

Housing, Communities and Local Government

Oral evidence: Commonhold and Leasehold Reform Bill, HC 1681

Tuesday 10 March 2026

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Members present: Florence Eshalomi (Chair); Lewis Cocking; Andrew Cooper; Chris Curtis; Mr Lee Dillon; Maya Ellis; Mr Will Forster; Andrew Lewin; Mr Gagan Mohindra; Sarah Smith; Sean Woodcock.

Questions 75-130

Witnesses

[I](#): Mari Knowles, landlord and tenant lawyer, Commonhold and Leasehold Experts Ltd; Douglas Maxwell, Barrister (human rights and property law specialist) at Henderson Chambers; Philip Rainey KC, barrister at Tanfield Chambers.

[II](#): Mark Chick, Director, Association of Leasehold Enfranchisement Practitioners; Philip Freedman CBE KC, member of the Land Law and Conveyancing Committee, The Law Society; Vanessa Griffiths, member of the RICS Residential Professional Group Panel, Royal Institution of Chartered Surveyors (RICS); Emily d'Albuquerque, General Counsel and Director of Data & Register Integrity Group, HM Land Registry.

[III](#): The Rt Hon Lord Richard Best OBE (Cross Bench), Chair, Regulation of Property Agents Working Group (2018-2019).

Examination of witnesses

Witnesses: Mari Knowles, Douglas Maxwell and Philip Rainey KC.

Chair: Good morning, everybody, and welcome to the Housing, Communities and Local Government Committee. I am Florence Eshalomi, the Chair of this Select Committee. Can my Committee colleagues quickly introduce themselves please?

Mr Mohindra: I am Gagan Mohindra, the Conservative Member of Parliament for South West Hertfordshire.

Lewis Cocking: I am Lewis Cocking, the Conservative Member of

Parliament for Broxbourne, and I am a leaseholder as well.

Mr Dillon: Good morning. I am Lee Dillon, Member of Parliament for Newbury.

Mr Forster: I am Will Forster, Member of Parliament for Woking.

Sean Woodcock: I am Sean Woodcock, Member of Parliament for Banbury.

Chris Curtis: I am Chris Curtis, Member of Parliament for Milton Keynes North.

Andrew Lewin: Good morning. I am Andrew Lewin, MP for Welwyn Hatfield.

Sarah Smith: Hi. I am Sarah Smith, the MP for Hyndburn and also a leaseholder.

Andrew Cooper: I am Andrew Cooper, Member of Parliament for Mid Cheshire.

Maya Ellis: I am Maya Ellis, Member of Parliament for Ribble Valley.

Q75 **Chair:** This morning's session is our second session looking at the pre-legislative scrutiny of commonhold and leasehold legislation laid out by the Government. Can I ask our guests to introduce themselves, please?

Philip Rainey: I am Philip Rainey KC. I am a barrister in private practice at Tanfield Chambers. I have specialised in property and leasehold work for more than 30 years. I have previously been a member of the technical support group for commonhold. I probably should declare that I also own a leasehold flat with a ground rent.

Mari Knowles: I am Mari Knowles. I am a solicitor in private practice. I should also declare that I work part time for the Department as a lawyer. That was disclosed prior to my invitation¹. I basically specialise in landlord-tenant and commonhold work. Most of my work is on behalf of leaseholders, but also resident management companies and right-to-manage companies.

Douglas Maxwell: My name is Douglas Maxwell. I am a barrister in private practice at Henderson Chambers in London, and I have a background in property law and human rights, with a PhD in property law and human rights and a book on the topic.

Q76 **Chair:** Thank you for coming before the Committee this morning. I think it is fair to say that the issue of commonhold has been a long-running theme in the last Parliament and now in this Parliament. Obviously, the Commonhold and Leasehold Reform Act was passed in 2002, and

¹ Mari Knowles works part-time as a contractor for the Ministry of Housing, Communities and Local Government. She gave evidence in a personal capacity as a landlord and tenant lawyer at Commonhold and Leasehold Experts Ltd.



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unfortunately we have seen only a very small number of commonhold developments established. An opening question to the three of you: what do you see as the key changes in the legal framework on commonhold in this draft legislation, and what changes would you want to see in future developments?

Philip Rainey: Briefly, the most important thing is simply the sunset clause on leasehold. That is because—and this is not a criticism of anyone—of the fear of the new when there is an established system. Unless there is a sunset clause, which there was not under the old Act, it is unlikely you will get a high degree of take-up. The second thing is the ability to convert to commonhold without 100% agreement of all leaseholders, freeholders, mortgagees and so on, which in practice is impossible to achieve.

The other important change is the ability to have sections in the commonhold and different service charge pots. Under the old Act, you could only have a single service charge with a single percentage, so the commercial units had to pay towards the same things as the residential units and so on. Therefore you could not in effect have mixed-used developments, or even two towers on the same estate. Those structural changes are, in my view, the most important things and should allow the commonhold to be delivered.

Very briefly, I think there is a danger of over-promise, in the sense that you can change the tenure of a building, but at the end of the day it is a building with flats in it and if the roof leaks it costs exactly the same to fix the roof on a commonhold building as it does on a leasehold building. I hope there will not be an over-promise of lower charges for everyone. They may be, because of better democratic control, but if something goes wrong with the building it will cost the same to fix, because the contractor will not care what the tenure is.

I do not want to take everybody else's time, but I think there are a couple of omissions. One thing that does not seem to me to have been thought of is that there is another document, which is the contract for sale of the commonhold unit off-plan. In a new commonhold, the developer will be selling off-plan, so someone needs to perhaps think about whether there should be controls over the contents of that contract.

To take one example, it is said the developer cannot control who the directors are because after 50% of the units are sold, the commonholders will have control, but could there not be a clause in the contract of sale that requires the unit holder to vote the way the developer tells them? That is one example. It would not be difficult to do something about that, but when thinking about a new commonhold you do have to think that there will be a whole raft of contracts in place at the beginning of the development.

The second thing is that there are a number of statutory time limits in the Bill, for instance for unit holders to challenge non-essential expenditure. They have a month to do that. I am not clear that there is a power in the

tribunal to relax that one-month deadline in an appropriate case if it is just inequitable, because that is statutory. If Parliament puts a statutory time limit in, then the courts and tribunals cannot simply override it.

Mari Knowles: My answer is twofold. First, I think transparency is absolutely critical to making commonhold work. We are asking commonholders in the building to vote on critical decisions, such as on the reserve fund and budget setting. If those commonholders do not understand what it is they are looking at—for example, understanding what a reserve fund is—it is very hard to get an accurate vote in favour and support of those documents.

In the Bill itself, I think there will be an opportunity for secondary legislation. There is nothing necessarily that needs to go into primary, but it is critical there is some kind of detail in respect of better transparency, to make sure commonholders have access to all the documents they need.

The second thing, following on from Mr Rainey's comments, is education. One of the fundamental problems with the leasehold system, taking into account my experience of speaking to many leaseholders, is the lack of education on their side. That is not because they are not willing, or because they are not intelligent enough; it is because there is no proper education facility. A lot of leaseholders come forward and say to me, taking a breach of lease, for example, "I carried out alterations in my flat. I wasn't made aware at the time I bought my flat that I needed the landlord's consent. I'm in breach. Now my landlord is trying to forfeit."

If leaseholders understood their lease to begin with, a lot of the problems that we see in the current system would not exist. Commonhold, I think, will only really be successful if it is implemented properly. It is not a legislative problem; it is an implementation problem.

Douglas Maxwell: On commonhold itself, I am going to limit myself to the expertise of those sitting to my right.

Q77 **Chair:** The draft Bill aims to address and fix some of the issues. Are there any glaring omissions? What improvements would you suggest?

Philip Rainey: I do not think there is anything that I would identify as a glaring omission. There are some things that we do not know, in the sense that regulations will fill in a lot of detail. A classic example of that is the section provision. At the moment, sections are clearly a good idea, and they are an answer to the problems of the current Bill in terms of phase development, but—

Q78 **Chair:** Do you think that will help in terms of the interest of the commercial and residential units?

Philip Rainey: Yes—and the developers. At the moment, the developer would plan it out. You would plan different service charge pools and work out which leaseholders are going to pay towards what. You simply cannot do that with commonhold. Under the new regime, it is not a lease that provides it, but the sections will provide it. It will allow developers, at least



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in principle, to plan their developments in the way they do at the moment. It will also mean that unit holders only have to pay towards the facilities that they are entitled to use. That is all good, but there are regulations that are going to govern when you can create a section. A potential problem would be if someone created regulations that were too restrictive, because then you effectively build in the problems of the old Bill.

Q79 Maya Ellis: I have a few questions about commonhold associations. I was interested in what you said about education, Mari, and looking at how we move people into this new way of working. Do you feel that the draft Bill sets out fair systems for decision making in commonhold associations, and do you think that in most cases, they will work as the Government intend?

Mari Knowles: The Bill itself—yes, absolutely. I think the foundations are there, but any good legislation is also dependent on successful implementation. My serious concern right now is the lack of support for commonholders to understand what it is they are voting on. That is my concern. It is not something that could be legislated on, but it needs robust enforcement.

Q80 Maya Ellis: In terms of this Committee and our report, are there things that you feel the Government could do at a national level to help create a framework or something to make sure that that happens?

Mari Knowles: There might be potential in secondary legislation under certain parts of the Bill. For example, there is a provision in the draft Bill relating to voting systems. We could put something in there that clearly says—in a statutory instrument—that “these are the documents that must be provided before a vote is taken” to make sure that everybody understands what they are voting on.

At a national level, the Leasehold Advisory Service has greatly improved over the last couple of months. I know that leaseholders are now getting a lot of support. Even two or three years ago, there was very little resource for leaseholders, but now the Leasehold Advisory Service has webinars for leaseholders, and the building safety team has really good videos and explanatory guidance for resident management companies in particular.

It is improving, but this has to be robustly implemented for commonhold. You do not want someone buying a flat or a unit who does not understand what it is they are buying, because if they get invited to a vote, and they do not understand what a reserve fund is and the benefit of a reserve fund, it is going to be extremely difficult to get these votes passed. I know that managing agents in particular are very concerned about a stalemate situation where they cannot get budgets or a reserve fund signed off. It is the practicalities of that. Educating commonholders to understand what they are voting on will go a long way to easing a lot of concerns that management agents have.

Philip Rainey: As a Committee, when you are looking at the votes, you have to remember that, unless it says it is a percentage of members, it is a percentage of those who vote. The key then is the quorum. Under the current regulations, the quorum for a commonhold association meeting is



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20%. If the Bill says, “75% of those who vote”, in theory that could be 75% of 20%. Certain things can pass at 15%. If it is an ordinary resolution, it is 50% of 20%, so 10% of the members. Certain things are actually easier to do than you might think.

There are two other important points. First, the commonhold association is a company, and therefore the commonholders will have to learn to comply with company law unless the Bill says otherwise. There is an education piece there. There are also a lot of traps in the technicalities of the Companies Act. I would suggest that the tribunal should be given the power to waive minor defects in procedures that do not affect the result.

The Committee might consider recommending wider powers to relax requirements of the Companies Act for commonhold associations because such an association is not a big PLC. Should ordinary people voting, perhaps in somebody’s kitchen, really have to comply with some things in that Act? I suggest that you could usefully put in a provision that those requirements are relaxed. You might even put in a provision that says that the current precedent—the case law—for ordinary Companies Act matters does not have to be applied rigorously to commonhold associations.

Q81 Maya Ellis: You have touched on this a bit, but what are the risks if we do not get the education right? You have highlighted some of the challenges, but what will the impact be in five or 10 years, once this all comes into play, if people are really struggling to understand and make use of that commonhold?

Mari Knowles: It will directly impact the quality of the building. That is the primary concern. Lenders may be speaking to you later to give evidence. They will no doubt have views on the condition of the building. I have a couple of right-to-manage companies that traditionally have not paid into the reserve fund. They have all contributed the absolute bare minimum service charge. They carry out the absolute bare minimum work, so now the buildings are severely dilapidated and they are all looking at five-figure or six-figure bills. We want to prevent that. Prevention is cure.

Philip Rainey: I have nothing to add, other than that if Mari is right—and I think she is—lots of ordinary blocks run with insufficient reserves. The positive is no unwelcome bills in 10 years’ time. The negative is that the yearly bill will be higher than some people are used to, because they are used to running on a shoestring.

Q82 Maya Ellis: Finally, do you think that the recommendations around tribunals are sufficient, or is there anything else that you would like to see changed?

Philip Rainey: As much jurisdiction as possible for the tribunal. Having to take Companies Act proceedings in the companies court is potentially a disaster. I am not sure that clause 97 gives the tribunal the power to waive either minor defects in procedure or to vary statutory time limits in the Bill. I must say that clause 97 is quite short. The regulations are going to have to do a lot of heavy lifting in dispute resolution.



Q83 Mr Forster: Douglas, what do you think the likelihood is that freeholders will seek a judicial review of the proposed legislation if it is passed in its current form? If you think that they are going to do it, what do you think the likelihood is that that legal challenge will be successful?

Douglas Maxwell: Dealing with the first question, I cannot speak on behalf of freeholders about what they are and are not going to do. The proposal that is probably the most significant interference is the capping of ground rent at £250, going to a peppercorn after 40 years. It seems almost inevitable that a challenge will be brought under human rights legislation. The economic impact of that reform will be far more draconian than the current Leasehold and Freehold Reform Act, which is being challenged in the courts at the moment.

Based on that, it seems almost inevitable that, in its current form, the Bill will be challenged on human rights grounds. I cannot really comment on whether that will be successful. At the moment there is probably not enough information in the public domain to determine that.

It would be helpful—and I appreciate that you are all asking for this as well—to have the response to the 2023 consultation. It would also be helpful to have an impact assessment of this reform. I know there was an impact assessment of the original consultation in 2023. I know there were problems, or issues, with that and some figures are quoted in the policy documents for the Bill as well, but it is really for the Committee to scrutinise that consultation, the response and the impact assessment.

It all comes down to the question of fair balance, although it may be unpopular with many. Lord Hope in the Supreme Court case of *Salvesen v. Riddell* said, “landlords, however unpopular, are as much entitled” to human rights as anyone else. I appreciate that the human right to property may sit in a somewhat odd space within what we would normally consider to be human rights, but they are entitled to it. Ultimately, Parliament determined that in the Human Rights Act through ratifying the European convention on human rights. Whether that will be successful really depends on myriad factors, and thankfully I am not the judge who will have to determine it.

Q84 Mr Forster: What action or amendments would you advise the Government to consider to reduce what you say is inevitable legal action?

Douglas Maxwell: In short, if there is going to be some form of cap or reduction in ground rent, there is probably very little that is not going to result in a challenge, but what the Government can do is reduce the risk of a successful challenge. Again, the consultation response on ground rent would be helpful to see how that pans out, but there are options.

For example, the policy goal in the manifesto is to “tackle unregulated and unaffordable ground rent charges”. The question is whether that, in and of itself, justifies the £250 cap, and also where the 40 years has come from. I assume it has come through legal advice, as that will reduce the possibility of a successful challenge, but it is not entirely clear, from this side, where that 40 years has come from. For example—this is a point that



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Philip noted, so I am not claiming any knowledge of this—the Rentcharges Act 1977 abolished ground rents for freehold properties, and that gave a 60-year sunset clause. There are certain examples of ground rents for freeholds that are not going to end until 2037, so there are different ways of doing it.

I appreciate that you people have very passionate views on ground rent, including what it is and how it is paid, but the real question is whether £250 a year really is an onerous ground rent, and also whether that actually tackles the bigger issue, or the real issue, with leaseholds: doubling ground rents. I accept that a Government can only go so far in tailoring legislation to the facts, but if you think about the fair balance, is it in the fair balance for Government to legislate to take ground rent away from a charitable trust that uses that money for its charitable purpose, and to give what is effectively a windfall to an offshore private landlord based overseas?

I appreciate that is an extreme example, but that is really an issue for the Committee to consider. I appreciate that there is a spectrum of ground rents, and a spectrum of people who effectively benefit from them, but it is important to look at the full spectrum. Going back to what Lord Hope said in *Salvesen*, however unpopular landlords are, they are still entitled to the protection of the European convention on human rights.

Q85 Mr Forster: That is helpful. Last week, we had two former Secretaries of State appear, and they said that ground rent is money for nothing. I have also had leaseholders in my Woking constituency say that they are paying ground rent for effectively nothing. We have had examples where people have said, “Oh, no! It’s the service we provide for the building.” Well, that is the service charge.

If a lot of opinion says that ground rent is money for nothing, why would a legal challenge on human rights grounds be successful? Do you think the Government have the balance right on that sunset clause and the change to peppercorn?

Finally, you mentioned the 1977 Act, but most changes in legislation do not get a 40-year transition period, and the Government are being extremely nice to plan that far ahead. Whether it is the WASPI women, student loans or other things, the changes are almost instantaneous. Why are freeholders getting such a good deal?

Douglas Maxwell: I cannot answer on behalf of freeholders. On your first question, the way in which A1P1 works is that it relates to possessions, so that is something with an economic value. The lease—the contract—is what gives it that value. It does not look at the subjective question of what ground rent is for, or whether—in your words—it is “money for nothing”. It is an economic asset that exists, and there is not really any way of getting around that.

There are many assets or streams of income where we may have questions about their morality, but ultimately, if they exist in the lease and

the contract, they are possessions under A1P1. Can you remind me what your second question was about?

- Q86 **Mr Forster:** It is such a long transition period—40 years. That is almost unprecedented. Surely that reduces the legal risk. Surely that is the Government being very fair to freeholders.

Douglas Maxwell: It is part of the balance that the court may have to make about that sunset clause, but ultimately it is still quite a significant interference in a large number of assets. The economic impact is significant; even though we have limited figures from the Government so far, we know the impact is significant. It is also quite an unusually large retrospective interference in property rights—rewriting contracts. But again, ultimately, that may be for the court, which takes into account myriad factors when considering that fair balance. The points that you have put forward will undoubtedly be put forward on one side and considered by the court. I think there does need to be some proper consideration of where the 40 years has come from. I assume it is based on advice that has been received about limiting the possibility of a successful challenge.

Chair: We are trying to get to the bottom of that—don't worry.

- Q87 **Andrew Cooper:** If Parliament legislates to ban ground rent, which is what it will effectively be doing if the draft Bill becomes a Bill and is passed, Parliament is expressing the view that ground rent ought not to happen. Regardless of what we may think about that, Parliament is saying, "Ground rent shouldn't happen." What we are arguing over here is the length of the sunset clause, which could be between zero and apparently 60 years, if we were to take the example of the 1977 Act. If you were offering advice to us and MHCLG, what factors would you say should be considered about where to draw that line? The Government has said 40 years, but what advice would you give on where the line should be drawn?

Douglas Maxwell: It is exceedingly difficult, in the confines of a minute and a half, to give an answer to that. It is also exceedingly difficult because of the points I raised earlier—we do not have the consultation response and we do not have the impact assessment. Although Parliament is sovereign and has its own will, Parliament's sovereignty is also expressed by the fact that Britain is party to the European convention on human rights, and the fact that Parliament legislated for the Human Rights Act in the late 1990s, which mirrored the majority of convention rights in schedule 1. In doing so, Parliament effectively accepted that there was a certain limit on what can be done. Unfortunately, if human rights are working, they tend to be quite unpopular with Parliament, because they place a limit on—

Chair: On Parliament's powers.

Douglas Maxwell: Yes. In my opinion, it is a good thing that we have human rights legislation that places those limits. I hope that Committee members would agree with that.

Chair: Some of my colleagues may want us to leave the convention, but that is for another day.

Douglas Maxwell: But ultimately, the human right to property is not an absolute right; it is a qualified right. It is primarily for Parliament to determine, and then it may be for a court to assess whether that complies with the case law of, say, the European Court of Human Rights, which Parliament has said should be taken into account.

Q88 **Lewis Cocking:** Douglas, based on what you know now, and all the evidence and your experience, where would you put the figure? How long would you give?

Douglas Maxwell: That is why I am glad I am sitting on this side and not in the Office of the Parliamentary Counsel.

Q89 **Lewis Cocking:** Obviously you have a lot of experience and you know a lot of the detail behind all of it, so if you were advising Government, would you say five, 10, 20 or 60 years?

Douglas Maxwell: I am not sure whether simply looking at the sunset clause is enough. I think there may be an issue about whether simply a straightforward cap of £250 really meets that manifesto commitment to tackle unregulated, unfair ground rents. There is a full spectrum where ground rents can be significantly higher than that and would not be considered unfair, and the real issue of ground rents more recently has been with new build houses and doubling ground rent. There is some really interesting work by a professor at Oxford called Susan Bright, who looks at the consumer rights impact of this. If you are interested in that issue, that is something the Committee should look at as well.

Q90 **Andrew Lewin:** Shared ownership is a growing tenure. Committee colleagues are bored of hearing me say that that is how I got on the housing ladder before I had grey hair. It is a really important part of the conversation about commonhold, so I want to ask you about how this might work practically. In particular, if we take an example where someone owns 25% as a shared owner, and the registered provider owns 75%, which is not uncommon at all when people first come into shared ownership, how could that practically work in a commonhold system where people are exercising votes? How would you see that practically playing out, and does the Bill at the moment provide enough specificity in that situation?

Mari Knowles: Clause 18 of the draft Bill does indeed provide for shared ownership. The Bill is divided into two sections. There are existing shared ownership leaseholders—there is a definition of what a pre-registration shared ownership leaseholder is—and one set of rules for existing shareholders who end up converting into a commonhold from an existing leasehold. There is a second set of rules that relates to new shared ownership leaseholders who come into the market in new commonholds. Clause 18 goes into this. We are, however, waiting for secondary legislation, which may take time to come, before we see the detail of how



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that will work. In particular, for example, clause 18(1) sets out provision for statutory legislation that sets out how all of that will work.

In terms of the protections for shared ownership leaseholders, I think they will have a stronger position than they do under the leasehold system. They will be able to participate more. There is a concern over the initial 10-year period—which I do have concerns about—but that is not a problem with this draft Bill; it is a problem with the shared ownership model. In case of interest, I would recommend reviewing the Levelling-up, Housing and Communities Committee report of 28 March 2024, where the Committee looked at the shared ownership model and all the abuses and problems that we see in private practice in respect of shared ownership. The Government did respond to that in, I believe, July 2024.

One of the first items in the recommendations was that there needs to be change in the shared ownership model, especially around who pays for service charges, for example. The Committee recognised that there is an imbalance and an injustice that really prejudices shared ownership leaseholders. The Bill, and clause 18 in particular, improves the position as against the leasehold system, but the shared ownership problems really need to be addressed at source, not through this Bill.

Andrew Lewin: I have one follow-up. You said the problem was with the model and not the Bill.

Mari Knowles: Yes.

Q91 **Andrew Lewin:** I appreciate that this requires secondary legislation, but let me press an example—I am just interested in your thoughts. Let's say that you are seven years into your 10-year qualifying period, and there is quite an urgent need for major works. You have a 25% share and the registered provider has a 75% share. How do you think we can grasp that nettle in terms of where the voting powers ought to be? The registered provider might have a legitimate claim: "We own 75% and we think we should do x." The shared owner might think we should do y. At the moment, I do not think we have an answer to that.

Philip Rainey: At the moment, the registered provider wins out. There must be some nuance that is capable of being built into the legislation. At the moment, the way it works is that during the 10-year qualifying period, the registered provider, and not the shared ownership leaseholder, is the member of the commonhold association, so logically the shared ownership leaseholder has no vote, as I understand it, on anything—subject to anything that regulations might say.

Even if they had the right to attend commonhold association meetings as a non-voting member or a right to speak—of course, it might be that they have views that they want to impress on their neighbours as much as on their own landlord—at the moment there is not anything that, for instance, requires the chair of the commonhold association meeting to let a non-member shared ownership leaseholder attend and say anything. That is a very small point, but you could do something like that. A better point would be to have some kind of mechanism for resolving a dispute between

the provider and the shared ownership leaseholder about a vote during the qualifying period.

Q92 **Chair:** I have a final question for Mari. In the conversion process, you have non-participating leaseholders; in a sense, they could get out of paying some of the enfranchisement costs. Is this something we should be pressing Ministers on?

Mari Knowles: What is fundamentally different with the conversion process is that, when you have a new block and 100% are commonholders, those commonholders voluntarily accept that it is commonhold, because they have bought into it, they know what they are getting, and their conveyancers are properly advising them on it.

With conversions, where you have non-participants who are joining that process, it is really important to think that not all residents in a building share the same views. That is a concern. There will be existing landlords who may, under the Leasehold Reform Act 2024, still have retained interests. You will also have non-participants, and some of them may not be just reluctant to the process; they might be proactively obstructive. We do a lot of collective enfranchisement claims and right to manage claims, and there are usually one or two in a building who are absolutely against it—they have their different motivations.

This comes back to the voting problem. In the scenario where you have people who are perhaps reluctant to convert, and they do not want to be there but they have voting rights, that may create a bit of a problem for managing agents in particular, who may struggle to get the votes that they need.

Chair: I think we will come on to that in our second panel. I thank you all for coming before the Committee this morning. We will continue this engagement and discussions.

Examination of witnesses

Witnesses: Mark Chick, Philip Freedman CBE KC, Vanessa Griffiths, Emily d'Albuquerque.

Q93 **Chair:** Welcome to the second panel in our pre-legislative scrutiny of the draft Commonhold and Leasehold Reform Bill. Can our guests introduce themselves, please?

Vanessa Griffiths: Good morning. My name is Vanessa Griffiths. I am a chartered surveyor and a partner in the leasehold reform and litigation team at Knight Frank. I act for both leaseholders and freeholders and have over 15 years' experience in that sector. I sit on the RICS Residential Professional Group Panel.

Mark Chick: I am Mark Chick, director of ALEP, the Association of Leasehold Enfranchisement Practitioners—a not-for-profit body that acts for solicitors and surveyors working in the field of enfranchisement. I am also a solicitor in private practice, and I am a senior partner in a firm in

central London called Bishop & Sewell. I have spent the last 15 to 20 years working in this sector.

Emily d'Albuquerque: I am Emily d'Albuquerque. I am a director and the senior lawyer at HM Land Registry.

Philip Freedman: I am Philip Freedman. I am a solicitor in private practice and a consultant at Mishcon de Reya solicitors, which, I must disclose, are involved in some of the litigation matters you mentioned earlier—although I am not handling them directly myself.

I am a member of the Law Society's conveyancing and land law committee. I am on the working groups that prepare the standard conditions of sale and the Law Society's transaction forms, which will be relevant for use with commonhold. I was a member of the Ministry of Justice's working group about 15 or 18 years ago that looked into why commonhold was not widely accepted, so I have been involved in commonhold matters for quite a long time.

I am here today to represent the Law Society. The Law Society wants to assist in making commonhold successful, and we have some suggestions to make.

Q94 **Chair:** Thank you all for appearing before the Committee. There are provisions in the current law for converting a block from leasehold to commonhold, but equally there are some challenges with making sure that everyone is signed up and with getting unanimous consent of all the leaseholders and the consent of the freeholder. If we take an example of a leaseholder in a block that has a third-party freeholder, what would be the main advantages of that leaseholder converting to commonhold?

Vanessa Griffiths: That is a tricky question to answer, especially if they have already done the enfranchisement process. Because they already essentially have control of that building, conversion to commonhold does not necessarily benefit them any further than that. In one sense, the enfranchisement process is better, because it removes the existing freeholder completely, whereas if they are still going to convert to commonhold, the existing freeholder is still present if they are obligated to take ownership of the non-participating units. I do not think it necessarily addresses that issue in comparison with enfranchisement.

Mark Chick: Essentially, if a block enfranchises—if they take away the third-party freehold—they are put in control of their own destiny. We have to look at the difference between commonhold and leasehold in how that budget is set. We heard from the previous panel about how the ability to set what will be the commonhold community assessment is going to be key to this, as will understanding the nature of the costs and charges. As Philip Rainey said a moment ago, it will not necessarily be the case that things will be cheaper in that environment.

The difference is what might be called the democratic deficit. There is now a structure in which people are in control of their own destiny, in the same way that they are in a post-enfranchisement scenario. How good will they



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be at taking control of that? That is the challenge. I think education and training are key. One thing that ALEP would certainly support is clause 101 of the Bill, which says that the Government will put aside resource for training and education in relation to this.

Q95 **Chair:** Do you think the cost of collective enfranchisement could be a barrier for some households?

Mark Chick: That is an important point to come on to, and I am glad you mentioned it. When we talk about what will happen or what will incentivise people to do this, commonhold will need to be better than leasehold. If that is to be the case, we have to look at how this is going to be rolled out. I think that I, and a number of other people on this panel, share the view that a phased implementation would be good. While we are here to talk about conversion—I have lots to say to you about that—it is key that we think about the roll-out of this. I suspect it would be far better if commonhold was rolled out for new build developments where there is 100% participation on day one because of the nature of the system, before we get into the mechanics of how we might take an existing structure and then convert that into commonhold. If commonhold is to have the acceptance, and people are to understand what it involves, it is far better that those who have the resources—the developers and the industry—put themselves behind that with appropriate backing on day one. That is key.

Q96 **Chair:** You have outlined two things there. The challenge back to you would be that our inboxes are full of messages from collective residents and constituents who are leaseholders seeing their costs increase on an almost monthly basis. A number of them have highlighted the fact that they are almost facing financial ruin because of the cost. But you are suggesting that the Government enact this on new flats; we tackle that, get everyone onboard, and then deal with existing leaseholders.

Mark Chick: The reason I say that is because, as was said before, there is a presupposition that it will automatically be cheaper if it is commonhold. I do not necessarily know that it will be. Other existing rights, such as the right to enfranchise and to manage, will put the democratic control of the management of the property into the hands of the leaseholders—the unit holders. So that position needs to be contrasted with the existing position.

Given the commitment of Government to strengthen enfranchisement rights, and given the commitment with LAFRA, which sits on the statute books but is yet to be implemented, there are a number of existing rights that are available to people. While there might be a degree of political excitement about the idea that one might be able to get rid of leaseholds, ban new leasehold flats, and require everyone to convert to commonhold tomorrow, it probably cannot work like that.

Emily d'Albuquerque: My fellow panel members are probably better placed to comment on the day to day. Purely from a land registration perspective, we anticipate that future transactions should be more straightforward.



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Philip Freedman: There is an anomaly here, because at the moment most leases require landlords to act reasonably. The legislation for service charges under the Landlord and Tenant Act 1985 requires landlords to only charge costs that are reasonably incurred, for work done to a reasonable standard. None of those provisions will apply in commonhold. Commonhold will have a rule, if it is passed as envisaged, that the majority of unitholders pass a budget, which is what is going to be spent, and that they have the decision-making process in relation to the running of the block.

There is no general requirement for them to be reasonable in what they are doing. This is particularly important in relation to a conversion, where people have bought flats on the basis that there is a known management regime in the block, they know whether it is well run or not, they know whether they can have cats and dogs or not, and so on. If you hand it over to the flat owners and say, "Okay, a majority"—or even 50%, which is not a majority, of course—"can decide to have a community statement that says, 'Oh, everybody can have cats and dogs, and it doesn't matter what we do, and we'll fix the roof when we want to,'" that is a completely different regime. Some individual occupiers may not find it a happier position to be in than leasehold, where you can complain to the landlord if they are acting unreasonably.

Q97 **Andrew Lewin:** I am really interested in that, but we have had a lot of evidence already and I can say with a degree of certainty that a lot of current leaseholders will not be of the view that freeholders have behaved reasonably. Just because it exists in legislation does not mean it has played out in reality. Are you of the view that at the moment there are freeholders who are all acting reasonably and in line with the 1985 Act? Because I am not.

Philip Freedman: I think the problem is that tenants very often are not aware of their rights, and/or find that enforcing those rights is difficult and cumbersome and requires going to lawyers and so forth. The law provides that landlords have to be reasonable. In practice, there are lots of landlords who are and lots who are not. Tenants find it difficult to enforce the law. Simply changing the law does not necessarily solve the problem. It is a behaviour matter. Unless you change behaviour, you can change the law as much as you like, but you will not achieve anything.

Q98 **Lewis Cocking:** I have a few questions about conveyancing. I think most of us can agree, particularly those of us on this Committee, that managing agents are the biggest baddies in the leasehold and commonhold system, closely followed by solicitors and conveyancing. I do not think they point out to people what they are buying—what the historical service charges are, how much they have gone up over the last couple of years, what you are responsible for, how much it is likely to go up in future. I think they just hand loads of papers to the buyer and say, "Sign here, here's your flat or your freehold house, happy days, off you go". Would you comment on what you think conveyancing could do better, and what they should be pointing out to people?



Mark Chick: Can I come back on that one first? There are a couple of things here. If I think about why we set up ALEP, the Association of Leasehold Enfranchisement Practitioners, it was because people found it difficult to get good quality advice about what were quite complicated property rights. It is about education and training, and about quality assurance within the provision of that.

If we look at why we are here now, today, and look back to 2017 and the so-called leasehold scandal, the reason for that is that people pursued the race to the bottom in terms of the “quality” of conveyancing that they wanted to pay for. They ended up going to what might be said to be a factory conveyancing outfit, which simply waved matters through. People did not read the clauses, they had doubling ground rents, timebomb ground rents, and ended up with unsaleable properties. Unfortunately, it is people who were squeezed financially that were at the worst end of that, because they were the people who pursued that route and were unfairly taken advantage of.

I think the key thing is to ensure there is education and training, both for the public about what these rights involve and also for the professionals. There are lots of bodies that do a very good job in relation to that.

Q99 **Lewis Cocking:** Hang on—what do you mean by “education and training for the public”? The public go out and get a solicitor, who should be advising them on all these matters. We do not need to train the public to say, “This is what you need to do”.

Mark Chick: I am agreeing with you. I agree wholeheartedly. I think the job of the responsible solicitor is to take the appropriate time to explain to the client what they are buying, so they can understand the nature of the asset. I am sure that Philip and The Law Society will say more about that. There is the quality conveyancing scheme.

It is about the appropriate badging and referencing of professionals that understand what they are doing and that take the time to explain, and the understanding that if you go to buy what is probably the most significant purchase of your life, the most significant asset, that the appropriate time is spent on that. If that means paying fees for that advice, that is probably okay at the end of the day, because it is a very significant life step, which should be taken properly, with someone appropriate standing by your side.

Philip Freedman: I completely agree. There is always the problem that you get what you pay for. If you want to get conveyancing done cheaply, you will not necessarily get as good a service as if you were paying a fuller price. It is the most important transaction that most people will make in their lives. That is why all this is so important—we have got to get commonhold right because it includes people buying their own homes. Buying their own home is the biggest transaction they have, and people need to be aware of what they are doing and be given all the advice.



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It will help in practical terms if the documentation can be standardised as much as possible. Once people are given a precedence of reports and guidance packs and so forth to the clients, it would help if the commonhold documentation and the commonhold community statement could be standardised as much as possible so that, in every residential block, you know whether you are responsible for the window frames or not and whether you can make noise and stuff.

If it can be standardised, there is a greater chance that people will be given the right advice, because it is not something that the conveyancer has to re-learn every time they get a transaction; they will not have to look and see whether the rules for one block are the same as for another block. In the real world, standardisation will help to get better information to the people who need it.

Plus, as was mentioned earlier, if buyers are required to run the companies—the commonhold associations—they need to be told what their obligations will be, including whether they are accepting liability under the Companies Act for building safety and so forth. There will be a lot of obligations imposed on the people who run things—those who actually stand up and are willing to do it. That is an essential element of a commonhold, because it is being managed in common and the people who are doing it need to be shown how to do it.

Q100 Lewis Cocking: Does anyone else want to comment on that?

Vanessa Griffiths: I want to confirm what Philip and Mark have said: education and training is key. We had a case study last year where one of our sales officers sold a flat in a block that had been converted to commonhold. There were four flats in the block, and the difficulty was not necessarily with the block and the management—the four flats were on board with it, and apparently, the management was running quite well, and everyone was quite happy.

The problems came with selling the unit, because the agent had not come across it before. It was difficult for the buyer to find a conveyancing solicitor to get the right advice. In the end, it actually went to an overseas buyer who did not need a mortgage, because the lending had become an issue. Education and training are key across the board for conveyancers, owners and agents—basically anyone who is going to transact with these properties.

Q101 Lewis Cocking: So you do not reckon the market is ready. If the Bill passes and commonhold becomes the default, am I correct in thinking that you do not think the market as it currently stands with the solicitors and conveyancing process is ready for that big change?

Vanessa Griffiths: No, I do not.

Mark Chick: I would echo that. One of the things we would like to know is where we are going to go with further implementation of LAFRA. Looking at some of the things we are here today to talk about with some of the more complex parts of conversion, the valuation side of LAFRA needs to be

resolved before that can move forward. That will also impact people's willingness to understand how it is going to work. All these points around voting come back to the point we made a moment ago: if it is mandated for new builds, then our question to you would be, "Let's look at the timing of the roll-out and how that is going to happen. Then there is the chance for lenders and the market to get comfortable with it before we start looking at turning every single block that is enfranchised into commonhold."

Philip Freedman: May I add two points to that?

Q102 **Chair:** One, very quickly.

Philip Freedman: First, if it starts with estates of houses rather than blocks of flats, that would be a way of doing it most easily for the technical legal reasons that the documentation will match what is being used at the moment.

You asked whether we can get cracking after the Bill is passed. The answer is no, because so much is reserved to be put in regulations. There is so much to be in regulations that without seeing, for example, the commonhold community statement and the regulations, we cannot even start preparing the detailed paperwork or the training and guidance, because so much is left to be in regulations.

Q103 **Chris Curtis:** Mark, you were talking about enfranchisement. Let us say we do phase it, and we park that for a bit. Is there not still a worry that the industry, particularly lenders, is not going to be in a place to accept commonhold on the day we pass all the secondary legislation?

Mark Chick: Going back to what Vanessa said, that seems to be the case at the moment. Some lenders are more comfortable with it than others, but it is difficult to consider, with a number of unknowns, how that is going to be workshopped. I believe you are going to hear from the lenders next week, so it is a question for them to get comfortable with it as an asset class.

Q104 **Andrew Cooper:** Emily, the Land Registry is going to have quite a central role in the establishment of commonholds under the legislation, and the registrar is mentioned several times in the documentation that needs to be lodged. From a Land Registry perspective, what is the process going to be for developers and leaseholders looking to convert to commonhold?

Emily d'Albuquerque: I will keep this fairly high level, but I can provide additional detail after, if that is useful. Probably the first thing to say is that commonhold, as it currently exists, is a concept with which Land Registry is familiar, although we have not had many come through the door.

Whether it is a commonhold development, leasehold development or freehold development, we offer services to developers pre-completion of any transaction, where we can work with them to look at skeleton documentation. We anticipate that we will be continuing the service we currently offer to consider the commonhold community statement and



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approve that ahead of completion. We think we will work with developers on the account management side to help them through that process. Before they get to the point of actually transacting and selling units, they will have had quite a bit of contact with us—if they want to—on getting everything ready to go so that there are no hitches when they come to sell.

Q105 Andrew Cooper: That works for new developments, but what about conversion?

Emily d'Albuquerque: These are fairly technical processes. We anticipate that it will be somewhat more streamlined because, instead of having to go through what is probably a collective enfranchisement and then a commonhold conversion process, it will feel more like one process for people going through this. We have staff who are expert in land registration, and we will need to work on expanding that capability as the market increases its appetite.

Q106 Andrew Cooper: Indeed, and the Land Registry has been criticised in recent years for the extent of the backlogs, hasn't it? I understand that you have made some significant progress on getting the backlog down for new applications, but the Committee has received evidence that significant delays still exist for non-urgent applications. For public confidence to be brought to bear on the commonhold process, the Land Registry will need to get a grip of those backlogs and ensure that there are not unnecessary delays in commonhold conversion and new commonhold registration. What steps are you taking to prepare for that?

Emily d'Albuquerque: The first thing I would like to say is that we acknowledge that our service is not where we want it to be, and bringing down the backlog remains a priority, as well as improving the speed of service for applications more generally. We are committed to making the investments needed to deliver these reforms—that is a priority for us and for our sponsor Department. We will need to have ongoing conversations with the Department about the prioritisation of the different deliverables.

In terms of the specifics, we are currently working through with the Department the design of the processes that we will be using for commonhold. At this stage, as fellow panel members have said, a lot of the detail is still to come through. We anticipate that, from a capability perspective, we will be able to train our caseworkers to deliver this to the timescales currently proposed. We have experience of training nearly 1,000 caseworkers a year on more complex topics as they progress.

From a capacity perspective, in terms of the number of people, we are working on automation of the simpler applications. That will not affect commonhold, but it will free up people to be available to process those. With the phasing of the implementation, as is currently proposed, and with the displacement of current leasehold enfranchisement applications to commonhold applications, we think we will be able to manage the volumes. However, we need to work this through, as the measures become clearer.

Q107 Andrew Cooper: So you are not anticipating capacity problems right now, but it is too early to say.

Emily d'Albuquerque: Yes.

Mark Chick: Can I just come in on that? ALEP very much supports the resourcing of both the Land Registry and the tribunal service, because it will also be key to supporting the successful delivery of the commonhold project, and I think there is a resourcing issue there that needs to be addressed.

Q108 Andrew Cooper: What work are you doing to prepare your online services for this? Currently, I think it is possible to do a straightforward Land Registry search, but for virtually every other kind of document, you have to fill in a form and send it off to the Land Registry. That really is not good enough in the 21st century, is it? What work are you doing to prepare your online services for commonhold, so that, for example, a commonhold community statement would be available for someone to access easily if it has been lodged? What other types of documentation are going to be available through your online service?

Emily d'Albuquerque: The first thing to say is that there is a difference in service experience between professionals who can access documents through online services, and ordinary people who tend to have to use the—

Q109 Andrew Cooper: That is completely fair, but it will be ordinary people living in commonhold blocks who may want to refer back to their commonhold community statement at a glance.

Emily d'Albuquerque: We do not yet have detailed plans, but we are aware that we need to make the commonhold community statements readily accessible. As you say, they can be accessed through a paper form, but we want to improve that for ease of day-to-day running and for transparency.

Andrew Cooper: You want to, but do you have plans in place to do it?

Emily d'Albuquerque: We do not have a detailed plan at this stage.

Q110 Andrew Cooper: Do you think you will by the time the Act is passed?

Emily d'Albuquerque: By the time the Act is passed? Potentially. We do have ambitions to be much more digital in the future. It is in our current strategy. I do not know yet exactly what that will look like.

Q111 Andrew Cooper: Mark, do you want to add anything to that? You looked like you did.

Mark Chick: Only to add that, as I understand the Bill at the moment, enfranchisement will be the route to commonhold. You can take your block, you can buy your freehold, and you will then have the election to decide if you want to make that further application and convert into commonhold status. Before you can understand how that will work in practice and what that will look like at the Land Registry, it is worth



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looking into this. For a simple block of maybe two or three flats that all participated, that might be a very straightforward process, but some of the provisions around non-participants are quite complicated, and some of the valuation provisions around non-participants are quite complicated. The previous panel alluded to that.

I urge the Committee to look into that quite carefully, because when we consider what will happen to somebody who has not taken part in the collective after completion, they will have this right to buy in. They will be able to serve a notice under section 52, but we do not have sight of any regulations about how that is going to be valued or how it is going to work.

Indeed, in a post-enfranchisement scenario where LAFRA has been implemented, the owner of the commonhold unit that belongs to the non-participating unit holder—the former leaseholder or leaseholder—is the former freeholder. There are a number of issues about how those interests are then divested on sale. We may not have time to come on to that now, but we would certainly like to address you in writing on that, because we believe that there are some serious issues to be addressed.

Q112 Chair: That would be really helpful, because I think that is the key. That would be helpful for us as a Committee.

Mark Chick: The other thing is that it would be really helpful to see the proposed workarounds for the valuation reform in LAFRA, which Mr Pennycook wrote to you about on 12 February. He has suggested that that will be dealt with when this legislation is brought before the House. That is entirely appropriate, but I wonder whether, in the interests of democracy, we could see some of that now.

Chair: We are pushing for a number of documents with the Department.

Q113 Chris Curtis: I want to push a little bit more on the digitalisation point, Emily. It feels as though the Land Registry has fallen quite far behind where the private sector is, and behind lots of other parts of the state. It comes up in a lot of work we do as a Committee as a general recommendation. It did not feel as though there was a massive amount of ambition to get there quickly. What is the constraint on moving quickly to digitalise? What is the challenge, and what can the Government be doing to help you overcome those challenges quicker?

Emily d'Albuquerque: First, it is fair to say that we share the Government's ambition to be more digital and to use modern technology. For example, we are currently using AI. In terms of constraints, there was a period of under-investment in Government services more generally, but particularly in the Land Registry. A number of our systems are legacy systems. We have to do quite a bit of foundational work before we can then modernise. In our spending review bid, we covered the sorts of transformation that we want to do, which includes both making our data more accessible and digitising services for—

Q114 Chair: Were you successful with that bid?

Emily d'Albuquerque: We were content with our spending review bid outcome.

Q115 **Chair:** In that sense, going back to Andrew and Chris's comments, will the Land Registry be able to modernise by the time this comes through, or will there still be internal challenges and hurdles that you feel the organisation will face?

Emily d'Albuquerque: It will not be a quick process to modernise our systems and to resolve our data foundations and make them truly interoperable, but we are committed to it and are currently working on it.

Q116 **Chair:** Finally, I wanted to come on to the Law Commission's recommendations, and their implementation. Obviously, leaseholders currently have to pay landlords regarding any development value. Mark, what impact do you think development value would have on enfranchisement premiums for leaseholders? Is that something that we should be making sure the Government address in the final version of the Bill?

Mark Chick: It is interesting, isn't it? The Law Commission made this recommendation that there would be a way in which development value could be ringfenced in favour of the former freeholder, so not only is the former freeholder also taking leasebacks—or what some practitioners would call commonbacks—in respect of non-participant units, but they would also be required to postpone receiving any value for the potential of future development by way of some kind of overage provision, which would then sit on the title. It is not yet clear to me how that might be workshopped through in a conversion from an enfranchised situation into commonhold—how that interest would then be protected, for instance.

I think there is a contrary position for Government and policy here, because we have had a relaxation of planning in the 2020 coronavirus regulations, and we have an ambitious Government who want to build more homes. Freeing up what could effectively be brownfield sites—rooftop development, for instance, is often one of these development value areas—would allow the provision of more homes, so to put something in the way of that might not be to their best advantage. We see many blocks where people will want to buy the freehold because the freeholder is seeking to do something—precisely so that they can prevent it from happening.

Vanessa Griffiths: I completely agree with what Mark said, but one of the other points to be aware of is how the valuation works. When leaseholders collectively enfranchise and pay a development hope value, it is the hope that that development might happen in the future. Therefore, that discount on value, or added premium, is more so than if the development was happening on day one.

We would therefore have to be careful if we deferred until development did happen. First, what would be the valuation date? Would it be then, or when the enfranchisement took place? Secondly, it is then happening, so leaseholders could actually end up paying more than they would have if

they had paid development hope value, because effectively it is then happening.

Q117 Chair: But you remember I asked about non-participating leaseholders; could there be a loophole where they could essentially get out of contributing to that final development value by joining the commonhold at a later date?

Mark Chick: I am very glad you have raised that point, because I think it goes to the point that I made a moment ago about the position of the non-participants in the post-enfranchisement scenario, and indeed in the post-conversion to commonhold scenario. In conversion to commonhold, those non-participants have this right to buy out the commonhold of their unit. That is a right exercised under section 52. What is not clear to me—or to anyone, I think, because I do not see any draft regulations anywhere—is how those interests are going to be valued.

If you want to incentivise collectives to happen, we do not want to end up in a situation where these people, later on, could potentially buy in and—if they are required to reflect back on the valuation mechanism under LAFRA, which effectively values it as if it is a lease extension—not have to contribute anything towards the cost that the collective has endured to buy the freeholding the first place. That is not just in respect of development value. Let's say that we can take that off the table; just look at the other areas within the building—common parts, and other things that have to be purchased in order to buy out the freehold interest. So I think that is something that needs to be looked at very carefully indeed.

If we go back to the work that the Law Commission did on this—you mentioned them a moment ago—after they published their paper in July 2020, they were commissioned to look at what was called the right to participate. You may know this, but, at the moment, if a collective has gone through, there is no individual right to later buy into the freehold; it can be done on a voluntary basis, but there is no compulsory right.

One of the reasons that the Law Commission parked that discussion was because they recognised that the valuation of that occurrence was quite difficult to deal with, for the very reasons I have just mentioned. How do you properly reflect back the costs that the others have incurred? We might be going into a situation where the same things could arise for those people in an enfranchisement scenario that converts to commonhold. It is something we have to look at very carefully.

Vanessa Griffiths: Just to add to that point very quickly, as I think you addressed earlier this morning, the valuation is the biggest area of concern, both for the Bill and with the outstanding points on LAFRA. We are still awaiting consultation on the rates and the secondary legislation for that. That probably needs to be addressed first, before talking about the valuation impacts of the Bill.

Q118 Chair: That was going to be my final question: are there specific areas in the Law Commission recommendations that the Government should focus



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on? Should they maybe look at the right-to-manage process as an option, or would you say that there are other areas there?

Vanessa Griffiths: It probably comes hand in hand for both. Right to manage is definitely the cheapest of all the options. With that comes the regulation of property managing agents, which I think we are probably all in favour of, but there is also the outstanding situation with LAFRA. We have legislation that is sat doing nothing, which is causing great market uncertainty. That needs to be rectified before we even talk about converting to commonhold for existing buildings.

Chair: Loud and clear—get on with it.

Vanessa Griffiths: Yes.

Chair: Thank you very much for coming before the Committee. It would be good if you could send us any follow-up reports and items. Thank you.

Examination of Witness

Witness: Lord Best OBE

Chair: Welcome to the third part of our discussion this morning on the Commonhold and Leasehold Reform Bill. May I ask our guest to introduce himself, please?

Lord Best: I am Richard Best. I am a Cross Bencher, an independent, in the House of Lords. I gave my maiden speech on the Commonhold and Freehold Reform Bill in 2002, 25 years ago. I chaired the regulation of property agents working group in 2018-19, and I am still waiting for that to be implemented.

Chair: Thank you for coming before the Committee this morning, Lord Best.

Q119 **Mr Forster:** In my Woking constituency, the top issue raised by constituents is housing, and one of the common themes is rogue managing agents. It is a wild west out there. We have examples of awful customer service, and in my view the fact that they are not regulated is a great injustice. Why do you believe the Bill will not lance the boil and correct that historic wrong—the thing that you have campaigned for almost since you came to this place?

Lord Best: First of all, I think regulation is unfashionable. There are voices that say, “Don’t regulate—it’ll be anti-growth,” but that is absolutely false argument. Good regulation gives confidence in an industry and builds trust. It is about growth, it helps growth, and the industry itself welcomes and wants it. All your witnesses, whichever part of the sector they come from, say that regulation would be a good thing; its being unfashionable should not be an inhibiting factor.

The best interpretation of the Government doing very little about this is that they are waiting for a moment for a really comprehensive, proper regulatory Bill—a separate Bill that would cover letting agents and estate



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agents as well as managing agents. If the Government say they are going to have a proper, comprehensive Bill with a proper regulator, I will be patient and wait a bit longer, but I think the real reason is lack of resource in MHCLG.

To get on and handle this requires three civil servants for three weeks, by my estimation—a very vague, back-of-the-envelope estimation. It needs people on the case to actually get this together. Michael Gove said that the Office of the Parliamentary Counsel lacks the capacity to intervene, write the legislative clauses and do the work. If only people would get to work on it, it is not that difficult. There is a lot of stuff out there already—for example, Danny Beales's private Member's Bill, which is already drafted. It would not take too much, and Government should get on with it. Perhaps the complexity of the Bill and all the other things are getting in the way, and they have not had the resource to embrace this element as well, but they should have done.

Q120 Mr Forster: I want to follow up on two points. What discussions have you had with Ministers, particularly Matthew Pennycook, who has highlighted that we might tackle this issue via another Bill? What discussions have you had with them about other legislation to regulate managing agents? Last week, both you and Lord Gove highlighted that, effectively, it is the Treasury stopping this, because it is concerned about the financial impact. I agree with you that providing certainty for the sector and giving consumers confidence that it is safe to buy a flat again would be really helpful. What concerns do you have that the Treasury is blocking that?

Lord Best: I do not think Treasury is saying the measure would be incredibly expensive, because it would not be. A modest levy on 5 million leaseholders, even if all of it is passed on by the managing agents, can pay for an awful lot. There might be a need for some seed corn at the beginning, which Treasury would have to stump up just to get things started, but this will be self-financing, so that is not really an argument. I think it is the sheer complexity of all of this. We have heard how complex things are just today, and dealing with 121 Law Commission recommendations requires a lot of input and a lot of civil service time that, unfortunately, has not been allocated.

I am meeting Matthew Pennycook again in about a week with Danny Beales, who has done the private Member's Bill. Matthew has always been very sympathetic. In opposition, politicians in both Houses have been favourably disposed toward regulation, but getting round to it, getting the clauses together and getting the legislation packaged properly has been low on the list of priorities.

Q121 Mr Forster: So the Minister has not said no to regulation at some point. The Government are working on it, considering it, but it is low on the list of priorities.

Lord Best: The Minister said yes to professionalising the sector, to qualifications, and to including—Steve Reed mentioned this—lettings

agents for the private rented sector and estate agents for the sales sector. All sweet words of comfort for me, but they are not actually in the Bill.

Q122 Sean Woodcock: Lord Best, last week we heard from campaigners that they did not want regulation of managing agents. They were concerned that that would just pass the costs on to them. Do you have any comment on that? That seems to me a fairly important piece of testimony.

Lord Best: It should not be incredibly expensive. The managing agents are bound to pass the cost on one way or another, or at least most of the cost. I suspect that that will happen, but a regulator spread across a whole industry is not a huge burden. I think they are worrying unnecessarily, especially if we can get Government to cover the start-up costs—you have to appoint somebody and get an office before you get going. The Government input would be relatively modest—we talked in my working group about £5 million, maybe £10 million. Yes, it is annoying, but if the Government put in a certain amount of seed corn at the beginning, the thing can run itself relatively inexpensively thereafter. As I was saying earlier, 5 million leaseholders putting in three quid a year provides £15 million, which can run a pretty good regulatory system.

Q123 Chair: Was that what you referred to in terms of self-financing?

Lord Best: Yes—those sorts of numbers. If everybody is paying the levy that the managing agent has to pay and that is being passed on to the consumer, there are 5 million consumers in leasehold. It is annoying, but not the end of the world.

Q124 Chris Curtis: In terms of process, this is an important part of our scrutiny of the legislation. From your conversations and your work over such a long period, what would it be useful for us to say to continue to push for the debate? Do you think it would be easier to say, “Put it in here,” than “Okay, it can’t go in here, but let’s do another piece of legislation as soon as we can”?

Lord Best: I think that would be good, although parliamentary time is precious and MHCLG has already had an awful lot of parliamentary time, so it would be a few years before we saw the end result. Although a comprehensive Bill is exactly what is required, I suspect the delays would make that difficult. We have been promised mandatory qualifications for agents, so there is something coming down the track. My argument is to extend that to cover a code of practice and then to enforce that code, which is what you get a regulator to do. That is not such a big extra to add to what Government have already committed to do. You will get the qualifications in the Bill, so there will be stuff in it, and if you are going to get anything in, why not go for it while you are at it and have a regulator?

Q125 Sarah Smith: What areas would you point to that demonstrate how a regulator has enabled growth rather than been a barrier?

Lord Best: Every regulator would probably tell you that they do a great job in making their industry safer and helping it to grow. I’m afraid the examples one tends to quote are those where regulation has not worked

or where numerous different bodies do the regulating. You need one body and one mind with a single focus.

Regulation does not work if it is not properly enforced, and if the regulator does not have the powers to make things happen—in this case, fines, reprimands and gentle things to start with, but building up to, “You lose your licence. You can’t operate. You’re out of business. It’s no good setting up a phoenix company tomorrow, because it is you who is out of business.” You have the licence as an individual as well as your firm being registered.

There are examples of where regulation gets in the way, but we learn from those examples. The lesson is not to confuse everything by having lots of different bodies involved in the regulatory process. If you concentrate your firepower and have good regulation, it works.

Q126 Sarah Smith: Stepping back, if the main goal of this area of legislation is fundamentally to reduce the costs to the individual of owning and managing their property, if that is one of the driving priorities, what are the risks in going forward with the Bill as drafted, given the impact management agencies have on costs?

Lord Best: The managing agent does have an influence. Some people downplay that, saying, “Even if you enfranchise, look after the property yourselves and have the powers that commonhold brings, you will still have the same costs of a managing agent,” but I don’t buy that. A lot of these costs relate to the managing agents themselves. They are to do with the scams at the worst end, but also ineffectiveness, extra charges, commissions and permission fees for all kinds of stuff.

There are a lot of savings if you are in command instead of some freeholder. You are in control. You can tell the managing agents, “You’re going to have to go. We’re going to get rid of you and appoint somebody else.” If you have that power, costs come down. I would not worry about increased costs.

The increase will come from recognising that you need to set aside money for a reserve—a sinking fund for the long term. When everyone can see what is going on and this is explained, although it may be irritating that you have to put aside money when you are planning to leave in two years’ time and will not be there for the new lift, you understand what the money is for—

Q127 Chair: Transparency is the key thing that comes back to us.

Lord Best: Absolutely, yes.

Chair: People receive bills for work that are so opaque they have to go through them line by line, and when they do that, they find they have been charged for something that does not relate to their block at all.

Lord Best: Quite. At the very best, they hear, “Oh, sorry, we didn’t notice that. Apologies—we won’t do it again.” People must feel threatened that

they can be fired. One of the main advantages of commonhold is that you are in charge; you can get rid of the managing agent, and they know that.

Q128 Sarah Smith: You have clarified this to some extent, but if further provisions were to be included in the Bill, is your position to prioritise the code of practice, while still wanting all the recommendations from your working group to be brought in?

Lord Best: Yes. The key thing is to have a regulator. The Government are talking about using designated professional bodies—that is, the RICS and the Property Institute—to do the work, and then spread some of it among duties on trading standards officers, and some with the ombudsman service.

Chair: All of them are overstretched.

Lord Best: All kinds of overstretched people are theoretically giving this a new priority, and there is no regulator—no single mind—behind it all. My key point is that yes, qualifications are great, but just being qualified does not necessarily make people behave properly; you still need a code of practice and enforcement. There needs to be an agency that enforces the code.

Q129 Sarah Smith: Might resources invested in those alternatives be not the best use of public money, compared with the opportunity of a regulator?

Lord Best: Absolutely. If you are going to spend the money, spend it on a regulator. There are also conflicts of interest. If we give this job to professional bodies that depend on subscriptions from their members, ultimately they have to be nice to their members. It is quite difficult to be the regulator as well, and that is your top priority; it is a secondary business. Let's have a regulator.

Q130 Chair: A new one, with enforcement powers, as opposed to letters that say, "You have been suspended, but then you can come back."

Lord Best: Exactly. We do not want any of that nonsense.

Chair: Thank you, Lord Best. It is an issue that will continue to come up as we discuss the commonhold and freehold legislation in full, before we get the final Bill. I thank all our witnesses for coming. We have a range of witnesses appearing before the Committee next week.