HOUSE OF COMMONS

Housing, Communities and Local Government Committee

Oral evidence: Leasehold Reform, HC 1468

Monday 5 November 2018

Ordered by the House of Commons to be published on 5 November 2018.

Watch the meeting

Members present: Mr Clive Betts (Chair); Bob Blackman; Mr Tanmanjeet Singh Dhesi; Helen Hayes; Kevin Hollinrake; Teresa Pearce; Mr Mark Prisk; Mary Robinson; Liz Twist; Matt Western.

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Witnesses

I: Sir Peter Bottomley MP, All-Party Parliamentary Group on Leasehold Reform; Jim Fitzpatrick MP, All-Party Parliamentary Group on Leasehold Reform; Martin Boyd, Chair of Trustees, Leasehold Knowledge Partnership.

II: Jo Darbyshire, National Leasehold Campaign; Katie Kendrick, National Leasehold Campaign; Shula Rich, Director, Federation of Private Residents' Associations.

Examination of witnesses

Witnesses: Sir Peter Bottomley MP, Jim Fitzpatrick MP and Martin Boyd.

Chair: Good afternoon. I welcome you all to this first evidence session of the Committee's inquiry into leasehold reform. Before we come over to the witnesses, I must ask Committee members to put on record any particular interests they have that may be relevant to this inquiry. I am a vice-president of the Local Government Association.

Liz Twist: I employ a councillor in my office.

Mary Robinson: My home is held in leasehold.

Kevin Hollinrake: I employ a councillor in my office and I have connections with the property sector, which are fully disclosed in the Register of Members' Interests.

Helen Hayes: I employ a councillor in my staff team and I am also a vice-president of the Local Government Association.

Bob Blackman: I am a vice-president of the LGA and own a leasehold property.

Mr Prisk: I am a fellow of the Royal Institution of Chartered Surveyors.

Mr Dhesi: I am a councillor, as per the Register of Members' Interests.

Teresa Pearce: I employ a councillor in my office.

Q1 **Chair:** Thank you very much for coming this afternoon. We probably know two of you fairly well already, but for our record could you go down the table, saying who you are and the organisation you are representing this afternoon?

Martin Boyd: Good afternoon. I am Martin Boyd. I am chair of trustees for the charity the Leasehold Knowledge Partnership.

Sir Peter Bottomley: I am Peter Bottomley, MP for Worthing West. For the record, I am a leaseholder and own shares of freehold in my constituency. I may be buying another leasehold home in four years' time.

Jim Fitzpatrick: I am Jim Fitzpatrick, Member of Parliament for Poplar and Limehouse.

Q2 **Chair:** Before we begin, on the Committee's behalf, I would like to give credit and express appreciation for the work that the all-party group has done on this matter, highlighting the many issues that we are now going to explore in our inquiry as a Committee. Thank you very much for coming this afternoon.

Turning to the issues that people have, there is a bit of fuss, with some leaseholders raising concerns, and we heard from many of them at our informal meeting with 50 of them recently. We had a lot of evidence, more evidence than we have had for any Select Committee inquiry. In the end, what proportion of leaseholders really are dissatisfied? Are the rest not sat there quietly and quite happy with their lot?

Martin Boyd: There have been a number of surveys in recent years. The most recent one on leasehold house owners by Propertymark suggested that 92% of people regretted their decision to buy. Over half did not feel they had even been properly informed about what buying a lease was. The Competition and Markets Authority had also looked at the matter back in 2014. They found a lot of consumer dissatisfaction as well.

We are aware that there is various information coming to Parliament now about the quantum of particularly onerous leasehold properties out there, and there is a belief that at least 100,000 properties are now affected by lease terms that will make the property difficult, if not impossible, to sell.

Sir Peter Bottomley: If I may say so, in addition to that, some people are satisfied until they realise what the problems are. For example, those in private tower blocks with Grenfell-type cladding now discover that, although by law they are only tenants, they are also the only tenants who are expected to pay for recladding by some freeholders or owners.

Take the retirement sector. I pay great tribute to Martin Boyd, Sebastian O'Kelly and Bob Bessell, another trustee of Leasehold Knowledge Partnership, for their work. I have in my hand a letter I got over the weekend from someone whose father had a retirement home valued at £330,000. He has not been able to sell it through the people who own it, Retirement Villages, for three years. They are now told they could have sold it back at 5% less than his father paid for it and less stamp duty, so for a £330,000 home he could apparently have got £270,000. When that happens, people find some of the dissatisfaction in what is going on.

Jim Fitzpatrick: Martin has quoted the figures, and there was an exchange at MHCLG questions about those statistics earlier on. It is quite well documented that, the more that people wake up to the limitations of their rights under law as leaseholders—thinking they had bought their property, yet when it comes to service charges, refurbishment charges, ground rents, cladding, disputes resolution and recognition of residents' associations, the powers they have are very limited—the more dissatisfaction there is.

Q3 **Chair:** From previous exchanges at MHCLG questions, there are a lot of issues concerning a lot of Members on behalf of their constituents, and we heard that this afternoon, absolutely. In the end, those are 100,000 people, but how many leaseholders are there? There are different estimates, between 4 million and 6 million.

Martin Boyd: The Government have just produced a new set of data suggesting we have 4.3 million or 4.2 million. We are about to put out some data later this month. It is actually considerably bigger than that. There are 6.7 million flats and leasehold houses in England and Wales. It is now a massive part of our housing stock. The 100,000 within that are people who are faced with extremely onerous leases that make the property almost impossible to sell. There are, beyond that, a huge number who face problems that are important and cause them a considerable degree of stress and costs that they should not be paying.

Sir Peter Bottomley: Can I add two other examples? The first is the difficulty of extending leases that are coming towards an end. That is not for newly created leases, with one exception, which we may come to. It is for expiring ones below 80 years, where the question of how much should be paid has been subject to one case in the Upper Tribunal. The hedonic regression, to use mathematical terms, has now been accepted in such a way, apparently, that leaseholders will have to pay a third more to extend their leases, more than the existing understood system, and even that was thought to be too high. That is one of the major problems.

A second major problem is when people start realising that ground rents have no purpose whatsoever. Leaving aside the ones that double every 10 years or every 15 years, or even increase by retail price index, what is a ground rent for? The answer is nothing. May I quote Bob Bessell again? He is the founder of Retirement Security. He founded his company in 1985. He has built over 1,500 retirement flats at 30 sites. He and his wife have controlling interest. They are going to leave the freeholds and trusts to the pensioner leaseholders, worth about £7 million. I quote: "We have never charged ground rents because there is no justification for them".

He adds that homes, whether leasehold in the retirement sector or in the under-retirement sector, are sold at market price. Those who have persuaded or hope to persuade Government or this Committee that having a ground rent reduces the price to the people they are supplying the home to are wrong, and they know they are wrong. I hope at some stage, perhaps as a result of this inquiry, they will be told that.

Q4 **Chair:** What is the difference between the figure you are coming up with, 6.7 million, and the Government's figure? Is it down to the social rented sector?

Martin Boyd: Part of it is. The Government are still using a survey methodology that seems prone to too many flaws. Their latest set of data asserts that there was no growth in the leasehold sector last year, despite the fact that we know that definitely at least 50,000 new properties have been added. There is a question of credibility over those figures.

We have included within our numbers Wales, which the English housing survey team does not look at. We have also added back in the social sector because, although technically some of the flats in the social sector are not leasehold, those flats have no title at all. They do not appear on the Land Registry. They are clearly flats. They clearly receive property management services and they are now very clearly subject to the issues that arise from building safety matters.

Q5 **Chair:** The British Property Federation said to us there are a lot of people living in leasehold properties who are quite comfortable and happy. Suddenly, all this bad news comes around and they suddenly find the value of their properties is reduced by the bad news, not by the existing arrangements they entered into. Is that a fair criticism of the campaign that is being run?

Jim Fitzpatrick: There is no doubt that the media coverage, certainly in the past six months, which has been greater than it has been for six years, has led people to wake up to the fact that there is a problem, and to a lot more properties now being red lined and not available for people to borrow to buy and for people in those properties to sell. In that instance, it has created a lot more dissatisfaction and I am sure it has had an impact on the price of a number of properties.

I have the second highest number of leasehold properties of any constituency in England and Wales, second only to Cities of London and Westminster. Half of my leasehold properties are former right-to-buy properties, council and housing association, and the other half are new properties because of the regeneration of east London, so it is a huge mix. Although there may very well be, and I am sure there are, happy leaseholders out there who do not see problems and do not have problems, every leaseholder who comes to me has a problem and they come in chunks. I had 500 over cladding at New Festival Quarter, and that was solved because Bellway said it would pay for it. I have 300 at New Providence Wharf, where Ballymore said the leaseholder will pay for it.

When it comes to service charges, refurbishment costs and insurance premiums, I am dealing with blocks of dozens. In some instances, estates have hundreds of leaseholders. The numbers are much greater in terms of dissatisfaction than the figures we have.

Q6 **Kevin Hollinrake:** Sir Peter, you said quite sensibly that we should put to one side the issue of really pernicious ground rents that we have seen in recent years and look at the whole leasehold issue completely. You said that there is no reason for leasehold or ground rents.

Sir Peter Bottomley: There is no need for a monetary ground rent in leasehold, yes.

Q7 **Kevin Hollinrake:** For 25 years, I was an estate agent. That is like a confession, isn't it? Lenders would never lend on freehold flats—and I know commonhold is different to freehold—because of the difficulties in enforcing the mutual obligations between different occupants of a block. Does a fair leasehold help to do that? There is somebody else, an arbiter, who has an interest in the overall block who can enforce key requirements, for example, for insurance or maintenance of common areas.

Sir Peter Bottomley: I am going to pass most of the answer across to Martin Boyd if I may, but can I give you two or three preliminary remarks and subtitles? First, why is it only England and Wales that have this problem? It does not exist in Scotland. It does not exist in Australia. It does not exist around the world. What is so peculiar about us? Secondly, a peppercorn can do just the same as £10 or £1,000, and a peppercorn has no monetary value. If you want to have some consideration, the peppercorn was invented to do that so it did not go up.

The flat I am in, in Worthing, which was built about 140 years ago, had doubling ground rents every 25 years from £10. If we had not bought the freehold, it might have gone up to £40 or even £80 a year. That is not a big problem to any of us, but it did not need to be that. If it had been a peppercorn, it would work just as well. It is not necessary.

Q8 **Kevin Hollinrake:** But, as for the person who has the common interest in the entire block, there is little financial opportunity to be involved in a block on that basis. Therefore, there would be nobody in overall control of that building.

Sir Peter Bottomley: If I may say so, your colleague has raised a very important question. Clearly, blocks need managing and they need a system where one person cannot hang out. They need to be able to be forced to take part or have the liability of a decision that goes forward. You do not need the ground rent for that, and you do not need an outside freeholder for that. You need commonhold; if it had worked from 2002, that would have done it. I will pass across to Martin, who can take the other points. You do not need leasehold. You do not need the cash and you do not need to have an outside freeholder who gets extra income for things they do not do.

Q9 **Mr Prisk:** LKP is clear about describing leasehold as being archaic and flawed, and the all-party group has described leasehold as something that needs to be ended. Picking up from where Mr Hollinrake has just been describing this, do you accept that there are good freeholders and in fact they may have a role to play?

Martin Boyd: Yes, I am one. We own the freehold of the site where I have a flat. To answer your question about there being a problem when there was a freehold flat, there was certainly a form of tenure known as flying freeholds where it was very difficult, if not impossible, to enforce service charge payments. Lenders will not lend on flying freeholds. They have to be converted to leasehold. It is becoming a very small part of the market.

The position where the leaseholders who live at the site then own a share of the freehold is normally controlled through a company that they are members or shareholders in. You then have no major conflict of interest. There is no third party looking to make a profit from being the landlord. That is the principal problem we get in the leasehold market: that you have an entity that is purely there to make a profit from the title they own in the building. They have no genuine interest in maintaining the quality of the building. If it is a 999-year lease, they are not going to get it back for a very long time. It matters not to them whether it is in good condition or bad condition. It does to the people who live in and own the properties.

Q10 **Mr Prisk:** Mr Boyd, as a freeholder yourself, you are saying you have no interest in the long-term interests of the property.

Martin Boyd: No. As the freeholder, we acquired our site from our third-party landlord via a compulsory acquisition order. Because we are both the leaseholders and the freeholder, we end up with a genuine interest in maintaining the building in good condition. When we had a third-party freeholder, he got no benefit from the building being in good or bad condition. His only benefit was from making a profit from the people who pay the service charges.

Q11 **Mr Prisk:** Sir Peter, you were quite clear about your view on this. Is there a role for good freeholders at all or do you feel that it is superfluous?

Sir Peter Bottomley: If a landlord has tenants, not leaseholder tenants but tenants—social housing, commercial people or student accommodation—there is no problem at all. When people are paying for a leasehold, by law they only have a tenant's interest, and yet they are looked on as though they are responsible for everything. They often find themselves with freeholders who will not recognise them, and who will spend thousands of pounds resisting recognising the tenants' association to get free access to the information. If there were more time, Martin Boyd's tale of Charter Quay in Kingston would be a fascinating one, about the crookery that went on over all kinds of things.

First of all, the freeholder should be the commonholder—as in effect Martin is and I am in Worthing—where the freeholder and the leaseholder is the same. You do not need an outside person owning the building for it to be looked after properly. That is the managing agent at someone's instructions, and the instructions could be from the leaseholders if they have the right to manage or if they have taken over the ownership of the property. It is not needed.

Coming back on the question of what the purpose of the ground rent is, what happens when an ordinary residential lease is extended? There is no ground rent. If there is no ground rent on an extended lease, why should you have a ground rent on any lease?

Q12 **Mr Prisk:** Coming back to the alternative, we have seen a lot of evidence around the problems with leasehold, but also potentially, and indeed you have submitted evidence yourselves, around the benefits of commonhold. If commonhold is so good, why is it that, 16 years after it was introduced, it has not been taken up?

Sir Peter Bottomley: The simple answer is that it was not done properly and it was left with the Ministry of Justice, which had no resources and frankly no interest in putting it right. Martin will give you chapter and verse.

Martin Boyd: We first began to explore this issue via the APPG in 2014. We were not taking a particular view on it. At the very first meeting, it was made extremely clear that there were some fairly fundamental flaws in the original legislation. A number of people made it clear: while there are additional profit income streams available in the leasehold market, why would any developer want to build a commonhold?

Sir Peter Bottomley: To give an example of that, if you put the words "St George's Wharf scandal" in a search engine, you will find that the managing agent got sacked and the leaseholders got repaid £1 million for being overcharged. Not all, but too many freeholders look on the fact of leasehold as a way of milking their leaseholders, milking the system and saying all sorts of things that are highly dubious.

That is before going back into the old Peverel way of ripping off leaseholders with apparently new call systems, where by my estimate over £1 million was overcharged and there were no criminal prosecutions because Peverel confessed to a cartel. It was not a cartel. It was misuse of dominance in their own business and no one paid any attention. The police did not. The Serious Fraud Office did not. People were just let down. It is an extra steam of income that makes a lot of people say, "We would like to keep this system going".

Q13 **Mr Prisk:** Mr Fitzpatrick, how do we change that?

Jim Fitzpatrick: How do we change it? That is a great question, Mr Prisk. The Conservative Governments in 1986 and 1993 tried to improve the lot of leaseholders. The Labour Administration in 2002 tried to improve the lot of leaseholders and tried to introduce commonhold, so there have been three attempts in the past 30 years by both main political parties to say, "There are problems here; let us try to fix it". All three have failed.

This Government are grasping the nettle again, making a lot of very positive comments about what they want to do. Everybody is looking very closely, and there are different views about how well they are doing and how badly they are doing. We are very grateful that this Select Committee is conducting its inquiry to help the Government bring forward conclusions and recommendations.

There has to be a complete rebalancing of the playing field to enfranchise leaseholders and give them greater rights under regulation against unscrupulous property management companies, which are ripping them off through service charges and refurbishment charges. Housing associations are doing exactly the same in the social sector. Private developers and freeholders are, as my colleagues have described, using leaseholders as a cash cow and not using the service charges they are collecting to maintain the buildings they own because they do not care. They want the money more than they want to keep their leaseholders happy. In terms of leasehold tenures, some are 99 years, some are 199, some are 250 and some are 999, so there are vagaries even in the kind of lease and the duration of it you can buy.

Q14 **Mr Prisk:** Can I briefly come back to Mr Boyd and the description of the potential imbalance between the freeholder and the tenant? There is, following the 2004 regulations, a dispute resolution process in place. Why is that not working?

Martin Boyd: The problem with most of the dispute resolution systems we have in the leasehold sector is that we have an entirely one-sided cost regime. There are almost no circumstances in which a leaseholder can recover their costs, even if they can show they have been overcharged.

There are a very large number of occasions where a landlord can pass on his costs, even if he is shown to have done something wrong.

Sir Peter Bottomley: Can I add two examples? One was in Plymouth, where a freeholder, Mr Moskovitz, or his company, and his managing agent Mr Gurvits, who I think was associated with his business, were responsible for the building's insurance and making sure it was maintained properly. When the roof blew off, a claim was put in. The insurance company said, "You have not maintained this roof properly and we are going to threaten to cut off the rest of your insurance, Mr Moskovitz", so the leaseholders were left paying for the insurance that did not work and for the roof that they should not have had to pay for.

When that went to the insurance ombudsman, they were told they had no role and no right to complain because they were not involved legally at all. One thing that certainly needs to happen is to give leaseholders a legal interest in what goes on on their behalf.

If I can give you one more example, at Plantation Wharf, these freeholders were not crooks. They were just used to commercial argy-bargy, rather than the care of looking after residential leaseholders. A man called Dennis Jackson and an elderly woman disputed their service charges. There was about £9,000 in dispute.

They went to the property First-tier Tribunal, which is supposed to have a fee of £500, but that is not the total of the costs. They got £7,000 taken off. Then there was a costs order and Mr Jackson innocently, I believe, thought, "It could not be more than £500; do not bother to go". He ended up with a £90,000 judgment against him and a forfeiture, so the £600,000 equity would be forfeited to the freeholder. As it happened, in that case, the Prudential very kindly came back, paid off the debt, rescued its own mortgage, and he was able to sell his home in time thanks to LKP and the advice they got there. Can I give you another example, just very briefly?

Chair: We will come on to disputes mechanisms in a bit more detail.

Sir Peter Bottomley: On the disputes mechanism, a woman in Southwark, who is a leaseholder, had a dispute with the council and went to the property First-tier Tribunal and was told she did not have to pay £24,000. Southwark Council then turn round and get one of the best QCs in the business to challenge this on appeal. I am very glad that Justin Bates, for whom I have not always said obliging words, has volunteered pro bono to come in and help her.

It seems to me, if a major, wealthy freeholder comes in—perhaps a council, Long Harbour, one of the Tchenguiz interests or even the Wellcome Foundation, for that matter—where it is a point of principle, it should say to the leaseholder, "Whatever the outcome in this case, you will not have to pay any more legal costs and you will not have to pay more than the First-tier Tribunal suggested". If you are establishing a point of law, you should not then load all the costs and a reversal of the judgment on an innocent little person who has a small flat with a small amount of equity in it.

Q15 **Bob Blackman:** Moving on to ground rent and the onerous nature of ground rents, can you give us a description of what you regard as being onerous ground rents? As you quite rightly said, Sir Peter, the position is that peppercorn or relatively low ground rents are really irrelevant. It is about ones that double, redouble and so on over the years. Can you give us some examples of what those are?

Sir Peter Bottomley: The worst one of all is a man called Martin Paine, who would buy up freeholds with expiring leaseholds. He would go to the person who was trying to sell and say, "I will give you an informal extension". Then the property goes up for auction, so it now appears to have a lease of 125 years. Tied in with the clauses, which most lawyers did not find, was a provision that the ground rent would double starting from the time the first lease was first given. People would pay, say, £80,000 or £120,000 for a leasehold flat, then get a charge of £12,000 and then complain to Mr Martin Paine, who would then say, "I will take it off you at a discount. Sue your solicitor". The solicitors' insurance companies were paying out a number of these cases and only when we started spotting some of the auctions did that particular practice stop. That is the worst.

The second worst is where people use the ground rent as a way of justifying keeping the leaseholder/tenant in a feudal lackey position where all sorts of other charges go on being given. Then you have the common one of a doubling every 10 years, some of which were limited to 50 years. If I may talk about Taylor Woodrow, which is one of the worst going into this business—

Bob Blackman: We are probably going to come on to that.

Sir Peter Bottomley: It is either the amount of money or it is the degree of control. It can be done innocently. Some of the mistakes made by Roger Southam, who for a time was chairman of LEASE—the Government's Leasehold Advisory Service—were just innocent. He never should have been appointed and he should not have been kept, but some of his mistakes, which we could go into, were innocent, I hope. Some of the others, such as the Martin Paine ones, I regard as straightforward fraud and crookery.

Q16 **Bob Blackman:** Martin, you said that there are 100,000 of these onerous rents. The evidence presented to us by freeholders and others—

Martin Boyd: They say it is much smaller.

Bob Blackman: They say there are 12,000. There is a huge discrepancy.

Martin Boyd: We have been making clear for a long time that there are approximately, as far as we can understand, 12,000 10-year doubling ground rent leases out there. However, there are a number of other terms that are deemed onerous by the lenders.

Q17 **Bob Blackman:** Sorry, can I just cut across you? If a ground rent is £10 but it doubles every 25 years, that is not going to be hugely onerous.

Sir Peter Bottomley: That was mine.

Martin Boyd: No. In the written evidence we gave to you, we listed what we understand to be the different lenders' criteria of issues they think are now onerous. A number of lenders have said any doubling ground rent that doubles in a period of less than 21 years is onerous, or any ground rent that can constitute at the start of the lease or at any point during the lease more than 0.01% of the value of the property is considered onerous. That is how we get close to the 100,000. The difficulty we also have with more modern leases is that it is not just an individual clause that makes the lease onerous. It is the cumulative terms and conditions that now appear in the lease.

Sir Peter Bottomley: A number of so-called long-term investors in residential leasehold properties bought their properties at about five times the ground rent. When the leaseholder tried to buy them they were quoted between 20 and 40 times the ground rent. That is unfair.

Chair: Colleagues are leaving, not because of anything you have said to them. As you will appreciate, there are a lot of DL Committees going on and there is a clash with those this afternoon.

Q18 **Liz Twist:** Again, looking at these new builds, the all-party parliamentary group commended Taylor Wimpey for introducing its ground rent review assistance scheme, though you highlighted several problems and said you remain deeply concerned about the offer. Can you tell us about your concerns, please?

Martin Boyd: Yes. I am sure, in your second session, they will have direct experience of it. Taylor Wimpey originally made a commitment in 2016 to help address its doubling leases. It became very clear, early on in the process, that they were only making that offer to first-time original buyers. They were not making this offer to second-hand properties also burdened by these lease terms.

The number of people who have managed to complete a conversion of their lease to the offer that Taylor Wimpey was making seems to be very small. Their last publically declared statement that I am aware of said that, out of the supposed £130 million that they had set aside to correct this problem, they had only paid out £11 million. That £11 million is not paid to the leaseholder; it is paid to the freeholder who bought the lease from Taylor Wimpey. It is not working.

A number of lenders, as we understand it, are very concerned that the conversion to an RPI lease will cause more problems long term than the doubling lease, because the doubling lease ends its doubling after 50 years. The RPI offer continues for the perpetuity of the lease.

Q19 **Liz Twist:** Why do you think there has been such a low take-up? Is it because of those problems?

Martin Boyd: It is difficult to tell. A number of leaseholders were not contacted by Taylor Wimpey. You had to contact Taylor Wimpey, as we understand it. A large number are outside the scheme because they did not buy directly from Taylor Wimpey; they bought second-hand. We are being told that it is slow. Taylor Wimpey is reliant on the freeholders that it sold the leases to to agree deals, and two years into the process it is slow. I know Taylor Wimpey made a submission. They put a percentage on the number that have, as they put it, been agreed or are in the process of being agreed. You might like to inquire of them what that breakdown is between the number that have been agreed and those that are still on the way to a solution.

Q20 **Liz Twist:** Are you aware of any other property developers that have come forward with schemes? Mr Fitzpatrick, did you mention another company?

Jim Fitzpatrick: No, sorry. I was talking about a different issue with freeholders, apologies.

Martin Boyd: We are aware that other developers out there also have 10-year doubling leases, and they have not come forward to offer any form of redress. It is almost impossible to sell a 10-year doubling lease property any more.

Jim Fitzpatrick: It is fair to say that is why we initially welcomed Taylor Wimpey coming forward. At the time it was an issue, and then they came forward and said, "We are putting up £130 million". We looked at it as a breakthrough because, if they are doing it, we can perhaps embarrass and shame other developers to do the same thing. The knock-on just has not happened and the delivery has been questionable as well.

Q21 **Liz Twist:** How should developers deal with leases that have been sold on?

Martin Boyd: The Secretary of State said in Parliament this afternoon that he is meeting with the developers yet again to encourage them to do more. If they have sold on the freehold, the developer is in quite a difficult position, but it was their choice to sell on the freehold. It is a problem that they created and it should be for them to solve it. It is not the leaseholders' problem to solve. In some ways, it is not the Government's problem to solve, although they let this thing happen over a number of years.

Sir Peter Bottomley: If you go through a list of the good, the bad and the indifferent, after the Labour Housing Minister tried to reform the system in 2002, following George Young some years before that, there has been indifference in the Department. LEASE did not give advice to Government on how things should change and there was a succession of Housing Ministers who did not think there was a particular problem, partly because the predecessor Department did not have expert staff. We fought through that. Gavin Barwell made the change when he was Housing Minister, and now the Secretary of State and Housing Ministers are more alive to the problems.

The comparison might be that, after the slave trade and slavery were abolished, the slave owners got paid off a fortune, but they were not paid by the slaves. Too often in this system we are asking the leaseholders who use their life savings and take on big debts to solve the problem that the developers and the so-called long-term asset holders have created. The easiest way of dealing with this, in my view, is either by law or for the Competition and Markets Authority to declare that some of these terms are unfair and unenforceable.

Q22 **Matt Western:** Thank you, it is very interesting evidence so far. From what you are saying, it sounds like it is the latest financial scam on an industrial scale. Mr Boyd, you were referring to the lenders and your concern about the lenders. Is this about underwriting the value of what their loan book looks like, and do we know what the scale of this is?

Martin Boyd: Yes, a number of lenders have become quite concerned because we are clearly seeing, particularly with help-to-buy purchases, these properties dipping in value. The lenders are not keen to be sitting on assets that are going down rather than up in price, so more and more are being cautious. We found out a while ago that Barclays Bank had stopped lending on leasehold houses many years ago because it felt that was not a risk it wished to be involved with.

Q23 **Matt Western:** Just to understand this, is there a selling on of this debt in the way we had with Fannie Mae and Freddie Mac, and all that? Seriously, it sounds like the beginnings of that.

Martin Boyd: Yes, and we understand that the lenders do sell on part of their book. The leasehold houses with 10-year doubling leases will be a book that is not particularly highly rated as an asset, I would have thought.

Jim Fitzpatrick: Just to reinforce your question—"Is this a scandal?"—the very excellent MP for Ellesmere Port and Neston, who happens to be vice-chair of the all-party parliamentary group, has described this as the PPI of the housing and construction industry. It goes that deep and there are that many people affected.

Matt Western: Thank you. I sensed that.

Q24 **Kevin Hollinrake:** On that point, Jim, you mentioned PPI. Do you know if anybody has taken a claim forward against either their solicitors or the surveyors who valued these properties? The valuer does not just value as at the current day; he or she also looks to the future. Has any claim like that been taken forward, as far as you are aware?

Martin Boyd: Some claims have gone through. They then become subject to NDAs.

Sir Peter Bottomley: That is, non-disclosure agreements.

Martin Boyd: So it is difficult for other leaseholders to gain the benefit of what agreement has been reached. Unfortunately, both the Competition and Markets Authority and Which?—

Sir Peter Bottomley: That is, the Consumers' Association.

Martin Boyd: —decided they did not want to use their super complaint powers to bring what would have been a much more useful, larger complaint against either the developers or the solicitors. It is left to individual leaseholders to fight their cause.

Q25 **Kevin Hollinrake:** A legal claim in court is open to public scrutiny and a representative action could take place for one leaseholder on behalf of 100 in a single block. It is surprising that somebody has not taken that up.

Sir Peter Bottomley: If a leaseholder takes a case against the freeholder and loses, they expect to carry the can of the costs. If a leaseholder, under many leases, takes a case against the freeholder and wins, the freeholder can then put all the costs on all the leaseholders in the block.

Q26 **Kevin Hollinrake:** That is a tribunal you are talking about. I am talking about a case against the solicitor, the conveyancer who acted on behalf of the purchaser, or the surveyor.

Martin Boyd: There are cases in progress at the moment, and your second session may be able to tell you slightly more about that, but it has proved to be an extremely difficult and slow process. For a lot of these leaseholders, particularly leasehold houses up in the north-east and north-west, these are first-time buyers. They do not have a huge amount of money to go out and pay very expensive solicitors to litigate, to try to get back to the position that they thought they had bought into in the first place.

Q27 **Chair:** Which? has done some work on the idea of a super complaint, and was not as enthusiastic as perhaps you are about it.

Sir Peter Bottomley: I am a long-term member of the Consumers' Association. I am deeply disappointed that, over the last six or even 16 years, they have not taken action, certainly during the time that they were nominated as one of those who could make a super complaint. They still can, they still should, and we will give them support.

The other thing that is probably worth thinking about is that, if we seek a remedy for these people who bought freeholds at, say, five times the ground rent and are now asked to get 30 times back, it should be declared a new right to buy that the leaseholder can buy back that freehold at, say, five times the ground rent or even eight times. Be generous; say eight times the ground rent. That would soon get these people offering to sell them voluntarily, unless they are getting money on issues where they are not legally entitled to it, like insurance commissions and other things that too often crop up.

Q28 **Helen Hayes:** Do you support the Government's proposal to cap ground rents for new leases at £10?

Sir Peter Bottomley: The argument for £10 is based on a misunderstanding of the situation. Rather like the statutory instrument that is hanging around the House now on recognising tenants' associations, they ought to withdraw that £10 and come back to a peppercorn, so that if you have to have a ground rent it is at no value. What is the point of £10 to anybody? It is only to give people some kind of right and some kind of monetary value to the freehold.

Q29 **Helen Hayes:** Can you elaborate a little on the nature of the misunderstanding?

Martin Boyd: I am not a lawyer, but one of the leading QCs, when the consultation came out, made very clear that he felt it was a mistake, moving away from a peppercorn to a nominal ground rent. It has all sorts of legal implications that are not helpful to the consumer.

Jim Fitzpatrick: On the basis that, as we understand it, the legal definition of peppercorn is "of no monetary value", the minute you put a price on it, it has monetary value and, therefore, you are opening that up. The consultation puts a monetary value on it, which is why we have submitted evidence to say "peppercorn" is the appropriate term and legally can be defended and defined.

Q30 **Helen Hayes:** I am guessing the answer might be no, but do you think there is any credibility in the claims of freeholders who would be affected by that change that they will be losing out on a revenue stream that helps them to cover their costs?

Martin Boyd: The freeholders' business model is making money out of the leasehold sector. If there are no ground rents available for them to buy in future, they do not have a business any more, so they are hardly likely to be coming along and saying they think that is a good idea.

Sir Peter Bottomley: Essentially, people sell things for the market price. If I want to sell a camera, I do not say, "Can I please have the rights over all your printing after that?" Why can people not just build these homes, sell them commonhold in effect, and then have no other monetary interest in the future? As I say, when the retirement sector appears to have persuaded the Government, the Law Commission or anybody that they need to have ground rents to cover the costs of providing common parts, they are selling these properties in retirement blocks or villages for what they can get. They are not doing it on the basis of what the costs are.

Q31 **Helen Hayes:** The proposal to reduce leasehold, as you are calling for, to having no monetary value would deal with the issue going forward for new leaseholders. But the Secretary of State wrote to the Committee in July saying that the nature of contract law means that legislation cannot change the terms of leases that have already been signed. What more, in your view, should the Government be doing to address the issue for existing leaseholders?

Sir Peter Bottomley: George Thomas, when he was a left-wing firebrand Labour MP, got the leasehold scandal in Wales changed and people had the right to take over their leases. They would not all just leave. It is worth looking at that history, or your advisers looking at it. If people are given the right to buy or the right to enfranchise, you solve the problem. You say what the terms would be.

The Law Commission is presently looking at whether you can have a simple look-up table on extending leases. Extending it to saying what valuation you would put to get the freehold solves that—or, if not the whole freehold, to extinguish the ground rent on that particular property, and you just say it is going to be five or eight times what the ground rent is. You are not interfering in the contract. You are just saying what has been unfair is not going to continue.

Q32 **Helen Hayes:** Do you believe that there is any scope currently to challenge onerous ground rent terms under the Consumer Rights Act 2015? Is that a piece of legislation that is effective?

Martin Boyd: In my understanding, it was an issue raised by the Law Commission as a matter that it could look into. It is not one of the projects currently given to them by MHCLG. They were principally, with that one, looking forward again, but there has to be a question as to what we can do to undo some unfair terms retrospectively. It has been done before.

Sir Peter Bottomley: If I can give a comparison with voting, in 1918 women could vote if they were over 30 and met some other conditions. When, 10 years later, they could vote at the same age as men, they did not say to the women who started at 30, "You have to go on like that". You bring everyone to the same. If we say something is fair for the future, it is possible to write a law that is reasonably fair to the freeholders and far more practical for the leaseholders.

Q33 **Kevin Hollinrake:** I will point out, before I get a storm of protest on Twitter, as I have in the past on this issue, that our company makes as much money selling freehold properties as leasehold. It makes no difference to me whether they are leasehold or freehold, but it does make a difference to some leaseholders, where there are some owners of apartments in a block, if nobody has a common interest in the whole block or if the residents are not interested in managing that block themselves, which could then bring about a deterioration in the value of the property or properties in that block. That is what leasehold was there to do, as I understand it. Somebody has a common interest to insure the block and insure the common parts. You say that ground rent has no purpose, but does that whole fact of somebody with a common interest in the entire block not negate your point?

Sir Peter Bottomley: The one-word answer is no.

Martin Boyd: The rest of the world somehow copes, and that is the big question asked. How on earth does the rest of the world manage to keep its buildings in one piece when they do not have this landlord system there to cope? As I was saying earlier, the leasehold system does not give you a third-party landlord who has a genuine interest in the building. Their only real interest occurs at the very end of the lease. Since everyone now has a right to extend their lease, you are never going to get to the end of a building anyway.

There is a problem, and I agree, that we have spent hundreds of years disenfranchising people who live in flats, saying, "You are the tenant of a third-party landlord". We cannot expect them instantly to turn round and become like our European cousins, and to understand that if you live in a shared block you have a shared responsibility.

We have no problems in our site any more. We, as a board, need to meet less often with our responsibility for running the building than we had to meet as a residents' committee. We had 12 meetings a year as a residents' group just to cope with our third-party landlord. In terms of managing the site, we have only two real tasks to do during the year. We have to agree who will be our managing agent to run the site for us, and we have to agree the budget. Those are really our prime responsibilities as a board of directors looking after that building, and that is all it is for most freeholders.

Q34 **Kevin Hollinrake:** You advocate moving to a system of commonhold, which I understand. Have you spoken to the lenders? Are they comfortable with lending on commonhold properties?

Martin Boyd: Lenders were very active drivers of the commonhold legislation. They were one of the principal organisations pushing for commonhold legislation to be introduced and for the precursor to commonhold, the proposals that came forward under the Conservative Government in 1996. It is now just under 50% of the lenders who still have a commonhold product available.

Q35 **Kevin Hollinrake:** So 50% do not.

Martin Boyd: No, 50% do not, because there is no market currently, but in our conversations the lenders have said that they are very happy to have a product, as long as they have some customers who want to take it from them. It costs them more to provide a commonhold product at the moment than they earn from it.

Q36 **Matt Western:** Banking is pretty international these days. We have Santander here. We have BNP Paribas. They offer those products in other countries. Surely they must be offering them here, and the rest of them are catching up.

Martin Boyd: We have just been told that Santander is not offering on commonhold at the moment, but Yorkshire Bank and a number of the others should be.

Matt Western: That is remarkable.

Q37 **Teresa Pearce:** I have a quick question. Given that, as you have described, there are homes that may be unmortgageable and may be unsellable—Jim, you have said it is bigger than the PPI scandal—has the Financial Conduct Authority shown any interest in this issue at all?

Martin Boyd: We have met the Financial Conduct Authority on about three occasions over the years. We have recently made contact with the Money Advice Service, which is the group funded by them. It has been an issue of priorities for them historically. They did not see it as a big enough issue to become directly involved in.

Teresa Pearce: They might regret that.

Q38 **Matt Western:** Is that a Bank of England concern?

Martin Boyd: No, the Money Advice Service. The Bank of England is looking at other things at the moment.

Q39 **Mr Dhesi:** Let us move the discussion on to service charges, one-off charges and administration charges. I am aware of the 2016 survey by LEASE, the Leasehold Advisory Service, but for the record do you think service charges provide value for money for leaseholders?

Jim Fitzpatrick: It very much depends on whether the service charges that are being levelled are appropriate for what is being spent on the block: "We spent £100,000 on the block; there are 10 of you; therefore, it is 10 grand each", or whatever. There are many instances where the freeholder is levelling service charges, taking the money and then not spending it on the block. The transparency for housing associations, on the other hand, going away from the private sector, and the ability for leaseholders to identify whether they are being charged reasonably has always been subject to question.

We changed the regulations as a Labour Government to say there should be more transparency, there should be single block accounting and leaseholders should have a better opportunity to see what they were being charged for. We were getting cases where people were being charged for the maintenance of lifts in blocks that did not have lifts, and being charged for horticulture when they did not have gardens, simply because it was a simple template that was rubber-stamped and sent to everybody who was a leaseholder in that housing association or what have you.

The situation has improved, but there are still huge anomalies and there are still many people who are being charged much more than they ought to be. I know you said, Chairman, we are coming on to dispute resolution later, so I will not make the point now, but where leaseholders have taken freeholders to lower-tier tribunal and won their case, they have still not had the money spent on their block, despite having the law on their side at lower-tier tribunal and Upper Tribunal.

Martin Boyd: Very clearly, there are going to be a number of service charges that are perfectly reasonable value for money. The problem you have as a leaseholder is that it is very difficult for you to find out if they are reasonable. There are no standard measures that you can apply. You can get it quite wrong and think that you are being overcharged when you are not, and then you can sit there thinking it is perfectly okay when you are being considerably overcharged.

We are getting an increasing number of problems in the social sector. They tend to use something called qualifying long-term agreements, where they may have an agreement that can last 10, 15 or even 25 years, and their leaseholders have absolutely no transparency over the costs at all.

Jim Fitzpatrick: The right of leaseholders to ask for a copy of the estimates and comparisons of bids from different companies for refurbishment charges is very, very limited. The ability of leaseholders, therefore, to determine whether the bid chosen by the housing association is the best value for money available, and has guarantees for the work for five years, 10 years or whatever is the appropriate period, is quite limited, which is why there needs to be regulation in this sector to provide protection for leaseholders, in order for them to examine, to compare and to challenge if necessary.

Q40 **Mr Dhesi:** We have had issues within our own constituency in Slough, especially post-Grenfell, whereby some leaseholders are facing exorbitant charges for fire safety works, which they rightly feel is not their responsibility. Sir Peter, what are your thoughts on this? Do you think that service charges provide value for money?

Sir Peter Bottomley: It depends on each case. The reason I got particularly involved in this was a case in my constituency where people were being charged for a resident manager's flat when there was not a resident manager. Again, innocent freeholders took bad advice and kept the thing away from the property tribunal. I got involved and got a pro bono lawyer to spend half a day arguing with it. The following week, I suggested that the freeholder give £70,000 to my constituents rather than be sued for £140,000, to get the whole thing over with, and it got done. That was a clear example of service charges being unjustified and using the law to delay putting it right.

I am not going to condemn all freeholders, because they are not all bad and many managing agents are good. But too often people have to fight to get the right to see the figures and the recognition of tenants' or leaseholders' associations is resisted. The only reason to avoid recognising a tenants' or leaseholders' association is because you are taking money you should not be taking, and that includes service charges too often.

Q41 **Mr Dhesi:** Let us move on to permission fees or lease administration fees. The Committee has heard from Catherine Williams, who brought a particularly displeasing example to our attention, saying that they were being charged £3,500 for the addition of a conservatory and this was for a construction "that did not need local council planning permission". It was for a surveyor to produce a report on the build and then give permission for it to happen. Those sorts of examples are there. In your opinion, should these lease administration fees, which are charged by the freeholders for a variety of different reasons, be banned?

Martin Boyd: No, they should not be banned, but they should be reasonable. The difficulty at the moment is that, for a leaseholder, it is not cost effective to challenge a fee. If you have a sublet agreement in a flat, it might be that to dispute that would require a challenge both in the county court and at the property tribunal. It does not matter what you do, or if you represent yourself; it is going to cost you more to bring that action than the landlord is trying to charge. Conversely, the landlord may have 100,000 flats that they control, so if you want to go into a dispute in the tribunal, even if you win, they have the rights of 100,000 flats they are going to defend and they basically will outspend you through the courts system.

Sir Peter Bottomley: I agree.

Mr Dhesi: Everyone is unanimous on that: they should not be banned.

Q42 **Matt Western:** Just to develop on the dispute mechanisms, there is a huge imbalance between the power of the freeholders and the scale of them up against leaseholders. I can say I have been a leaseholder on many occasions, both in the UK and abroad. How would you go about reforming them? There are problems with the way the tribunal system and the redress scheme work. What would you advocate?

Sir Peter Bottomley: This is the first thing I would do: on the major issues, where the leaseholder has won at the lower tribunal, any appeal should guarantee that the leaseholder does not have any extra costs. Just guarantee it. If it is a point of law and you want to establish the point of law, by all means do it, but do not make the leaseholder vulnerable to having to turn up in court a second time or carry somebody else's costs.

Q43 **Matt Western:** Open-ended costs.

Sir Peter Bottomley: Any costs. We are talking about someone who lives in this leasehold home because they could not buy a freehold one or a commonhold one, and they are being put at risk for establishing the law. It seems obvious to me.

The second thing, in my view, that needs to be done is to give the leaseholder the right to opt out of having the freeholder, the ground rent or the control. For example, if you take these professional freeholders I read about in the Long Harbour submission, just say that they should be required to sell the value of the ground rent freehold for that particular flat at what they paid for it plus 10% and just say it is a rule. It would solve three-quarters of the problems.

Jim Fitzpatrick: There is an imbalance in the playing field. The disputes resolution procedure was supposed to be informal and low cost, and what is happening is that leaseholders are turning up on a number of instances to represent themselves, or Martin has represented them because of his expertise. Freeholders are turning up with barristers, even QCs, and because of their knowledge of law and legal procedures they are running rings round ordinary people who are just taking a concern to a lower-tier tribunal, hoping they can get some sense of balance and fairness through the informal procedure. The playing field just is not level.

I had leaseholders in one of my private blocks. They were very nice properties with very professional people. I suspect most of the flats were around about £1 million and some up to £3 million. They took the freeholder to court, won at first-tier tribunal, won at second-tier tribunal and found the legal costs on their service charges the next year. They want back to the tribunal and said, "This cannot be right. We won both cases and he is charging us for his legal fees". The answer was that it was a legitimate business expense incurred as a result of his responsibilities as a freeholder, so he is entitled to charge you for the privilege of beating him.

They had to go back again to the tribunal because, notwithstanding the fact that they won in two different courts, the freeholder still was not carrying out the maintenance to the building from the money he was receiving from the service charges of the leaseholders. The court made what they call a section 24 appointment. They appointed a building manager. That building manager spent two years doing nothing but answering letters from the lawyers of the freeholder, rather than maintaining the building. We went to MoJ last month to have a discussion with the Justice Minister about this, and she is looking at it because, first, the system is not fair; secondly, it is biased against leaseholders; and, thirdly, even when leaseholders win their cases, they do not get fairness or justice.

Sir Peter Bottomley: There is another thing that they get from too many people, and I say in Parliament that I am prepared to do this for virtually anybody. A leaseholder campaigning for justice often gets threatened with legal action by someone they have upset. That again seems to be bad. I have had one or two myself in this work. Various investigative journalists have had the same thing. *Private Eye* has done quite well and has attracted attention.

People ought to know that they cannot hide behind anonymity and that these threats will be exposed. If they have a dispute, they should say what their problem is and what will put it right. They should not just say, “We are potentially going to take legal action against you”, because that is using another form of legal costs and distraction when people are just seeking justice. I would add that, if we did not have the alphabetical thing of Gavin Barwell, Martin Boyd, Sebastian O’Kelly and Catherine O’Riordan, this group would not have been as well prepared to try to raise the issue, in common with many of our colleagues in Parliament, whose constituents have suffered unnecessarily, too much, too long.

Jim Fitzpatrick: I secured an adjournment debate last month on this particular case and the unfairness in the system. The lawyers for the freeholder wrote to the Speaker the day before demanding that the debate not be allowed to take place because it was infringing his rights and claiming sub judice, which it was not, and the debate went ahead. In terms of the lengths to which they will go to protect their cash cow, we are talking mega-bucks. We are talking millions here. They will not stop.

Q44 **Matt Western:** Can I ask you to go a little further on the threat of forfeiture, which we are told alters the balance of power for leaseholders if they seek to challenge freeholders over unreasonable service charges? How should the law concerning forfeiture be reformed?

Sir Peter Bottomley: The first thing the courts ought to do is say what the dispute is about and how it can be resolved, instead of it bouncing from the property tribunal to the different court and then back, with costs and all the rest. Secondly, if ever there needs to be the equivalent of a forfeiture the equity should go back to the leaseholder. It should not just go into the hands of the freeholder.

Martin Boyd: It is a matter that the Law Commission had reviewed in 2006, and they proposed a move to a forced sale position, where both parties are paid the moneys that they are due. The problem with the forfeiture system is that it provides a massive windfall for the landlord and it acts as a very onerous threat against the leaseholder.

Jim Fitzpatrick: Many of my constituents are facing costs for the removal and replacement of cladding and fire wardens, much as Mr Dhesi was talking about in Slough. Many of these are young professionals. They are mortgaged up to the hilt. They could not borrow any more money from their lender if they wanted to, because they just do not have the wherewithal. They are now facing bills of thousands of pounds for this cladding work. They are exposed because, if they do not meet the freeholder’s terms, their homes are vulnerable. For £5,000, £10,000 or £20,000—whatever the costs are—they could lose their £400,000 or

£500,000 flat. They do not have protection under law, because forfeiture gives the power to the freeholder or the developer.

Sir Peter Bottomley: I hope this Committee will get the Government to publish where every private tower block with Grenfell-type cladding is. They know the figures. They will not say where they are. They say, for some reason, it is security or confidential. Why is it confidential? Why is it not disclosed? Why do the freeholders not do it voluntarily?

Q45 **Kevin Hollinrake:** The occupants of that building, whether it was leasehold or commonhold, would have the responsibility to re-clad that building.

Jim Fitzpatrick: Indeed they would, but if it was commonhold they could go to a lender and borrow money. They are being forced by the freeholder, who says, "You will pay us", when in reality the leaseholders are the innocent parties. It was the developer, the freeholder, the construction company, the architect or the supply company that was responsible for the defective cladding being put on. The people who are innocent in all this are the leaseholders, who have no power whatsoever.

Q46 **Kevin Hollinrake:** I agree with that, but there is no legal connection between a commonholder, or a leaseholder potentially, and the person who has put the wrong kind of cladding on the outside of the building.

Jim Fitzpatrick: That is absolutely true, but the Government have put up £400 million for the social sector, for housing associations and councils. We have been saying that they should set up a similar fund for the private sector.

Kevin Hollinrake: We recommended that in our previous report.

Sir Peter Bottomley: The leaseholder by law is a tenant. The only reason that some of these freeholders are trying to make the tenant pay is because the lease allows it. It was not foreseen. It is clearly unfair and it should not be enforceable.

Q47 **Kevin Hollinrake:** We will not go into it. This is the main point I was going to ask. In terms of purchasing the freehold through a multiple of ground rents, you said earlier in your remarks, Sir Peter, that it should be at five times the ground rent. Justin Madders, who was in earlier, in a Private Member's Bill said 10 times the ground rent. You say now it should be the price they paid plus 10%. Many of these ground rents have changed hands at 30 times ground rent plus 10%. Are you still comfortable in that position?

Sir Peter Bottomley: I do not want to take on a professional in the business.

Kevin Hollinrake: We do not sell them, by the way.

Sir Peter Bottomley: Most of the people who bought them, whether they are the Tchenguiz interests, some of the private people or the Long

Harbour type—I do not want to get at Long Harbour, but it accumulated a lot—bought them at between five and seven times the ground rent. Many of the developers would not let the leaseholder enforce their right to buy within two years. When the leaseholder did say to the new owner, "Can we buy it?", the price quoted was 20 or 30 times what it was. I do not think many of these have traded between professionals at 30 times. Mostly, it has been the professionals buying them at a low multiple, so my system would work for most cases.

Q48 **Kevin Hollinrake:** In recent years, I can say that is not the case. The multiple has been way higher than five or 10 times.

Martin Boyd: In recent years it has, but it has become a speculator's market. It is a financial instrument. People are buying and selling these for whatever money they can get.

Q49 **Chair:** On the dispute mechanisms, previously the Committee, in a different report, has recommended the idea of a housing court, which the Government have looked at. Is that something you would welcome in trying to resolve some of these disputes in an easier, probably lower-key and less formal way?

Sir Peter Bottomley: In simple terms, it depends on the detail.

Q50 **Helen Hayes:** I would like to ask about the Leasehold Advisory Service. The APPG has been highly critical of the Leasehold Advisory Service, noting a plethora of problems and calling for its reform or replacement. Are these problems, in your view, to do with leadership, resources, or are there more fundamental concerns?

Sir Peter Bottomley: We may have different views, and I seem to be the dove. Many of the people working in LEASE, answering the phone calls, and their lawyers give the best advice they can. Sometimes they tell people what their legal rights are, but their legal rights do not often work in the circumstances where the inquiry comes in. I welcome their commitment.

In terms of leadership, it is odd that no one I know involved in the leasehold field, as a leaseholder or representing them, has been appointed to the LEASE board in my time involved in all this. That is a great big gap. It does not happen in any other field I have been involved in. Without wishing to personalise it too much, when I was with others engaging with Deep Sagar, who was the previous chairman, I found him totally not understanding of what the situation of leaseholders was and what needed to change.

His successor, Roger Southam, about whom I kept an open mind for a long time, turned out to have made one or two dramatic professional mistakes. I do not want to go into them now. There is no secret about them. He should not have been appointed, should have chosen to leave or should have been disposed of far earlier. That has been the problem with LEASE. It was set up by Lord Young of Cookham on a temporary basis when there was a change in the law and it rolled on without sufficient resources, so Government are to blame for that. In Deep Sagar's time, they ran conferences where the leaseholders would come in late for nothing and get nothing, or not much. The professionals could come in and pay a fee, which helped to fund LEASE, and they could hear, for example, in one terrible case, about how to inflate insurance commissions and take money off the leaseholders. That has been my problem with LEASE.

Martin Boyd: I am less dovelike. LEASE has been a monopoly service for far, far too long and it has done huge damage to the sector. Until Gavin Barwell turned round in February last year and said that LEASE must be wholly on the side of the leaseholder, they had, prior to that, taken the view that they were there as much to help landlords and managing agents as they were leaseholders. They are still technically mandated to help landlords before they are mandated to help leaseholders. It is still in their memorandum. Nothing has changed. For us and for almost every other group that is out there trying to help leaseholders, it causes a huge problem, because LEASE is the only organisation that is funded by the Government; it is the only organisation that is endorsed in any way by the Government; and it is the only organisation that is referred to in any Government documentation. When people find us, it is normally because they have been through the LEASE process and found it has not helped them, and they are trying to find an alternate solution.

Jim Fitzpatrick: That is a disappointment with LEASE. The Government gave them another £500,000 fairly recently to help with the additional pressures. Martin is far too modest to say it, but the Leasehold Knowledge Partnership is helping many more people than it is given credit for. Other organisations like the National Leasehold Campaign are out there in the field, helping leaseholders. LEASE should be the body that is doing that, and the fact that it is not is a source of great disappointment.

Sir Peter Bottomley: We did have a positive meeting with some of the LEASE board. I am grateful to them for giving us a chance to listen to them and talk with them.

Jim Fitzpatrick: I would hope that they would spend more time advertising the other bodies in the field to say, "We are here to help", which they should be. I am sure they help lots of people but they could be doing an awful lot more, being much more proactive and sharing the contact details for LKP, NLC and others for people to make comparison.

Q51 **Helen Hayes:** What is your view of the role that the Government's proposed New Homes Ombudsman can play in relation to both the problems with redress at the moment and the problems with LEASE?

Sir Peter Bottomley: I have no view.

Jim Fitzpatrick: I have not looked at it, sorry.

Martin Boyd: It is a good thing that it is there because it may have been one of the technical reasons why the CMA has not, historically, been able to look at the super complaint. There was no ombudsman scheme.

Q52 **Liz Twist:** Are you satisfied with the Government's proposals for reform of the leasehold-enfranchisement process?

Sir Peter Bottomley: No.

Q53 **Liz Twist:** Would you like to explain why?

Sir Peter Bottomley: It would take too long. I do not think it solves enough problems. I do not think it is successful enough and I do not think it is cheap enough. I will stop there.

Martin Boyd: It is too early in the process to know. It is not retrospective. It is not looking to help existing leasehold owners in some of the issues. Some elements of the project have been excluded. It does not look at the right of first refusal in blocks of flats under the 1987 Act. There are a number of loopholes that allow developers to sell on the freehold without ever offering it to the leaseholders. There also seems to have been the assumption that the 25% commercial element rule should still apply: if there is more than 25% commercial, you are not allowed to enfranchise.

However, there are a lot of very good elements in the Law Commission's project: the fact that they are going to standardise the rules between houses and flats and simplify the process is most welcome. But the way it is going to work is still open to debate, as to whether they will get to the right system.

Q54 **Liz Twist:** What support do you think should be given to leaseholders who cannot afford to enfranchise? We know that there are many of those about.

Sir Peter Bottomley: Again, the simplest way is to say that all leases can be extended at a certain rate related to the ground rent for, say, 150 years, 500 years or whatever you like. That solves the problem of the ground rent because, when they are extended, the ground rent is reset to zero. That gets most of the reasons why a freeholder might want to misuse or strongly use their position out of the way. You then have easy recognition of leaseholder associations. Good managing agents will drive out the bad ones. They will be used—word will go round about who the good ones are—and you have solved three-quarters of the problems. You still have to be responsible for your property but so do people who buy freehold. I am not going to have anyone tell me that the leaseholders in my constituency are any less responsible or less capable than the freeholders in my constituency.

Martin Boyd: One of the parts of the Law Commission work is to look at right-to-manage legislation, which was introduced in 2002 specifically for those sites where they either did not have the money or did not have the wish to buy out the freehold. One of the very good parts of the Law Commission work is that they are looking to introduce that right to estates where we have houses. Currently, they have no rights. If they bring that in, it will be very good. They can make the process simpler and give less loopholes for the landlord. A landlord should have no reason to object to a right to manage, because there are no legitimate profits taken away from the landlord when a right to manage comes into existence. There are other profits, such as insurance commissions, that the landlord will lose but, if the purpose of right to manage is to make it easy and simple for people, it has to work to stop landlords taking those profits that they should not be taking.

Sir Peter Bottomley: One example, which Martin may be familiar with, is where a freeholder ran his office telephone off the lift phone in the block of flats.

Martin Boyd: That was at my site.

Q55 **Liz Twist:** When we had our roundtable, many expressed the view that leasehold should be abolished. Would any of you like to comment on that? That was clearly people who have leasehold already.

Sir Peter Bottomley: Developers and purchasers should choose commonhold, because that means that the property gets developed, it gets sold, and people then have self-determination. For existing leaseholds, you would have ways of ending either the costs or the abuses that are going on. That is not done by immediately abolishing leasehold, in my view, because you have 6 million properties that you are dealing with. If you can stop the problems with, say, 150,000 to 200,000 new properties a year, that is a beginning. If you provide a method of dispute resolution or of calculating what the cost of a lease extension is, you then get so close to commonhold that you are virtually there.

Martin Boyd: In other countries where they have introduced an equivalent of commonhold, there is a gradual transition of the existing stock because, as commonhold becomes more and more common, the acceptance that a lease is a depleting asset means that those properties gradually become worth slightly less. For the leaseholders in those properties, it becomes more and more economic to convert to a commonhold.

Q56 **Liz Twist:** Finally, some freeholders argue that there is a risk that it could swing too far the other way in favour of leaseholders and have negative implications for savers and pensioners who may be invested in freehold properties. Is that a reasonable concern?

Sir Peter Bottomley: It is nonsense. First of all, where they are making money for pensioners—or claiming they are—it is not always clear who the pensioners are, because sometimes these things are run through a whole series of offshore funds. If it is the result of financial engineering, or buying something at five times what the leaseholder is paying and trying to sell it back to them at 30 times, that is just unjustifiable. Some of these people who seem to be so concerned about the interests of leaseholders do not seem to develop properties themselves. They buy the freeholds off the developers. We know that developers can sell properties commonhold or freehold; they should not be able to sell them leasehold in future. You should have a system where the lease, in effect, is part of the commonhold and there is no problem. You can expect, if you do not mind, some of us to send some of you our commentary on some of the evidence you have heard from other people, much of which is, frankly, self-interested nonsense.

Jim Fitzpatrick: There are powerful bodies at play here. Whether you take the Government figures of 4.3 million leasehold properties or our suggestion that it is closer to 7 million, when you start extrapolating the numbers in terms of what is being charged for service charges, for insurance costs or for refurbishments, the level of profits being taken and the abuses within the system, there are a lot of people making huge amounts of money off the backs of leaseholders.

Therefore, where there might be some legitimate objections and concerns being expressed—"If you go too far, too quickly, you are going to rob pension funds" et cetera—there are a lot of very shady characters out there who are doing everything they can and lobbying behind the scenes to prevent any changes to this sector whatsoever, because it is going to threaten the income that they are making off leaseholders who just do not have the protections under law that they ought to have to be able to demand fairness within the system. If you like, the pendulum is up here against leaseholders. We would like to get it over here for leaseholders. The developers and the freeholders are doing everything they can to stop the pendulum swinging, and we are behind it, trying to push it the other way.

There is going to be a battle out there with Government following the consultations that have already started, future consultations and draft legislation that will go forward. This is a battle over the next three or four years about what kind of property-owning democracy we want to see in this country for those who can afford to buy their property. When they do buy it, they ought to be able to own it rather than just be long-term tenants paying money to somebody else.

Q57 **Matt Western:** You will be aware of how notorious some of the housebuilders like Persimmon have been, as reported, in terms of the payments and bonuses being made to directors. Have you tried to establish how much of that profitability can be attributed to this practice?

Sir Peter Bottomley: The simple answer is not that much, because people sell properties for what they can get. When we were first told that leasehold houses were sold at a discount to freehold houses, Martin's work showed that was not true. People sell the houses for what they can get, so the Persimmon profits and the bonus share are independent of this issue. The difference is the people who buy the freeholds and then multiply their value. Again, if we had more time, I could take you through some of the real crookery that has happened in the past, but there is not time.

Chair: Thank you all very much for coming and answering such a wide range of questions.

Sir Peter Bottomley: We are grateful to you and to the Committee for taking on the issue.

Chair: And we are to the all-party group for setting the whole interest that the Department has in this particular matter in train. Thank you very much for coming this afternoon.

Examination of witnesses

Witnesses: Jo Darbyshire, Katie Kendrick and Shula Rich.

Q58 **Chair:** Good afternoon and thank you very much for coming to be our second panel this afternoon. For our records, could you go down the table and say who you are and the organisation you are representing today?

Katie Kendrick: My name is Katie Kendrick and I am the founder of the National Leasehold Campaign, which has 12,300 members.

Jo Darbyshire: I am Jo Darbyshire. I am a co-founder, with Katie, of the National Leasehold Campaign and, two months ago, was appointed a trustee of the Leasehold Knowledge Partnership.

Shula Rich: My name is Shula Rich. I represent the Federation of Private Residents Associations. I also run a drop-in for leaseholders once a week and see approximately 1,000 leaseholders a year. I reply to questions for the Federation of Private Residents Associations. I am chair of a block of 109, so I have experience of being both a freeholder and a leaseholder. I write courses for managing agents on leasehold.

Chair: Thank you very much for coming this afternoon.

Q59 **Matt Western:** To start with, I want to look into this whole area of mis-selling of leasehold properties. Perhaps if I can start with you as representatives of the National Leasehold Campaign, your written evidence highlights this malpractice of mis-selling by developers. Can you describe some of the practices that you have come across?

Katie Kendrick: When the majority of us bought our new-build houses, we were told they were leasehold—most of us were, anyway—and we were told, "Do not worry; you can buy it after two years for a couple of thousand pounds". The long-term implication of what a leasehold meant was never apparent because we only ever wanted to get to the two years and then buy our freehold, which was sold to us like it was a very simple process. Unbeknown to us, by the time we got to our two years, when we were legally entitled to buy our freehold via enfranchisement, our freeholds had been sold on in the interim. They could have been sold on two weeks after you moved in or just before the two-year mark. For me personally, the price rocketed from £3,000 or £4,000 up to £13,000, and Jo will tell you that hers went from £5,000 to £40,000.

We were told that it is now considered standard practice for the onward sale of these freeholds. If it was standard practice, why was that standard practice not passed on to the consumer at the point of sale in order for us to make an informed decision as to whether it was something we wanted to enter into? Had the 12,500 people in our campaign known what they know now, no way would they have entered into such a vulnerable position that we are all in now. We did not sign up for any of this whatsoever. We just wanted to buy a home, live in it and own it.

This is further impeded by the fact that the majority of the leasehold house scandal is in the catchment area of the north-west. In terms of consumer choice, people said, "Why did you not buy a freehold house?" You could not, because over 80% of new builds in the north-west have been leasehold, so there was no choice to buy an alternative. That was further impeded by the help-to-buy scheme that had to be used on new-build houses. If you wanted to use the Government's help-to-buy scheme, you had to look at new-build, but it had to be leasehold because there was no alternative. The consumer choice out there was non-existent in the north-west, which is where the big boom is.

Jo Darbyshire: I guess my story is similar to many. I have one of the now infamous Taylor Wimpey doubling ground rent houses. I bought my house in December 2010. In the verbal conversation with the saleslady at the time, she told us the ground rent doubled. My husband and I looked at one another and went, "That is not like our old house, so what shall we do?" She said, "Okay, you can buy the freehold at any point for about £5,000", so we had all the costs of moving and we decided to buy it before it doubled.

We went into the purchase of the house on that basis, knowing that we would be buying the freehold for around £5,000, before it doubled. The freehold was sold, 11 months later, to an offshore investor. It was not until the summer of 2016, when a neighbour's house sale fell through, that we realised what we were now in. Her house sale fell through because the purchasers were told that the ground rent terms were onerous, so they wrote to the management company for a quote to buy the freehold. That costs £108, by the way, just to ask for a quote. The quote they got back was over £50,000. We held a residents meeting, because somebody else had written and said, "That cannot be right. It must be a typo". They got a different number but that was over £40,000.

At that point, we realised that, on that one day that our freehold was sold on, the price to buy our freehold significantly increased. I have evidence across the board. My neighbour bought their freehold for £4,425, with the same terms of lease as me, directly from Taylor Wimpey at the point of sale. It could have been bought for £4,425 at the point of sale. Because I was not given the information to make that informed choice, it was sold on 11 months later, with no right of first refusal, and that number is now thousands and thousands more. As Katie says, if that is common practice, why did the salespeople not tell us it was and allow us to buy the freehold? Adriatic Land bought my freehold for £7,375. If we had been given a choice, we would have bought it.

The other thing from a mis-selling point of view is that at no point did anybody explain permission fees to us either. We had no idea. There is a fundamental lack of understanding about what leasehold tenure means to consumers out there. I missed that. I thought I owned the house but I did not own the land. It was not until I got involved in this campaign that I realised I do not own the house either; I just own the right to live in it for the term of the lease.

On permission fees, my neighbour was quoted over £2,000 in permission fees for a small extension that he does need planning permission for. In the group, we have seen examples of people having to pay to have a pet or to change a doorbell. It costs me £100 if I want to remortgage. Every time we contact the management company, it is £108 to ask for anything. That whole secondary income from our homes through permission fees was not even highlighted at all in the purchase.

If you are looking at definitions of mis-selling and whether we were given unsuitable advice, we were not even told that the freehold was going to be sold on and what the dire implications of that would be. The risks were not explained to us, so we have ended up with products that are not suitable. As Katie said, if we knew then what we know now, would I have bought my house? Yes, but I would have bought the freehold at the time I bought the house, absolutely, without question.

Q60 **Matt Western:** You were saying that your neighbour paid £4,425 and you have since, 11 months later, been offered it at how much?

Jo Darbyshire: The day that they are sold, the new owner wants what they perceive to be market value for the freehold. My valuer at the minute, who I have employed to look at enfranchisement on my doubling ground rent, says that is between £23,000 and £33,000.

Q61 **Matt Western:** It is really disturbing to hear that and I can empathise insofar as, in about 2004 to 2005, I bought a leasehold property. That window passed us by and we were not told about it either, and it got sold on in the way that you describe. That is a long time ago, 13 years, and the scale of this problem is pretty shocking. One thing that has come to light is this area of conveyancing. There are two things: the developers are selling the properties themselves, directly through their sales agents, with all sorts of practices you describe, such as on-selling, promising this and promising that, suggesting you might get a discount on this. You might get a discount on council tax; that is what I have heard in Warwick and Leamington, the constituency I represent, with certain developers. With conveyancing, were you forced down a particular route with their own conveyancing solicitor?

Katie Kendrick: I was, yes. It was in 2014. I was told that, because I was using the Government's new help-to-buy scheme, it was quite a complicated process. This group of lawyers understood the estate that I was purchasing on. They understood the help-to-buy process. We only had a fairly strict 28 days to exchange contracts, so it was just easier to keep it all in-house. They had the leaflet with the price of how much it would cost to use them. It had the developer's name at the top, followed by the lawyer's name and address. I just thought, "Keep it all in-house. It all sounds very easy". I had no telephone calls with my conveyancing solicitor. The saleslady said that she knew them, so she did all the telephone conversations. I did use them because I thought it was just easier to do so, and nothing was highlighted to me.

Jo Darbyshire: I used one of the recommended solicitors from the panel. We were told that, if we used them, it would just make the process go more quickly and easily.

Q62 **Matt Western:** You said you have 12,500 members. Do you have research that shows that this is very much the norm among those?

Katie Kendrick: Yes. If they did use their panel solicitors, they would get free carpets, free lawn in the back gardens and stuff like that. They would get a discount off other parts of the house, if they were to use their panel solicitors.

Q63 **Matt Western:** What changes could be made to help purchasers to be more aware of the lease terms at the point of purchase?

Katie Kendrick: A lot of work has been done already. Even now, a lot more information at the point of sale is being given to people, probably because of our campaign to raise awareness of what questions to ask. People are asking more of the right questions now when they go into a salesroom. It is just about being open and honest about what the process is. I was never offered my freehold; I got told I could not buy it until after two years, yet my neighbour bought his at the point of sale. It was available; they just said to me that I could not purchase it. That is still the case now. Some people do not offer the freeholds, unless you go down the enfranchisement route, which is very off-putting.

Jo Darbyshire: Many people buy properties with their heart, not their head, so they will tend to ignore a lot of what is said. Some of my past experience is in financial services. There needs to be something akin to a key features document that is given to consumers at the point of sale. That means that they need a clear understanding about what leasehold tenure is and what that means.

We have seen from quite a lot of our members since the leasehold scandal broke that developers are moving to a freehold model that is not really freehold. We have termed it "fleece-hold" because it looks like freehold but it is not. You will see that the new-build properties are marketed as freehold houses, yet when you examine the documentation that is in the transfer document, all the same permission fees that are in our leases are in the transfer documents for these freehold houses. They include having to ask permission. I know some people have said, "Well, how can that be? You are the freeholder". But the terminology in the document requires the transferee to pay the transferor these fees. It needs to be explained to people what they need to look for when they are buying a property, in terms of permission fees and covenants.

Another thing that is coming out of the woodwork now is the non-adoption of public services on new-build estates, which is going to be another scandal. You have a lot of first-time buyers, in particular, buying new-build properties, where the street lighting and the highways are not adopted, and they have no idea what that means for them going forward. The costs and risks associated with that are huge. Those areas of leasehold, fleece-hold and non-adoption of public services all need to be covered by some kind of document that is mandated, and conveyancing solicitors and salespeople need to be trained to make sure that consumers are making an informed choice. It is the biggest financial purchase of your life and you have fewer consumer rights than if you bought a toaster.

Q64 **Matt Western:** I have not heard the term "fleece-holder" before, and this category, but from what you are saying you really believe that there is a major scandal going on here. In the way you describe it, would it therefore be really helpful at the point of purchase if there was some simple document, as was recommended? We had a roundtable session and one person proposed this: a simple form that spells out the financial literacy terminology and what these different terms mean, and explains what is included in the leasehold and some of these other things, such as permissions and so on, to avoid mis-selling and have some consistency in the process.

Jo Darbyshire: Absolutely, and it comes back to mortgage lending and affordability as well. People need to be really clear of what their outgoings are going to be. If it is leasehold, you have ground rent. If it is fleece-hold, you potentially have permissions, even though you have no ground rent. If it is non-adoption of public services, what likely costs do you have in the future to maintain what should be public services? There are a lot of estates now with estate management fees; with flats, it is service charges. You will typically find, on a new-build development, there is some token piece of land, which might be a children's park or a grassed area, that attracts an estate management charge. Again, consumers have no concept that these are currently unregulated in how much they can go up by. We see all the time now from people who post in our group how they are hitting issues of affordability because they had no idea what was going to happen with these costs.

Q65 **Mary Robinson:** Katie, you mentioned what I thought was quite a staggering figure: 80% of new build in the north-west has been leasehold. There has been a huge expansion, and an expansion of the problems associated with it. What is this down to? Is it down to the prevalence of certain builders and developers, and a practice that is inherent with them, or is it associated with help to buy?

Katie Kendrick: In all the help-to-buy figures that I have read, as well as all the developers' evidence that they have put in for this inquiry here, for some reason it is considered the standard throughout the industry that the north-west sells leasehold houses, and I do not know why. I do not know if it is because of low income. I have no idea why the north-west has been targeted for leasehold properties. I really do not know, and I would like to know the answer to why developers have chosen the north-west for this.

Mary Robinson: Thank you. I would be interested too.

Q66 **Kevin Hollinrake:** Jo, I think you said you were on a 10-year doubling ground rent lease. What was the starting point? How much was it?

Jo Darbyshire: £295.

Q67 **Kevin Hollinrake:** Have you had a revaluation of your property to determine whether it has gone down in value as a result of that?

Jo Darbyshire: Not of the property itself, but I can vouch for most of the properties on my estate at the minute. They are not selling for pretty much what they were sold for originally.

Q68 **Kevin Hollinrake:** Do you have any indication of what it might have dropped by as a result of the lease?

Jo Darbyshire: If it is still on a doubling ground rent at the minute, I would hate to think what my property is worth now because it is not mortgageable.

Q69 **Kevin Hollinrake:** Might it be 50% less or 25% less?

Jo Darbyshire: I would think I have lost a lot of money.

Q70 **Kevin Hollinrake:** Have you looked at taking a claim forward against your solicitor or your surveyor? You made the point about a key features document. That is pretty much what a solicitor or conveyancer is there to do: to explain the terms of the purchase you are making, and whether any have really adverse consequences. Have you looked at taking a claim forward against either of those parties?

Jo Darbyshire: Yes, I have. Part of the difficulty is that professional negligence is so complex. You have to be able to prove material loss. You have to be able to prove causation. It is also time barred. Six years from the point of exchange of contracts is the time bar.

Q71 **Kevin Hollinrake:** When did you buy?

Jo Darbyshire: December 2010. By the time we found out about it, it was summer 2016 and we were pretty much at the six years. You can argue date of knowledge to get that extended, but again that is not guaranteed. It is a very complex procedure. You will find that either I have to have quite a chunk of money to be able to fund a case myself, or I have to find a solicitor who would take it on, on a no-win, no-fee basis. They are very careful about taking on a no-win, no-fee case, because they want to take on the ones that they can win.

Q72 **Kevin Hollinrake:** But it is a pretty clear-cut case. If you have a valuation on that property that is a significant drop from where you started, you can prove the material loss. I take your point about funding a legal claim, which is not easy for anybody, but it should be relatively easy to demonstrate that you have a claim against somebody.

Jo Darbyshire: The initial advice I have had so far is that it would be very difficult to prove my solicitor negligent because, in my report on title, it says the property is leasehold, it says the ground rent is £295 and it says that it doubles every 10 years and, therefore, they were not negligent. In my view, they did not advise on the onward sale and the permission fees, but the initial legal advice is that that is borderline.

Q73 **Bob Blackman:** What did you receive from the developer in terms of the offer? Did you get a letter setting out all the details or was there minimal documentation?

Jo Darbyshire: We had a reservation form, which stated that it was leasehold and it doubled every 10 years. I have no issue that I was not told it was leasehold. Some people in our group did not know it was leasehold and they did not know it doubled, but I knew both of those things. But I was also assured verbally—

Q74 **Bob Blackman:** Verbally, so you have nothing in writing about buying the freehold.

Jo Darbyshire: No. There are so many similar stories.

Q75 **Bob Blackman:** The other issue is that, presumably, you are buying your property with a mortgage through a lender. Did the lender look at any of these aspects?

Jo Darbyshire: No. The only thing on my mortgage papers is two boxes—leasehold or freehold—and there is a little cross in the box that says leasehold. That is it.

Q76 **Bob Blackman:** One of the concerns that any lender is going to have is whether you can afford to continue with payments.

Jo Darbyshire: It is just my opinion, but I think a lot of the lenders were caught on the back foot with this. My previous house was leasehold. It was £95 ground rent and it never went up. It took the lenders a while to cotton on that, all of a sudden, these new lease terms were circulating in the market.

Q77 **Mr Dhesi:** Katie and Jo, you have very eloquently highlighted what so many other leaseholders are saying, in that they believe that their homes were mis-sold to them. But in this whole process—and it is a question for all three of your good selves—have the consumer bodies, the regulators or the ombudsman been able to offer any useful support?

Shula Rich: I would say not, because the biggest scam and the biggest misunderstanding is that leasehold is sold as ownership, which comes even way above the terms that I would call unfair. In a lease, we say we own a flat or buy a flat. Estate agents should not be allowed to say that. They should say "buy a leasehold", not "own a flat" and not "own several flats", because the overarching mis-selling is that it is ownership. That is the complete misunderstanding of what leasehold is. It does not devalue leasehold to tell the truth about it; it puts its correct valuation on it. It would be quite simple to say, "Do not advertise: 'buy a flat'. You buy a lease. You do not buy a flat". That is not a hard thing to change.

Katie Kendrick: Can I just add to that? That is a really good point. For a lot of us, the big pull factor that has made this whole problem so much worse is the help to buy, which is clearly labelled: they are helping you to buy. But how can they help you to buy something where you are literally a tenant? "Help to rent" would have been better, but that has been a massive pull factor. I do not know whether the developers suddenly changed from building freehold houses at what appears to be a similar time to when they introduced help to buy.

Q78 **Mr Dhesi:** Have the support agencies been able to offer any useful support in terms of the ombudsman or regulators?

Katie Kendrick: Trading standards are looking at it, now that they have an increased budget. I believe that trading standards are keen to look at this. They have only just had an increase in budget recently, in the last couple of months, so it is something that they are going to look at. But, again, that is time barred. I think it is three years for consumer rights protection, so that dismisses all of us who have been around a few years longer than that.

Jo Darbyshire: Which? was mentioned in the previous session. My understanding is that they have come back and said there cannot be a super complaint because there was no ombudsman. It is a source of great frustration to Katie, Cath and I that there seems to be this blatant and systemic mis-selling of homes across the country, and we have nowhere to go. It is almost like, on every path we take and try, there is a wall and we just cannot get anywhere.

Q79 **Mr Dhesi:** I completely empathise with what you are saying and you have the platform now. What would you like the Government to do? In terms of supporting leaseholders, what would you want them to do?

Jo Darbyshire: For me, it is really simple. I know Jim said earlier that this was the PPI of the housing industry. For me, it absolutely is. I do not think it is a coincidence that all these developers suddenly adopted a very similar business model in terms of leasehold houses at the same time. It would be really interesting for the panel to look at whether there are any connections between the investment companies that have bought the freeholds and the senior executives and management of the development companies.

Any kind of financial mis-selling, whether it be mortgages, PPI or pensions, has been subject to an independent inquiry and a redress scheme that sets out to put consumers back in to same financial position they would have been in, had they not been mis-sold in the first place. To me, that is where we should all be. Had I have been advised properly, I would have bought my freehold for £4,425 at the point of sale and I would not have paid £295 ground rent for the last seven years. It is as simple as that.

Q80 **Mr Dhesi:** I hear that loud and clear, and hopefully we will make a note of this as a potential area to explore further. Shula, what do you think?

Shula Rich: With regard to leasehold, I would absolutely say that you can no longer sell leasehold as ownership. I would support Katie when she says it is the right to buy your leasehold, not the right to own or buy a flat. Within that, although we are told that a lease is a contract, unfair terms in contracts do not apply beyond the first signing of the contract. When they say the familiar phrase, "They knew what they were doing when they signed their leases", they did not sign their leases. It is only the first purchaser who signs the lease. Going on from there, what leaseholders are buying could be thought of as the fag end of a timeshare. It is basically a long-term timeshare; it is not owning anything. If unfair terms in contracts were to apply to leasehold contracts, any time a term is seen to be unfair, it would be open to question. For example, for assured shorthold tenancies, what was the Office of Fair Trading had an examination of unfair terms in tenancy agreements, but that did not apply to long-term tenancy agreements, only to short-term tenancy agreements, and eventually a sunset clause on leasehold.

Q81 **Mr Dhesi:** Ladies, you have already mentioned that you think this is akin to the PPI scandal with regard to what is happening with leaseholders. Do you think, having said that, that there should be a right to compensation? Should that be established?

Katie Kendrick: Yes.

Jo Darbyshire: Absolutely.

Shula Rich: Yes.

Q82 **Mr Dhesi:** That is unanimous. Just before this panel, you heard the all-party parliamentary group. They were highly critical of LEASE, the Leasehold Advisory Service. Do you agree with them, and what do you think should be done to reform?

Katie Kendrick: As to the general consensus in the National Leasehold Campaign, we get feedback not just from people with houses, but we have a lot of flats as well. When they have contacted LEASE, the feedback on the help they have received is, honestly, quite appalling. Generally speaking, the campaigners feel that LEASE has been fully aware of what has gone on for several years. They have advised on the law but we all know that the law is broken in this area, hence we are all here today. All they have been commenting on is what the current law says, which is no good.

Unless they have fed back to Government and said, "We are having a lot of concerns regarding this area of the law, and it is not helping these people", they have done very little to present it in front of Government, to be honest. I feel that that was the job of LEASE, to see trends and to see where the law is broken, and to advise. If it was not for LKP and the like highlighting this issue, I feel they would have been looking the other way for even longer. With all due respect, they presently seem to be doing a bit more but, as far as we are concerned, that is much too late, because there has been a lack of trust. We have lost faith in them, to be honest.

Jo Darbyshire: There is a huge credibility problem with LEASE among leaseholders. That is just because the organisation lost its way when it was asked to be a more commercial outfit. It then ended up in that bizarre situation where it was running paid conferences for freeholders, advising them how to maximise income from leaseholders. It is just nonsense. You could not write it. Then there are key figures in key positions in the organisation who have interests in the sector. I agree that, if LEASE is going to carry on as an organisation, the change needs to start at the top. You could not make a better statement than to appoint a leaseholder and people who have experience as leaseholders in some of the senior roles there.

Shula Rich: When LEASE was established, it was to give advice on leasehold and commonhold. I think it was the 1996 Act. LEASE was just one body that was supposed to be financed. I have a local organisation, Brighton Leaseholders Association. We wrote asking for funds and we were then told that the funds were confined only to LEASE, which means that LEASE is seen as a representative of leaseholders, when, in fact, it is staffed entirely by professionals. In the evening in particular, I do not know if the scheme goes on now but professional volunteers were requested, who were giving advice to leaseholders, who could be giving advice in the interests of that professional person. At least the LEASE advisors during the day are advisors paid from Government funds, but many of the other people involved are professionals and they advise on leaseholds. It is almost in their interests, unfortunately, to keep leasehold going. LEASE should not represent leaseholders, and the funds should certainly be more spread out, for example to FPRA, to LKP and to the National Leasehold Campaign. If there are funds, why should those be concentrated just with LEASE?

Q83 **Mary Robinson:** We have heard some really worrying evidence from you concerning the difficulties of being a leaseholder and trying to purchase your lease back, as well as permission costs. Clearly, there are a lot of issues there, but just looking at onerous ground rents and the impact they may have on the ability of leaseholders to remortgage or to sell, is ground rent a really big issue?

Katie Kendrick: We have lots of examples of house sales falling through all the time because of the lease terms. By highlighting the issue, it is bringing it to the forefront. In the short term, it is probably making more leasehold properties more unsellable in the interim, but it has to get to this point before changes are made to benefit us in the future. Sales are falling through, and it is only when the sales fall through that people have that penny-drop moment, and that is when they join our campaign, going, "Oh my goodness". They did not realise it up until that point.

On my housing estate in Ellesmere Port, there are 300 houses. Not many of them have been concerned about it up until the last six months, when they are trying to sell their properties and they are falling through. Now they are realising why, because one of the first questions people are asked when they ring up for a viewing is, "Is it leasehold or freehold?" If it is leasehold, they just will not touch it, regardless of the lease terms. For the doubling ground rent ones, people cannot get a mortgage on them, so they literally are unsellable. Under the whole umbrella of leasehold, people just will not go near it. If leasehold houses are being banned in the future, why would people willingly enter into something that is going to be extinct?

Jo Darbyshire: Defining onerous ground rent terms is more difficult. There was a school of thought that the onerous ground rents were the doublers. Some double only every 25 years. They are probably better ground rent terms than RPI, when you work that out on an annual rate. But the doublers are the ones that have most of the publicity. Big mortgage lenders like Barclays, Santander and Nationwide are now coming out with clear mortgage terms around leasehold properties. It tends to be that they will not lend on any property where the ground rent doubles more frequently than every 20 years. They will not lend on anything that has RPI increases more frequently than every five years.

The real killer now—for me, this is the real ticking time-bomb with leasehold stock—is this absolute measure. It is where the ground rent exceeds 0.1% of the property value. On my estate, £295 is everybody's starting ground rent. There are a number of detached houses like mine that are worth around £400,000, or they were. There are also a number of townhouses at the end of the estate that are worth around £200,000, so they are already over the 0.1%. Quite a few of those have RPI leases. If you think the doublers are the only problems, you would think there is no problem with any of the RPI leases. But, if these absolute terms are adopted by all the lenders, you are going to take a hell of a lot of properties, particularly in the north-west, where property prices are lower than in London, out of the housing stock. That is huge.

I would question why RPI is seen as acceptable as well. RPI is not the recognised measure of inflation; CPI is. Mark Carney at the Bank of England has argued that RPI should be discontinued. If lenders are going to start to adopt an absolute measure of ground rent against property value, house prices do not increase in line with RPI. You are going to get houses and flats where, potentially, the ground rent goes above and below this 0.1% threshold as property values rise and fall and the ground rent rises and falls. That cannot be sustainable in the long term.

Shula Rich: There is also a long-term scam with regard to ground rents. When people try to extend their lease, they do not know that there are two ways to do it. One is the statutory way and the other way is an informal lease extension. Surveyors, freeholders and valuers who are working for the freehold company are not obliged to tell people that there are two ways to do it. The statutory lease extension gives you a peppercorn ground rent and 90 years after the end of the term, and that is what Government intended a lease extension to be.

People do not know about this, and I see it every week. They are told that there are new terms for a lease extension, which can involve a doubling ground rent or all sorts of variations on that, because it is entirely up to the freeholder what they choose to put into their offer. People will not care, because they will accept that offer and then sell, so they will be able to sell with a lease that has been brought up to 99 years, or perhaps 90 years after the end of the term. But, if there is anything different between the statutory and the lease extension that they get, they cannot challenge it and they are subject to an increase in ground rent.

That is a loophole in what Government intended. Even if we can stamp out rising ground rents in new leases, we also ought to make it mandatory that, if people are not taking a statutory lease extension, they at least know about it.

Katie Kendrick: That is very similar to houses: the formal and informal route of enfranchisement. You can purchase your freehold via enfranchisement or you can do your informal offer, which is direct with the freeholder. All of a sudden, in the last six to 12 months, freeholders are offering a lot of what appear to be attractive freehold purchases. They will contact the leaseholder directly and say, "You can now buy your freehold for £5,000. It is a time-limited offer for three months, and you have three months to accept". It is creating panic among leaseholders thinking that they have only three months to accept this offer; otherwise, they are going to sell it on to a third party. It is creating such panic among leaseholders that they are now doing these informal freehold purchases directly with their freeholders, thinking that they have to do it because, if they sell them on, it is going to be even more.

As Jo said before, they are keeping all the same permission fees in that TP1, so all those permission fees will stay in. You will have a freehold with the same permission fees as what you had as a leasehold, so all you are paying is your ground rent upfront. But people do not understand that, and are panicking and buying their freeholds via the informal route as opposed to the statutory enfranchisement, which is causing us a lot of concern. Leaseholders are asking us what they should do: should they accept the informal offer? But you do not have the right to challenge all these permission fees that you would do if you went down the enfranchisement route and you could take them to FTT. I know it is awfully costly to challenge them, but you have the right to do so if those terms are unfair, which you do not have if you go down the informal route.

Q84 **Mary Robinson:** There is clearly a lot of action going on at the moment. Taylor Wimpey, for instance, has introduced a ground rent assistance scheme. From what you have said, I gather that you do not think that is entirely positive, or do you?

Jo Darbyshire: I guess, being Taylor Wimpey, I should probably answer that one. I consider myself to be a fairly bright person, but I really do not know whether I should take this offer. It is so difficult to know, on a number of fronts. My doubling stops after 50 years. If I convert to RPI, it continues for the whole term of the lease. In my lifetime in the property, I may pay less ground rent but, if I do not enfranchise, the person who has the house after me and after them will pay considerably more than if it had stayed doubling. In theory, the cost to enfranchise, if I convert to RPI, is less than if I enfranchise on a doubler, but that all depends on the capitalisation rates that the valuers use to value it. If, as may happen, doubling ground rents start to be seen as toxic, it may be that the capitalisation rates used to enfranchise a doubler are much higher than those for an RPI lease, because the market for doubling ground rents is not attractive, whereas the market for RPI is.

You can get a bizarre situation—and it does not take much movement in capitalisation rates to make that happen—where for me to enfranchise an RPI lease is more expensive than for me to enfranchise a doubling one. Do I play the odds? If I do, because I bought from Taylor Wimpey, in addition to my deed of variation, I have to sign a settlement agreement, which waives all my rights to claim further from Taylor Wimpey. It may only cost me £10,000 or £11,000 plus costs to buy my freehold, but that is still way more than the £5,000 I was told at the point of sale, and I have just signed away all my rights to claim anything further from them.

It is a clever exercise in capping their corporate liability. I really, genuinely do not know what to do next.

Q85 **Mary Robinson:** Can I just ask you a very general question and for a very short answer? What do you think, in general, of the efforts that have been made by developers and freeholders to support residents and leaseholders who are affected by onerous ground rents?

Jo Darbyshire: They are as little as they think they can possibly get away with.

Q86 **Mary Robinson:** The Government have proposed that ground rents for new leases be capped at £10 a year. That does not, however, apply to existing leases. What should the Government do to support existing leaseholders in challenging onerous terms and leases?

Katie Kendrick: We need to help people get out of this. The enfranchisement route is, for many, going to be far too costly anyway. We just want to own the homes that we pay for. We are not asking to be given anything; we are just asking for what they sold us at the beginning. It seems that we are now suddenly at a point where we are in such a complex, complicated process that none of us knew anything about. We have just given up two years of our lives to get to this point now. It has taken the shine off our new homes, and people cannot wait for it to be over. There are so many people out there who want to sell, and they cannot. They are literally stuck in their homes until the outcome of this and until the outcome of the enfranchisement project. We are probably talking a good few years still for people. I do not know what they can do but they have to do something for the existing leaseholders because, at the minute, everything is all for the future.

In the two-tier market that they are making, they cannot leave the existing leaseholders in this mess, which is further impeded by help to buy. People are at the point now where they have to start paying back the help to buy, i.e. the interest, because they are now in year 6, and that is an additional cost. Some people had planned to remortgage and pay back the help-to-buy element. We have leaseholders who, because the value of their property has gone down by about £30,000 because of a doubling ground rent, are now having arguments over how much their help-to-buy element is, because the value of the property has gone down and the 20% that they borrowed from the Government is now worth less. They now have that fight on their hands.

There is then the argument of whether you enfranchise before you pay back your help to buy. If you make your house freehold, you are going to add value to the property, and you are going to give the help-to-buy element more money back. People just do not know where to turn.

Shula Rich: In terms of onerous leases, if we can see leases as contracts all the way through as they exchange, that would be helpful. FPRA supports the transition to commonhold to make that easier. Removing the percentages for enfranchisement would also make it a lot easier for people who already have leases to get out of them. Nobody wants to create two tiers and to trap people. To get out of the leasehold trap, the Government can help considerably there.

Katie Kendrick: I would like to see them support my MP, Justin Madders's Leasehold Reform Bill for 10 times the ground rent. That would be very much welcomed by a lot of leaseholders and would be affordable for most.

Jo Darbyshire: There is a gap at the minute for existing leaseholders. There is the stock going forward: zero ground rent going forward and no leasehold houses going forward, and zero ground rent on leasehold flats. That is great going forward, but what do you do for the people who are already trapped in this mess? Making enfranchisement cheaper, faster and easier is great but that is going to take time. In the meantime, these people have lives. They have growing families. It is just not quick enough for people's lives.

You then have a whole chunk of people who cannot afford to enfranchise, whether they are in a house or a flat. You can have as many theoretical conversations about valuation bases for enfranchisement as you like. Whether it is £3,000 or £4,000, it is not an attainable amount of money. They just do not have it, so they will not be able to enfranchise, no matter what the new proposals are, which still leaves them with these onerous ground rents that are more than 0.1% of the property value.

If you are a flat owner, those problems are exacerbated even more because you have to get the 50% to collectively enfranchise. If you have 25% of commercial property in the block, you cannot enfranchise. Those problems are not going to be solved with any of the work that the Law Commission is doing right now, and that is still going to leave all these flat owners at the mercy of ground rents that are more than 0.1% of the property value and, again, unmortgageable and unsellable. There are a whole chunk of leaseholders here who are going to be missed out.

Chair: I am conscious of the time. We just have two more questions.

Q87 **Bob Blackman:** To continue on the issue of enfranchisement, there has been a lot of evidence presented to us both at the roundtable and in writing about the position. Clearly, the Government are considering what they should do both in the future and possibly retrospectively, but we will see what happens there. Are you satisfied with the Government and the Law Commission's proposals for reform in the future, i.e. the future arrangements that would exist if these reforms were introduced?

Katie Kendrick: Coming back to the overall aim of the National Leasehold Campaign, it would be to abolish leasehold and to convert flats to commonhold. That is the ultimate aim. In terms of reform and as a stepping point to get to the overall abolishment of leasehold, we welcome the recommendations of the Law Commission, but there is something in there about being able to enfranchise at 10% of the value of the property. That is not going to help anybody because that is just unachievable. No one formula has been put forward yet for the Government.

Q88 **Bob Blackman:** I think you are saying that you are not happy with the proposals going forward.

Katie Kendrick: Which proposals are you referring to?

Bob Blackman: The Government are consulting at the moment on proposals, so it is really an opportunity to put on record your views.

Jo Darbyshire: I guess there are a couple of elements for us. On enfranchisement, there is some really good stuff in the Law Commission proposals. It is a very thorough document. It wants to eliminate inconsistencies. There is some really good stuff. The problem for us is with the terms of reference. When you get the Law Commission's terms of reference that say you have to ensure sufficient compensation for the freeholder, you just have a dichotomy straightaway. How can you make it cheaper for a leaseholder without compensating the freeholder? They have been given an impossible task, in our view.

In terms of the Government's consultation on leasehold houses going forward, we are absolutely in support but we do not want to see any of the proposals watered down. We have suddenly gone from zero ground rent when Sajid Javid was Secretary of State, to this idea of £10. You discussed it at length in the previous session, but as soon as you put any monetary value on a ground rent you create an asset class in people's homes. It has to be a peppercorn. There are leading QCs who can explain that much better than I can.

Shula Rich: The most constructive way forward would really be a consolidation Act. What you are getting in housing law is one Act overlaid upon another. For example, if you look at the consultation regulations called section 20, it is section 20 that comes up in the 2002 Act, but when you are heading it up you have to say "1985 as amended", because that is where section 20 first occurred. Everything that the Law Commission does, worthy as it may be, is adding further layers and further complications until, in the end, it is not just any solicitor; it is highly specialised solicitors who can deal with this.

At my drop-in the other day, I explained to people who had more than 25% commercial that they could not get right to manage but they could get something called appointment of a manager. These were people who, in other lives, might be just as competent as all of us. They do not have just one brain cell because they are leaseholders. They wrote to me and said they had checked out what I said, but right to manage was not possible because it was 25% commercial. But I had not said that; I had said appointment of a manager, which just illustrates how needlessly complicated leasehold law is. With every bit more from the Law Commission, we are making it worse.

Q89 **Bob Blackman:** The final issue for me is that the Government's proposals talk about what we do in the future. You and many others across the country are trapped in a position, which it could be claimed is of your choosing because you chose to buy a property under these circumstances. Whether you should have been given proper legal advice and so on is another issue. What would you like to see happen, going back, in terms of the current position that individuals find themselves in under this requirement to enfranchise?

Jo Darbyshire: I would go back to my earlier point. I would like to see an independent inquiry into how and why this scandal was created in the first place, and a compensation scheme akin to the kinds that were in place for pension and endowment mis-selling, which looks to put consumers back in the same financial position they would have been in, had they been properly advised in the first place.

Q90 **Chair:** You mentioned the problems that many leaseholders feel they have with service charges being unjust and unfair. What experience have you had of trying to challenge those through any of the dispute mechanisms and particularly the First-tier Tribunal?

Shula Rich: I have had a lot of experience in challenging service charges. One of the most important weapons that the freeholder always has is to threaten forfeiture as soon as people begin to challenge. Most leases say that, in contemplation of forfeiture, the lessee has to pay the costs, so it becomes in the freeholder's interest just to threaten forfeiture, so that the costs can be fixed right from the beginning on the lessee, who has only chosen to ask for justification or explanation of the service charges. It is something that is written into leases, which could, again, be considered an unfair term, if leases were seen as contracts, after the first exchange.

Jo Darbyshire: In theory, it is a nice idea that leaseholders have legal recourse if the service charges are not fair or reasonable, but practically it rarely works. You have this David versus Goliath fight in terms of resources and financial means. We are aware of cases where people will take a freeholder to tribunal. They may win. That will then be appealed, so they have to go to appeal. It is six months of their life. They have a sword of Damocles hanging over them in terms of financial costs. Even where they win year 1, those costs can be passed on to them, because they were legitimate business costs to pass on. The next year, they will be challenged again. Some of the people we know have seen cases where the freeholder does it year after year, and they do it on purpose because they know that, eventually, the leaseholder will just go, "Do you know what? It is just easier to pay".

Q91 **Chair:** Do you have experience of the First-tier Tribunal?

Katie Kendrick: No.

Jo Darbyshire: Not personally.

Shula Rich: Yes, I have attended many tribunals and supported people.

Q92 **Chair:** Did you find they are weighted against the leaseholder?

Shula Rich: However hard the chair tries not to, when you have a litigant in person and when you have a barrister, the barrister is able to quote precedents and, to be a little bit cynical, it is an awful lot less trouble for the chair to go with the barrister than to wonder whether the litigant in person might or might not be right. I will not say it happens all the time but there is a huge advantage, of course, in being represented, although some leaseholders are also represented. Recently, I attended a case of Brighton and Hove City Council, where the lessees were represented and they did a much better deal than the unrepresented leaseholders. It is about representation, which I do not think the tribunals were really set up for. It was hoped that it would be an area where people could fight their own battles, rather than have to be represented.

Q93 **Chair:** You mentioned earlier, Jo Darbyshire, the whole issue of permission fees and some of the outrageous costs, as you were alluding to. Do you think permission fees should just be made illegal?

Jo Darbyshire: For me, yes. I know that might sound like a very simple answer, but I do not know how, logistically, you could manage it if they were not. You get back to this: "They have to be reasonable", but what is reasonable? That is subjective. How do you argue if you do not think they are reasonable?

Q94 **Chair:** Then you are back into the old problem.

Jo Darbyshire: Yes, definitely. I just do not see how it is manageable if they are not.

Katie Kendrick: In my case, where my freehold was sold on, the permission to build a small conservatory went from £300 to £2,600, for the same permission. It did not need permission from the local council because it was small enough to not need that permission. If it did need that permission, you would then have to pay your freeholder as well as the council. It is like paying twice all the time for something. It is just permission to say yes. They do not do anything, the same as with your ground rent.

Chair: Thank you all very much for coming to give evidence to us this afternoon. I hope you feel you have got across a very clear message to us about your experiences, which has been very helpful to the Committee.