaseholders as customers. It is a most appalling misnomer. In most leasehold, leaseholders are in no sense customers of the property manager. They are the product, not the customer. They are the product to be monetised.

Q14 **Lord Clement-Jones:** We have all heard what you have said about the imbalance of power, but can I come to what a new regulator might do? I entirely accept that that is not the fundamental issue for you; the fundamental issue is the imbalance. The working group suggested that

the new regulator should operate codes of practice that agents would have to sign up to as a condition of their licence to practice. Would you support that? If so, would you like to see this kind of code of practice instituted?

Sebastian O'Kelly: Yes. I think that it would be good. I would have much more confidence in a code of practice provided by Lord Best and people of his stature than in one provided by the Royal Institution of Chartered Surveyors. It has quite a good code of practice, but it has far too much use of the conditional tense, rather than the imperative. There are lots of "shoulds" and "coulds", rather than "shall" and "must".

Lord Clement-Jones: So you have a pretty good idea of what that kind of code of practice should contain.

Sebastian O'Kelly: Beef it up and it is not too bad.

Lord Clement-Jones: Coming on to the next point, the working group also suggested that property agents should be mandated to be properly qualified. We heard what Conor had to say about that. Do you agree? What would you see as particularly important considerations for agents to be trained in?

Sebastian O'Kelly: Yes, I agree. The Institute of Residential Property Management, which, unfortunately, has now combined with ARMA to become the Property Institute but was better as an independent, separate organisation, has done a good job. Property managers should be properly trained and should have a decent career path. They are often extremely impressive people. Typically, they are ex-Army officers or graduates in the sciences, and they have to deal with quite complicated issues. When we are talking about really big blocks of flats, you need a complicated skill set. I do not think that there is much point in trying to outline what all that should involve, but the IRPM has qualifications. It is good that there are qualifications. I really applaud the IRPM for taking a good look at the gentleman I mentioned earlier and kicking him out, as he was not an adornment to the profession.

Lord Clement-Jones: So you think that the combination of individual qualification—in a sense, proper qualification, according to that kind of rubric—plus the overarching code of practice or code of conduct for the actual business of the property agent, is the right way forward.

Sebastian O'Kelly: Yes, I do. I do not think that there needs be any expense in this, because the IRPM is doing the qualification bit on its own and should continue to do so.

Q15 **Lord Agnew of Oulton:** Hello, Sebastian. You paint a very vivid picture of the problems in the sector. As an incrementalist, I wonder whether, rather than have another layer of bureaucracy, some of these suggestions might get the problem solved.

First, I worry about the level of legal advice that leaseholders receive when they buy a leasehold property. It seems to me that there has been

a race to the bottom on the quality of legal advice. The report on title and so on are very inadequate for people who, as you mentioned earlier, are new to property ownership. I wonder whether that could be an improvement.

Moving on from there, you mention the asymmetric warfare between a freeholder and a leaseholder. Again, it sounds dreadful. I did not know about the things you have just told us about. Could the legislation not deal with that so that it was much more balanced?

Your other important point was about service charge cash not having to be ring-fenced in client accounts, which we now do, finally, for rental deposits on residential property.

All those things might deliver meaningful improvements. What I worry about with a regulator is that it would not just be your £8 million-a-year job with the housing associations, because it would be sitting over many tens or hundreds of thousands of properties. If the problem is as bad as you say it is, there will be huge numbers of transactions and cases flowing through it, so there will have to be a substantial levy on the sector somewhere to pay for all of this. I would be interested if you could comment on those thoughts.

Sebastian O’Kelly: Yes. On the issue of legal advice, you said that it is a race to the bottom. That is an extremely polite way of putting it for some of the legal advice that we have encountered in this sector.

I really think that developers and estate agents should be banned from recommending solicitors to purchasers or having a panel of recommended solicitors. Time and again, we have shown that that has been abused. Our plc housebuilders decided that it was a good idea to spread leasehold houses around the country. Then they thought that it was an excellent idea to introduce extremely aggressive ground rent into their leases of those houses: 10-year-doubling ground rents. It meant that those properties were unsellable. That was obvious to somebody as innumerate as me. It must have been flagged up somewhere among the housebuilders.

None the less, those properties were built; they were sold; and the solicitors, almost invariably recommended by the housebuilder, flagged up no problems whatever with the lease. Only when there was a huge intervention and scandal over the doubling ground rents or aggressive ground rent issue was the matter resolved. The legal profession was utterly useless on this. I do not think that they should have such a close relationship with the seller of the property. That is my view. It is not so much a race to the bottom. I would say that they have acted as the seller’s stooge and failed in their professional duties.

You made a point about the cash being ring-fenced. Could you elaborate?

Lord Agnew of Oulton: I may have misheard you. I thought that you were saying that several billion pounds—

Sebastian O’Kelly: Yes. From £2 billion to £4 billion, we would estimate.

Lord Agnew of Oulton: That is money that tenants or leaseholders pay into the service charge accounts for the managing agency.

Sebastian O’Kelly: Correct.

Lord Agnew of Oulton: I may have got it wrong, but I thought I heard you say that that money is not protected in client accounts.

Sebastian O’Kelly: It is in client accounts, but the managing agents, particularly rogue ones, can abscond with it—and do. We have an issue at the moment with a managing agent. A million pounds of reserve funds, from four sites, have gone missing.

Lord Agnew of Oulton: What are you proposing?

Sebastian O’Kelly: I hope that this cash will be regulated. There should be third-party oversight of it.

Lord Agnew of Oulton: If you steal from a client account, that is criminal. You talk about regulation. This is my worry about regulation.

Sebastian O’Kelly: Yes, but try to interest the police in a fraud case: it is extremely difficult.

Lord Agnew of Oulton: How would it be any different if you had a regulation that said that it was now—

Sebastian O’Kelly: If there were some kind of oversight, it would make it more difficult to make off with the funds than it is at the moment. At the moment, we just have to take on trust that the accounts are held in trust in a bank account and looked after. Absolute transparency of the service charge account is what is required. I would support leaseholders having visual access to the bank account to see how it was being spent on a day-to-day basis. Obviously, you will have a number of rather idiotic complaints about that, but they can be dealt with. More serious ones will have legs.

The Chair: We have had some very useful information. Lord Best, do you want to come back in?

Lord Best: The thing that you have been emphasising is the imbalance between the two parties involved. I want to test on you whether the recommendation for a regulator helps to correct that imbalance in a couple of ways.

The first, which you touched on, is the appointment of a new agent: not going on being with a first-tier property tribunal but transferring to the regulator, who has all the particular specialist understanding of the issues and could handle the appointment of a different managing agent. That would be quite a big change from the present structure and would bypass a lot of the legal problems a case currently has to go through.

The other is that, broadly, a regulator would be very much part of transparency, which is about spelling out what these service charges

cover and what commissions the agent is taking. In the working group we recommended that that should be in a standard format, so that everyone could compare with everybody else. It would be entirely clear. Would those things not satisfy you, at least in part, that the imbalance is—

Sebastian O’Kelly: They would all be very welcome. I absolutely agree with you. Having a service charge pro forma that was national and immediately comprehensible would be hugely useful. At the moment, accounts are as opaque as they possibly can be, in many cases.

Lord Best: What about the appointment of the agent?

Sebastian O’Kelly: It was wonderful that you put that in your report. I congratulate you on that.

Lord Best: This would help with the imbalance, I think.

Sebastian O’Kelly: It would help with some of the imbalance, but the system is not working. Before the appointment of the estimable Mr Boyd, the Leasehold Advisory Service did a survey of leaseholders. It reported that 58% of leaseholders bitterly regretted their decision to purchase. That is not good, really.

The Chair: Thank you very much for your evidence. You have given us some very interesting information. Thank you very much for coming along this morning.